

JOINT LEGISLATIVE
AUDIT AND REVIEW
COMMISSION

THE
VIRGINIA
GENERAL
ASSEMBLY

MANAGEMENT AND USE
OF CONSULTANTS
BY STATE AGENCIES

Operational Review
May 12, 1980

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

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MANAGEMENT AND USE OF CONSULTANTS BY STATE AGENCIES

May 12, 1980

Joint Legislative
Audit and Review
Commission

In fiscal year 1979, State agencies used consultants for 1,338 projects. The value of these projects was \$47.5 million, of which \$16 million was paid out during the fiscal year. Consultant services provided to State agencies varied greatly from preparation of training programs and manuals to the design of accounting systems and highways.

Agencies were found to employ consultants for justifiable purposes in many cases. However, weaknesses in procedures used for selecting and managing consultants, and in agency and central information systems regarding consultant services, raise serious questions about accountability and the adequacy of controls. The State needs to improve its management processes by:

- More thoroughly assessing the need for consultants;

- Mandating a preference for competitive bidding;
- Requiring written contracts;
- Specifying contract form and content;
- Monitoring projects more systematically;
- Improving central accounting records; and
- Improving documentation of project files.

Competitive Bidding (pp.11-18)

Virginia, unlike many states, does not have a clearly developed policy which makes competitive bidding the preferred method of procuring consultant services. In fact, three-quarters of the 1,338 consultant projects examined during this review were not competitively bid. Moreover, 51 percent of the projects involving commercial firms were awarded without competition. Of special concern was that commercial firms were awarded 56 projects valued at more than \$10,000 each without competition among potentially qualified consultants. Eleven of these projects cost over \$50,000, and three cost over \$100,000.

A JLARC REPORT SUMMARY

Lack of competition increases the opportunity for favoritism and fraud in the selection of consultants. Without competition it is difficult to ensure that the State is contracting for projects at the lowest cost consistent with the consultant's ability to deliver a quality product. Furthermore, although this review found no obvious evidence of impropriety in consultant selection, the high rate of noncompetitive procurement eliminates relying on this fundamental control as a valid guard against fraud and abuse.

Several instances were found where agency failure to obtain competitive bids resulted in procurement decisions subject to question. In one case, two State agencies contracted with one firm for separate projects at a cost of \$102,000 without requesting competitive proposals. In other cases, consultants were reported to have been selected for reasons of "administrative convenience," "favorable recommendations between agencies," or "because they had worked with an agency earlier." Regardless of

the merits of the consultants used in these cases, without competitive bidding it is impossible to determine whether their sole-source selection was cost effective.

Recommendation (1). The General Assembly may wish to enact legislation or resolve to make competitive bidding the preferred method of consultant procurement, with necessary exceptions for small projects and special circumstances.

Recommendation (2). The Governor should develop and promulgate comprehensive statewide guidelines for minimum documentation requirements. Documentation should be sufficient to support (1) the agency decision to employ a consultant, and (2) the agency decision on whether the project should be competitively bid.

Needs Assessment (pp.10-11)

Of 160 consultant projects over \$5,000 reviewed by JLARC staff, 101 did not have documentation on why a consultant was needed. There was almost no documentation for smaller projects. Although inadequate documentation does not necessarily mean that an agency failed to adequately assess its need, lack of documentation does severely weaken accountability. In many agencies, the available evidence suggests that needs were not sufficiently studied before a consultant was employed. As a result, agencies may have used a more expensive alternative than was necessary, or may have settled on an external consultant when internal resources were available.

Recommendation (3). Agencies should give greater consideration to using existing staff resources, other State agencies, or State colleges and universities before deciding on the use of an external consultant.

Recommendation (4). Each cabinet secretary should request that a list of consultants used by agencies under their jurisdiction be compiled. The list should include each consultant's areas of expertise and include those State agencies and institutions which provide specialized consulting services. The consultant lists should be available for informational purposes to encourage wider competition among interested consultants, and could serve as the basis for developing one or more consolidated lists of consultants in the future.

Personnel System Avoidance (pp. 18-20)

Consultants can be used to avoid the requirements and controls of a classified personnel

system. This review found instances of consultants being used in what would normally be a classified position. For example, one agency employed a consultant who functioned as the agency fiscal officer for four years at a cost up to 25 percent above the salary level for fiscal officers of other large State agencies.

Recommendation (5). The Governor should develop guidelines which clarify policy regarding the use of consultants for jobs which are routine, long-term, or normally performed by classified employees. Consultants should not be used to provide supervision of classified employees except as necessary to complete a short-term project.

Contract Administration (pp. 22-28)

A written contract is the most important control in governing a consultant project. However, agencies reported as part of a consultant inventory survey that one-quarter of the 1,338 projects conducted during fiscal year 1979 did not have a written contract.

The review also found that several contracts were signed after projects had been initiated. Most delayed signings appeared to be oversights; however, at the Department of Mental Health and Mental Retardation 19 separate contracts were signed after project initiation. In 16 of the cases, the project had been completed before the contract was signed.

Some contracts executed in a timely fashion were limited by imprecise language or incomplete provisions. The most serious problem was contracts which did not clearly establish what was to be accomplished. Other problems included the fact that one-third of all projects did not specify a maximum payment, and some did not establish a time schedule for completion of work.

The review also found that consulting arrangements between State agencies or involving a State employee are often not governed by any written agreement. While the need to have written agreements may be less compelling in cases of agency-to-agency consulting, instances of misunderstanding and dissatisfaction with the project outcome were noted.

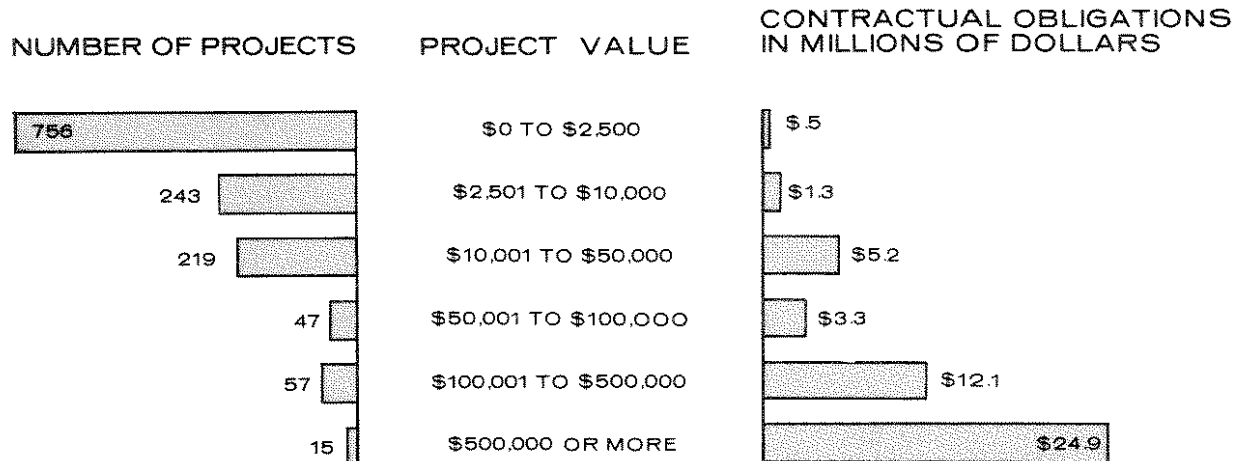
Recommendation (6). Written contracts should be required for all projects and should be completely executed before consultants begin work.

Recommendation (7). Regulations for development and execution of contracts should be developed and applied to all State agencies. The regulations should ensure that all contracts include statements covering the (1) scope and

DEMOGRAPHICS OF CONSULTING

FISCAL YEAR 1979

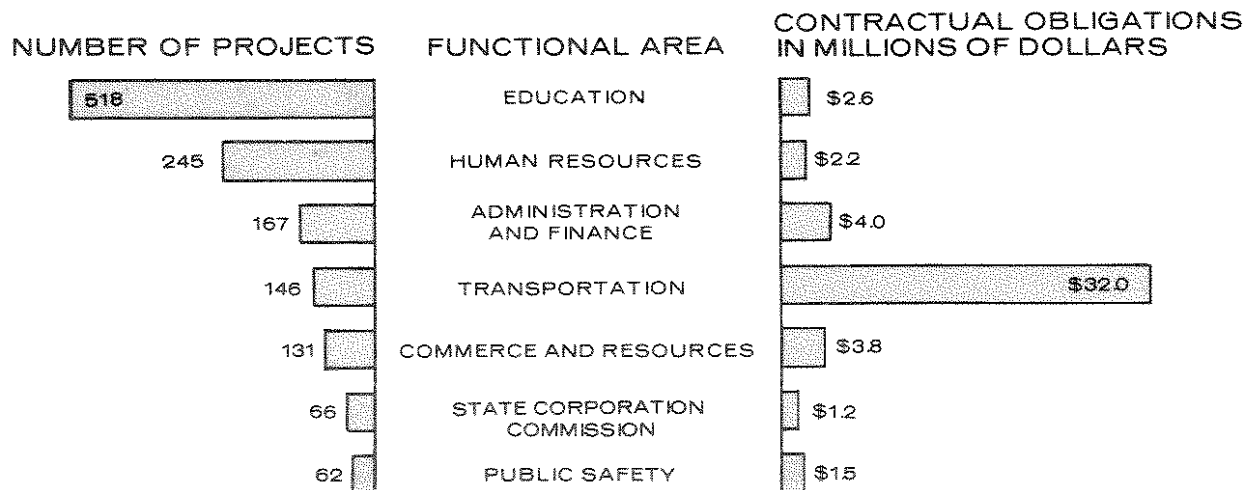
CONSULTANT PROJECT VALUE



TYPES OF CONSULTANTS USED

TYPE OF CONSULTANT	PROJECT NUMBER AND PERCENT		CONTRACTUAL OBLIGATIONS	
INDIVIDUALS	650	49%	\$1,487,556	3%
COMMERCIAL FIRMS	405	30	\$9,734,259	84
COLLEGE OR UNIVERSITY	114	8	\$2,211,505	5
STATE AGENCY	86	6	\$2,291,959	5
NON-PROFIT ORGANIZATION	36	3	\$662,403	1
LOCAL GOVERNMENT	16	1	\$274,093	-
FEDERAL GOVERNMENT	5	1	\$300,422	1
ALL OTHER	26	2	\$521,872	1
TOTAL	1,338	100%	\$47,484,069	100%

CONSULTING BY FUNCTIONAL AREA



nature of services to be provided by the consultant, (2) responsibilities of and resources to be provided by both parties to the contract, (3) project schedule, (4) method, schedule, and total amount of payment, (5) procedures for amending or cancelling the contract, (6) procedures for resolving disputes, and (7) provision for withholding final payment until the contracting agency is fully satisfied with the results.

Recommendation (8). Procedures should be developed to more completely enforce the requirement that all contracts be reviewed by the Attorney General.

Project Monitoring (pp. 28-31)

Project monitoring is necessary to ensure that the consultant adheres to the conditions of the contract. Periodic monitoring and supervision are also necessary to get maximum benefit from the consultant project. Agency monitoring procedures were found to vary widely. For example, periodic progress reports are generally recommended for large projects. However, one-half of the projects with costs over \$5,000 did not have a single progress report on file. In several agencies, records were scattered and fragmentary, making effective monitoring difficult. In three agencies, record-keeping was so weak that top management officials were unaware of the full scope of consultant activities in their agencies.

Recommendation (9). Guidelines should be developed to assist agencies in systematic monitoring of consultant projects.

Recommendation (10). Each agency that uses consultants should appoint one individual as an agency contract officer to be responsible for maintaining contract and financial information for all consultant projects, and to serve as a liaison with other employees who monitor individual projects.

Accounting for Consultant Services (pp. 33-41)

There is little central information on agency use of consultants. The JLARC review required an extensive agency survey simply to determine how much was spent on consultant services in fiscal year 1979. The existing information sources are limited by the lack of a standard definition of consulting, excessively broad accounting codes, and inconsistent reporting of travel, lodging, and other ancillary expenditures made in support of a consultant contract. There is also evidence of substantial agency miscoding of the expenditures reported to the Department of Accounts.

Recommendation (11). The Secretary of Administration and Finance should direct the Department of Planning and Budget and the Department of Accounts to clearly define what is to be reported as a consultant service. One or more accounting codes presently available in the contractual services series should be separately identified for use in reporting consultant expenditures.

Recommendation (12). A standard procedure should be established for accounting for ancillary costs related to consultant projects.

Recommendation (13). Agencies need to exercise greater care in the use of accounting codes when reporting expenditures. Agency fiscal officers should routinely post-audit a sample of agency vouchers to determine whether personnel under their supervision are coding expenditures consistently and in accordance with instructions.

Recommendation (14). The management assistance teams established by the Secretary of Administration and Finance should place a high priority on reviewing the use of accounting codes by agency personnel.

JLARC

JLARC is an oversight agency of the Virginia General Assembly. Its primary function is to carry out operational and performance evaluations of State agencies and programs.

Joint Legislative Audit and Review Commission

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Preface

The Joint Legislative Audit and Review Commission has a statutory responsibility to carry out operational and performance reviews of State programs. One mandate specified by Section 30-58.1.B, *Code of Virginia*, is a charge to "study on a continuing basis the operations, practices and duties of State agencies, as they relate to efficiency in the utilization of space, personnel, equipment and facilities." Accordingly, this report focuses on an important personnel resource for State government--consultants.

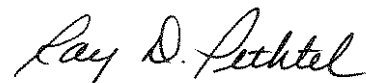
Consultant use is extensive in the Commonwealth. During the 1979 fiscal year, State agencies used consultants for 1,338 separate projects. The total value of these projects was \$47.5 million.

Hiring a consultant is often an extremely important decision for a public agency. Key findings of this evaluation, however, are that most agencies do not adequately assess the need for consultants, consultants are selected without competition in all too many cases, and consultant projects are poorly managed. A series of recommendations is included in the report intended to increase use of competitive bidding, to improve project documentation to reduce the possibility of fraud or favoritism, and to improve public accountability through better management policies and procedures.

An important part of the research methodology on this project was the development of a census of consultant projects active during fiscal year 1979. No such inventory was available from any source prior to this effort. The census is available for inspection on request.

The staff report and recommendations to improve the management and use of consultants were presented to the Commission on May 12, 1980. Concurrently, Administration and Finance Directive 2-80, which contains new policies related to selecting and managing the consultant episode, was issued by the Secretary of Administration and Finance. The appendix contains a copy of the policy directive and draft implementation guidelines subsequently developed by the Department of Management Analysis and Systems Development.

On behalf of the Commission staff, I wish to acknowledge the cooperation and assistance provided during the course of this evaluation by the employees of each State agency that assisted in developing information for this report, especially the Department of Accounts and the Department of Management Analysis and Systems Development.



Ray D. Pethtel
Director

June 6, 1980

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I. Introduction

Consultants provide a wide variety of services to State agencies and institutions, from conducting small training seminars to planning major highway projects. In fiscal year 1979, 123 agencies and institutions employed consultants for 1,338 projects. Expenditures for the fiscal year were \$16 million and total contractual obligations for these projects amounted to \$47.5 million.

