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We have completed an audit of the use by agencies of the Executive Branch of State Government of contracts with consultants. This audit was required by Chapter 384, Statutes of Nevada, 2009 (A.B. 463). The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions. The results of our audit, including findings, conclusions, recommendations, and the Department of Administration's response, are presented in this report.

We wish to express our appreciation to the management and staff of the Department of Administration and those state agencies that assisted us during the audit.

Respectfully presented,

A handwritten signature in black ink, appearing to read "Paul V. Townsend".

Paul V. Townsend, CPA
Legislative Auditor

November 30, 2010
Carson City, Nevada

STATE OF NEVADA
CONTRACTS WITH CONSULTANTS
(A.B. 463)

AUDIT REPORT

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EXECUTIVE SUMMARY

CONTRACTS WITH CONSULTANTS (A.B. 463)

Background

During the 2009 Legislative Session, legislators expressed concerns regarding the State's use of consultant contracts. As a result, Assembly Bill 463 was passed. The bill included numerous provisions to strengthen controls over consultant contracts. These controls consist primarily of requirements for certain contracts to be approved by or reported to the Interim Finance Committee (IFC). A.B. 463 requires IFC approval before an agency can employ, by contract or otherwise, a consultant if one of four conditions exists.

- The person is a current employee of the State.
- The person is a former employee of the State and less than 1 year has expired since their employment ended. This provision also applies to employment through a temporary employment service.
- The term of the contract is for more than 2 years, or is extended beyond 2 years.
- The person is employed by the Department of Transportation for a federally funded project that is more than 4 years, including extensions.

Other provisions within the bill provide various reporting requirements and exemptions. For example:

- Agencies shall report to the IFC whenever they employ a consultant who is a former employee of the State.
- Each board or commission, school district, and institution of the Nevada System of Higher Education that employs a consultant must report to the IFC at least once every 6 months.

During our audit, we identified 250 current and former employees providing services to the State. These employees were paid a total of \$11.6 million during fiscal years 2008 and 2009.

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CONTRACTS WITH CONSULTANTS (A.B. 463)

Purpose

The purpose of our audit was to analyze the use of consultant and other professional service contracts with current and former state employees. This audit focused on professional service contracts with Executive Branch agencies in effect during fiscal years 2008 and 2009, and included activities through September 2010 for certain areas.

Results in Brief

Better oversight is needed for contracts with current and former state employees. The State does not have adequate controls to prevent current employees from performing contractor activities during their state work hours. Because controls are not in place to prevent abuse and detect timesheet discrepancies, some employees were paid twice for the same time. Further, agencies did not always enter into a contract with current and former employees. We also found several former employees provided services to the same agency they previously worked for, and performed similar duties for an extended period. In addition, agencies did not properly utilize the Contract Summary form to disclose important information, and former employees were frequently hired by the State through temporary employment services. Improved monitoring of contracts with current and former employees will provide transparency and help ensure contract costs are minimized.

The 2009 Legislature passed A.B. 463 to provide better oversight of state contracts with consultants. This includes requirements that information be provided to the Interim Finance Committee regarding contracts with current and former employees. However, the IFC has received very little information regarding consultant contracts entered into by state departments, divisions, and other agencies. Shortly after enactment of A.B. 463, the Department of Administration narrowly defined the term consultant to exclude individuals that provide any type of work product.

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Therefore, only under rare circumstances would a contractor be deemed a consultant and reported to the IFC. In contrast, boards, school districts, and the Nevada System of Higher Education (NSHE) used a broad definition of consultant and reported many contracts to the IFC.

Principal Findings

- The State does not have adequate controls to prevent current employees from performing contractor activities during their state work hours. Because controls are not in place to prevent abuse and detect timesheet discrepancies, some employees were paid twice for the same time. We tested 23 employees with a state contract and found 8 employees either performed contractor activities during their regular state work hours, or did not provide adequate documentation to verify contractor activities were performed on their own time. For example, one employee was paid for 25 hours in 1 day. This included 10 hours of contract services, a regular 10-hour shift on his timesheet, plus an additional 5 hours of overtime. Another employee used 8 hours of family sick leave on a day he provided 2.5 hours of contract services at a rate of \$250 per hour. (page 11)
- Executive Branch agencies did not always enter into a contract for services provided by current and former state employees. We identified 111 individuals that were either a current or former employee and found 28 (25%) were paid for services without a contract. When there is no contract, state requirements for contract approvals are bypassed. Sixteen individuals rendered services for 2 years or more without a contract, and one current employee was paid \$62,590 during fiscal years 2008 and 2009 in addition to her state salary. State Administrative Manual 322.5 requires all services provided to an agency by persons or firms falling under the definition of an independent contractor to be supplied under a

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contract executed by the agency receiving the services. (page 14)

- A significant number of the current and former state employees we identified performed independent contractor services similar to their state job duties. For example, we found 51 of 111 (46%) individuals were paid for similar job duties. This includes 18 current employees and 33 former employees. Many of the former employees returned to the same agency and performed services for an extended period. As a result, there is an increased risk of unnecessary cost to the State, such as higher contract rates. Also, there may be the potential for state employees to perform the work without additional cost to the State. (page 15)
- The contract hourly rate was not always comparable to the employee hourly rate when current and former employees contracted to perform similar duties. We found some instances when an individual performed similar duties at a significantly higher hourly rate. For example, one agency contracted with a former employee at a rate of \$350 per hour vs. \$65 per hour cost to the State as an employee. Another former employee had a contract rate of \$150 per hour vs. \$71 per hour cost to the State as an employee. (page 18)
- Former employees provide a valuable resource to the State because of their knowledge and skills gained through years of state service. For short-term or specific assignments, agencies can use these employees' expertise to address a staffing shortage, fluctuating workloads, or to provide services on an as-needed basis. In many instances, former employees can provide these services more effectively and at a lower cost than hiring and training additional staff. For example, a firefighter provided training for the Department of Public Safety at a rate of \$26 per hour. Total payments to this individual were \$1,400 during a 2-year period. (page 18)

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CONTRACTS WITH CONSULTANTS (A.B. 463)

- Contract Summary forms were not always prepared as required, and were not always accurate or complete. When the summary form is not provided, or it is inaccurate, authoritative bodies do not have all information necessary to determine if the contract should be approved. We tested 40 contracts for current employees and found only 10 instances when both a Contract Summary was submitted and it properly identified the contractor as a current employee. In addition, the Contract Summary form can be improved to provide better disclosure of employee information. (page 19)
- Our testing of 18 former employees, hired through a temporary employment service, found some pay rates were excessive and other pay rates were reasonable. For example, one individual was paid \$121 an hour compared to \$60 an hour cost to the State as an employee. This individual retired, returned to the same agency, and was paid \$117,500 during a 2-year period. This individual was also paid \$25,150 by another agency during the same period. On the other hand, a former department director provided services at a reasonable pay rate of \$30 an hour compared to \$69 an hour cost to the State as an employee. (page 21)
- Because of a narrow definition of consultant, the IFC has received very little information regarding consultant contracts entered into by departments, divisions and other agencies since the enactment of A.B. 463, effective May 31, 2009. The State Administrative Manual Section 304.2 defines the term consultant as a person who provides information, an opinion or advice for a fee. However, according to Department of Administration personnel, the Attorney General's Office provided a verbal opinion that the term consultant does not include an individual that provides a work product, such as a written report. Therefore, this narrow definition has limited the number of contracts submitted to the IFC for approval. (page 23)

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- The Department of Administration did not provide any consultant contracts to the IFC for review and approval from July 2009 through July 2010, a period of more than 1 year. Before the Department narrowed its definition of consultant, it submitted a list of 32 consultant contracts for the June 25, 2009, IFC meeting. However, 30 of the contracts were already approved by the Board of Examiners on June 17, 2009. Therefore, the IFC approved two applicable contracts. During our audit, no other consultant contracts were submitted to the IFC for review and approval. (page 24)
- Since enactment of A.B. 463, state agencies have not notified the IFC whenever they employed a former state employee to provide consulting services. Our review of IFC minutes and agenda items from June 2009 through July 2010 indicates the IFC had not been notified by any department, division, or other agency when it employed a former state employee. Because former employees typically provide a work product as part of their consulting activities, the Department of Administration's narrow definition of consultant prevented the reporting of former employees to the IFC. (page 26)

Recommendations

This audit report contains seven recommendations to improve the state's contracting practices with current and former employees. Six recommendations relate to ensuring contract agreements are entered into, contracts with current and former employees are adequately disclosed, and employees rendering contract services are properly monitored. In addition, one recommendation was made to clarify the term consultant for purposes of providing information to the IFC. (page 46)

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CONTRACTS WITH CONSULTANTS (A.B. 463)

Agency Response

The Department of Administration, in response to the audit report, accepted the seven recommendations.
(page 43)

Introduction

Background

During the 2009 Legislative Session, legislators expressed concerns regarding the State's use of consultant contracts. As a result, Assembly Bill 463 was passed.¹ The bill included numerous provisions to strengthen controls over consultant contracts. These controls consist primarily of requirements for certain contracts to be approved by or reported to the Interim Finance Committee (IFC). Section 1 requires IFC approval before an agency can employ, by contract or otherwise, a consultant if one of four conditions exists.

