

Final

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**State of Connecticut
State Contracting Standards Board
Study of Personal Service Agreements (PSA)
Competitive Bidding Practices**

**Findings and Recommendations
Study of Personal Service Agreements Competitive Bidding Practices**

December 2018

Committee Members

Alfred W. Bertoline, Chairman

Bruce Buff

Robert Rinker

David L. Guay, Ex Officio

**State of Connecticut
State Contracting Standards Board (Board)
Study of PSA Competitive Bidding Practices Committee (Committee)
December 2018**

**Executive Summary
Findings and Recommendations**

The Committee reviewed the Report to the General Assembly for Personal Service Agreements (PSA) submitted by the Office of Policy and Management (OPM) for the fiscal year ended June 30, 2017, dated October 31, 2017. The report indicated that 68% of all open Personal Service Agreements (PSA) were not subject to competitive bidding. A prior report on PSA contracts as of June 30, 2016, indicated that 73% were not competitively bid. This prompted the Board to conduct studies on PSA procurement practices in both 2016 and 2017. In performing our studies, it became clear that the lack of competitive bidding by state agencies was a problem and that through a robust competitive bidding process hundreds of millions of dollars may be saved annually by the State.

Findings from our studies are summarized as follows:

- The State is not taking advantage of the cost savings available through present procurement practices
- The tone at the top should focus on cost savings as important to the State's success
- The waiver process from competitive bidding may be too routine and lax
- State employee training in procurement practices appears to be insufficient
- Knowledge transfer from contractor to State employees seems to have little focus in the State's Contracting practices.
- The process to hire expensive outside contractors appears to be easier than to hire less expensive State employees

Recommendations

Empower the State Contracting Standards Board to bring immediate and significant value to the State (annual cost savings of \$56-\$107 million) by implementing the following:

Near Term

- Move the responsibility for the independent/objective approval of waivers from competitive bidding on PSA contracts from OPM to the Board.
- The Board should implement a procedure that requires all contracts that are requesting a waiver from competitive bidding be posted on BIZNET with the reasons justifying the waiver so there is complete public transparency in the conduct of State contracting
- Fill the vacant position of Chief Procurement Officer who will effectively discharge the Board's statutory responsibility to oversee state contracting agency compliance with provisions of statutes and regulations concerning procurement and implement changes to address the following issues:
 - Business justification to outsource the work
 - Compliance issues addressing cost-benefit analysis, cost effectiveness evaluations and contractor performance evaluations
 - Building results-based accountability into contracts
 - Insure contracts include knowledge transfer provisions
- Populate the critical position of Chief Procurement Training Officer who will:
 - Educate State procurement employees so they have the power and tools to adequately perform their responsibilities
 - Monitor and assess the performance of the procurement duties of each agency procurement officer
 - Design and implement a procurement officer certification program to elevate their knowledge and proficiency in world-class procurement practices
- Add the position of Chief Procurement Auditor who will:
 - In collaboration with the State Auditors design procedures to continually monitor the financial and cost provisions on contracting regulations
 - Conduct regulatory triennial audits on every contracting agency
 - Establish an anonymous fraud/complaint hotline regarding procurement and perform investigations as appropriate
 - Measure and report annually on procurement process improvement success

Longer Term

We believe that the State has the potential for annual cost savings of several hundred million dollars by implementing the following:

- All procurement for the State should move from its present decentralized organization to a more centralized, professional group. There should be a Chief Procurement Officer and several full-time professionals performing all procurement functions for the State. Each agency would have a procurement professional assigned to it who would report directly to the Chief Procurement Officer. The agency professional would work along with the agency personnel in determining agency needs, performing cost-benefit and effectiveness analysis, establishing criteria and performance measurements for the contractor and assisting the agency in contractor evaluation and measurement of performance. The execution of each contract, including negotiation with the contractor, would be handled by the procurement professional to ensure that regulatory requirements were met, competition among contractors was robust and that optimum value is derived from each contract to the benefit of the citizens of the State.
- The operations of the centralized procurement group would be housed under an existing agency, perhaps the Department of Administrative Services or the Office of Policy and Management, yet the continuing independent/objective oversight of State procurement would reside with the Board.
- Bring all Offices, Agencies, and Departments of the State under the same procurement oversight and regulatory compliance. Presently, the following are excluded from the Board's independent/objective oversight:
 - University of Connecticut
 - State College and University System
 - Constitutional Offices
 - Judicial Branch
 - Quasi-Public Agencies