The use of consultants to provide professional advice and assistance to State officials is an important component of sound management practice. JLARC's review found that, in the majority of cases, State agencies and institutions have used consultants for justifiable purposes and appear to have benefited from the project outcome. However, the review identified many weaknesses in the management of consultant projects which could be addressed by:

- More thoroughly assessing the need for consultants;
- Mandating a preference for competitive bidding;
- Requiring written contracts;
- Specifying contract form and content;
- Monitoring projects more systematically;
- Improving central accounting records; and
- Improving documentation of project files.

A series of recommendations for improving project administration and helping ensure that consultant use is in the best interest of agencies and the Commonwealth is included in this report.

Report Scope and Methodology

Report findings are based on a comprehensive review of consulting activity for fiscal year 1979. At the initiation of the review, it was determined that neither a standard definition of consulting nor an accurate record of consultant use was available from any central State records. As a result, the review was designed with two major objectives in mind: (1) to determine the accurate scope and nature of consultant use for one fiscal year; and (2) to assess the management of State-employed consultants against generally accepted practice.

Definition. No standard definition of consulting is used by State agencies in reporting expenditures or program activities. This lack of a definition creates fundamental management and accountability concerns. To carry out this review, JLARC used a definition for consulting based on concepts found in professional publications, such as the American Bar Association's *Model Procurement Code*, as well as definitions used by other states. This definition is similar to one developed by the Division of Planning and Community Affairs in a 1975 study of consultant use in Virginia.

For the purpose of this report, consulting includes the following services:

- Management advice or assistance;
- Preparation of plans, reports, manuals, grants, or contracts;
- Internal audits or evaluations;
- Technical assistance;
- Legal assistance;
- Personnel management, training, testing, or evaluation;
- Advertising and other public relations services;
- Automated data processing systems design, development, conversion, analysis, and related programming; and
- Architectural and engineering services for preplanning, location, and design studies not included as part of a specific capital outlay project.

Certain services were specifically excluded because they were neither a professional service nor consulting as it is generally defined. These services included honoraria to guest speakers; medical and other services provided directly to agency clientele; secretarial, keypunching, and printing services; food services; and janitorial or maintenance services.

A careful distinction in definition was also drawn between architectural and engineering services provided as part of a specific capital outlay project, and other services provided by architectural and engineering firms. Only the latter were considered to be consulting for this review. This distinction is also drawn in the professional literature. Furthermore, the Department of Accounts considers the cost of architectural and engineering services for capital outlay projects to be part of the contract price, and reports these expenditures under a specific accounting code.

JLARC also drew the distinction to avoid duplicating the work of the Joint Subcommittee to Study the Selection Process for Architects and Engineers Working on State and Local Capital Construction Projects. This subcommittee, established by House Joint Resolution 275, was in part a result of JLARC's 1978 study of the State's capital outlay process, which found deficiencies in the selection process for architects and engineers.

As a result of the joint subcommittee's work, House Bill 601 was passed during the 1980 session. This bill directed the Department of General Services to develop and promulgate rules and

EXAMPLES OF CONSULTANT SERVICES PROVIDED TO STATE AGENCIES



The Department of Alcoholic Beverage Control hired a computer engineering firm to develop and install its new "point of sale" inventory system.

The Department of Personnel and Training contracted with a Richmond firm to prepare a pay and classification plan for the City of South Boston. DPT also used many individuals and State universities to conduct its open enrollment training programs for State employees.

The State Corporation Commission used a consultant to assess the need for automation of operations in the Division of Aeronautics.

Four private investment advisory firms manage investments for the Virginia Supplemental Retirement System.

The Department of Mental Health and Mental Retardation contracted with an individual to assess the management techniques and the role of administration at Catawba Hospital. The project included planning for future in-service training.

The Department of Corrections used a consultant to conduct a feasibility study for plans to expand a meat processing plant to include portion control.

The Department of Highways and Transportation contracted with a highway engineering firm to prepare the final design and contract documents for the I-664 crossing of Hampton Roads.

The Department of Planning and Budget used a consultant to make population projections into the year 2020.

A consultant was used to develop a proposal for a new undergraduate program in health services management at Norfolk State College.

The Virginia State Travel Service used a consultant to review photographs and make recommendations on operational procedures and priorities.

regulations for architect and engineer selection for State capital projects. These guidelines are to apply to all State capital projects, except those of the Department of Highways and Transportation.

Data Sources. Data for this review came from two principal sources.

1. A questionnaire and instructions were mailed to 202 State agencies requesting information on each consultant project active during fiscal year 1979.
2. An on-site review was made of 567 project files at 16 agencies. The 16 agencies were selected because of their known use of consulting, functional area, and size. The findings for the case study agencies are believed to be similar to consultant use in other State agencies.

JLARC staff also interviewed officials and examined procedures used by North Carolina's Division of Purchase and Contracts. North Carolina is considered by informed observers to have one of the best consultant management processes in the nation. A technical appendix with additional information on the data collection methodologies used in this review is included in this report.

Evaluation Criteria. Criteria for evaluating the use and management of consulting projects were drawn from management practices recommended by several authoritative sources, especially the American Bar Association and the Council of State Governments. Policies and procedures used by other states were also considered. The introduction to each chapter identifies the criteria used for evaluating the topics discussed.

Consultant Use in Virginia

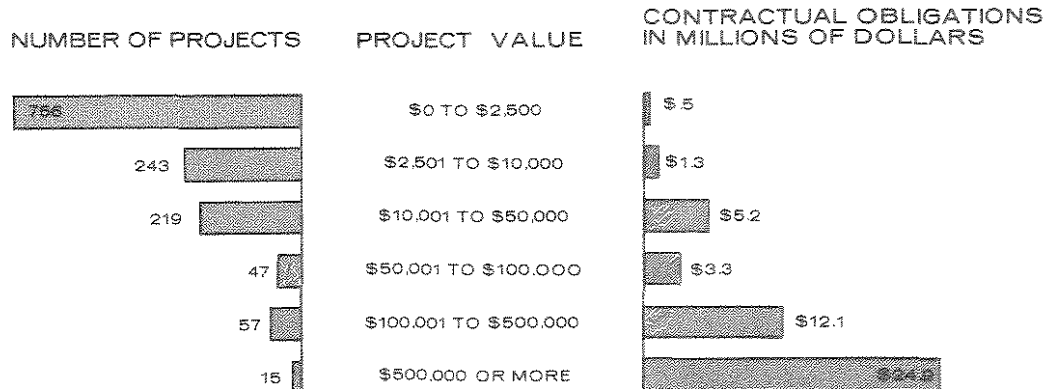
About one-half of all State agencies used a consultant during fiscal year 1979. Individual project costs ranged from \$25 to \$3.6 million for the 1,338 projects reported by agencies. Three fundamental items of information about consultants used by State agencies between July 1, 1978, and June 30, 1979--contract value, type of consultant, and functional purpose--are shown in Figure 1.

Most consultant projects were relatively small, with expenditures under \$2,500. A few large projects accounted for most of the contractual obligations involved in fiscal year 1979. Since many of the large projects are scheduled to be completed and paid for over a number of years, the total value of the 1,338 projects active in fiscal year 1979 was \$47.5 million, but actual expenditures for that fiscal year were \$16 million.

The functional area of transportation accounted for the largest portion of the State's total contractual obligation for consultants in fiscal year 1979. Education and Human Resources had many more contracts, but they were primarily for personnel training, staff development, and preparation of reports--projects which tend

FIGURE 1
DEMOGRAPHICS OF CONSULTING
FISCAL YEAR 1979

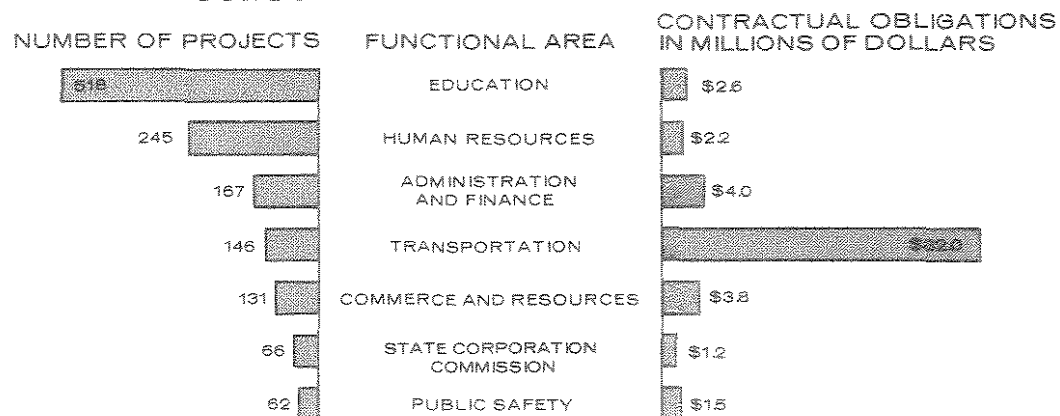
CONSULTANT PROJECT VALUE



TYPES OF CONSULTANTS USED

TYPE OF CONSULTANT	PROJECT NUMBER AND PERCENT		CONTRACTUAL OBLIGATIONS	
INDIVIDUALS	650	49%	\$1,487,556	3%
COMMERCIAL FIRMS	405	30	39,734,259	84
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ALL OTHER	26	2	521,872	1
TOTAL	1,336	100%	\$47,484,069	100%

CONSULTING BY FUNCTIONAL AREA



SOURCE: JCLARC CONSULTANT INVENTORY

to be of shorter duration and less cost than other types of consultant services.

Almost one-half of consultant projects were carried out by individuals, although projects with 84 percent of the total dollar value were conducted by commercial firms. The listing of individual consultants includes 160 faculty members. Most universities encourage faculty to seek consulting opportunities as a form of professional development, although guidelines are generally established as to the percentage of a faculty member's time that can be devoted to outside consulting.

The 405 commercial firms consulting for State agencies during fiscal year 1979 included many of the country's largest management, accounting, engineering, and investment consulting firms. Parsons, Brinckerhoff, Quade and Douglas, a transportation planning and engineering consultant headquartered in New York, received the largest total payment of all firms of almost \$1.2 million. Peat, Marwick, Mitchell and Company was the largest provider of accounting/management consulting with over \$600,000.

About 14 percent of all consultants used by State agencies were institutions of higher education or other State agencies. Virginia Polytechnic Institute and State University and the Virginia Institute of Marine Science each received about \$240,000 for consulting done for State agencies. The Department of Management Analysis and Systems Development provided \$655,559 in consulting services to other agencies, primarily in payments to the systems development working capital fund.

The types of services provided by consultants for all projects undertaken in fiscal year 1979 and the agencies with the highest consultant expenditures during the year are shown in Table 1. Twenty-two percent of consultant projects were in the general category of personnel training and staff development. Many agencies hire consultants to put on training workshops or to develop training packages to be used by agency personnel. The third largest category, report preparation, includes the use of consultants to prepare a variety of products from financial, management, and accounting manuals to natural resource conservation plans.

Fifteen agencies spent over \$200,000 for consultants. The Department of Highways and Transportation was the major user of consultants, primarily involving highway and bridge design. The Virginia Supplemental Retirement System, which employs consultants to manage investments, was the next highest user and the State Corporation Commission, which uses consultants for ongoing development of several automated data processing systems and for expert testimony at regulatory hearings, was third. The Department of Management Analysis and Systems Development (MASD), the State's internal consulting agency, had the fourth highest consultant expenditures during 1979, of which one-third were used to purchase external services and two-thirds involved internal transfers to the MASD Systems Development Working Capital Fund.

Table 1

TYPES OF CONSULTANT SERVICES PROVIDED
(All Projects, Fiscal Year 1979)

Type of Service	Projects		Value	
	Number	Percent	Amount	Percent
Personnel Management & Training	293	22%	\$ 1,278,115	3%
Curriculum Evaluation & Development	164	12	205,575	--
Report Preparation	155	12	14,783,873	31
Automated Data Systems Development	146	11	5,232,166	11
Program/Process Review & Evaluation	130	10	1,863,445	4
Technical Assistance	81	6	1,000,677	2
Research & Technical Study	69	5	1,583,413	3
Architectural & Engineering Design	66	5	17,381,564	37
Technical Advice	56	4	1,028,277	2
Management Assistance & Advice	55	4	972,643	2
Advertising & Public Relations	28	2	1,198,684	3
Others	95	7	955,637	2
Total	1,338	100%	\$47,484,069	100%

AGENCIES WITH CONSULTANT EXPENDITURES
IN EXCESS OF \$200,000
(Fiscal Year 1979)

Agency or Institution	Expenditures
Department of Highways and Transportation	\$5,248,856
Virginia Supplemental Retirement System	943,754
State Corporation Commission	846,185
Department of Management Analysis and Systems Development	655,559
Department of Welfare	555,164
State Department of Health	425,707
University of Virginia	419,831
Governor's Employment and Training Council	389,201
Department of Conservation and Economic Development	379,631
Division of Industrial Development	368,719
Department of Transportation Safety	350,469
Department of Corrections	343,554
Virginia Commonwealth University	334,714
Department of Accounts	282,350
State Water Control Board	246,391

Source: JLARC consultant inventory.

National Concerns About Consultant Use

The use of consultants in the public sector has come under increasing criticism nationally in recent years. Reviews at the federal level and in other states have resulted in allegations of unnecessary and wasteful use of consultants, shoddy and unusable products, and mismanagement of consultant projects by state and federal agencies.

Much of the concern centers on fundamental questions of accountability. Consulting is a service purchased by government which is unique in three ways: (1) consultants are generally not employees of the government that pays them; (2) they provide technical assistance which is often outside the expertise of agency officials; and (3) they are often expensive, with individual consultant charges of up to \$700 a day found during this study. Within this context it is essential that the employing agency be able to adequately document and account for its use of consultants.

In addition to the need for adequate documentation, the literature on consultant use in the public sector is unanimous on one point: each consultant project must be actively managed, from identification of the problem to evaluation and use of the product. Only active management on the part of the agency can guarantee that the project potential will be fully realized, regardless of how competent or dedicated the consultant may be.

The rest of this report examines these two key areas of consultant use: agency accountability and project management. Chapter II reviews the vital process of identifying the need for a consultant and procuring the appropriate firm or individual at the lowest cost to the Commonwealth. Chapter III evaluates agency practices in contracting with the consultant and managing the project. Finally, Chapter IV looks at the ability of the State to accurately account for consultant expenditures.

II. Procuring Consultant Services

Procurement of consultant services, with the exception of automated data processing, is the responsibility of individual agencies. JLARC evaluated the procurement procedures developed by agencies against three generally accepted standards:

1. Agencies should clearly determine the nature of the problem and explore all reasonable alternatives prior to deciding to employ a consultant. In cases of large expenditures, it is incumbent on the agency to fully document the needs assessment process followed for the purposes of post-audit and public accountability.
2. Agencies should seek to use competitive bidding whenever possible and appropriate.
3. Consultants should not be employed in place of classified State employees to perform routine, on-going services, or for other types of personnel purposes not related to the consultant role.