- The person is a current employee of the State.
- The person is a former employee of the State and less than 1 year has expired since their employment ended. This provision also applies to employment through a temporary employment service.
- The term of the contract is for more than 2 years, or is extended beyond 2 years.
- The person is employed by the Department of Transportation for a federally funded project that is more than 4 years, including extensions.

Other provisions within section 1 of the bill provide various reporting requirements and exemptions. For example:

- Agencies shall report to the IFC whenever they employ a consultant who is a former employee of the State. The Nevada System of Higher Education, boards and commissions, and certain Nevada Department of Transportation engineers are excluded from this reporting requirement.
- Each board or commission, school district, and institution of the Nevada System of Higher Education that employs a consultant must report to the IFC at least once every 6 months.
- Agencies may employ a current employee, or former employee that left in the past 1 year, without IFC approval if the term of employment is for less than 4 months and the executive head of the agency determines that an emergency exists. If an agency employs a person pursuant to this subsection, it shall include in the report to the IFC a description of the emergency.

¹ See Appendix B for a copy of Assembly Bill 463.

Overall, the intent of A.B. 463 was to strengthen controls over the contract approval process and provide transparency by requiring various entities to report consultant contracts to the IFC.

Our audit included an analysis of payments recorded in the state’s accounting system for fiscal years 2008 and 2009. From this analysis, we identified payments to many current and former employees for a variety of services. This includes, but was not limited to, consultants. Our analysis also noted vendors were listed as either an individual, company, or limited liability company (LLC).

Current and Former Employees Receiving Payments Were Identified

For payments to vendors listed as individuals, we were able to identify current and former employees. We also identified some state employees that were key officers with certain companies, corporations and LLC’s. However, information was not available to identify all state employees with all companies. Further, we identified current and former state employees that were hired through a temporary employment service. Exhibit 1 shows the total number of current and former employees identified from our review of individuals, companies, and temporary employment services.

Exhibit 1

Number of Current and Former Employees Identified That Received Contract Payments During Fiscal Years 2008 and 2009

Entity Type	Number of Current Employees	Number of Former Employees	Totals
Individual	50	61	111
Company	4	6	10
Limited Liability Company	4	13	17
Temporary Employment Service ¹	9	103	112
Totals	67	183	250

Source: State’s accounting and payroll systems.

¹ Accustaff, Kelly Services, and Manpower Employment Services.

The 250 employees in Exhibit 1 were paid a total of \$11.6 million during fiscal years 2008 and 2009. For the purpose of this audit, individuals that received contract payments while employed by the State are identified as a current employee. Therefore,

these individuals were a current employee at the time of the contract. However, some of these individuals may no longer be working for the State.

Scope and Objective

This audit was required by Chapter 384, Statutes of Nevada, 2009 (A.B. 463) and was conducted pursuant to the provisions of NRS 218G.010 to 218G.350. The Legislative Auditor conducts audits as part of the Legislature's oversight responsibility for public programs. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This audit focused on professional service contracts with Executive Branch agencies in effect during fiscal years 2008 and 2009, and included activities through September 2010 for certain areas. The objective of our audit was to analyze the use of consultant and other professional service contracts with current and former state employees.

Findings and Recommendations

Contracts With Current and Former Employees Need Better Oversight

Better oversight is needed for contracts with current and former state employees. The State does not have adequate controls to prevent current employees from performing contractor activities during their state work hours. Because controls are not in place to prevent abuse and detect timesheet discrepancies, some employees were paid twice for the same time. Further, agencies did not always enter into a contract with current and former employees. We also found several former employees provided services to the same agency they previously worked for, and performed similar duties for an extended period. In addition, agencies did not properly utilize the Contract Summary form to disclose important information, and former employees were frequently hired by the State through temporary employment services. Improved monitoring of contracts with current and former employees will provide transparency and help ensure contract costs are minimized.

Contracts With Current Employees Provide Opportunity for Abuse

The State does not have adequate controls to prevent current employees from performing contractor activities during their state work hours. Because controls are not in place to prevent abuse and detect timesheet discrepancies, some employees were paid twice for the same time. We tested 23 employees with a state contract and found 8 employees either performed contractor activities during their regular state work hours, or did not provide adequate documentation to verify contractor activities were performed on their own time.

State policies allow employees to work on contract for another state agency; however, the employee must perform these activities on their own time. This would include rendering services while on annual leave, before and after work, and during a regular day off. Our audit identified significant problems from testing only a few payments from each individual selected; therefore, the State needs to establish strong controls over contracts with state employees.

Our review of contractor billing statements, employee work shifts, and corresponding timesheets identified various time discrepancies. Exhibit 2 shows examples of time discrepancies for employees providing contract services.

Exhibit 2

**Examples of Time Discrepancies
for Employees Providing Contract Services**

<ul style="list-style-type: none"> • One employee was paid for 25 hours in 1 day. This included 10 hours of contract services, a regular 10-hour shift on his timesheet, plus an additional 5 hours of overtime. We also identified this employee did not use annual leave on another day when he provided 10 hours of contract services.
<ul style="list-style-type: none"> • An employee used 8 hours of family sick leave on a day he provided 2.5 hours of contract services between 9:00 and 11:30 a.m. On two other regular workdays, this employee billed for 5 and 8 hours of contract services and no annual leave was taken. The contract rate for this employee was \$250 per hour.
<ul style="list-style-type: none"> • An employee traveled to a rural location to perform contract services on a regular workday. The employee billed the State \$1,360 for 11.5 hours of service, including travel time. No annual leave was recorded on the employee's timesheet.
<ul style="list-style-type: none"> • One employee had a contract with the agency she worked for. We identified 4 weekdays where \$1,410 in services were billed and no annual leave was taken. Because the agency could not provide the times when services were performed, we could not verify that services were performed on the employee's own time.
<ul style="list-style-type: none"> • One employee provided services to two other state agencies. For the payments we tested, four services were performed on weekdays and no annual leave was used. One agency reported that two services started at 1:30 p.m., and the other agency could not determine the times two other services were provided. We estimate each service took between 3.5 and 6 hours to perform. This employee had a variable work schedule and was not required to specifically identify hours worked on his timesheet or billing statements. Therefore, controls were not in place to ensure \$2,398 in charges were provided on the employee's own time.

Source: Auditor analysis of invoices and timesheets.

For the 8 employees with time discrepancies, we tested 22 payments during fiscal years 2008 and 2009. However, from reviewing payments recorded in the state's accounting system, these employees received a total of 795 payments over a period of years. Four employees provided services for more than 4 years, including two individuals that have received payments since 1999. The eight employees with time discrepancies worked for five different agencies and received payments of about \$294,000 during 2008 and 2009.

Inadequate Controls Over Contracts With State Employees

State agencies did not have adequate controls over contracts with state employees. State agencies did not ensure: 1) a monitoring process was in place for contracts with employees, 2) employees signed statements acknowledging services must be rendered on their own time, 3) invoices contained information on the times services were performed, and 4) employees provided a detailed accounting of hours worked. For most contracts where we identified time discrepancies, agency management was not aware their employee had a contract with another agency.