The citizens of Connecticut deserve to have all State contracting be subject to the same regulations, standards and best practices not only to insure the State is getting the most value from each dollar spent on procurement but also that the process is open and transparent to all.

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Introduction

The mission of the State Contracting Standards Board (Board) includes “...to ensure that state contracting and procurement processes reflect the highest standards of integrity, are transparent, **cost effective...**”

Further, State Procurement Standards issued by OPM for Personal Service Agreements require: “The competitive procurement process is designed to foster an impartial and comprehensive **evaluation of multiple proposals**, leading to the selection of the most responsible proposer who can **provide the best value to the State...** A procurement is considered “**non-competitive**” when a State agency purchases or acquires services by means of (1) a “**sole source**” selection, (2) an RFP process that results in the submission of **fewer than three acceptable proposals...**” To enter a non-competitive procurement “the agency must request a **waiver from competitive solicitation** and obtain approval from **OPM.**”

In 2017, the Board reviewed the Report to the General Assembly for Personal Service Agreements (PSA) submitted by the OPM for the fiscal year ended June 30, 2016, dated October 7, 2016. That report indicated that of the \$3.231 billion in total open PSA contracts as of June 30, 2016, 73% of such contracts were let on a non-competitive basis. Considering this result was not in the spirit of the requirement for a competitive procurement process, the Board conducted an analysis on the data and issued a report presenting the following summary of recommendations which we believed had the potential to realize cost savings to the State on PSA contracts to be \$56-\$107 million annually:

- Legislation should be passed mandating competitive bidding on all PSA and POS (Purchase of Service) contracts.
- The Board should be empowered to lead the development of updated procurement regulations and to implement an annual process to measure results, report on compliance and provide the leadership for continuing improvements to procurement practices based on its findings.
- The Board, in consultation with the Department of Administrative Services (DAS) should develop and implement a world-class procurement staff training and certification program.

The Board was unable to implement its recommendations due to its lack of resources. We needed the vacant Chief Procurement Officer position to be filled, and in addition we requested a training officer and auditor to accomplish the strengthening of State Procurement practices. Those professional skill sets were never authorized. However, input from the Board's volunteer-sourced audit activity and other sources indicated that procurement issues continued to be a source of on-going concern.

Upon the Recommendation of the Board's chairman, Larry Fox, and approval by the said Board, the Board initiated a process to analyze the waiver of competitive procurement for state contracts by the Office of Policy and Management for Personal Services Agreements. A Personal Service Agreement is a contract between a state agency to provide goods and services to that state agency. Chairman Fox appointed the following Board members, Alfred Bertoline, Chairman, Bruce Buff, and Robert Rinker. Mr. Fox also reached out to the Department of Administrative Services (DAS) and the Office of Policy and Management (OPM) to contribute to the scope of the study as well as the data collection and analysis. DAS appointed Carol Wilson, Director of Procurement, and Devin Marquez, Assistant Director of Procurement, as contributors. OPM declined to participate in the study.

The Committee reviewed the "Report to the General Assembly for Personal Service Agreements" submitted by the Office of Policy and Management for the fiscal year ended June 30, 2017, dated October 31, 2017. That report indicated that of the \$3.647 billion in total open PSA contracts as of June 30, 2017, 68% of such contracts were let on a non-competitive basis. Since procurement standards require that no non-competitive contracts can be let without the approval and a documented waiver issued by OPM, our study focused on the waiver process and overall compliance with procurement standards.