Table 2

PROCUREMENT PERFORMANCE OF CASE STUDY AGENCIES

AGENCY	Procurement Governed by Written Policy		Agency Appears to Assess Needs and Document Decisions			Agency Appears to Make Good Use of Competitive Bidding			Agency Used Consultants For Routine Jobs or Nonconsulting Functions	
	Yes	No	Almost Always	Inconsistent Performance	Rarely	Almost Always	Inconsistent Performance	Rarely	Yes	No
Alcoholic Beverage Control Board		✓	✓			✓				✓
Central State Hospital		✓		✓		✓				✓
Department of Community Colleges		✓			✓			✓	✓	
Department of Corrections		✓			✓		✓		✓	
Department of Education		✓			✓			✓	✓	
Department of Health		✓		✓			✓			✓
Department of Highways and Transportation	✓		✓			✓				✓
Department of Mental Health and Mental Retardation		✓			✓			✓		✓
Old Dominion University		✓			✓			✓	✓	
Department of Personnel and Training		✓		✓			✓			✓
State Corporation Commission		✓	✓			✓			✓	
Tidewater Community College		✓		✓		✓				✓
Virginia Commonwealth University		✓			✓			✓		✓
Supplemental Retirement System		✓		✓			✓			✓
State Water Control Board	✓			✓		✓				✓
Department of Welfare		✓			✓			✓		✓

Source: JLARC review of consultant project files.

An overview of procurement practices used by the 16 case study agencies reviewed by JLARC is shown in Table 2. Procurement practices were found to be marked by a lack of adequate documentation and excessive reliance on non-competitive selection.

Needs Assessment

Only two of the 16 agencies reviewed by JLARC had formally adopted procedures for assessing the need to hire consultants. These agencies, the Department of Highways and Transportation and the State Water Control Board, are frequent users of technical and engineering consultants.

Thirteen agencies reviewed relied on informal procedures and did not generally provide an adequate level of documentation for decisions. Of 160 projects reviewed with expenditures over \$5,000, 101 were not adequately documented as to why a consultant was needed, what selection criteria were used, or what other alternatives were considered. There was almost no documentation for smaller projects in the 13 agencies.

This lack of documentation does not necessarily mean that the agency failed to adequately assess its needs for a consultant. Inadequate documentation does, however, severely weaken agency accountability and greatly increases the difficulty of detecting fraud or abuse. Furthermore, instances such as the following were found where the agency may have used a more expensive alternative than necessary.

The Department of Welfare hired a Chicago-based consultant for a training project on the SPSS computer programming package. The consultant was paid \$3,600 for the training session. No documented assessment of alternatives was available in the project file, and evidence suggests that a complete assessment was not made.

At the time the consultant was hired, the department employed two persons who taught SPSS training sessions. According to the department employee who contracted for the training project, one employee was asked about the project, and she indicated she would be capable of conducting the training session but did not have the time. The other employee was not contacted.

In addition, Virginia Commonwealth University routinely conducts SPSS training sessions free of charge, but the department did not approach the university to design the required training.

Personnel training and staff development represent one area where better needs assessment could result in reduced costs. Virginia colleges and universities appear to be an underutilized resource for training services. Although 293 of the 1,338 consultant projects in fiscal year 1979 were for training services, only the Department of Personnel and Training made frequent use of university resources for training programs. Training projects procured from private firms which could have been done by university faculty and are within the scope of currently available training resources include:

- A training session at the Department of Welfare on interviewing techniques.
- Several team development seminars conducted for the Department of Mental Health and Mental Retardation.
- A team building training project for the Virginia Employment Commission.
- A workshop on stress management conducted for the Department of Welfare.

The needs assessment and evaluation process for procuring consultants is inadequately documented in most agencies and has probably led to unnecessary use of consultants when other less expensive alternatives were available. State guidelines should require specific documentation for all consultant projects over some dollar threshold. In addition, agencies should be encouraged to fully consider the use of existing staff resources, other State agencies, and university resources as an alternative to private consultants whenever possible.

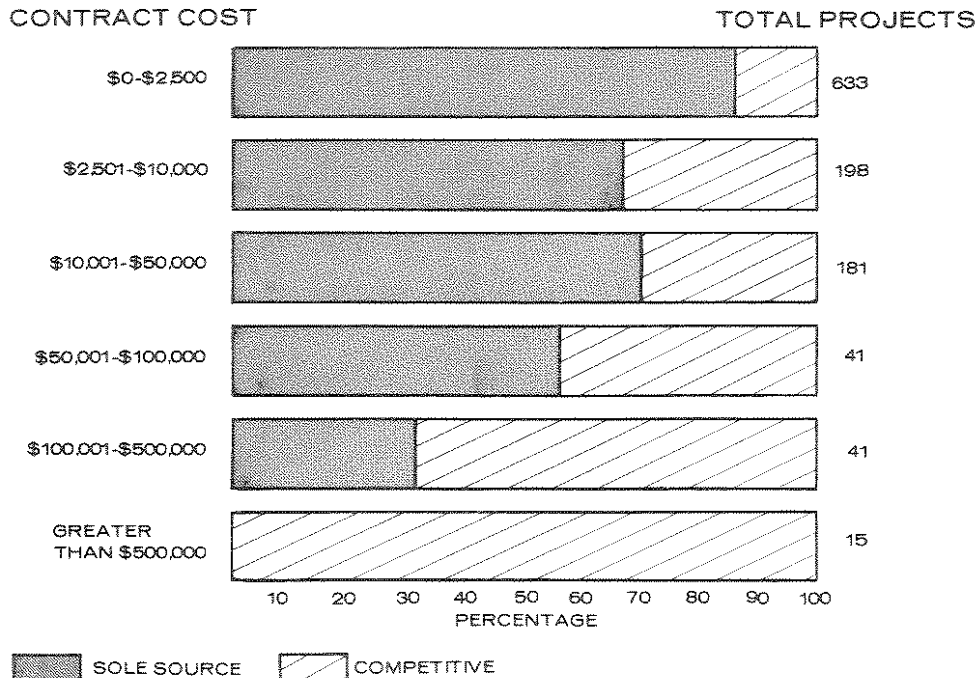
Competitive Bidding

The American Bar Association in its *Model Procurement Code* indicates that competitive bidding is a fundamental component of a satisfactory consultant procurement process. Competitive bidding significantly reduces the opportunity for bias, favoritism, and fraud in the selection of consultants. Requesting several bids also helps to ensure that the State is contracting for projects at the lowest cost consistent with the consultant's ability to deliver a quality product.

Lack of Competition. Despite the advantages of competitive bidding, three-quarters of the 1,338 consultant projects identified by JLARC in fiscal year 1979 were not competitively bid. Noncompetitive procurement was not limited to small, agency-to-agency, or special purpose projects. Fifty-one percent of the projects using commercial firms were selected without competition. Of special concern were the 56 projects valued at more than \$10,000 each which were awarded to commercial firms without competition. Eleven of these projects were over \$50,000 and three were over \$100,000. The proportion of competitive and sole source procurement for several levels of project expenditure is shown in Figure 2.

Figure 2

PROPORTION OF PROJECTS AWARDED WITHOUT COMPETITIVE BIDDING
(Fiscal Year 1979)



Source: JLARC consultant inventory.

Examples of projects which probably could have been competitively bid include the following.

The University of Virginia had two contracts totaling \$74,000 in fiscal year 1979 with the same accounting firm. The contracts were for a financial procedures manual and general recommendations on improving accounting procedures. The firm was chosen without consideration of other providers because it had previously completed an audit for the university.

Two engineering firms conducted school bus safety studies for the Department of Transportation Safety. The projects cost \$30,000. The firms were chosen without competition because the department had previous experience with them and felt that the firms had excellent qualifications.

The College of William and Mary hired an engineering firm to conduct a study of custodial

operations. The firm was recommended to the college by officials at Eastern State Hospital and Colonial Williamsburg. The college reported it could achieve cost savings by hiring a consultant already active in the area, but it never solicited proposals from other firms to make an analysis of the savings available. This project cost William and Mary \$68,567.

In at least one instance, there is evidence that the decision not to obtain competitive bids resulted in a continuing relationship with a consultant which cannot be determined to be cost effective.

In 1979 the Department of Personnel and Training (DPT) selected a firm to do a personnel study for the Division of Motor Vehicles. DPT chose the firm without requesting other proposals for the project. DPT based its selection on "specialized expertise" and on the recommendation of "two private employers in Virginia." The consultant services were reimbursed at per diem costs for three individuals of \$700, \$600, and \$500, respectively.

Upon completion of this project, the consultant was employed by the Department of Rehabilitative Services on the recommendation of DPT.

When a senior associate of the original firm left to form his own consulting firm, the Department of Rehabilitative Services continued with the senior associate to maintain the continuity of the personnel study.

Finally, the senior associate was employed by the Department of Highways and Transportation on DPT's recommendation for yet another personnel project.

Overall, three agencies used the same consultant for similar projects at a cost of \$156,000. Regardless of the merits of the consultant, DPT's failure to use competitive bidding for the original project, followed by subsequent referral of the consultant without further consideration of competing proposals, raises questions about the wisdom of the procurement process as followed in this instance.

Competitive Negotiation. Some groups do not consider pure price competition to be appropriate. Price competition is not used in the selection of architects and engineers, for example, because these professions consider such activity unethical. In such cases, the American Consulting Engineers Council (ACEC) and the American Bar Association (ABA) recommend the use of "competitive negotiation." (It should be noted here that a U. S. Supreme Court decision in April

1978 upheld a district court ruling that the ethical canon of the National Society of Professional Engineers prohibiting competitive bidding is in violation of the Sherman Anti-Trust Act.)

The Department of Highways and Transportation (DHT) makes the most extensive use of competitive negotiation in Virginia. A comparison of the department's selection process and the one recommended by the ACEC is shown in Table 3. DHT's selection process is generally comparable to the recommended process; however, it is different in at least two respects.

First, the initial selection of firms to be considered for a project does not allow for consideration of all interested firms. DHT makes no public announcements soliciting preliminary responses from potential providers as recommended by the ABA. Instead, DHT personnel review information on three or more firms from DHT files, and selects the "most qualified" firm for negotiation. Only the firm with which the department wishes to negotiate is ever contacted about a project. Other firms are not given the opportunity to express interest in a given project, as recommended by the ACEC and ABA.

The second difference with DHT's process is that the criteria used to select a firm are somewhat restrictive. Nine criteria have been developed by the department to determine which firm is most qualified. Three of the nine criteria give advantage to firms with some previous experience with the department, and have no specific relationship to the abilities of the firms. Each of these criteria tends to restrict competition. In contrast, the criteria recommended by the ACEC all deal with the firm's abilities, fiscal stability, facilities and equipment, and professional reputation. A fourth criterion gives advantage to in-State firms--a practice adopted by many states.

Although DHT procurement procedures were among the most systematic reviewed by JLARC, they appear to be overly restrictive when compared to the standards established by professional associations such as the ACEC. The department should review its procedures to ensure the broadest consideration of potential consultants.

Promoting Greater Competition. The high rate of non-competitive selection suggests that the State may not be realizing the most economical use of consultants. Attempts to increase competitive bidding, however, will encounter two principal criticisms leveled at procurement systems which emphasize competition: the process can be costly and inflexible, and quality may be sacrificed for low cost. Neither criticism is insurmountable.

With regard to the high cost of competitive bidding, there are logical exceptions which can be incorporated in a rational procurement system:

- Small projects, e.g., those under a specific dollar amount, might be exempted when the cost of the competitive procurement process will exceed the value of the project itself.

Table 3

COMPARISON OF COMPETITIVE NEGOTIATION PROCEDURES

AMERICAN CONSULTING ENGINEERS COUNCIL	DEPARTMENT OF HIGHWAYS AND TRANSPORTATION
Invitation to submit information may be public announcement, direct requests to prequalified firms, lists from professional societies.	None
Interested firms respond with letter of interest, demonstration of understanding, firm's ability, personnel profiles, references, and evidence of fiscal stability.	None
A Respondents' Conference may be held for complex projects.	None
Evaluation of responses to eliminate respondents who are obviously not qualified to do the work.	None
Preparation of short list of most highly qualified firms. Should include three or more firms.	Division head chooses three or more firms from list maintained by department for consideration for project.
Top three firms ranked according to qualification and preference. Ranking based on specific criteria.	Division head evaluates firms on standard evaluation form, with nine criteria. Director selects firm, with concurrence of chief engineer.
(This step unnecessary in ACEC process)	Division head determines if selected organization is interested in providing services. (If not, division head obtains authority to negotiate with another firm.)
No. 1 ranked firm invited to provide a comprehensive proposal. Final terms are negotiated.	Firm given complete description of project. Firm provides current information on ability to perform work, and provides cost proposal.
	Fiscal manager conducts "pre-award audit" for projects over \$50,000.
Final agreement consummated in writing as binding on both parties. Contract documents should be submitted for legal review before signatures affixed.	Final agreement is approved by appropriate authority: If less than \$50,000 - Deputy Commissioner If \$50,000 to \$100,000 - Commissioner If more than \$100,000 - H & T Commission
If negotiations unsuccessful with first firm, begin negotiations with second-ranked firm.	If negotiations unsuccessful with first firm, division head gets authority to negotiate with second firm.

Source: Adapted from **A Guide to the Procurement of Architectural and Engineering Services**, American Consulting Engineers Council, and Policy Memorandum DPM 6-8, Department of Highways and Transportation.

- Follow-up projects which build upon previous work could be exempted if the prior experience of a consultant provides a clear, distinct, and well-documented advantage in producing a satisfactory product.

The other major criticism often made of competitive bidding is that it may lead to the selection of an unqualified or inferior consultant due to the emphasis on cost. This criticism suggests that once a decision is made to seek competitive bids, cost becomes the only factor for consideration. In fact, the ABA's *Model Procurement Code* clearly notes that cost and the ability of the consultant to deliver a satisfactory product, as evidenced by the consultant's proposal and reputation, are both elements of the procurement decision.

In summary, steps can be taken to increase the use of competitive bidding without sacrificing the quality of the consultant process. Two steps are particularly needed: a State policy on competitive bidding and a centralized source of information on consultant use.

State Policy. Most states have some statutory language which advocates the use of competitive bidding as the preferred alternative for procuring consultants. Twelve states now require this practice. At present, with the exception of the provisions of House Bill 601 dealing with architects and engineers for capital outlay projects, Virginia does not have a clear statement of legislative intent regarding competition in the procurement of professional services.

The General Assembly may wish to establish a policy which makes competition the preferred method of procuring consultant services. The Governor could be called upon to establish guidelines to implement the policy, with necessary exceptions for small projects and special cases.