- No Monitoring Process – All 12 agencies we contacted did not have a monitoring process to ensure employees with their agency or with another agency render services on their own time.
- No Signed Statements – For 31 of 35 current employees selected, agencies could not provide a statement signed by the employee acknowledging services are to be rendered on their own time.
- No Times on Invoices – For 23 individuals tested, 14 submitted invoices that did not provide the time of day when services were performed. Many dates listed on invoices were normal workdays and the corresponding timesheets did not indicate leave was used; however, charges were often for short periods of time. Therefore, adequate information was not always available to determine whether or not services were provided on the employee's own time.
- No Required Reporting of Work Times – Most employees were not required to provide specific details on their timesheets for hours worked. These employees were only required to report exceptions, such as sick time and annual leave. In addition, some employees had variable work schedules with no requirements to report when work times occurred. Without an accurate accounting of time, it is difficult to tell when these employees were working as a state employee or a state contractor.

Nevada Administrative Code (NAC) 284.766 and State Administrative Manual (SAM) 320.5 require all state permanent employees to devote full time, attention and effort to state employment during official duty hours and not to contractual obligations. However, state employees with one agency may lawfully work on contract for another state agency while on annual leave from the first agency. Because state employees are allowed to contract with other agencies, controls should be established to ensure all contractual obligations are properly disclosed and performed on the employee's own time.

Current and Former Employees Provided Services Without a Contract

Executive Branch agencies did not always enter into a contract for services provided by current and former state employees. We identified 111 individuals that were either a current or former employee and found 28 (25%) were paid for services without a contract. When there is no contract, state requirements for contract approvals are bypassed. Further, terms and conditions are not documented, monitoring of costs and services is diminished, and various insurance requirements are not met.

These individuals provided services such as consultant, psychologist, physician, training instructor, social worker, and lab assistant. We also found instances when services were provided for an extended period of time and individuals were paid a significant amount while concurrently working for the State without a contract. For example:

- Sixteen individuals rendered services for 2 years or more without a contract.
- Two individuals have consistently received payments since 1999 while also working as a state employee. This includes one individual who has been paid over \$145,000 in addition to his state salary as a psychologist.
- A current employee was paid \$62,590 for psychological services during fiscal years 2008 and 2009 in addition to her state salary.

SAM 322.5 requires all services provided to an agency by persons or firms falling under the definition of an independent contractor to be supplied under a contract executed by the agency receiving the services. This includes, but is not limited to, medical services, consultants and training. When individuals are paid for services without a contract, there is an increased risk costs are not properly monitored and limited. Per SAM 325.0, it is the policy of the State to limit and monitor costs associated with the hiring of professional and expert services.

Some agencies and contract monitors do not have an adequate understanding of when contracts are required for services. For example, one agency made payments to 18 individuals without a contract. When we inquired about the lack of contracts for services, the agency responded a contract was not needed for these individuals because services were provided under their Direct Purchase Authorization with the Purchasing Division. However, according to the Purchasing Division, the Direct

Purchase Authorization only relieves the agency of the procurement process for selecting a vendor and a contract is still required for all services.

Current and Former Employees Performed Similar Duties as Contractors

A significant number of the current and former state employees we identified performed independent contractor services similar to their state job duties. For example, we found 51 of 111 (46%) individuals were paid for similar job duties. Further, many of these individuals returned to the same agency and performed services for an extended period. As a result, there is an increased risk of unnecessary cost to the State, such as higher contract rates. Also, there may be the potential for state employees to perform the work without additional cost to the State. Exhibit 3 shows the number of current and former employees that performed different or similar contractor duties.

Exhibit 3

**Number of Current and Former Employees¹
With Different or Similar Contractor Duties**

Employee Status	Different Duties	Similar Duties	Totals
Current	32	18	50
Former	28	33	61
Totals	60	51	111

Source: Auditor analysis of state's accounting and payroll systems, contracts, and invoices.

¹ Does not include current and former employees hired through a temporary employment service or company.

These 111 current and former employees were paid a total of about \$6.3 million during fiscal years 2008 and 2009. From this amount, about \$2.3 million was paid to the 51 individuals that performed similar duties. Exhibit 4 shows the amount paid by each agency to the 51 current and former employees.

**Amount Paid by Each Agency
to Current and Former Employees Performing Similar Duties
Fiscal Years 2008 and 2009**

State Agency	Amount Paid	Number of Individuals Performing Similar Duties
Division of Mental Health & Developmental Services	\$1,312,918	16
Colorado River Commission	329,649	2
Rehabilitation Division	325,699	15
Department of Cultural Affairs	83,191	2
Department of Wildlife	48,442	1
Division of Health Care Financing & Policy	41,703	2
Department of Public Safety	39,508	5
Taxicab Authority	34,800	1
Department of Personnel	33,146	2
Department of Conservation & Natural Resources	29,362	2
Housing Division	24,373	1
Real Estate Division	7,692	1
Division of Child & Family Services	6,261	1
Department of Agriculture	3,773	2
Individuals Performing Duties at Multiple Agencies	-	(2)
Totals	\$2,320,517	51

Source: Auditor analysis of state's accounting and payroll systems, contracts, and invoices.

We also found that 29 of these 51 individuals performed similar duties for the same agency that employed them. Further, we noted many of the similar duties were medical services provided by psychiatrists and psychologists.

Current Employees Were Paid for Services Similar to Their Job Duties

We identified 18 of 50 current employees performed services similar to their state job duties. Examples of contract services that were similar to job duties included psychologist, physician, attorney, training instructor, and social worker. Our testing of current employees also identified:

- Eight psychologists employed by one agency were also paid for providing contract services by another agency. These psychologists were paid a total of \$245,956 during fiscal years 2008 and 2009.
- Five physicians performed medical services as a contractor. These physicians were paid a total of \$156,234 during fiscal years 2008 and 2009. Three of the five physicians provided contract services to the same agency they work for.

Agencies should minimize the need to contract with current employees, especially with one of its own employees. NAC 284.754 prohibits an employee from entering into a private contract with the State in any capacity that may be construed as an extension of his assigned duties or responsibilities to the State. There may be situations when a contract with a current employee is necessary and benefits the State. However, contracts for similar services should be properly disclosed to those with approval authority, as discussed later in this audit report. Further, contracts with current employees have an inherent risk the State will pay for contract services that were performed on state time.

Former Employees Performed Similar Duties

We found 33 of 61 former employees performed services that were similar to their prior job duties. As a result, there is an increased risk the State is paying a former employee for services a current employee could perform. For the 33 former employees that performed similar duties, we also identified:

- Returned in Less Than 1 Year – 28 returned within 1 year of leaving state employment. This included two people who retired and came back the next month.
- Returned to the Same Agency – 23 provided services to the same agency that previously employed them.
- Contracts for an Extended Period – For 30 instances when there was a contract, 24 were for 1 year or more. Thirteen of the contracts have been for 3 years or more.
- Retired and Returned – 16 retired and returned to work for the State as contractors.

SAM 344 requires agencies to justify why a contractor is being used rather than a state employee. This section of SAM also advises agencies that a state employee with the same or another state agency may be able to perform the needed work. We acknowledge there can be contracts with former employees that benefit the State.

However, if a former employee is hired because of specialized knowledge that was acquired while working for the State, the agency should take action to ensure the contract is not for an extended period. For example, the contract could include a provision that requires the contractor to transfer their knowledge to a state employee within a reasonable period of time.

Contract Pay Rate Not Always Comparable to Employee Pay Rate

The contract hourly rate was not always comparable to the employee hourly rate² when current and former employees contracted to perform similar duties. We found some instances when an individual performed similar duties at a significantly higher hourly rate. This included:

- One agency contracted with a former employee at a rate of \$350 per hour vs. \$65 per hour cost to the State as an employee. The agency indicated this individual had an extensive background in complex water and natural resource issues. This contract started immediately after the individual left in November 2006 and it has been extended through June 30, 2011. As of September 2010, a total of \$472,493 has been paid to this individual.
- One former employee had a contract rate of \$150 per hour vs. \$71 per hour cost to the State as an employee. This individual retired and came back to the same agency as a consultant regarding water and natural resource issues. The contract started in December 2007 and has been extended through February 2013. As of September 2010, a total of \$55,125 has been paid to this individual.
- We reviewed contracts for six psychiatrists that were former employees and found all six contracts had a rate of \$135 per hour. The per hour cost to the State for senior psychiatrists ranges from \$89 to \$100 per hour.