Scope of 2018 Study

The Committee initiated a study as follows:

- Designed a form to solicit procurement standards including compliance and waiver information from agencies executing Personal Service Agreements
- Selected 60 non-competitive contracts from the "Report to the General Assembly for Personal Service Agreements" submitted by the Office of Policy and Management for the fiscal year ended June 30, 2017, dated October 31, 2017
- Requested contracting agencies to complete the information relating to compliance and waivers on the selected contracts
- Summarized our findings and recommendations for improvements

The form soliciting compliance information, 'Contract Data Response Form' (see Exhibit A attached), requested information including:

- Details on the PSA such as description of services, cost, and term
- A determination as to whether the PSA was a privatization contract and, if so, requested the applicable cost-benefit analysis be provided

- Information regarding contract extensions and/or renewals, and if Cost Effectiveness Evaluations were prepared, requested that they be provided
- Information justifying the waiver including sole source or fewer-than-three-proposal responses
- Information on whether the contractor was an individual or current or retired State employee and information addressing the regulatory requirements for such PSA

The sample of 60 PSAs selected for the study was determined as follows:

- 30 high-dollar PSAs were identified as follows:
 - The largest PSA contracting agencies were selected and the value of their total contracts represented 98% of all PSA contracts outstanding
 - The percentage of each agency's PSA value to the total was determined, and that percentage was used to provide the number of PSAs by agency to be selected to study from the 30 in the sample
- 30 randomly selected PSAs from the entire data base as follows:
 - Using a random number generator, a 30-PSA sample was selected giving each PSA in the data base an equal chance of being selected. The only deviation came when the random number generator landed on a competitively bid contract, the selection took the next non-competitive contract in the listing

The sample selection process was followed to eliminate any bias in the selection process and in order that the results of the study be truly representative of current practices that prevail regarding PSA procurement.

Scope Exceptions

Agencies that did not respond to our request for information are as follows:

- **Mental Health & Addiction Services**
 - 11MHA1023
 - 17MHA1041
 - 17MHA1045
 - 17MHA1046
 - 17MHA1048
 - 12MHA1090

15MHA1197

16MHA6005

16MHA6005 2nd

17MHA1000

17MHA1095

17MHA1000 2nd

• **Office of Early Childhood**

15OEC8301EG

Findings

1. Compliance with established procurement standards is less than adequate as evaluated by the Committee:

	<u>% Non-Compliant</u>
Cost Effectiveness Evaluations	68%
Contractor Evaluation Form completed	88
OPM Waiver Documentation not submitted	57
Due Diligence on Sole Source Waiver not adequate	37
Waiver Documentation on fewer than 3 bids not adequate	75
If contractor was an individual:	
Collective Bargaining Rep. not notified	83
Commissioner of DAS not notified	82
Joint Standing Committee not notified	83

Cost Effectiveness Evaluations

Very few Cost Effectiveness Evaluations were provided on PSA renewals, as in most cases the respondent indicated that the PSA did not meet the definition of a privatization contract. There seems to be considerable misunderstanding of these requirements which needs clarification and training. Several PSAs were renewed over multiple years without any business evaluation on continued cost effectiveness and savings. This practice appears to promote hiring outside contractors to perform needed services as an easier path to compliance with budgetary measurement practices than possibly hiring less expensive state employees.

Contractor Evaluations

Very few Contractor Evaluations were submitted documenting compliance with this requirement. One comment on a PSA with renewals with a cumulative term of 10 years indicated "... no evaluation was performed as the

contract is currently in process...” The lack of response and the comments indicate that this compliance requirement needs clarification and training for procurement personnel.