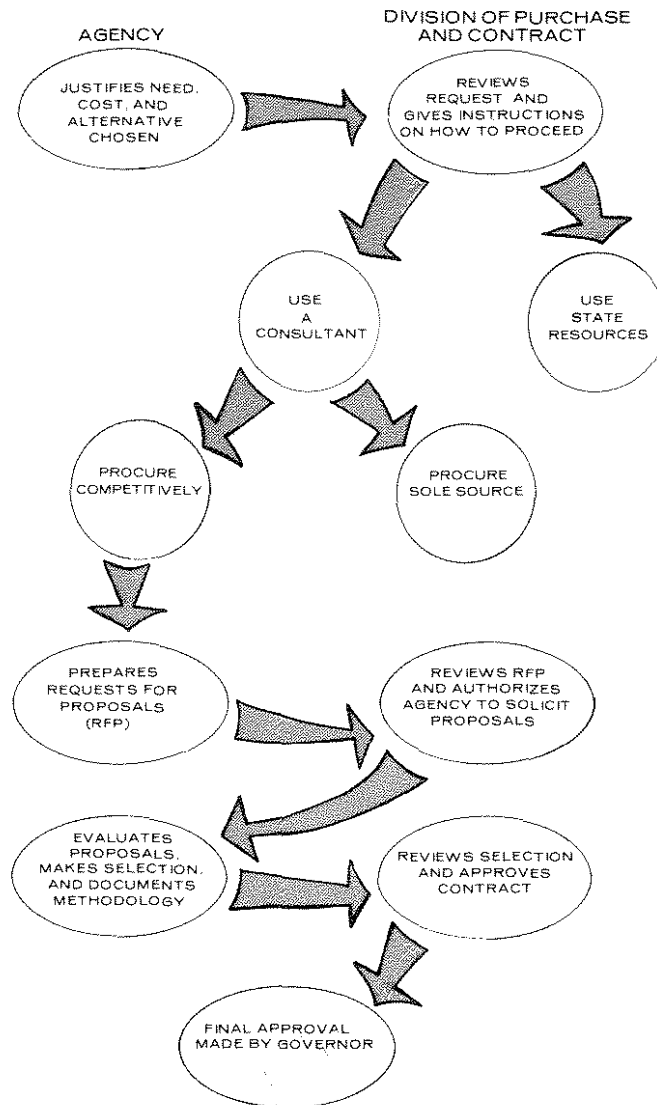
Information on Consultants. Most agencies reviewed select consultants based on the experiences of agency personnel and the reputations of large nationally-known firms. As a result, even when an agency decides to request proposals from several sources, the selection is often made without considering the fullest possible range of qualified consultants.

Agency personnel in 11 of the 16 agencies reviewed by JLARC indicated that they would benefit from a central source of information on consultant availability. This approach is used by the North Carolina Division of Purchase and Contract which maintains a central list of consultants for use by state agencies. Consultants who are interested in working for the state submit information on their special areas of expertise. Agencies may then review this list in determining how to best disseminate their request for proposals on a specific project.

A well-structured, rational procurement process is essential if the State is to obtain the best results from its use of

Figure 3

NORTH CAROLINA PROCUREMENT PROCESS



Source: JLARC staff illustration.

consultants. And, in order to compare Virginia's process with a nearby state, interviews were held in North Carolina because North Carolina's procurement process, shown in Figure 3, was suggested to be among the most developed in the country.

JLARC staff found that North Carolina's Division of Purchase and Contracts does indeed serve as a central control point for consultant procurement, including approval authority for all procurement decisions. This degree of central control may be unnecessary.

The North Carolina model also uses a restrictive definition of consulting which removes a significant portion of the function from any central review. Despite these limitations, the North Carolina process might serve as a general model for improving Virginia's selection of consultants.

Selection of consultants in Virginia could be improved by the development of a comprehensive list of consultants and their specialties. The first step toward developing such information could be to have each cabinet secretary compile a list of consultants used by agencies under their jurisdiction. The consultant lists prepared by the secretaries could be consolidated into one list for use by all executive agencies. This list would be used as an information source only, and inclusion on the list should not carry any kind of specific or implied recommendation. Agencies should be free to use other consultants as well as those on the list.

Personnel System Avoidance

A secondary objective of this review was to determine if consultants were used to avoid the purpose and controls of the State personnel system. Most consultants appear to be used appropriately, that is, to provide specific, temporary advice or technical assistance. However, several instances were found where consultants were not used for these purposes.

Consultants in Policy-making Positions. In one case, an agency retained a consultant to carry out policy-making and administrative functions that are normally performed by classified personnel.

The Department of Corrections employed a consultant in 1975 to develop a financial management system. From 1975 until 1979 the consultant served as the department's chief financial officer at a cost of \$150 per day. In March 1979 the department hired a classified State employee as its financial officer. At that time the consultant was made a general advisor to the department at a cost of \$250 per day. Total payments to the consultant from 1975 through 1979 were \$192,245.

The department's decision to employ a consultant to function as the agency financial officer, and to retain him in that position for four years, was questionable for two reasons. First, the consultant occupied a position that routinely provided direct supervision to classified State employees and functioned as an integral part of the agency hierarchy. This practice is contrary to generally accepted standards for consultant use.

Secondly, the rate of pay for this consultant was far higher than comparable classified positions. For example, in 1978 the consultant was paid \$35,686, 25 percent more than the maximum compensation for fiscal officers at the State's largest agencies. As a general advisor during the last quarter of fiscal year 1979, the

consultant was paid at a rate that, if maintained for an entire year, would exceed the Governor's annual salary of \$60,000.

In addition to the financial consultant, the Department of Corrections has retained consultants for several years to provide services which appear to parallel the activities of departmental personnel. For example the department has an organized capital outlay division and also a capital outlay consultant. An industrial consultant advises the department in the area of Institutional Enterprises. One of the department's auditors is a consultant. Total payments to these individuals between fiscal years 1975 and 1979 amounted to \$219,939. The continued use of these consultants over a multi-year period suggests that they are the equivalent of departmental employees.

An important factor to consider in using consultants for routine duties is the federal Social Security Act. This law requires payment of Social Security taxes for all individuals judged to be in an employer-employee relationship with a State agency. For the purposes of Social Security, an individual is defined as an employee if:

. . . the employer for whom the person works has the right to direct and control him/her in the way he/she works, both as to the final results and as to the details of when, where, and how the work is to be done. The employer *need not actually exercise control. It is sufficient that the employer has the right to do so.* (emphasis added)

A review of the Social Security laws suggests that the State could be liable for Social Security taxes for consultants hired to perform routine agency functions.

Use for Other Personnel Purposes. In several cases, agencies used the flexibility inherent in employing consultants as a way to provide what amounts to severance pay, or to bring on newly employed personnel for orientation.

An individual resigned from a senior management position in the Community College System but was retained on the payroll as a consultant for nine months at the cost of \$24,000. The individual was not employed as a consultant to perform a specific service, but did complete several project assignments. Apparently, the primary purpose was to ease the individual's transition between jobs.

In three instances in 1978, Old Dominion University had newly hired deans begin curriculum planning and orientation prior to the formal assumption of their duties. Each of these

individuals was paid as a consultant, although the actual nature of the services was preparation for work to be done upon assuming their duties as deans. The costs of these services amounted to \$4,135.

Whatever the merits of these kinds of personnel practices, reporting the expenditures as consultant projects mis-stated both the scope and nature of consultant use.

RECOMMENDATIONS FOR IMPROVING CONSULTANT PROCUREMENT

Procurement of consultant services is almost exclusively the responsibility of each State agency. Although this review found no evidence of impropriety in procuring consultant services, there was evidence that agencies underutilize competitive bidding and fail to conduct a thorough needs assessment in all cases. Standard policies and guidelines are needed to ensure that consultants are not used unnecessarily or inappropriately.

Recommendation (1). The General Assembly may wish to enact legislation to make competitive bidding the preferred method of consultant procurement. The Governor could be called upon to develop guidelines to implement this policy, with necessary exceptions for small projects and special circumstances.

Recommendation (2). The Governor should develop and promulgate comprehensive statewide guidelines for minimum documentation requirements. Documentation should be sufficient to support (1) the agency decision to employ a consultant, and (2) the agency decision on whether the project should be competitively bid. Complete project files, including requests for proposals, consultant proposals, selection criteria, and project-related correspondence should be maintained.

Recommendation (3). Agencies should give greater consideration to using their existing staff resources, other State agencies, or colleges and universities before deciding to use a consultant.

Recommendation (4). Each cabinet secretary should request that a list of consultants used by agencies under their jurisdiction be compiled. The list should include each consultant's areas of expertise and include those State agencies and institutions which provide specialized consulting services. The consultant lists should be available for informational purposes to encourage wider competition among interested consultants, and could serve as the basis for developing one or more consolidated lists of consultants in the future.

Recommendation (5). The Governor should develop guidelines which clarify policy regarding the use of consultants for jobs which are routine, long-term, or normally performed by classified employees. Consultants should not be used to provide supervision of classified employees except as necessary to complete a short-term project.

III. Managing Consultant Projects

Project management is essentially the responsibility of individual agencies. The State provides little guidance on managing consultant projects. In the absence of any State-mandated requirements, three generally accepted standards were used to evaluate agency project management practices:

1. All consultant projects should be governed by a written contract or letter of understanding that is signed prior to the initiation of the project.
2. Contracts should clearly state what is to be done or provided by the consultant, the amount to be paid, and the scheduled completion time.
3. Agencies should monitor projects by establishing project milestones and maintaining adequate management records.

The performance of the 16 case study agencies measured against these evaluation criteria is shown in Table 4. Contract administration is deficient in several agencies, and project monitoring is hindered by informal procedures and poor records.

Table 4

PROJECT MANAGEMENT PERFORMANCE OF CASE STUDY AGENCIES

AGENCY	All Projects Had Written Contract		Projects Without Written Contract	Written Contracts Were Signed Before Project Initiation		Written Contracts Were Clear and Complete			Project Monitoring Procedures and Records Were Adequate	
	Yes	No		Yes	No	Almost Always	Inconsistent Performance	Rarely	Yes	No
Alcoholic Beverage Control Board		✓	1 of 4	✓		✓			✓	
Central State Hospital	✓		0 of 11	✓				✓		✓
Department of Community Colleges		✓	2 of 8	✓				✓		✓
Department of Corrections		✓	6 of 36		✓		✓			✓
Department of Education		✓	57 of 61	✓				✓		✓
Department of Health		✓	3 of 17		✓		✓		✓	
Department of Highways and Transportation	✓		0 of 55	✓		✓			✓	
Department of Mental Health and Mental Retardation	✓		0 of 33		✓		✓			✓
Old Dominion University		✓	7 of 9	✓		✓				✓
Department of Personnel and Training		✓	1 of 86	✓			✓		✓	
State Corporation Commission	✓		0 of 66	✓		✓			✓	
Tidewater Community College	✓		0 of 2	✓			✓			✓
Virginia Commonwealth University		✓	7 of 73	✓			✓			✓
Supplemental Retirement System		✓	2 of 13	✓		✓				✓
State Water Control Board	✓		0 of 26		✓	✓			✓	
Department of Welfare		✓	12 of 77	✓			✓			✓

Source: JLARC review of consultant project files.

Contract Administration

Although a written contract with the consultant is the most important control to protect the State's interests, contracting practices for consultants are weak in the following respects.

- One-fourth of all consultant projects conducted during fiscal year 1979 were reported by agencies to have been carried out without a written contract.
- In some instances contracts were not executed until after a project was completed or under way.
- Contract terms were occasionally vague and did not specifically establish what the consultant was to accomplish, project schedules, maximum compensation, or provisions for withholding payments.

The executive branch has recognized the importance of written contracts by requiring agencies to submit contracts to the Attorney General for review. This procedure appears to have some potential for improving contract administration, although its impact has been minimized by limited enforcement.

Lack of Contracts. During fiscal year 1979, agencies reported that one-fourth (26%) of all consultant projects did not have a written contract. In some of these cases the project may have been initiated by a letter of agreement or some other document. While letters of agreement satisfy basic legal requirements for a contract, they do not always provide sufficient guidance to ensure that each party understands the full scope of the agreement on its terms and conditions. Total obligations for these projects were approximately \$1.5 million. Although most of these projects were small, the review found at least five projects conducted by private consultants at a cost of more than \$10,000 apiece that did not have a written contract. Examples of these projects include:

The Virginia Port Authority employed an engineering firm by oral agreement to conduct inspections and an advertising firm to develop a booklet, map, and description of port facilities. Payments to these firms was \$25,609.

Virginia Commonwealth University retained a firm by oral agreement to provide assistance in conducting an analysis of small housing units. The cost of this project was \$12,500.

Virginia Tech hired a firm to conduct various engineering studies of the university power plant. The cost for these activities was \$12,224.

Some agencies appear to routinely employ many consultants without a written contract. The Department of Education had 57 projects which lacked contracts, Virginia community colleges had 42 such projects, and Virginia Tech had 29 projects without contracts.

Although verbal agreements or understandings may be legally binding they are difficult to administer. A written contract provides clarity and is less open to misinterpretation. The problems which may arise when an agency employs a consultant without a written contract are illustrated in the following examples.

The Department of Corrections used a real estate agent to identify parcels of land for use by the department. No contract was prepared or signed with the agent. The agent prepared a report on potential sites and purchased an option on a \$272,000 parcel of land with \$2,000 of State funds. The agent's potential commission on this sale was ten percent, or \$27,200. However, the department was unable to use the land as intended and decided not to exercise its option. The agent requested \$10,000 for his services. The department settled with him for \$7,000 upon authorization of the Secretary of Public Safety.

Piedmont Virginia Community College arranged for a consultant to produce a slide show for a vocational education project. No contract was signed with the consultant or the sub-contractor to whom the consultant assigned production of a script. All agreements were verbal. Although several scripts were produced, the final version was not completely acceptable to the college and required revisions by college staff. The sub-contractor, however, billed the college for the work performed, claiming that it had met the obligations agreed to with the college. College officials paid \$500 despite the shortcomings of the product.

In both of these cases, written contracts would have prevented any misunderstanding between agency and consultant. A standard real estate contract specifying the agent's commission on the sale or compensation in the event of no sale would have protected both parties. The community college could have protected itself against the expenditure of funds for services which did not fully meet its expectations with a written contract specifying that the product must be acceptable to the college.

Contracting After the Fact. In addition to agencies not having written contracts for consultant projects, in several instances

agency officials signed contracts after projects were initiated. In effect, these projects were conducted all or in part without a written contract.

The Department of Mental Health and Mental Retardation contracted for a training course on the elderly which was delivered between May 7 and 10, 1979, at a cost of \$2,677. The contract was not signed by the commissioner until five days after the project was completed.

The Department of Corrections contracted with a commercial firm to study and propose a reorganization of the department's personnel section. The consultant conducted a review of the agency in April 1979. Although a letter of confirmation was sent to the consultant in April, the contract was not signed until June 1979.

The State Water Control Board contracted with Virginia Tech to provide land management seminars to persons whose activities could cause pollution. The seminars were to be conducted between June 1978 and February 1979 at a total cost of \$18,700. No contract was signed until February 1979.

The Department of Mental Health and Mental Retardation contracted for management workshops to be held at six facilities at a cost of \$1,089. The project lasted from February 2 to March 13, 1979. The contract was not signed by the commissioner until February 23, 1979.

In most agencies, failure to sign contracts until after project initiation was relatively infrequent. However, the Department of Mental Health and Mental Retardation often did not execute contracts in a timely fashion. In 19 separate cases for fiscal year 1979, contracts were verbally approved by the commissioner but not signed until after the project had been initiated; in 16 of these cases the project was completed before the contract was signed.

Failure to fully execute a contract prior to the beginning of a project means that agencies lack the legal basis for holding consultants responsible for their performance. To ensure that agencies and consultants have a clear understanding of what is

expected, contracts should be signed by all parties prior to the start of any work on projects.

Vague Specifications. Among the 959 consultant projects for which written contracts were prepared, JLARC found instances of vague or incomplete contract provisions. The most frequently noted problems were:

- failure to clearly specify what the consultant was to accomplish;
- no time schedule or maximum payment specified; and
- no provision included allowing agencies to withhold final payment until they are satisfied with the project outcome.