Former Employees Also Provide a Valuable Resource to the State

Former employees provide a valuable resource to the State because of their knowledge and skills gained through years of state service. For short-term or specific assignments, agencies can use these employees' expertise to address a staffing shortage, fluctuating workloads, or to provide services on an as-needed basis. In many instances, former employees can provide these services more effectively and at a lower cost than hiring and training additional staff. Some of the contracts with former employees we identified that benefitted the State include:

² Our calculation of employee hourly rate is the total hourly cost to the State, including fringe benefits.

- A veterinarian provided services at a rate of \$50 per hour, when needed. This rate was slightly less than the state's hourly cost, including fringe benefits, to employ a veterinarian. The scope of work was to provide veterinary diagnostic consulting and assist a laboratory in rural Nevada. Because the contract was for services on an as-needed basis, he received payments of just \$2,300 during a 2-year period. As a result, the State paid a reasonable rate for specialized skills.
- A pharmacist provided services at a rate of \$50 per hour, when needed. This rate was slightly less than the state's hourly cost, including fringe benefits, to employ a pharmacist. Terms of the contract included a maximum of 40 hours per week, no payment for travel time, and backup services at different locations if needed. Total payments to this individual were \$2,000 during a 2-year period. As a result, the State paid a reasonable rate for services only when they were necessary.
- A firefighter provided training for the Department of Public Safety at a rate of \$26 per hour. Total payments to this individual were \$1,400 during a 2-year period. Further, NRS 477 mandates the State Fire Marshal to furnish and administer programs for the training of firefighters. Thus, a former employee provided required services at a reasonable rate.

Contract Summaries Were Not Properly Utilized

Contract Summary forms were not properly utilized for contracts with current and former employees. We found contract summaries were not always prepared as required. Further, when summaries were prepared, they were not always accurate or complete. When the summary form is not provided, or it is inaccurate, authoritative bodies do not have all information necessary to determine if the contract should be approved. SAM 344 requires a completed Contract Summary form be attached to all contracts and agreements.

The Contract Summary form³ is a critical document in the state's contracting process. When properly completed, it contains important information that is not in the contract. For example, it includes a section for agencies to disclose if the contractor is a current or former employee. It also includes a section to explain why state workers were not able to do the work, and describe how the contractor will account to his or her employer for time spent as a contractor to the State.

³ See Appendix C for a copy of the Contract Summary form.

Contract Summaries for Current Employees Not Prepared or Not Accurate

We tested 40 contracts for current employees and found only 10 instances when both a Contract Summary was submitted and it properly identified the contractor as a current employee.

- For 18 instances, there was no Contract Summary prepared because there was no contract.⁴
- For 8 of 18 instances when a Contract Summary was submitted to the Board of Examiners, it did not accurately disclose that the contractor was a current state employee.
- For one individual, there was a contract but a Contract Summary was not prepared. For three individuals, there was a signed agreement but no Contract Summary. Further, these agreement templates did not disclose the employee's status or address other requirements.

The Contract Summary form can be improved to provide better disclosure of employee information. For current employees, SAM 320.5 requires agencies to provide the Board of Examiners with a written description of the proposed work and the employee's normal job duties so the Board can make a determination whether the contract is an extension of assigned job duties. However, the Contract Summary does not have a section to provide a description of the employee's normal job duties. For former employees, SAM 324.5 requests agencies to substantiate all contracts entered into with former employees who would perform work similar to their state employment. However, the Contract Summary does not include a section to identify whether former employees perform similar work.

Former Employee Use of Temporary Employment Services Is Extensive

Executive Branch agencies paid \$23.2 million to temporary employment services during fiscal years 2008 and 2009. This includes payments to a number of former state employees, many of which returned to the same agency. Further, agencies did not always ensure pay rates were comparable to the state's rate for similar duties. As a result, there is an increased risk of excessive costs to the State.

About 95% of the payments noted above were made to three major temporary employment services. From information provided by these three companies, we

⁴ The issue of services rendered without a contract is addressed in a previous section of this audit report. The Contract Summary form is addressed separately because it is the only document used to disclose a current or former employee.

identified 112 individuals that were current or former employees. Our analysis of this information found:

- About \$2.2 million was paid to these 112 individuals.
- Sixty were retirees that received a total of almost \$1.5 million.
- Approximately 60% of former employees tested returned to work for the same state agency.
- Nine individuals worked concurrently as a state employee and through a temporary employment service.

Pay Rates to Former Employees Were Not Always Reasonable

We identified instances when pay rates to former employees, hired through a temporary employment service, were not reasonable. We judgmentally selected and tested 18 former employees that were likely to provide consulting and other services. Our selection was based on the former employee’s state job title and their pay grade. We found that 11 of 18 provided consultant or other professional services. For these 18 employees, some pay rates were excessive and other pay rates were reasonable. Exhibit 5 shows examples of excessive and reasonable pay rates.

Exhibit 5

**Excessive and Reasonable Pay Rates
Former Employees Hired Through a Temporary Employment Service**

Excessive Pay Rates:
<ul style="list-style-type: none"> • One individual was paid \$121 an hour compared to \$60 an hour cost to the State as an Administrative Services Officer. This individual retired, returned to the same agency, and was paid \$117,500 during a 2-year period. This individual was also paid \$25,150 by another agency during the same period.
<ul style="list-style-type: none"> • One individual was paid \$72 an hour for physical therapy services compared to \$41 an hour cost to the State to employ a physical therapist. This individual retired, returned to the same agency, and was paid \$211,000 during a 2-year period.
<ul style="list-style-type: none"> • One individual was paid \$61 an hour compared to \$35 an hour cost to the State as a Business Process Analyst. This individual returned to the same agency and was paid \$84,500 during a 2-year period.
Reasonable Pay Rates:
<ul style="list-style-type: none"> • A former department director provided services at \$30 an hour compared to \$69 an hour cost to the State as an employee. Further, as a former director, he provided specialized knowledge to the State at a favorable rate.
<ul style="list-style-type: none"> • A former Department of Public Safety Captain provided training at \$31 an hour.
<ul style="list-style-type: none"> • One individual provided grants and project analyst services at \$29 an hour compared to \$59 per hour cost to the State as an employee.

Source: Auditor analysis of the state’s payroll system, vendor invoices, and data provided by temporary employment services.

Note: The hourly cost to the State includes fringe benefits. Pay rate for temporary service includes agency commission.

Former employees hired through a temporary employment service should be paid an hourly rate that is comparable to their prior rate or to a current employee performing similar duties. For example, one department has written procedures in determining the hourly rate for temporary staff. The procedures state consideration must be given to the hourly rate which a state employee performing similar work would receive. When hiring a state retiree, the hourly rate for the temporary staff must not exceed 10% more than the hourly rate the person was earning at the time of retirement for performing similar duties. Further, approval by the division and department head is required if the hourly salary is to exceed the 10% limit or if the length of employment exceeds 6 months. The State Administrative Manual does not include a section that establishes a policy regarding pay rates for individuals hired through a temporary employment service. Therefore, policies should be established to address this area.

Recommendations

The Department of Administration should:

1. Provide agencies with guidance that ensures state employees render contract services on their own time.
2. Notify agencies of the state's requirements to enter into contracts for services.
3. Revise the Contract Summary form to provide written justification for pay rates of current and former employees contracting with the State to perform services similar to their state employment.
4. Revise the Contract Summary form to provide a description of the normal job duties for current employees, and the prior job duties of former state employees contracting with the State.
5. Provide guidance to agencies and contract monitors to help ensure contract summaries are properly completed, including the identification of current and former employees.
6. Revise SAM to provide guidance regarding pay rates and employment terms of former employees hired through a temporary employment service.

Consultant Contract Information Not Always Provided to the IFC

The 2009 Legislature passed A.B. 463 to provide better oversight of state contracts with consultants. This includes requirements that information be provided to the Interim Finance Committee (IFC) regarding contracts with current and former employees. However, the IFC has received very little information regarding consultant contracts entered into by state departments, divisions, and other agencies. Shortly after enactment of A.B. 463, the Department of Administration narrowly defined the term consultant to exclude individuals that provide any type of work product. Therefore, only under rare circumstances would a contractor be deemed a consultant and reported to the IFC. In contrast, boards, school districts, and the Nevada System of Higher Education (NSHE) used a broad definition of consultant and reported many contracts to the IFC.