Documentation of Waivers

Documentation for the Waiver, due diligence on sole source and fewer- than-3-bid PSAs need special attention as the following justification comments demonstrate:

- Special capabilities because appointed by the State Board of Education
- Discussed internally and agency would need more funding if services came from a different source
- It would cause a delay in the release of funds; a new vendor would require start-up costs and staff would need retraining which would be costly and time consuming
- Requires specific knowledge...RFP would be disruptive to ongoing processes
- Selected vendor due to expertise and ability to meet timetables
- No waiver was granted but the contract seemed to be specifically designed for vendor
- No waiver submitted – just hand-written note “OPM approved”
- Only agency uniquely qualified for the service
- Waiver granted based on no known competitor – no due diligence documented
- Sole source waiver granted even though service is provided by several contractors in other 49 states
- Feels comfortable with service provider
- No waiver sought on contract renewal (This practice eliminates the continual testing of the marketplace for better pricing and/or better services and products)
- Department has not been approached by another vendor to do the work
- Pharmacy services – only response to a limited RFP distribution
- Easier to renew than prepare RFP

- Proprietary software – locked in (The use of open software would decrease the need for sole source and allow state employees access to software that would lower costs to the State)

Contracts with Individuals

We noted minimal compliance for PSAs with individuals to contact State labor organizations to notify them of the intent to contract with an outside individual.

It is apparent that compliance with procurement regulations and standards for PSAs is less than adequate. Further, the waiver process which should provide an independent check to insure agency procurement is realizing the most value for each dollar spent for State-purchased services has become more routine and may not provide the checks and balances intended by the requirement.

2. This study supports and reinforces the findings presented in our prior “Study of Competitive Bidding Practices” dated November 2017 as follows:

Tone at the top

There is little clear direction from the Executive and Legislative branches of State government over important procurement practices for State employees. There are plenty of rules and regulations guiding procurement activities which are found in many State-wide and agency publications, but there is no clear overriding directive on how to maximize the value to the State of each dollar spent. Cost savings appear to be far down the priority list in qualifying a contractor for some State agencies. The culture seems to be “just get the job done and keep the operation going” and one of selecting contractors with histories of delivering services in a seamless, least disruptive manner. These criteria are admirable; but lower priority focus is apparent for competitive bidding, reduction in costs, and transfer of knowledge to employees and proper documentation and justification for the contractor selected.

Considerable cost savings are not being realized due to non-competitive bidding practices of PSAs

Non-competitive PSAs represented 73% of all PSA contracts outstanding at the end of fiscal 2016. Justification for waivers from competitive bidding are summarized in the following general categories as presented in more detail in our current study above:

Mandated to select contractor	31%
Contractor-unique qualifications	31
No reason given	19
Other	7
No bidder	7
No time	<u>5</u>
	100%

The waiver process from competitive bidding may be too routine and lax

Our sample revealed that one of the major deficiencies in procurement practices is the extensive use of the established procedure for securing waivers from competitive bids/proposals. Waivers are reviewed and approved based on insufficient justifications (not enough time to secure competition, no one else can provide

the specific service, no apparent benefit to securing competition, etc.), and not enough critical review of these waiver requests is performed.

Training

State employee training in procurement practices appears to be insufficient. Procurement procedures are extremely complex, and compliance with the rules, regulations and agency requirements takes initial training and on-going education. We noted that employees assigned procurement responsibilities often had little formal training and too often learned from the person who performed the function before them. This process of education of our procurement personnel heightens the risk that improper practices continue to be passed on to the next person assigned to the task and to exposure to non-compliance continues to grow.

Knowledge Transfer

Knowledge transfer from contractor to State employee seems to have little focus in the State's contracting practices. Of the top 40 PSA contracts, 38 have an average term of over 10 years and 2 (1 for banking services and 1 for investment services) have terms of 106 and 94 years, respectively. If original contracts are let because the State does not have the required expertise, over time the needed expertise and skills enhancement would be acquired by State employees to diminish the need to continue hiring outside contractors for the continuing scope of services. As a further example, DMAS considers their contractors as partners in providing services, and maintaining open lines of communication apparently keeps the Agency current from their perspective – but not to the degree to enable the agency to provide these services currently provided by contractors. Why should the State continue to pay a contractor to train its junior people over time at the State's cost when the contractor should be training State employees to gain that expertise? There appears to be no transfer-of-knowledge-provisions included in any request of waiver from competitive bidding.