The most common problem in contract administration was the use of vague project specifications which did not clearly establish what the consultant was to accomplish. Vague contract provisions are of little value in providing direction to the consultant and lessen the contract's legal value as a means of protecting State interests. Examples of vague contract provisions were found at several agencies.

The Department of Corrections contracted with an industrial consultant to advise its Industrial Enterprises Division. The consultant was paid \$37,050 during fiscal year 1979. The contract specified only that the consultant would "perform duties specified by you (the assistant director for institutional services)."

The department also contracted with a retired employee who was paid \$2,300 to serve as agriculture consultant. The contract language was identical to the above.

Central State Hospital contracted with the Medical College of Virginia for instruction of psychiatric resident physicians during fiscal year 1979 at a cost of \$33,000. The contract specified only that MCV would ". . . provide or arrange for instruction and supervision of psychiatric residents . . . in Basic and Clinical Psychiatry, Outpatient Psychiatry, Neurological Basic Sciences, Psychology and other related pertinent subjects . . ." The amount and format of the instruction and other contractor obligations were not stated.

A second general problem was that contracts did not include a maximum amount of compensation. Almost one-third (29%) of all

projects during fiscal year 1979 did not specify the total amount to be paid. For example:

The State Department of Health contracted with an engineering firm to provide technical assistance in soliciting and reviewing contractor proposals for engineering and related studies. The firm also monitored and coordinated the activities of engineering contractors used by the department. The firm was paid on a per diem basis, but the contract did not specify a maximum amount of payment. Payments to the firm totaled \$101,826 in fiscal year 1979.

A final area in which consultant contracts were unclear was the failure to include a provision for withholding part of the consultant's fee until the agency judges the consultant's performance to be acceptable. Good contract administration requires such a provision to ensure that the consultant meets the agency's expectations. The lack of a withholding provision can result in payment for unacceptable work, as occurred at one institution.

Virginia State University contracted with a private firm to evaluate its Career Counseling and Placement Program. The project was conducted under the terms of a letter agreement at a cost of \$3,660. The university was not satisfied with the consultant's written report or recommendation that Virginia State use a placement manual previously developed by the consultant. Despite its dissatisfaction, the university paid the consultant because the letter agreement did not specify that payment would be based on receipt of a satisfactory product.

Vague contract provisions limit agency capability to hold consultants accountable for their performance or to control the cost of these activities. To improve accountability and control, all contracts should (1) precisely describe the scope of consultant responsibilities; (2) establish a definite period for consultant services; (3) specify the maximum amount of compensation to be paid; and (4) include a provision for withholding final payment.

Contracting Between Agencies. State agencies and institutions of higher education served as consultants to other State agencies for 200 projects during fiscal year 1979. In 26 percent of these projects, there was no written agreement, contract, or memorandum of understanding. Lack of written agreements was particularly characteristic of the Department of Management Analysis and Systems Development (MASD) which provides development services for automated data processing to other State agencies. Approximately half of MASD development projects were conducted without written agreements.

The need to have written agreements for consulting between agencies of State government is less compelling than in cases where the State contracts with private firms or individuals. Nevertheless, the lack of a written agreement can lessen the control over projects by the agency being served, as shown in the following example.

The Department of the Treasury requested MASD to develop a Time Deposit Accounting System in 1975. No agreement was signed by the two agencies. MASD and Treasury required two years to develop the system and both agencies assigned different analysts to the project over this period, resulting in inconsistencies in programming. Since 1977, Treasury reported that it has had to constantly modify the system to keep it operating. During fiscal year 1979, payments for this purpose were \$4,282. Treasury is now purchasing a new system from a private contractor.

Because no agreement was in force, the Treasury Department had no clear basis for holding MASD accountable for its performance. To ensure that agencies have adequate understandings when contracting with other State agencies, written agreements should be executed for these projects in the same manner as for projects involving private firms and individuals.

State agencies also occasionally hire individual employees of other State agencies as consultants. This practice is authorized by State policy, provided the arrangement is approved by the agency employing the person who is consulting. However, some of these agreements are set up as temporary employment using a P-14 form. The Department of Planning and Budget and the Department of Personnel and Training indicate that use of temporary positions for hiring consultants is an incorrect procedure. Moreover, the P-14 does not provide a satisfactory definition of the consultant's responsibilities. State employees, when hired as consultants by other agencies, should be employed under a written agreement which specifically describes the terms and conditions of their consulting.

Legal Review of Consultant Contracts. Concern about the adequacy of agency contracting was the basis for two recent initiatives within State government.

First, in 1979 the Secretary of Administration and Finance issued A&F Directive No. 2 which required, beginning in fiscal year 1980, the following:

. . . any agency wishing to enter into an agreement with a contractor, for any purpose, shall first have the terms of that written contract approved by the Office of the Attorney General as to its form and substance. No expenditure of funds shall be made under any contract unless this requirement has been met.

This requirement has not been fully implemented because the number of contracts to be reviewed exceeds the available legal staff capacity. According to the Department of Accounts, only contracts with payments in excess of \$1,000 must be submitted for review. Moreover, there is no guarantee that this requirement is fully enforced because enforcement is left to the agencies. The Department of Accounts does not review vouchers to ensure compliance.

The second initiative was the request by the Secretary of Administration and Finance to the Attorney General for the development of contract guidelines to be used as a model by State agencies. Draft guidelines have been prepared but have not yet been finalized by the Secretary. The evidence from file examinations suggests a great need for standard guidelines which would (1) require agencies to have signed contracts for all projects, and (2) specify essential provisions to be contained in the contracts. Development of such standard procedures could reduce the problems created by inadequate contracts for consultant services.

Project Monitoring

Project monitoring is necessary to ensure that the consultant adheres to the conditions of the contract. Close monitoring and supervision is also necessary for the agency to get maximum benefit from the consultant project. Key elements of the project monitoring process are progress reporting, fiscal control, and record-keeping.

Progress Reporting. Only about one-half of all consultant projects over \$5,000 had written progress reports in the files when they were reviewed by JLARC staff. Smaller projects under \$5,000 had written progress reports in only seven percent of all cases. Agency heads indicated that project monitoring is generally accomplished through informal contacts with the consultant, and by use of one agency employee specifically identified as a project monitor. In most cases it appears that progress reporting is adequate, although in a few instances the inability or failure to carefully monitor or take timely action regarding consultant projects results in serious breakdowns. For example:

The Virginia Supplemental Retirement System (VSRS) contracted with an accounting firm to design automated records and financial management systems. The contract was awarded through competitive bidding, was priced at \$22,500, and was scheduled to be completed by January 1978. From the beginning, the project was plagued with problems related to the scope, the lack of sufficient funds, and the availability of contractor personnel. As a result, the project fell far behind schedule and questions arose about the consultant's ability to complete his work.

In November 1978, VSRS renegotiated the contract to increase the consultant's fee by \$25,000 and extend the deadline for completion. When the original general systems design was prepared in early 1979, VSRS deemed it unacceptable. The consultant revised the document to acceptable standards and was terminated upon payment of \$12,500 of the \$25,000 renegotiated amount. A new consultant was hired to complete not only the design, but also to program and implement the systems at a cost of \$295,000.

In another instance, the State Water Control Board closely monitored its consultant but failed to withhold payment even when unacceptable work was turned in.

The State Water Control Board (SWCB) engaged an engineering firm to prepare a manual on stream modeling for use in its water management programs. When SWCB reviewed the preliminary draft, the project monitor discovered that the text was not in publishable form and that some references cited in the text and bibliography could not be verified. SWCB stopped payments to the consultant and requested that the firm revise the manual and validate citations.

After nine months, the consultant had corrected many of the problems with the manual and conducted a seminar on using the manual. SWCB was still not satisfied with the manual, however, and terminated the contract by paying the remaining balance to the consultant. The total cost for this project was \$56,077.

In this case, effective monitoring did not prevent payment for unsatisfactory work. State Water Control Board officials indicated that the consultant was paid in full because the agency felt the technical information was more important than the remaining problems. The consultant's product was used after extensive revisions by SWCB.

Fiscal Control. Control of payments to consultants is considerably more systematic than monitoring of projects. Each of the 16 agencies visited required some form of certification to be submitted before payments would be processed. Requests for payments also had to be approved by a project monitor, and disbursements had to be authorized by accounting or financial personnel.

The most extensive procedures were used by the Department of Highways and Transportation. Firms working on the design of highways, bridges, and traffic control systems are required to include progress reports and documentation of costs along with their

bills. Before payments are processed, the bills and attachments are audited by the department.

Despite the establishment of generally adequate procedures, fiscal control does break down. Instances were noted of payments being made without adequate review, as illustrated below.

The Department of Corrections contracted with an individual to supervise a construction project. Payment was set at \$225 per month, but the consultant was not required to submit any proof of service. Payment was made automatically to the individual. As a result, the consultant was paid for one month when he was unable to work due to poor weather. The error was discovered when the consultant returned the payment.

Fiscal control of contractual payments sometimes breaks down when agencies attempt to circumvent problems created by inadequate financial administration.

VCU hired an individual to teach several workshops during fiscal year 1979. In five of six instances, invoices for payments totaling \$3,700 were processed before the workshops were actually held. VCU officials explained that payments were made to the department which then held the checks until after the workshops were completed. These officials indicated that the reason for prior processing was that long delays in processing payments after the fact have made it difficult for VCU to obtain needed instructors.

These breakdowns, although few in number, point out the need for careful checks on processing consultant payments.

Record-keeping. Agencies should keep reasonably complete records of each consultant project as an aid in evaluating any future proposals by previously-used consultants, as well as for post-audit purposes. However, in ten of the 16 case study agencies reviewed by JLARC, records were found to be inadequate. To obtain necessary information on consultant projects, JLARC and agency staff were required to piece together fragmentary records scattered throughout the agency. At the following two agencies, top management personnel were unaware of the full extent of consultant activity.

The Department of Corrections told JLARC to coordinate its review with the executive assistant director. Using this source, JLARC identified 17 contracts. However, no expenditure data for contracts are maintained by that individual. JLARC staff reviewed agency

disbursements and, in the process, identified an additional 19 consultant projects.

The assistant director of administration for the Department of Welfare provided JLARC with a list of payments made to consultants during fiscal year 1979. The agency indicated that this list was the best available estimate of consultant projects. Using the payments list, JLARC identified 77 consultant projects, 63 of which were training projects costing \$107,070. However, a list of training projects provided by Welfare's Training and Staff Development office revealed the department contracted for an additional 93 consultant training projects.

In contrast to the poor record-keeping at most agencies, four agencies were found to have accurate and readily accessible central records. Each of these agencies--the State Water Control Board, the State Corporation Commission, the Department of Highways and Transportation, and the Alcoholic Beverage Control Board--made use of a designated contract officer in combination with a well-designed information system. Contract officers were found to provide the focus necessary for maintaining an adequate record-keeping system.

Contract officers and central records of basic contract information appear to be valuable steps that could be adopted by agencies which make regular, frequent use of consultants. Improved record-keeping is particularly important for the Departments of Corrections, Welfare, Education, Personnel and Training, and Mental Health and Mental Retardation, and Virginia Commonwealth University. In fiscal year 1979, these agencies spent over \$1.9 million for consulting services but did not have readily accessible, comprehensive records for these activities. While some of these agencies now have contract officers, they are not supported by adequate information.

Contract administration procedures at the State Water Control Board and the State Corporation Commission appear to be particularly good models for use by other State agencies.

RECOMMENDATIONS FOR STRENGTHENING PROJECT MANAGEMENT

Management of consultant projects needs to be strengthened to ensure that both contracting agencies and consultants are fully aware of their obligations and responsibilities and that agencies carefully monitor consultant performance. Five specific actions should be taken to develop a more systematic process for project management.

Recommendation (1). Written contracts should be required for all projects and should be completely executed before consultants begin work. Agency heads or their designated representatives should be required to send a notice to consultants giving them specific authorization to proceed.

Recommendation (2). Regulations for development and execution of contracts should be developed and applied to all State agencies. The regulations should ensure that all contracts include statements governing the (1) scope and nature of services to be provided by the consultant; (2) responsibilities of and resources to be provided by both parties to the contract; (3) project schedule; (4) method, schedule, and total amount of payment; (5) procedures for amending or cancelling the contract; (6) procedures for resolving disputes about the contract; and (7) provision for withholding final payment until the contracting agency is fully satisfied with the project results.

Recommendation (3). Procedures should be developed to more completely enforce the requirement that all contracts be reviewed by the Attorney General.

Recommendation (4). Guidelines should be developed to assist agencies in systematic monitoring of consultant projects. These guidelines should establish general procedures for agencies to use in establishing their own monitoring procedures.

Recommendation (5). Each agency that uses consultants should appoint one individual as an agency contract officer. Agency contract officers should be responsible for maintaining contract and financial information for all consultant projects and should also serve as a liaison with employees who monitor individual projects.

IV. Accounting for Consultant Services

The high visibility and unique nature of consultant use in the public sector require accurate information on agency consultant expenditures. The State's central information system cannot produce this needed information.

The following components are needed to establish an adequate information base:

1. Accurate expenditure reporting which requires a standard definition of consulting and sufficiently exclusive accounting codes.
2. Consistent reporting of all costs, including ancillary costs.
3. Correct coding of expenditures by agencies.

Expenditure Reporting

Virginia's primary source of information on expenditures, including consulting, is the Commonwealth Accounting and Reporting System (CARS), which uses a series of accounting codes for reporting expenditures. Three of these codes are most appropriately used for consultant expenditures (see Table 5). The first code--1213--is used for a variety of professional services, including most consulting. The next two codes--1288 and 1289--encompass expenditures for automated data systems development.

Lack of Definition. The usefulness of CARS accounting codes for consultant expenditures is severely limited by the lack of a standard definition of consulting services. The terms "consulting" or "consultant" are not used anywhere in the CARS instruction manual. Thus, agencies have no specific guidance for categorizing consultant expenditures. Moreover, descriptions of the accounting codes intended to include consultant services are not precise. As a result, agencies must use their own judgment in deciding how to report consultant expenditures.

JLARC's review found numerous instances of activities which would have been better reported under one of the three codes used for consulting, but which were listed elsewhere. For example:

The Division of Industrial Development used a consultant to design an advertising campaign and place ads promoting Virginia as an industrial location. The entire expenditure of approximately \$379,000 was reported under CARS as an advertising service, although the cost of designing the campaign was a consulting service.

Table 5

ACCOUNTING CODES MOST APPROPRIATELY USED FOR
REPORTING CONSULTANT EXPENDITURES
(Fiscal Year 1979)

<u>Code</u>	<u>Description</u>
1213	Professional Services (other)--Legal, engineering, management, and other professional services. . . not included elsewhere.
1288	ADP Development Services (State)--Services provided by another State agency, including consulting services, feasibility analysis, systems design development, modification, and conversion.
1289	ADP Development Services (Non-State)--Services defined in subobject code 1288, but provided by a non-State agency.

Source: Department of Accounts and Department of Planning and Budget.

The Governor's Manpower Service Commission contracted with Virginia Tech to conduct a needs assessment for manpower training, for which the commission paid \$16,800 in fiscal year 1979. This consulting service was reported to CARS as a grant expenditure.

The Department of Taxation spent \$19,263 for consultants to provide a series of training programs. This expenditure was reported to CARS under the accounting code for convention and education travel.