Narrow Definition of Consultant Used by the Department of Administration

Because of a narrow definition of consultant, the IFC has received very little information regarding consultant contracts entered into by departments, divisions and other agencies since the enactment of A.B. 463,⁵ effective May 31, 2009. The State Administrative Manual Section 304.2 defines the term consultant as a person who provides information, an opinion or advice for a fee. However, according to Department of Administration personnel, the Attorney General's Office provided a verbal opinion that the term consultant does not include an individual that provides a work product, such as a written report. Therefore, this narrow definition has limited the number of contracts submitted to the IFC for approval. Exhibit 6 shows examples where the Department concluded that contracts approved by the Board of Examiners in July 2010 were not consultants.

⁵ The IFC approval and reporting requirements of A.B. 463 were codified in NRS 284.1729.

**Examples of Contracts Deemed Not a Consultant
by the Department of Administration
Approved July 2010**

Contractor Name	Description of Service per Contract Summary	Contract Length	Contract Maximum
AON Consulting	Provide actuary, analysis, and consultant services for certain administrative functions.	8 years, 1 day (contract extension)	\$4,416,866
Gilbert Coleman, Ph.D.	Independent expert to provide consultation and assistance in the determination and evaluation of economic claims and damages.	4 years, 257 days (contract extension)	\$ 94,999
JNA Consulting Group, LLC	Financial advisory services in connection with issuance of debt securities.	2 years, 19 days (new contract)	\$1,000,000

Source: Contracts submitted and approved by the Board of Examiners on July 13, 2010, per the Department of Administration.

Our review of legislative minutes related to A.B. 463 indicates the term consultant was used to describe individuals that provide professional services to the State, including former state employees that were reemployed under contract to provide services similar to their prior state job. We believe it is common practice for consultants to perform or produce work related to their service. For example, consultants often collect, analyze, and present data in the form of written reports. Consultants also conduct training activities and provide instructional materials. Therefore, for purposes of our audit, we considered a consultant to be an individual that provides information, an opinion, or advice for a fee, including performing or producing work related to the service provided.

Contracts Not Submitted to the IFC for Approval for More Than 1 Year

The Department of Administration did not provide any consultant contracts to the IFC for review and approval from July 2009 through July 2010, a period of more than 1 year. Before the Department narrowed its definition of consultant, it submitted a list of 32 consultant contracts for the June 25, 2009, IFC meeting. However, 30 of the contracts were already approved by the Board of Examiners on June 17, 2009. Therefore, the IFC approved two applicable contracts. During our audit, no other consultant contracts were submitted to the IFC for review and approval.

Pursuant to NRS 284.1729(1), a department, division or other agency must obtain IFC approval prior to employing a person, by contract or otherwise, to provide services as a consultant for the agency if:

- (a) The person is a current employee of an agency of this State;
- (b) The person is a former employee of an agency of this State and less than 1 year has expired since the termination of the person's employment with the State;
- (c) Except as otherwise provided in paragraph (d), the term of the contract is for more than 2 years, or is amended or otherwise extended beyond 2 years; or
- (d) The person is employed by the Department of Transportation for a transportation project that is federally funded and the term of the contract is for more than 4 years, or is amended or otherwise extended beyond 4 years.

In addition, NRS 284.1729(1)(b) applies to former employees providing consulting services through a temporary employment service.

Most personnel we interviewed indicated they did not have contracts subject to the requirements of NRS 284.1729. In addition, some agencies indicated it would be burdensome if contracts were submitted to the IFC for approval. Although many contracts we reviewed indicated the individual would perform consulting services, agency personnel have relied on advice by the Department of Administration and have changed their definition of consultant. For example:

In December 2007, an agency entered into a consultant contract with a retired employee for \$150 per hour to advise the director regarding complex environmental and water issues. When the contract was extended in August 2009, the agency indicated the contractor was a consultant on the Contract Summary form; however, the form was changed by the Department of Administration to indicate the contractor was not a consultant. In December 2009, a new contract was entered into for similar services and a note was written on the Contract Summary form indicating the contractor did not meet the definition of a consultant. The termination date for the new contract was February 2013, a contract term of over 3 years.

Had the Department of Administration considered the above example a consultant contract, IFC approval would have been required for both the August 2009 extension and the new contract in December 2009. In addition, this contract with a former employee would have been subject to the reporting requirements for former employees as described in the following section.

Former Employees Not Reported to the IFC

Since enactment of A.B. 463, state agencies have not notified the IFC whenever they employed a former state employee to provide consulting services. Our review of IFC minutes and agenda items from June 2009 through July 2010, indicates the IFC had not been notified by any department, division, or other agency when it employed a former state employee. Because former employees typically provide a work product as part of their consulting activities, the Department of Administration's narrow definition of consultant prevented the reporting of former employees to the IFC.

NRS 284.1729(4) requires agencies to report any former employee providing consulting services. This law states a department, division or other agency of this State shall report to the Interim Finance Committee whenever it employs, by contract or otherwise, a person to provide services as a consultant for the agency who is a former employee of a department, division or other agency of this State. NSHE, boards or commissions, and certain Nevada Department of Transportation engineers are excluded from this reporting requirement.

As indicated in this audit report, our testing identified 183 former employees providing services to state agencies during fiscal years 2008 and 2009. Because former employees often provide services to the State, a process needs to be established to report all consultant contracts with former employees, including employment through a temporary employment service.

Boards, School Districts, and NSHE Reported Many Consultants

Boards, school districts, and institutions of NSHE have submitted informational reports to the IFC regarding consultant contracts. Although these entities are not required to obtain approval from the IFC when employing a consultant, they must submit a report to the IFC every 6 months regarding consultant contracts.

NRS 284.1729(6) requires each board or commission of this State, each school district in this State and each institution of the Nevada System of Higher Education that employs a consultant to, at least once every 6 months, submit to the Interim Finance Committee a report setting forth:

- (a) The number of consultants employed by the board, commission, school district, or institution;

- (b) The purpose for which the board, commission, school district, or institution employs each consultant;
- (c) The amount of money or other remuneration received by each consultant from the board, commission, school district, or institution; and
- (d) The length of time each consultant has been employed by the board, commission, school district, or institution.

Exhibit 7 shows the number of contracts reported to the Interim Finance Committee in February 2010.

Exhibit 7

**Consultant Contracts Reported to the Interim Finance Committee
by Boards and Commissions, School Districts, and NSHE
February 2010 Meeting**

Reporting Entity	Number of Consultant Contracts Reported
Boards and Commissions	23
School Districts	1,041
Nevada System of Higher Education	250
Total	1,314

Source: Interim Finance Committee informational items February 3, 2010.

Our review of the information reported by the above entities identified they used a broad definition of consultant pursuant to A.B. 463. For example, some of the consultant contracts reported to the IFC included:

- Accounting
- Engineering
- Legal
- Medical
- Program Evaluation
- Technology
- Actuarial
- Fiscal
- Lobbyist
- Physical Therapy
- Psychological
- Temporary Service
- Collection Agency
- Grant Funding
- Marketing
- Policy Development
- Software Support
- Training

Although certain entities reported consultant information to the IFC, the overall intent of A.B. 463 has not been achieved, especially for providing legislative oversight of contracts with current and former state employees. Because a narrow definition of consultant was adopted by the Department of Administration, the IFC is unlikely to

receive information regarding contracts with current or former employees until the term consultant is clarified through legislation.

Recommendation

7. The Legislature should consider enacting legislation to clarify the term consultant for purposes of providing information to the Interim Finance Committee.

Appendices

Appendix A

Audit Methodology

To gain an understanding of requirements and best practices for contracts with consultants, we reviewed Assembly Bill 463 and audit reports by other states. To gain an understanding of requirements for service contracts with state employees, we reviewed regulations and the State Administrative Manual. To identify legislative concerns regarding contracts with state employees for consultant and other professional services, we reviewed minutes for legislative committees related to Assembly Bill 463. We also met with representatives from the State Controller's Office and obtained information to assist us with our audit.

We documented and assessed internal controls over the state's contract approval process for contracts with individuals, companies, and temporary employment services, and contracts with current employees. Further, we assessed controls over the process for reporting consultant contracts to the Interim Finance Committee.