Contractor Suggestions

- Contractor suggestions – Contractors had the following suggestions regarding how to improve the procurement process:
 - RFPs are issued with specific criteria – Often contractors would like to respond with good ideas that differ from RFP specifications; however, such suggestions can't be considered under current contract standards. The regulations need some flexibility to take advantage of efficiencies and potential cost savings.
 - The Contractor pool may be limited by onerous State contract requirements including Indemnification, Insurance, Protection of Personal Information, and Executive Orders clauses.
 - The Contractor Advisory Panel has not been populated with members, which limits the benefits from the free-flow of comments and suggestions from contractors on the State Procurement practices.

Our studies clearly demonstrate that cost of services takes a much lower priority with most agencies engaged in procurement. Agency performance is measured by performing continuing services in a reliable, consistent manner. Therefore, contractors tend to be those who have a proven relationship with the agency for seamless and reliable services on a continuing basis. Entering new PSAs through the RFP and competitive process tends to be a disruptive process to ongoing operations, and it may be easier to request a waiver from going through the competitive bidding process. The fact that 68% of open contracts as of June 30, 2017, were let on a non-competitive basis supports this motivation.

We believe the present practice of obtaining waivers from competitive bidding from the Office of Policy and Management has become more routine and less objective than necessary to bring State procurement cost under tighter control. Waivers from competitive procurement should be the exception rather than standard practice as the data demonstrates (73% for 2016; 68% for 2017). This function should be transferred to the Board for an independent/objective analysis of the data.

The benefits of securing competition, lower pricing, improved quality of services provided, improved risk management, and access to outside expertise have been well established. But how much in cost savings can be realized by the competitive bid process? There have been several studies on this subject which can offer some guidance on how much organizations can expect from requiring competition.

In an April 4, 2011, article in the New York Times, Leonard Gilroy, Director of Government Reform at the Reason Foundation, stated that competitive contracting usually generates cost savings of between 5 and 20 percent on average.

In 2009, a study conducted by the Government Accounting Office (GAO) determined that organizations average 20 percent cost savings on competed contracts. Researchers analyzed 56 contracts for agencies throughout the federal government. Eighty percent of the samples were from DOD sources and twenty percent were from non-DOD services. Overall, commodities seemed to yield higher cost savings than services; however, the average remained at 20%. These findings were validated by a study conducted in September 2014, entitled "The Value of Competitive Contracting," by the Naval Post Graduate School, Monterey, California.

The Joint Committee has utilized a very conservative anticipated cost savings of 8 to 15 percent.

Recommendations

Near Term

Empower the State Contracting Standards Board to bring immediate and significant value to the State (annual cost savings of \$56-\$107 million) by implementing the following:

1. Move the responsibility for the independent/objective approval of waivers from competitive bidding on contracts from OPM to the Board.
2. The Board should implement a procedure that requires all contracts that are requesting a waiver from competitive bidding be posted on BIZNET with the reasons justifying the waiver so there is complete public transparency in the conduct of State contracting. In doing so, a potential bidder or proposer may contest the request for waiver under the Board's Statue 4e-36 as being a non-competitive procurement.

3. Fill the vacant position of Chief Procurement Officer who will effectively discharge the Board's statutory responsibility to oversee State contracting agency compliance with provisions of statutes and regulations concerning procurement and to implement changes to address the following issues:
 - Business justification to outsource the work
 - Focus on compliance issues addressing cost-benefit analysis, cost effectiveness evaluations and contractor performance evaluations
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4. Populate critical position of Chief Procurement Training Officer who will:
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5. Add the position of Chief Procurement Auditor who will:
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professionals performing all procurement functions for the State. Each agency would have a procurement professional assigned to it who would report directly to the Chief Procurement Officer. The agency professional would work with the agency in determining agency needs, performing cost-benefit and effectiveness analysis, establishing criteria and performance measurements for the contactor and assisting the agency in contractor evaluation and measurement of performance. The execution of each contract, including negotiation with the contractor, would be handled by the procurement professional to ensure that regulatory requirements were met, competition among contractors was robust and that optimum value is derived from each contract to the benefit of the citizens of the State.

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 - Constitutional Offices
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