The Office of Emergency and Energy Services contracted with an engineer to develop lighting efficiency standards at a cost of \$3,000. This expenditure was reported under a "catch-all" code for contractual services.

The Marine Resources Commission employed a consultant to do seafood marketing research at a cost of \$24,970. This expenditure was also reported to CARS under the "catch-all" category.

The problems created by the lack of a precise definition are further illustrated by examples of agencies reporting the same kind of expenditure inconsistently.

The Science Museum reported \$25,493 for capital outlay preplanning under one code, while the Department of Corrections reported similar preplanning expenditures of \$16,450 under a different code.

The Department of Welfare contracted with a systems engineering firm to provide eight workshops in fiscal year 1979 at a cost of \$17,609. Four workshops were coded in the "catch-all" code and then recoded as professional services two months later. Two workshops were coded as "catch-all" and were never changed.

Without a standard definition of consulting services, it is impossible for CARS to be used as a means of accounting for consultant expenditures.

Broad Accounting Codes. Even when agencies properly use the CARS accounting codes which are intended to include consulting expenditures, the usefulness of the information is limited due to the broad inclusive nature of these codes. Under the present system, the Department of Accounts would respond to a request for information on consulting expenditures by listing the expenditure data in the three codes discussed earlier. This listing would be of little value because these codes are properly used to report a variety of expenditures including, but not limited to, consulting. For example, the 1213 code can be used for a wide variety of purchase-of-service expenditures (such as expenditures for analyses of water samples, expenditures for collection agency services, or expenditures for repairing communications equipment) as well as consulting.

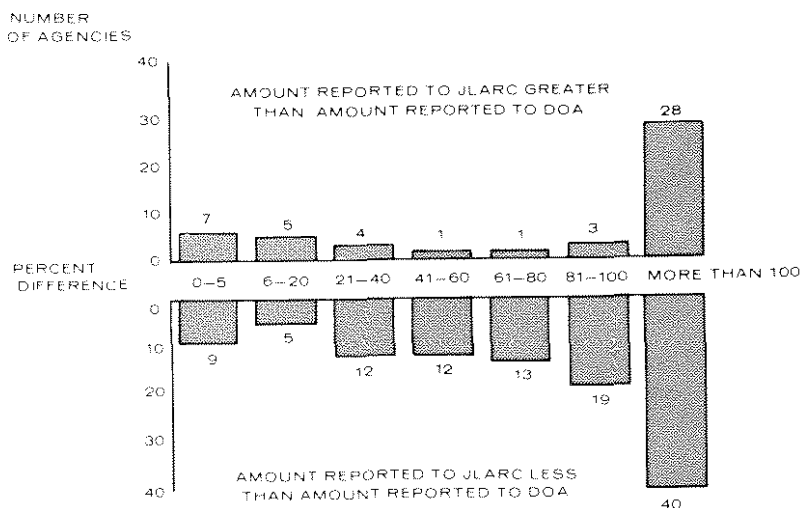
In short, it is not possible to accurately determine the costs of consultants used by State agencies through analysis of CARS expenditure reports.

The overall effect of the lack of a clear definition, coupled with broad inclusive accounting codes, is an average discrepancy of well over 100 percent between the best estimates of consulting costs available through CARS and the actual expenditures. The difference between the best CARS estimate and information supplied to JLARC by all agencies using consultants in fiscal year 1979 is shown in Figure 4. The best estimate from CARS approximated (within five percent) actual consulting expenditures for only 15 agencies, while estimates for 68 agencies were off by more than 100 percent.

The difference between the best estimate of consulting expenditures available from CARS for selected agencies and the actual

Figure 4

PERCENT DIFFERENCE BETWEEN CONSULTANT EXPENDITURES
REPORTED TO JLARC AND BEST ESTIMATES AVAILABLE FROM CARS
(All Agencies Using Consultants, Fiscal Year 1979)



COMPARISON OF ACTUAL CONSULTANT
EXPENDITURES WITH BEST ESTIMATES AVAILABLE FROM CARS
(Selected Agencies, Fiscal Year 1979)

Agency	CARS	JLARC	Difference(+/-)
Industrial Development	\$ 6,729	\$368,720	\$ 361,991+
Transportation Safety	0	350,469	350,469+
Manpower Service Commission	83,380	389,201	305,821+
Marine Resources Commission	3,688	189,407	185,719+
Northern Va. Community College	38,001	147,650	109,649+
State Library	27	54,410	54,383+
Va. Beach Erosion Control	0	50,997	50,997+
Justice and Crime Prevention	19,559	62,540	42,981+
Office of Emergency Services	37,078	74,095	37,017+
Housing and Community Development	21,221	42,632	21,411+
Virginia State University	158,348	76,765	81,583-
Virginia Institute of Marine Science	181,885	87,086	94,799-
Alcoholic Beverage Control Board	156,662	61,330	95,332-
Public Telecommunications Council	162,292	54,234	108,058-
Management Analysis and Systems Development	791,002	655,559	135,443-
Department of Corrections	571,431	343,554	227,877-
Old Dominion University	395,038	16,097	378,941-
State Department of Welfare	3,073,533	555,164	2,518,369-
Virginia Commonwealth University	3,183,223	334,714	2,848,509-
State Department of Health	5,486,504	491,847	4,994,657-

Source: Department of Accounts and JLARC consultant inventory.

consulting expenditures as reported to JLARC by the agencies is also shown in Figure 4. The first ten agencies (with lower expenditures reported to CARS than to JLARC) are examples of agencies coding consultant expenditures in other than the intended codes. The second ten agencies (with greater expenditures shown in CARS than reported to JLARC) are primarily examples of the problem created by the inclusive nature of the accounting codes, particularly code 1213.

The fact that the State's accounting system could not accurately reflect consultant expenditures was first noted in the 1975 study conducted for the Secretary of Administration. This study was prefaced on the following assumption.

. . . the existing accounting object code classification system was not adequate for comparative analysis by purpose, fund source, duration, character and similar detailed data needs regarding consultant and part-time assistance usage.

The study also concluded that "since consultant services are assigned codes which are also used for other types of expenditures, consultant expenditures become lost within the larger totals."

The 1975 study recommended that the Division of Budget "develop a workable definition of consulting services," while the Department of Accounts "should determine whether the accounting code classification needed to be changed to better reflect consultant expenditures."

Subsequent to that study, the automated CARS system was introduced in 1978. The CARS system presently has 58 unused accounting object codes available in the contractual services series which could be assigned specifically for consultant expenditures. While it is obviously impractical for every activity of State government to have a separate accounting code, the high visibility and accountability demands of consultant use would suggest that separate accounting for consultant expenditures is necessary. It is important to note that the Department of Planning and Budget has already adopted the use of two separate codes for consulting expenditures for automated data processing as a result of the high cost and accountability demands of computer systems development.

Ancillary Costs

Another problem in accounting for consultant expenditures with CARS data is the fact that agencies vary in the way they report ancillary costs for consultant projects. Ancillary costs are expenses such as travel, lodging, and other support services provided for consultants during a project. At present, there is no established policy on how these costs should be reported.

Most consultant contracts separated the consultant's professional fee from ancillary costs. In those cases where the total

project cost, including ancillaries, is in the form of a single payment, the entire amount is reported as a consultant expenditure. Logically, the total cost of ancillary services for contracts which separate the professional and ancillary costs should also be reported under a single accounting code to avoid understating the actual cost of the project. However, there is no policy to this effect now in use.

As a result, agencies adopt their own policies on reporting ancillary costs. These policies often differ from one agency to another. For example, the Department of Education reports consultant travel and lodging under one code, while the Department of Corrections reports the same expenditures under a different code. The result can be substantial understating of the true cost of consulting services, as shown in the following examples.

Northern Virginia Community College contracted with three individuals to develop a small business management course. The professional fee was \$25,950, which was reported to CARS as professional services. However, the college incurred additional costs of \$107,331 for facility space, materials, and supplies. These expenditures were reported to CARS under a variety of codes not related to consultant expenditures.

The Department of Welfare contracted with a consultant to provide four training seminars on casework techniques at a cost of \$2,350. Expenditures for two of the seminars were reported separately as travel, lodging, and professional services; all expenditures for the other two seminars were reported as professional services.

Inconsistency in reporting ancillary costs distorts expenditure information in both the accounting codes intended to reflect consultant use and in the codes now used to account for agency travel, lodging, and supply expenditures. A uniform policy is necessary to avoid misrepresenting costs in both categories.

Agency Miscoding

Miscoding of expenditures by agencies also reduces the validity of CARS data in accounting for consultant expenditures. During the course of its review, JLARC encountered approximately 30 cases of apparent miscoding of expenditures. Expenditures were judged to be miscoded if they were clearly placed in an inappropriate CARS accounting code. For example:

The State Department of Health contracted with a private computer firm to process Medicaid claims. Department officials described this

contract as a purchase of services rather than consulting. However, most payments to the company--\$3.9 million in fiscal year 1979--were reported as ADP development services. These expenditures should have been reported as ADP operation.

The Department of Corrections coded the cost of one employee's mileage and meals as professional services rather than travel and lodging.

Corrections also coded travel expenses for 23 out-of-state officials attending a conference as a professional service. However, the \$8,900 cost of this travel was paid by a federal grant which was administered by Virginia's department. This should have been coded as a distribution of grant funds.

Virginia Commonwealth University used an advertising agency to provide a series of graphics design and art work. Although these services were identical, the payments were reported to CARS under two different accounting codes.

Old Dominion University reported the transfer of \$273,644 of earnings from the university's Eminent Scholars Endowment Fund as professional services. However, these funds were used to support faculty salaries and were reported in this manner because university officials could not find a more appropriate category.

The Department of Welfare paid approximately \$2.0 million to the Department of Computer Services for computer time and use of equipment. This expenditure was reported to CARS as ADP development when it should have been reported as ADP operation.

Virginia Commonwealth University paid \$6,210 to physicians who examined patients or performed other services relating to various research projects. These expenditures were reported as professional services. The appropriate reporting code would have been health professional services. This same error was also encountered at several other agencies, including the Department of Mental Health and Mental Retardation, the Woodrow Wilson Rehabilitation Center, and the Department of Corrections.

State agencies are primarily responsible for policing the accuracy of their own coding of expenditures for CARS. The evidence from the JLARC file examination suggests that substantial miscoding exists, at least in the accounting codes reviewed for consultant expenditures.

The Department of Accounts recently began conducting on-site agency reviews as part of the work of management assistance teams established by the Secretary of Administration and Finance. The JLARC findings indicate that these reviews should include assistance in those accounting codes which relate to consultant services and ancillary services as a high priority item.

RECOMMENDATIONS FOR IMPROVING FINANCIAL REPORTING

Lack of accurate, accessible information on expenditures for consultant services limits legislative oversight and executive control. Thus, accountability for this highly visible and unique activity cannot be maintained, because neither the General Assembly nor the Governor can readily determine how much is spent for consultants.

This deficiency is increasingly significant in light of recent attempts to limit growth in the number of classified State positions. Several agency officials told JLARC staff that an increase in the use of consultants could occur to offset hiring limitations imposed by the Governor. Consequently, savings generated by control of personnel increases may be eroded by increased expenditures for consultants.

Recommendation (1). The Secretary of Administration and Finance should take the lead in directing the Department of Planning and Budget and the Department of Accounts to clearly define what is to be reported as a consultant service. One or more of the accounting codes presently available in the contractual services series should be separately identified for use in reporting consultant expenditures. Any authorized variation of the State's central accounting system, such as those used by universities and colleges, should also be based on the same definition of consulting and revised accounting structure.

Recommendation (2). A standard procedure should be established for accounting for ancillary costs related to consultant projects. These procedures should be included in the CARS instruction manual.

Recommendation (3). Agencies need to exercise greater care in the use of CARS accounting codes when reporting expenditures. Agency fiscal officers should routinely post-audit a sample of agency vouchers to determine whether personnel under their supervision are coding expenditures consistently and in accordance with instructions. The Department of Accounts should also review coding practices on a sample basis.

Recommendation (4). The management assistance teams established by the Secretary of Administration and Finance should place a priority on reviewing the use of CARS accounting codes by agency personnel. Accounting codes relating to consultant use should receive particular attention.

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TECHNICAL APPENDIX

The JLARC review of the management and use of consultants was based on data collected from 218 State agencies. A comprehensive inventory of consultants used by agencies during fiscal year 1979 was developed from the data.

Case Study Agencies

Sixteen State agencies were chosen for on-site, in-depth review on the basis of expenditures reported to the Department of Accounts under subobject codes for Professional Services (1213) and ADP Development (1288 and 1289). Although expenditure data cannot be used to ascertain the exact amount of funds paid to consultants, the data do provide a relative comparison of consultant use among agencies.

Three criteria were used to choose case study agencies.

1. All agencies with expenditures greater than \$500,000 were chosen. These agencies were the Department of Health, Department of Mental Health and Mental Retardation, Department of Welfare, Department of Highways and Transportation, State Corporation Commission, Virginia Commonwealth University, Virginia Supplemental Retirement System, and Department of Personnel and Training.
2. Four additional agencies with reported expenditures in excess of \$100,000 were chosen to balance functional areas. These were Old Dominion University, Department of Corrections, Alcoholic Beverage Control Board, and State Water Control Board.
3. Four agencies and institutions were chosen for specific purposes. The Department of Mental Health and Mental Retardation delegates substantial authority for employing consultants to individual institutions, as does Virginia Community College System. Therefore, Central State Hospital, the Department of Community Colleges, and Tidewater Community College were selected. The Department of Education was chosen due to its frequent use of outside advice for curriculum development and evaluation.

General Survey and Consultant Inventory List

A questionnaire and instructions were mailed to 202 State agencies for reporting consultant use. The inventory form is shown on the following page.

Based on the on-site project reviews and agency responses to the survey, JLARC staff compiled an inventory of consultants used by agencies during fiscal year 1979. This inventory is available for inspection at the JLARC staff offices, 910 Capitol Street, Suite 1100, Richmond, Virginia, 23219.

CONSULTANT INVENTORY

Please read the instructions before you begin.
Use one form for each consulting project/activity.