To identify payments made by the State for professional services, we reviewed the state's accounting system and identified all applicable accounts. Next, we constructed a query and downloaded all payments recorded to these accounts during fiscal years 2008 and 2009. To test the reliability and completeness of our data, we randomly selected 20 accounts and compared the totals from our download with totals from the Data Warehouse of Nevada. Next, we compared totals for all 20 accounts with the totals for the same accounts in monthly vendor tables. Finally, we randomly selected 20 approved contracts from four Board of Examiners' meetings. For each contract, we verified the contractor and agency name were properly included in our download.

To analyze the use of contracts with current and former employees, we first identified vendors in our download listed as individuals. To determine which individuals were state employees, we compared vendor names and social security numbers to employee names and social security numbers. For each state employee identified, we

reviewed the contract and supporting documents to determine if the employee status was properly disclosed and other required information was provided. To determine if similar duties were performed, we compared contract services to the individuals' state job duties. To determine if current employees performed contract services on their own time, we judgmentally selected 23 individuals and obtained invoices for 60 payment vouchers. For each invoice, we compared the date and time services were performed to the corresponding timesheet to identify if annual leave was taken or services were rendered on time off. We also requested 12 agencies provide a description of their monitoring process to ensure employees perform contract services on their own time.

To identify current and former state employees with limited liability companies (LLC), we selected all 449 LLC's in our download. To identify current and former state employees with corporations and private companies, we judgmentally selected 50 companies. Judgment was based on domestic companies with unfamiliar names. For each company selected, we obtained names and addresses of key officers from the Secretary of State's website. For each name listed, we determined if there was a matching name in the state's payroll system. For each matching name, we compared the key officer address to the address listed in the state's vendor system. For each person identified as a state employee, we reviewed the contract and supporting documents to determine if the employee status was properly disclosed and other required information was provided.

To analyze the use of temporary employment services by current and former state employees, we first determined which temporary employment services received payments during fiscal years 2008 and 2009. From this data, we identified three temporary employment companies had received 95% of the payments. From each of the three companies, we obtained names of individuals that provided temporary services to the State during our audit scope. For each name listed, we also obtained payment amounts, addresses and other data. To identify state employees from the names listed, we matched data provided by the temporary agency with the state's accounting and payroll systems. For each state employee identified, we documented the dates of state employment, state agency employed by, temporary income amount,

and temporary state agency employed by. We also documented which former employees were retirees.

To determine if temporary pay rates were reasonable, we judgmentally selected 18 individuals. Judgment was based on individuals likely to perform consulting and other administrative services. For each individual selected, we obtained invoices and compared the temporary hourly rate to the State's hourly cost as an employee, including fringe benefits. We also interviewed staff at six agencies to determine if they had written policies and procedures for temporary employees and pay rates.

To determine if consultant contracts were properly approved by and reported to the Interim Finance Committee (IFC) by state agencies, we reviewed IFC agendas and minutes from June 2009 through August 2010. We also discussed the definition of consultant with staff from various Executive Branch agencies, including the Department of Administration. During our testing of contracts with current and former employees, we documented instances when consultants were not properly approved or reported.

To determine if boards, commissions, school districts and the Nevada System of Higher Education reported consultant contracts to the IFC, we first identified all entities required to report. For each entity, we reviewed the IFC agendas and minutes for the period of June 1, 2009 to November 30, 2009 and documented which entities submitted a report. To determine if the contract list submitted by certain licensing boards was complete, we identified 12 consultant contracts approved by the Board of Examiners during the period of July 2007 through November 2009. For each consultant contract, we verified it was included on the board's reporting form.

Our audit work was conducted from October 2009 through September 2010. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In accordance with NRS 218G.230, we furnished a copy of our preliminary report to the Director of the Department of Administration. On November 8, 2010, we met with

the Director to discuss the results of our audit and requested a written response to the preliminary report. That response is contained in Appendix E which begins on page 43.

Contributors to this report included:

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Appendix B
Assembly Bill 463

Assembly Bill No. 463—Assemblywoman Smith

CHAPTER.....

AN ACT relating to governmental administration; restricting a department, division or other agency of this State from employing a person as a consultant; providing certain exceptions; requiring certain entities to submit to the Interim Finance Committee a report concerning each consultant employed by the entity; requiring that contracts with temporary employment services be awarded by open competitive bidding; requiring that information concerning the use of consultants and temporary employment services be included and explained in the budget process by a state agency; requiring the Legislative Auditor to conduct an audit concerning the use of contracts with consultants by state agencies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill restricts a department, division or other agency of this State from employing a person as a consultant for the agency. **Section 1** requires the Interim Finance Committee to approve the employment of a consultant under certain circumstances and limits the approval of the employment of the person as a consultant if the person is a former employee of a department, division or other agency of this State and at least 1 year has not expired before the person is employed as a consultant. **Section 1** also requires each board, commission, school district and institution of the Nevada System of Higher Education to submit to the Interim Finance Committee, at least once every 6 months, a report concerning each consultant employed by the entity. **Section 1** also requires that contracts with temporary employment services be awarded by open competitive bidding. **Section 1** further provides that certain exceptions apply for the employment of persons for a period of less than 4 months under certain conditions and for the employment of certain persons by the Department of Transportation for transportation projects that are federally funded. **Section 2.5** of this bill requires that information concerning the use of consultants and temporary employment services be included and explained in the budget process by a state agency. **Section 2.7** of this bill requires the Legislative Auditor to conduct an audit of the use by agencies of the Executive Branch of State Government of contracts with consultants.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 284 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Except as otherwise provided in this section, a department, division or other agency of this State shall not employ, by contract*



or otherwise, a person to provide services as a consultant for the agency if:

(a) The person is a current employee of an agency of this State;

(b) The person is a former employee of an agency of this State and less than 1 year has expired since the termination of his employment with the State;

(c) Except as otherwise provided in paragraph (d), the term of the contract is for more than 2 years, or is amended or otherwise extended beyond 2 years; or

(d) The person is employed by the Department of Transportation for a transportation project that is federally funded and the term of the contract is for more than 4 years, or is amended or otherwise extended beyond 4 years,

↪ unless, before the person is employed by the agency, the Interim Finance Committee approves the employment of the person.

2. The provisions of paragraph (b) of subsection 1 apply to employment through a temporary employment service. A temporary employment service providing employees for a state agency shall provide the agency with the names of the employees to be provided to the agency. The Interim Finance Committee shall not approve the employment of a consultant pursuant to paragraph (b) of subsection 1 unless the Interim Finance Committee determines that one or more of the following circumstances exist:

(a) The person provides services that are not provided by any other employee of the agency or for which a critical labor shortage exists; or

(b) A short-term need or unusual economic circumstance exists for the agency to employ the person as a consultant.

3. A department, division or other agency of this State may employ a person pursuant to paragraph (a) or (b) of subsection 1 without obtaining the approval of the Interim Finance Committee if the term of employment is for less than 4 months and the executive head of the department, division or agency determines that an emergency exists which necessitates the employment. If a department, division or agency employs a person pursuant to this subsection, the department, division or agency shall include in the report to the Interim Finance Committee pursuant to subsection 4 a description of the emergency.

4. Except as otherwise provided in subsection 7, a department, division or other agency of this State shall report to the Interim Finance Committee whenever it employs, by contract



or otherwise, a person to provide services as a consultant for the agency who is a former employee of a department, division or other agency of this State.

5. Except as otherwise provided in subsection 7, a department, division or other agency of this State shall not contract with a temporary employment service unless the contracting process is controlled by rules of open competitive bidding.

6. Each board or commission of this State, each school district in this State and each institution of the Nevada System of Higher Education that employs a consultant shall, at least once every 6 months, submit to the Interim Finance Committee a report setting forth:

(a) The number of consultants employed by the board, commission, school district or institution;

(b) The purpose for which the board, commission, school district or institution employs each consultant;

(c) The amount of money or other remuneration received by each consultant from the board, commission, school district or institution; and

(d) The length of time each consultant has been employed by the board, commission, school district or institution.

7. The provisions of subsections 1 to 5, inclusive, do not apply to the:

(a) Nevada System of Higher Education or a board or commission of this State.

(b) Employment of professional engineers by the Department of Transportation if those engineers are employed for a transportation project that is federally funded.

8. For the purposes of this section, "consultant" includes any person employed by a business or other entity that is providing consulting services if the person will be performing or producing the work for which the business or entity is employed.

Sec. 2. NRS 218.6827 is hereby amended to read as follows:

218.6827 1. Except as otherwise provided in subsection 2, the Interim Finance Committee may exercise the powers conferred upon it by law only when the Legislature is not in regular or special session.

2. During a regular or special session, the Interim Finance Committee may also perform the duties imposed on it by subsection 5 of NRS 284.115, subsection 2 of NRS 321.335, NRS 322.007, subsection 2 of NRS 323.020, NRS 323.050, subsection 1 of NRS 323.100, subsection 3 of NRS 341.090, NRS 341.142, subsection 6



of NRS 341.145, NRS 353.220, 353.224, 353.2705 to 353.2771, inclusive, and 353.335, paragraph (b) of subsection 4 of NRS 407.0762, NRS 428.375, 439.620, 439.630, 445B.830 and 538.650 ~~and~~ **and section 1 of this act**. In performing those duties, the Senate Standing Committee on Finance and the Assembly Standing Committee on Ways and Means may meet separately and transmit the results of their respective votes to the Chairman of the Interim Finance Committee to determine the action of the Interim Finance Committee as a whole.

3. The Chairman of the Interim Finance Committee may appoint a subcommittee consisting of six members of the Committee to review and make recommendations to the Committee on matters of the State Public Works Board that require prior approval of the Interim Finance Committee pursuant to subsection 3 of NRS 341.090, NRS 341.142 and subsection 6 of NRS 341.145. If the Chairman appoints such a subcommittee:

(a) The Chairman shall designate one of the members of the subcommittee to serve as the chairman of the subcommittee;

(b) The subcommittee shall meet throughout the year at the times and places specified by the call of the chairman of the subcommittee; and

(c) The Director of the Legislative Counsel Bureau or his designee shall act as the nonvoting recording secretary of the subcommittee.

Sec. 2.5. NRS 353.210 is hereby amended to read as follows:

353.210 1. Except as otherwise provided in subsection 6, on or before September 1 of each even-numbered year, all departments, institutions and other agencies of the Executive Department of the State Government, and all agencies of the Executive Department of the State Government receiving state money, fees or other money under the authority of the State, including those operating on money designated for specific purposes by the Nevada Constitution or otherwise, shall prepare, on blanks furnished them by the Chief, and submit to the Chief:

(a) The number of positions within the department, institution or agency that have been vacant for at least 12 months, the number of months each such position has been vacant and the reasons for each such vacancy; ~~and~~

(b) *Any existing contracts the department, institution or agency has with consultants or temporary employment services, the proposed expenditures for such contracts in the next 2 fiscal years and the reasons for the use of such consultants or services; and*



(c) Estimates of their expenditure requirements, together with all anticipated income from fees and all other sources, for the next 2 fiscal years compared with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year.

2. The Chief shall direct that one copy of the forms submitted pursuant to subsection 1, accompanied by every supporting schedule and any other related material, be delivered directly to the Fiscal Analysis Division of the Legislative Counsel Bureau on or before September 1 of each even-numbered year.

3. The Budget Division of the Department of Administration shall give advance notice to the Fiscal Analysis Division of the Legislative Counsel Bureau of any conference between the Budget Division of the Department of Administration and personnel of other state agencies regarding budget estimates. A Fiscal Analyst of the Legislative Counsel Bureau or his designated representative may attend any such conference.

4. The estimates of expenditure requirements submitted pursuant to subsection 1 must be classified to set forth the data of funds, organizational units, and the character and objects of expenditures, and must include a mission statement and measurement indicators for each program. The organizational units may be subclassified by functions and activities, or in any other manner at the discretion of the Chief.

5. If any department, institution or other agency of the Executive Department of the State Government, whether its money is derived from state money or from other money collected under the authority of the State, fails or neglects to submit estimates of its expenditure requirements as provided in this section, the Chief may, from any data at hand in his office or which he may examine or obtain elsewhere, make and enter a proposed budget for the department, institution or agency in accordance with the data.

6. Agencies, bureaus, commissions and officers of the Legislative Department, the Public Employees' Retirement System and the Judicial Department of the State Government shall submit to the Chief for his information in preparing the proposed executive budget the budgets which they propose to submit to the Legislature.

Sec. 2.7. 1. The Legislative Auditor shall conduct an audit concerning the use by agencies of the Executive Branch of State Government of contracts with consultants. The State Controller shall provide such information as is requested by the Legislative Auditor to assist with the completion of the audit.



2. The Legislative Auditor shall present a final written report of the audit to the Audit Subcommittee of the Legislative Commission not later than February 7, 2011.

3. The provisions of NRS 218.737 to 218.893, inclusive, apply to the audit performed pursuant to this section.

Sec. 3. The amendatory provisions of section 1 of this act do not apply to a contract of employment specified in that section that is entered into or renewed before the effective date of this act.

Sec. 4. This act becomes effective upon passage and approval.



Appendix C

Contract Summary Form

For Budget Division Use Only
 Under \$10,000: [] Yes [] No
 Reviewed by: _____

For Board Use Only
 Date: _____
 Number: _____

CONTRACT SUMMARY

(This form must accompany all contracts submitted to the Board of Examiners (BOE) for review and approval)

I. DESCRIPTION OF CONTRACT

1. Agency Name: _____ Contractor Name: _____
 Agency Code: _____ Address: _____
 Appropriation Unit: _____
 Is budget authority available?: Yes No Contact / Phone: _____
 If "No" please explain: _____ Vendor No.: _____ CDB# _____

To what State Fiscal Year(s) will the contract be charged? _____
 What is the source of funds that will be used to pay the contractor? Indicate the percentage of each funding source if the contractor will be paid by multiple funding sources.

<input type="checkbox"/> General Funds _____ %	<input type="checkbox"/> Fees _____ %
<input type="checkbox"/> Federal Funds _____ %	<input type="checkbox"/> Bonds _____ %
<input type="checkbox"/> Highway Funds _____ %	<input type="checkbox"/> Other funding: _____ %

2. Contract start date:
 a. Effective upon Board of Examiner's approval? or b. other effective date _____
 Anticipated BOE meeting date _____
 [Contracts with an effective date prior to BOE approval (retroactive) must be accompanied by a memorandum explaining the reason prior BOE approval was not obtained.]

3. Termination date: _____ (original contract)
 Contract term: _____ (indicate in years the length of the contract and any potential renewals)

4. Type of contract (check one):
 a. New Contract Cooperative Agreement
 Contract Amendment # _____ Revenue Contract
 Interlocal Contract Other Contract: _____

- b. Contract Description (limited to 3 or 4 key words): _____
 5. Purpose of contract (Describe Scope of Work or service to be accomplished): _____

6. a. NEW CONTRACTS ONLY:
 The maximum amount of the contract for the term of the contract is: _____
 Payment for services will be made at the rate of _____ per _____
(enter dollar amount) (time interval, i.e., hour, year)
 or, if not applicable, specify other basis for payment: _____

- b. CONTRACT AMENDMENTS ONLY:
- | | | | |
|--|----|-------|------------------------------|
| Maximum amount of the original contract: (refer to 6 a) | 1. | _____ | Meeting date of BOE approval |
| Total amount of any previous contract amendments | 2. | _____ | |
| Amount of current contract amendment | 3. | _____ | |
| New maximum contract amount <small>(Add lines 1, 2, and 3 for the total of line 4)</small> | 4. | _____ | |
- and/or the termination date of the original contract has changed to: _____
 and/or explain other changes: _____

II. JUSTIFICATION

7. What conditions mandate that this work be done?
.....
.....
8. Explain why State employees in your agency or other State agencies are not able to do this work:
.....
.....
9. Were quotes or proposals solicited? Yes No
Was the solicitation (RFP) done by the Purchasing Division? Yes No If both are No, see 9 b.
a. If yes, list the names of vendors that submitted proposals.
.....
.....
b. Solicitation Waiver # _____ Professional Service Exempt
c. Why was this contractor chosen in preference to others?
.....
.....
d. Last bid date: _____ Anticipated re-bid date: _____
10. Does the contract contain any IT components? Yes No
If yes, per NRS 242.151 DoIT approval is required.
.....
.....
DoIT Director or designee approval _____ Date _____

III. OTHER INFORMATION:

11. a. Is the contractor a consultant that is providing an opinion or advice as defined in S.A.M. Chapter 300? (S.A.M. states "a consultant is a person that provides information, an opinion or advice for a fee")
 Yes No
b. Is the contractor a current employee the State of Nevada?
 Yes No If "Yes," is the contractor planning to render services while on annual leave, compensatory time, sick leave, or on his own time? (Please explain)
.....
.....
c. Was the contractor formerly employed by the State of Nevada within the past one (1) year?
 Yes No If "Yes," please provide employment termination date.
.....
.....
d. Is the contractor employed by any of Nevada's political subdivisions or by any other government?
 Yes No If "Yes," please explain
.....
.....
12. Has the contractor ever been engaged under contract by any State agency?
 Yes No If "Yes," specify when and for which agency and indicate if the quality of service provided to the identified agency has been verified as satisfactory:
.....
.....
13. Contracts over \$25,000 per fiscal year: Is the contractor currently involved in litigation with the State of Nevada?
 Yes No If "Yes," please provide details of the litigation and facts supporting approval of the contract.
.....
.....