1. NAME OF CONSULTANT			Agency I. D.
2. TITLE OF CONSULTING PROJECT/ACTIVITY			Control Area
3a. WRITTEN CONTRACT? <input type="checkbox"/> Yes <input type="checkbox"/> No		3b. RENEWABLE OBLIGATION? <input type="checkbox"/> Yes <input type="checkbox"/> No	3a.
3c. IF NOT WRITTEN, DESCRIBE NATURE OF AGREEMENT/ARRANGEMENT			3b.
4. FY 1979 EXPENDITURES	5. TOTAL COST OF ORIGINAL CONTRACT/AGREEMENT (If per diem, give rate and total cost to date.)	6. TOTAL AMENDED COST (IF ANY)	3c.
Fees:			4.
Other Payments:			5.
7. PROJECT/ACTIVITY PERIOD			6.
Original: From _____ to _____ month day year month day year			7a.
If Amended: From _____ to _____ month day year month day year			7b.
8. BRIEF DESCRIPTION OF SERVICES PROVIDED/TO BE PROVIDED			7c.
9. REASON(S) FOR USING CONSULTANT			7d.
10a. CURRENT STATUS OF PROJECT <input type="checkbox"/> Completed <input type="checkbox"/> In Progress			8a.
10b. IF COMPLETED, WAS RESULT/PRODUCT SATISFACTORY? <input type="checkbox"/> Yes <input type="checkbox"/> No			8b.
10c. IF NOT COMPLETED, DESCRIBE PROGRESS TO DATE			9a.
11. FUNDING SOURCE(S)			9b.
<input type="checkbox"/> General Fund <input type="checkbox"/> Special Funds <input type="checkbox"/> Higher Ed. Operating Fund <input type="checkbox"/> Highway Maint. and Constr. Fund <input type="checkbox"/> Enterprise Fund			10a.
<input type="checkbox"/> Intragovernmental Service Funds <input type="checkbox"/> Trust and Agency Fund <input type="checkbox"/> Debt Service Fund <input type="checkbox"/> Dedicated Special Revenue Funds <input type="checkbox"/> Federal Trust Funds			10b.
12a. TYPE OF CONSULTANT			10c.
<input type="checkbox"/> Commercial Firm <input type="checkbox"/> Individual <input type="checkbox"/> Non-profit Organization <input type="checkbox"/> Institution of Higher Education			11a.
<input type="checkbox"/> Federal Agency <input type="checkbox"/> State Agency <input type="checkbox"/> Local Agency or Authority <input type="checkbox"/> Other: _____			11b.
12b. STATE EMPLOYEE?		13. TYPE OF PROCUREMENT	11c.
<input type="checkbox"/> State University or College Faculty <input type="checkbox"/> Other State Employee <input type="checkbox"/> Not a State Employee		<input type="checkbox"/> Sole Source <input type="checkbox"/> Competitive	12a.
14. COMMENTS			12b.
15. NAME OF PERSON COMPLETING INVENTORY		16. PHONE	13.

JLARC SUBCOMMITTEE ACTION AND EXECUTIVE RESPONSE

This appendix contains Administration and Finance Directive 2-80 and an outline of implementing guidelines which have been released by the Secretary of Administration and Finance concurrent with exposure of the JLARC staff report. A&F 2-80 was issued on May 11, 1980, and establishes policy on the use and procurement of consultants. Guidelines to implement the directive were drafted by the Department of Management Analysis and Systems Development (MASD) on May 28, 1980.

The directive and implementing guidelines were reviewed by a JLARC subcommittee on May 30, 1980. The subcommittee concluded that the actions taken by the executive substantially met the intent of the recommendations in the JLARC report. To underscore the importance of competitive procurement, however, the subcommittee decided to retain the recommendation that the General Assembly adopt legislation or resolve to make competitive procurement the preferred method of selecting consultants. The subcommittee expressed the belief that a resolution would be sufficient to implement this recommendation.

It was agreed that the definition used in the JLARC report and that used by MASD were essentially identical, proper, and should provide a satisfactory basis for accounting for consultant use. The subcommittee concurred that architects and engineers should be treated as any other consultant except when performing specific professional design projects. In those instances the nature of services may warrant a separate definition.

The subcommittee discussed the practicality of preparing a consolidated list of consultants to be used to inform agencies of consultant availability. It was agreed that a first step should be encouragement of the development of separate lists by cabinet secretaries for agencies under their direction.

Finally, the subcommittee expressed its concern about the need for continuing oversight by both executive and legislative offices. The subcommittee recommended that JLARC staff conduct a supplementary study of consultant use.

(Guidelines for implementing Administration and Finance Directive 2-80 were issued by MASD on June 12, 1980, after approval by the Secretary of Administration and Finance. No substantive changes were made to the draft reviewed by the subcommittee.)



COMMONWEALTH of VIRGINIA

Office of the Governor

Charles B. Walker
Secretary of Administration and Finance

Richmond 23219

May 9, 1980

Secretary of Administration and Finance Directive No. 2-80

Subject: Use of Consulting and Professional Services by
State Agencies

Purpose: There are times when a state agency cannot meet all of the requirements placed upon it with its existing personnel resources. On occasion, agencies and institutions find it necessary to contract for consulting, professional and individual services to effectively carry out and to maintain and improve administration and management.

In partial recognition of this need, the state has developed, over the past several years, the capability for providing certain technical and managerial assistance through selected central agencies, such as:

1. The Department of Management Analysis and Systems Development
2. The Department of Accounts
3. The Department of Personnel and Training
4. The Department of Planning and Budget

The Administration has also recognized the need for agencies to ensure that services provided by agencies from sources outside of the state are obtained and managed in the most effective and efficient manner.

The purpose of this Directive is to strengthen the management of consulting, professional and individual services at the agency level by:

1. Providing clear policies and guidelines on when and how to obtain such services to assure their most effective use;
2. Encouraging state agencies to make maximum use of in-house services available in designated state agencies;

Secretary of Administration and Finance Directive No. 2-80

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3. Requiring state agencies to ensure that the services are properly justified in terms of agency mission, priorities, programs and funding;
4. Formally designating the agency head as the individual responsible for the use and control of consulting, professional and individual services.

Applicability: This Directive applies to all agencies in the Executive branch of state government in the use of consulting, professional or individual services, except where such services are in fulfillment of grant or contract requirements associated with a sponsored program in an institution of education. The use or purchase of such services under a sponsored program, however, shall be subject to the requirements of the grantor or contracting agency to include competitive procurement, and approval of the contract as to form and substance by the Attorney General.

Definitions: The following terms are defined for use in this Directive:

Consulting Services - Advice or assistance of a purely advisory nature provided for a predetermined fee to an agency by an outside individual, firm or organization under contract to that agency. Such advice or assistance does not relieve agency management of the responsibility for the decision but does result in a report or other deliverable, setting forth alternative courses of action and recommendations based on the expertise possessed by the outside individual, firm or organization.

Professional Services - Assistance provided by an outside individual, firm or organization under contract to a state agency to implement a decision made by agency management or to complete a discrete and specialized task or project which involves clearly identified deliverables for which the outside individual, firm or organization is liable. Payment for such assistance is based on a predetermined fee or a schedule of rates and charges.

Individual Services - Consulting or professional assistance provided on a specific project or assignment basis to a state agency by an outside individual having specialized skills or expertise not available within the agency. The purpose of such services is to augment permanent staff. As such, the individual may be part-time and serve in a non-salaried capacity under limited supervision. Payments to such individuals will not exceed the rate of pay of comparable individuals in state service possessing similar skills and abilities.

May 9, 1980

Policies: This Directive is intended to place the responsibility and accountability with the agency heads for the use and control of professional services contractors. The procurement and use of consulting, professional and individual services shall be governed by the following policies:

1. In all cases, state agencies shall use such services only when there is a clearly defined, justified and approved need to do so. Until agency management takes the initiative to establish such controls and follow-up procedures, there will be little improvement.
2. To the maximum extent possible, state agencies shall utilize the expertise and capabilities which currently exist in-house in the central agencies of state government and in the state's institutions of higher education. Agencies shall not engage outside firms to perform the following services offered by other state agencies without first examining their alternative use:
 - a. Department of Management Analysis and Systems Development - services related to general management and automated data processing including management studies and organizational reviews.
 - b. Department of Personnel and Training - personnel management, employee relations, training programs, job evaluations, compensation studies and work-load evaluations.
 - c. Department of Accounts - financial controls and systems and internal audit programs.
 - d. Department of Planning and Budget - analysis of alternatives, program review and evaluation, cost reduction programs and productivity improvement.
3. Where it is determined that an agency needs outside consulting, professional or individual services, it may purchase such services on the authority of the agency head or the board, in applicable cases, if funds for such purposes have been appropriated to the agency, consistent with the policies set forth in this Directive.
4. State agencies may not purchase consulting, professional or individual services, without prior approval of respective Secretaries, when funds have not been appropriated to them for such services.

Secretary of Administration and Finance Directive No. 2-80

Page four

May 9, 1980

5. State agencies may only utilize individual contract employee services in cases where such expertise is not otherwise available within the agency and is less than full-time (40 hours per week). In no case shall such services be utilized to circumvent agency position and employment levels assigned under the Governor's Manpower Utilization Program.
6. The process of selecting an individual, firm or organization to provide such services should be objective and unbiased and should encourage those qualified to submit proposals to do so.
 - a. Consulting services - proposals should normally be solicited from a minimum of two outside sources to provide for at least limited competition. When it is in the interest of the Commonwealth, such limited competition may be bypassed based on written justification and approval by the agency head.
 - b. Professional services - maximum competition should be utilized when obtaining professional services. A minimum of three proposals should be solicited. Price need not be the sole determining factor. The basis for selecting the winning proposal will be documented and approved by the agency head.
7. Contracts for such services shall be executed in accordance with current state policy.

The Department of Management Analysis and Systems Development shall be responsible for developing such guidelines as may be necessary to implement this Directive. The Department of Planning and Budget shall be responsible for establishing subobjects of expenditures that will permit oversight on the use of consulting, professional and individual services by state agencies effective July 1, 1980. The Department of Planning and Budget shall also distribute procedures to state agencies that require agencies to justify the need for employing consulting, professional and individual services in their operating plans for the 1980-82 biennium.

Authority: This Directive is issued pursuant to Executive Order No. 11 (78) and Section 2.1-51.26 of the Code of Virginia.


Secretary of Administration and Finance



COMMONWEALTH of VIRGINIA

R. W. Miller
Director

*Department of Management Analysis
and Systems Development
201 Eighth Street Office Building
May 28, 1980*

Richmond, Virginia 23219
(804) 786-6041

MEMORANDUM

TO: Heads of All State Agencies

FROM: R. W. Miller

SUBJECT: Agency Guidelines for the Implementation of Administration and Finance Directive 2-80, "Use of Consulting and Professional Services by State Agencies"

The use of consulting and professional services has grown over the past several years. At the same time, State agencies have met with varying degrees of success and satisfaction when dealing with the many contract services available today. To a great degree, success and satisfaction are dependent on (1) a clear definition of need by the requesting agency; (2) a basic understanding of strategies for seeking out and selecting the most responsive candidate to meet this need; (3) an awareness on the part of the requesting agency about how to work effectively with the selected individual or firm; and (4) an ability to ensure that the defined objectives and needs are met in a timely, cost-effective, and professional manner.

To assist you in obtaining maximum benefits from the use of outside experts and in implementing Administration and Finance Directive 2-80, the Department of Management Analysis and Systems Development (MASD) has developed Guidelines (enclosed) for your use in developing internal procedures appropriate to your agency. These Guidelines deal with various phases of utilizing professional or consulting services from defining the need through measuring the results and benefits received.

MASD is available to advise and assist you in any of your contacts with outside individuals or firms. Should you have any questions or comments regarding these Guidelines, please contact Mr. John P. Dooley, Management Consulting Division, MASD, 786-8000.

RWM:NR:cbp

Enclosure

GUIDELINES FOR THE USE OF CONSULTING,
PROFESSIONAL, AND INDIVIDUAL SERVICES

- I. PURPOSE OF THE GUIDELINES
- II. DEFINITION OF CONSULTING, PROFESSIONAL, AND INDIVIDUAL SERVICES
- III. SCOPE OF THE GUIDELINES
- IV. GENERAL CRITERIA FOR THE USE OF CONSULTING, PROFESSIONAL, AND INDIVIDUAL SERVICES
- V. DEFINITION OF THE PROJECT AND DETERMINATION OF THE NEED FOR SERVICES
 - A. Define the Project
 - B. Determine the Need for Outside Services
 - C. Secure Secretarial Approval
 - D. Pre-qualify Individuals or Firms
- VI. SELECTION PROCESS
 - A. Determine a Procurement Strategy
 - B. Prepare a Request for Proposal (RFP)
 - C. Develop Evaluation Criteria
 - D. Determine a Strategy for Individual/Firm and Agency Interaction
 - E. Appoint a Selection Committee
 - F. Appoint a Review Committee
 - G. Select an Appropriate Fee Arrangement
 - H. Complete Engagement Acceptance Arrangements
 - I. Prepare a Contract
- VII. MEASUREMENT OF THE RESULTS
- VIII. IMPLEMENTATION OF THE RECOMMENDATIONS
- IX. MANAGEMENT CHECKLIST
- X. APPENDIX
 - A. Administration and Finance Directive 2-80
 - B. Sample Request for Proposal (RFP)
 - C. Elements of a Sound Consulting Proposal
 - D. Reference Check Guide
 - E. Evaluation Worksheet
 - F. Engagement Control Sheet

JLARC Staff Note: MASD's "Guidelines for the Use of Consulting, Professional, and Individual Services" is 45 pages in length, including a 27-page appendix. This outline of the guidelines has been printed rather than the entire document. A copy of the guidelines is available for public review at both the JLARC and MASD staff offices.

AGENCY RESPONSES

JLARC policy provides that each State agency involved in its review and evaluation efforts be given the opportunity to comment on an exposure draft report. This process is one part of an extensive data validation process.

Two agency review processes were used in completing this report. First, each agency was asked to review the factual information contained in case examples used in the report and to recheck the accuracy of the consultant census. Second, agencies were asked to comment on findings of fact, conclusions, and recommendations before the JLARC subcommittee endorsed the report.

Each letter received before our printing cutoff date which related to the second exposure draft and contained a substantive comment is included in the following pages.



COMMONWEALTH of VIRGINIA
Division of Motor Vehicles
2300 West Broad Street

Vern L. Hill
Commissioner

Mail Address
P.O. Box 27412
Richmond, Virginia 23269

May 20, 1980

Mr. Ray D. Pethtel, Director
Joint Legislative Audit and Review Commission
Suite 1100, 910 Capitol Street
Richmond, VA 23219

Dear Mr. Pethtel:

Thank you for sending a copy of your exposure draft on the management and use of consultants in State government. As you know, this Agency utilizes consultants on a limited basis and after careful consideration of alternative courses of action. I believe the report is objective and to the point. A & F Directive 2-80 should prove most helpful in the future management and use of consultants by this Agency.

The census listing provided is correct. In FY 1978-79, this Agency expended \$78,535 as a comparison to the obligation figure listed, which is correct. I appreciate being asked to comment on this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vern L. Hill".

Vern L. Hill
Commissioner

VLH:ak

cc: Honorable George M. Walters



COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

May 23, 1980

Charles B. Walker
Secretary of Administration and Finance

Mr. Ray D. Pethtel, Director
Joint Legislative Audit and Review
Commission
Suite 1100
910 Capitol Street
Richmond, Virginia 23219

Dear Ray:

I appreciate your updated exposure draft entitled "Management and Use of Consultants by State Agencies". As I indicated at the time you made your presentation to JLARC, I feel the report reasonably depicts some of the abuses relative to the use of consultants.

I still feel the term "consultant" is overused and misused. I do not believe we should classify architects and engineers as consultants and would recommend that they be treated separately for reporting purposes. Beyond that, the directive we have issued dealing with consultants attempts to broadly define types of consultant services and establishes some guidelines for their use.

When you appeared before the Senate Finance Committee to explain your report, you commented that our directive was a good first step, but did not go far enough. I would appreciate it if you would elaborate on that point so that we might consider additional steps you believe are appropriate.

Very truly yours,

A handwritten signature in cursive script that reads "Charles B. Walker".