14. Agency Field Contract Monitor:

Printed Name

Title

Phone No.

15. Certified Contract Manager Approval:

Printed Name

Signature

Phone No.

16. Agency Head Approval:

Signature

17. Date Contract Summary was Prepared:

Date

Appendix D
Schedule of Amount Paid by Executive Branch Agencies
for Temporary Employment Services
Fiscal Years 2008 and 2009

	Agency Name	Amount Paid
1	Health Division	\$12,364,014
2	Division of Welfare and Supportive Services	1,708,481
3	Division of Mental Health and Developmental Services	1,640,386
4	Division of Child and Family Services	1,522,324
5	Department of Transportation	1,181,236
6	Department of Public Safety	908,087
7	Rehabilitation Division	747,329
8	Employment Security Division	426,446
9	Division of Health Care Financing and Policy	373,258
10	Division of State Library and Archives	318,446
11	Department of Health and Human Services	255,129
12	Division of Museums and History	226,812
13	Department of Information Technology	193,933
14	Department of Wildlife	181,595
15	Department of Education	163,474
16	Nevada Arts Council	155,584
17	Division of Environmental Protection	135,934
18	Division of Mortgage Lending	104,363
19	Department of Personnel	104,362
20	Office of Historic Preservation	70,029
21	Commission on Tourism	67,229
22	Office of Veterans' Services	66,620
23	Division of Industrial Relations	42,928
24	Office of Homeland Security	31,685
25	Natural Heritage Program	20,352
26	Department of Employment, Training and Rehabilitation	18,624
27	Office of the Attorney General	18,527
28	Hearings Division	17,333
29	Division of Financial Institutions	15,612
30	Office of Energy	12,636
31	Agency for Nuclear Projects	11,862
32	Risk Management Division	11,743
33	Aging and Disability Services Division	11,542
34	Division of Insurance	10,795
35	Public Utilities Commission	9,344
36	State Public Works Board	7,285
37	Hearings Division, Victims of Crime Program	7,184
38	Department of Administration	6,762
39	Department of Information Technology, Telecommunications Unit	5,125
40	State Board of Examiners	5,098
41	Office of the State Treasurer	4,851
42	Division of Forestry	4,770
43	Department of Agriculture	3,914
44	Office of the Military	3,785
45	Purchasing Division	2,130
46	Colorado River Commission	614
47	Housing Division	583
	Total	\$23,200,155

Source: State's accounting system.

Appendix E
Response From the Department of Administration

JIM GIBBONS
Governor

STATE OF NEVADA

ANDREW K. CLINGER
Director



DEPARTMENT OF ADMINISTRATION

209 E. Musser Street, Room 200
Carson City, Nevada 89701-4298
(775) 684-0222
Fax (775) 684-0260
<http://www.budget.state.nv.us/>

November 29, 2010

Paul Townsend, CPA
Legislative Auditor
Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV 89701

Subject: 2009 Legislative Audit of Executive Branch Agencies' Use of Contracts With Consultants

Dear Mr. Townsend,

This letter is in response to the audit conducted on the use of contracts with consultants by Executive Branch agencies. We would like to state that the professionalism of staff and the efficient manner in which this audit was conducted is greatly appreciated. We accept all recommendations and have implemented some of the recommendations and are developing an implementation plan on the remaining. We are please to respond as follows:

- 1. Provide agencies with guidance that ensures state employees render contract services on their own work time.**

Response: **Accept**

The State Administrative Manual (SAM) Chapter 0300 Cooperative Agreements and Contracts, Section 0320 Independent Contractors, 5. (1-9) currently outlines the policy for state employees working as an independent contractor. Specifically, 5. 2., states "All State permanent employees must devote full time attention and effort to State employment during official duty hours and not to contractual obligations. (NAC 284.766)." The Department of Administration will send a reminder all agency memorandum out to this effect to ensure compliance.

2. Notify agencies of the state's requirements to enter into contracts for services.

Response: **Accept**

The State Administration Manual (SAM) Chapter 0300 Cooperative Agreements and Contracts, currently states all contract requirements. The Department of Administration will send a reminder all agency memorandum out to this effect to ensure compliance.

3. Revise the Contract Summary form to provide written justification for pay rates of current and former employees contracting with the State to perform services similar to their state employment.

Response: **Accept**

The Contract Summary form is a form that is in the automated Contracts and Entry Tracking System (CETS). This change would require a program change in the CETS. We will be working with the programmers to determine the cost and timelines to implement this recommendation

4. Revise the Contract Summary form to provide a description of the normal job duties for current employees, and the prior job duties of former state employees contracting with the State.

Response: **Accept**

The Contract Summary form is a form that is in the automated Contracts and Entry Tracking System (CETS). This change would require a program change in the CETS. We will be working with the programmers to determine the cost and timelines to implement this recommendation.

5. Provide guidance to agencies and contract monitors to help ensure contract summaries are properly completed, including the identification of current and former employees.

Response: **Accept**

The Department of Administration, Purchasing Division currently offers a contract class to ensure agencies are trained in contract monitoring. All Contract Summary forms submitted are required to be reviewed and signed by a certified contract monitor. The above recommendation will be added to the curriculum simultaneously as the CETS is updated to reflect the additional information.

- 6. Revise SAM to provide guidance regarding pay rates and employment terms of former employees hired through a temporary employment agency.**

Response: **Accept**

The Department of Administration will revise the State Administration Manual (SAM) to reflect the recommendation above upon approval of the State Board of Examiners.


- 7. The Legislature should consider enacting legislation to clarify the term consultant for purposes of providing information to the Interim Finance Committee.**

Response: **Accept**

To help ensure agencies had some clarity as to the definition of a consultant, we added to the State Administrative Manual (SAM) Chapter 0300 Cooperative Agreements and Contracts, Section 0304 Definition of Public Agency, Definition of Consultant which states "A **consultant** is defined as a person who provides information, an opinion or advice for a fee."

Thank you for your work in the above recommendations. Please feel free to contact me should you have any questions.

Sincerely,


Andrew K. Clinger, Director
Department of Administration

Department of Administration Response to Audit Recommendations

<u>Recommendation Number</u>		<u>Accepted</u>	<u>Rejected</u>
1	Provide agencies with guidance that ensures state employees render contract services on their own time.....	<u> X </u>	<u> </u>
2	Notify agencies of the state's requirements to enter into contracts for services	<u> X </u>	<u> </u>
3	Revise the Contract Summary form to provide written justification for pay rates of current and former employees contracting with the State to perform services similar to their state employment	<u> X </u>	<u> </u>
4	Revise the Contract Summary form to provide a description of the normal job duties for current employees, and the prior job duties of former state employees contracting with the State	<u> X </u>	<u> </u>
5	Provide guidance to agencies and contract monitors to help ensure contract summaries are properly completed, including the identification of current and former employees.....	<u> X </u>	<u> </u>
6	Revise SAM to provide guidance regarding pay rates and employment terms of former employees hired through a temporary employment service.....	<u> X </u>	<u> </u>
7	The Legislature should consider enacting legislation to clarify the term consultant for purposes of providing information to the Interim Finance Committee	<u> X </u>	<u> </u>
	TOTALS	<u> 7 </u>	<u> 0 </u>