Charles B. Walker

CBW/ft

cc: The Honorable Richard M. Bagley
Stuart W. Connock
Ronald W. Miller

COMMONWEALTH OF VIRGINIA



PRESTON C. SHANNON
CHAIRMAN
THOMAS P. HARWOOD, JR.
COMMISSIONER
JUNIE L. BRADSHAW
COMMISSIONER

WILLIAM C. YOUNG
CLERK OF THE COMMISSION
BOX 1197
RICHMOND, VIRGINIA 23209

STATE CORPORATION COMMISSION

May 21, 1980

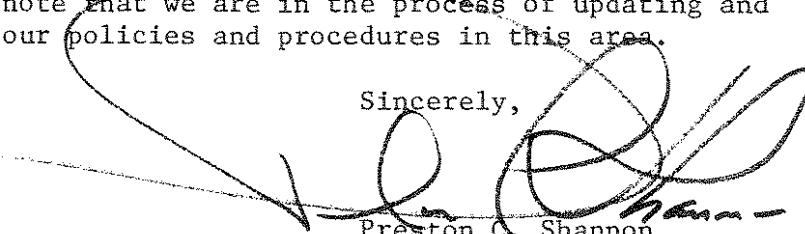
Mr. Ray D. Pethtel, Director
Joint Legislative Audit
and Review Commission
Suite 1100
910 Capitol Street
Richmond, Virginia 23219

Dear Mr. Pethtel:

I am in receipt of the "JLARC Exposure Draft" titled, "Management and Use of Consultants by State Agencies." The data collected, the analysis and the recommendations are very useful. They serve as a measure of our effectiveness in this area and afford an opportunity to improve our controls, policies and procedures.

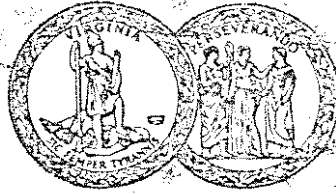
For your information, I enclose a copy of a memorandum that has been distributed to our Staff relative to the report. You will note that we are in the process of updating and amending our policies and procedures in this area.

Sincerely,


Preston C. Shannon
Chairman

PCS/s
Encl.

COMMONWEALTH OF VIRGINIA



PRESTON C. SHANNON
CHAIRMAN

THOMAS P. HARWOOD, JR.
COMMISSIONER

JUNIE L. BRADSHAW
COMMISSIONER

WILLIAM C. YOUNG
CLERK OF THE COMMISSION
BOX 1197
RICHMOND, VIRGINIA 23209

STATE CORPORATION COMMISSION

May 21, 1980

Memorandum

To: All Division Heads and Administrative Staff Members

From: Preston C. Shannon *PCS*

We are in receipt of a draft copy of the JLARC report to the General Assembly on "Management and Use of Consultants by State Agencies." The report does not identify any major weaknesses of procedures in the State Corporation Commission. In fact, the report states that, "Contract administration procedures at the State Water Control Board and the State Corporation Commission appear to be particularly good models for use by other State agencies." We are one of the four agencies referred to in the statement, "In contrast to the poor record-keeping at most agencies, four agencies were found to have accurate and readily accessible central records." The four agencies "made use of a designated contract officer in combination with a well-designed information system. Contract officers were found to provide the focus necessary for maintaining an adequate record-keeping system."

I am very pleased that we withstood critical evaluation of our procedures, and I commend those who contributed. I urge you to be exceedingly careful in evaluating the need for consultants, being certain to provide adequate documentation. Documentation should be adequate to support the decision to employ a consultant and the decision on whether the project should be competitively bid. Written contracts are required which should include statements covering the following:

1. scope and nature of services to be provided;
2. responsibilities of and resources to be provided by both parties to the contract;
3. project schedule;
4. method, schedule, and total amount of payment;
5. procedures for amending or canceling the contract;
6. procedures for resolving disputes;

Memorandum to Division Heads and
Administrative Staff Members
Page 2
May 21, 1980

7. provision for withholding final payment until we are fully satisfied with the results.

You are reminded that the memorandum of agreement for all contracts that are not development-related must reflect the signature of the General Counsel. This ensures that the contract will be in accord with sound legal principles. The contractual form for development contracts was established in concert with the General Counsel.

Copies of the documentation referred to above and a copy of the contract must be furnished the Commission with the memorandum of agreement. After approval by the Commission, a copy of the total package must be submitted to the Commission Comptroller. The last signature to the contract will be that of the Commission Comptroller. The Commission Comptroller is the contract officer responsible for maintaining contract and financial information for all consultant projects.

In concert with the recommendations reflected in the report, I feel that our procedures can be enhanced. We are in the process of documenting the procedures that have been developed, with improvements based on the JLARC review. Your continuing effort to make our system the very best is appreciated.

PCS/s



VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

OFFICE OF THE PRESIDENT

May 26, 1980

Mr. Ray D. Pethtel, Director
Joint Legislative Audit and Review Commission
1823 East Main Street
Richmond, Virginia 23223

Dear Ray:

We appreciate the opportunity to verify the information on consultant use at Virginia Tech. Unfortunately, this response comes after your due date; however, we did notify your office on May 23 to let you know the data were accurate for each Virginia Tech agency.

We experienced some delays in responding because the report for each Virginia Tech agency was mailed to different individuals. As you can well imagine, the task of coordinating a quick response for several agencies can be cumbersome. Even though our three agencies are separate entities with unique missions, they are highly interrelated and are governed by one Board of Visitors. It makes the complex job of managing these agencies a little easier and it certainly improves our ability to respond to all inquiries if correspondence from all external sources is addressed directly to my office.

Once we coordinated our efforts in response to your request, we identified several points which we felt important enough to bring to your attention:

1. The overall content of your exposure draft is consistent with our own thinking. That is, we feel the need for a broad framework to be identified for agencies to work within. A limit should be established above which competitive bidding is required. Formal agreements need to be required and improved standards should be developed by each agency for documenting and managing the use of consultants. Our greatest concern is that the responsibility should rest with the agency to manage within the broad framework provided by central directives.
2. In any governmental process, problems can be identified. One must weigh the practicality and cost of implementing corrective actions against the ideals suggesting the actions. As a case in point, we would concur that standardizing the use of subobject codes among agencies is an ideal to strive for;

Mr. Ray D. Pethtel
Page 2
May 26, 1980

however, we wonder just how far it is practical and cost efficient to pursue this ideal. Certainly definitions can be improved to reduce the need for interpretation by clerks and both internal and external auditors can place some emphasis on this problem. Overall, though, there would appear to be no ideal solution.

3. The concept of having a data base of available consultants accessible through some central location. As long as such a list was for information purposes and did not limit agencies to specific consultants, it could become a very useful tool.
4. On page S-7, recommendation number eight would require Attorney General review. We would suggest that this recommendation be altered slightly. It is important that we involve our Legal Officers in the review process. While these positions are considered a part of the Attorney General's staff, they are also staff members at the individual agencies.

We hope these comments will be helpful and, again, we appreciate the opportunity to verify data prior to its general release. If you should have any further questions regarding the use of consultants at Virginia Tech, please let me know.

Sincerely,



W. E. Lavery
President

WEL:scw



OLD DOMINION UNIVERSITY
NORFOLK, VIRGINIA 23508

Office of the President

May 30, 1980

Mr. Raymond D. Pethtel, Director
Joint Legislative Audit and Review Commission
910 Capitol Street, Suite 1100
Richmond, Va. 23219

Dear Ray,

I am writing to respond to your invitation to Old Dominion University to comment on the exposure draft of the Commission's study "Management and Use of Consultants by State Agencies" dated May 12, 1980.

I am concerned that on pages 27 and 28 of the report the following statement is made under the heading Use for Other Personnel Purposes:

*In three instances in 1978, Old Dominion University had newly hired deans begin curriculum planning and orientation prior to the formal assumption of their duties. Each of these individuals was paid as a consultant, although the actual nature of the services was preparation for work to be done upon assuming their duties as deans. The costs of these services amounted to \$4,135.

Actually, the cases cited involved two deans hired to replace acting deans and a department chairman.

In the cases of the deans, each was hired as a consultant to provide advice and assistance to the vice president for academic affairs on critical management decisions involving personnel, budget, and curriculum. The University had to make these decisions before each dean was to assume office. Had we not been successful in recruiting these deans we quite probably would have sought outside assistance in making these decisions. The University's selection process for them as deans made them the best available candidates as consultants.

In the case of the new department chairman, the same was true except that the decisions were related to curriculum development which had to be begun before the date he was to assume office. In none of the three cases was orientation the primary concern, although obviously this is a side benefit.

For these reasons I would argue strongly that this is not a case of "use for other personnel purposes," but an appropriate use of consultants under the Commission's first definition on page 2 "management advice or assistance." I am requesting that this be deleted as an example.

Our discussions with your staff indicate that this case is the reason for the "yes" check under the matrix heading "Agency Used Consultants for Routine Jobs or Nonconsulting Functions" on page 14. Again, I would argue strongly that this should be changed to "no" for the reasons outlined above.

The comment on page 55 concerning the coding of Eminent Scholars endowment income is accurate and appropriate.

We appreciate the opportunity to comment and would be happy to answer any further questions the Commission may have.

Cordially,

A handwritten signature in black ink, appearing to read "David T. Shufflebarger". The signature is fluid and cursive, with the first name "David" being the most prominent.

David T. Shufflebarger
Assistant to the President
for Governmental Relations



COMMONWEALTH of VIRGINIA

STATE WATER CONTROL BOARD
2111 Hamilton Street

May 23, 1980

R. V. Davis
Executive Secretary

Post Office Box 11143
Richmond, Virginia 23230
(804) 257-0056

BOARD MEMBERS

George M. Cornell
Chairman

Kenneth B. Rollins
Vice-Chairman

Col. J. Leo Bourassa
Warren L. Braun
Millard B. Rice, Jr.
William L. Tate
R. Alton Wright

Mr. Ray D. Pethtel, Director
Joint Legislative Audit and Review
Commission
910 Capitol Street, Suite 1000
Richmond, VA 23219

Dear Mr. Pethtel:

The list of consultants used by the State Water Control Board forwarded by letter dated May 14, 1980 is correct.

We feel that the review done by the Commission's staff was necessary and will benefit the agencies and citizens of the Commonwealth. We have received the report and do have some concerns with the exposure draft and the directives which may be forthcoming.

By letter dated May 6, 1980, we submitted comments to Mr. Mark Fleming on the two references to Board contracts. The comments were unavoidably submitted after May 7, 1980. However, it is requested that the comments be considered and appropriate changes be made prior to printing the final report.

Also, we do not totally disagree with the notation in Table 6 that work proceeded in a Board contract prior to signing of the formal contract. However, (1) this only occurred on one of the Board's 26 contracts; (2) the scope of work was approved by the Board prior to work proceeding; and (3) no payments were authorized until the contract was signed.

As far as the recommendations in the summary are concerned, on:

Recommendation 1: We feel that the General Assembly should consider exempting in any legislation preference to competitive bidding (1) in cases where agencies intend to contract with other public institutions such as State/Federal agencies, State universities, planning commissions, etc. and (2) in cases of emergencies.

Recommendation 2: Agree.

Recommendation 3: We currently do.

Mr. Ray D. Pethtel
May 23, 1980
Page Two

Recommendation 4: We feel that having one agency compile a statewide list could be burdensome on that agency. We would suggest that the individual agencies compile needed information and prepare a brief list of consultants and areas of expertise for submittal to a central source.

Recommendation 5: Agree.

Recommendation 6: We currently do.

Recommendation 7: We agree that the types of provisions to be included in a contract should be regulated. However, we feel that the exact terminology should be left to the agency and their legal counsel in order to provide greater flexibility for individual agency needs.

Recommendation 8: We currently have our legal counsel review all contracts.

Recommendation 9: We agree, but would request that the procedures be guidance instead of directives.

Recommendation 10: We currently do.

Recommendation 11: Agree.

Recommendation 12: We do not really understand whether the information desired is during the time of performance or upon completion. We think this needs clarification prior to action. For instance, we would consider staff time on a contract to be a cost of operating Board programs instead of an add-on cost to the contract.

Recommendation 13: We have no problems with this, but have been coding based on the current definitions of the subobject codes.

Recommendation 14: Agree.

We appreciate the opportunity to comment on the report and request that our comments be provided to the Commission. At this time, we are not requesting to make a presentation before the Commission. However, should the Commission desire our attendance, we will be available.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Acting
R. V. Davis, P.E.
Executive Secretary



COMMONWEALTH of VIRGINIA

Department of Mental Health and Mental Retardation

LEO E. KIRVEN, JR., M.D.
COMMISSIONER

MAILING ADDRESS
P. O. BOX 1797
RICHMOND, VA. 23214

May 22, 1980

Mr. Ray D. Pethtel, Director
Joint Legislative Audit and Review
Committee
Suite 1100, 910 Capitol Street
Richmond, Virginia 23219

Re: Report on Management and
Use of Consultants by State
Agencies

Dear Mr. Pethtel:

My staff and I have reviewed the May 12, 1980 J.L.A.R.C. Exposure Draft of the Commission's Report on Management and the Use of Consultants within Virginia.

Overall we are in agreement with the fourteen recommendations which you and your staff make regarding the future utilization of consultants by State agencies. We are particularly sensitive to the need for this Department to assure that all contracts are negotiated and signed prior to the initiation of any contractual service. As you will note in the attachment to this letter, I have reminded the staff of this Department that this has always been our Departmental policy and that they must have negotiations completed and a signed contract prior to the initiation of these services. The Deputy Commissioner for Operations and each of the Assistant Commissioners in the various divisions will be responsible for assuring that all contracts are executed properly within their various divisions.

In addition, we have discussed at length your recommendation #10 regarding the designation of an agency contract officer. We do feel that this is a valid recommendation which would aid in the overall monitoring of procedures related to contract execution and the maintaining of financial information for all contracts; however, we did not feel that one individual within this large of an agency could monitor all contracts for questions relating to programmatic issues. For this reason, each Assistant Commissioner will have responsibility for this task within their various divisions.

There were several general comments relating to the overall report which we would like to make and for convenience we will refer to the page in order that you might note our concerns.

Page 14, Table 4. Listed in the table regarding Procurement Performance of the Case Study Agencies you have listed Central State Hospital separate from the Department of Mental Health and Mental Retardation. Although official budget documents list this as a separate institution and J.L.A.R.C. surveyed them separate from the remainder of the Department of Mental Health and Mental Retardation they are a part of the Department and could have been combined in the general statistics.

Page 28, Recommendation 1. I would be more supportive of procedures being developed by the Executive Branch with some monitoring system rather than legislation which might aid some agencies and impede others in the carrying out of their mission.

I feel that in certain areas, our development of contracts has adhered to the recommendations which you have made in this report such as receiving Attorney General approval prior to the Commissioner signing these contracts.

The Department will view this report in a constructive manner and utilize your recommendations in the development of an improved system for assuring all contracts let by the Department of Mental Health and Mental Retardation are negotiated and executed properly and are necessary to carry out the mission of this Department.

Yours very truly,



Leo E. Kirven, Jr., M.D.
Commissioner

LEKjr/jb

cc: The Honorable Jean L. Harris, Secretary of Human Resources
C. W. Brett, Ph.D., Deputy Commissioner
Allen E. Wolfe, Assistant Commissioner, Administration
Donald S. Biskin, Ph.D., Assistant Commissioner, Technical
Services

HAROLD C. KING, COMMISSIONER

LEONARD R. HALL, BRISTOL, *BRISTOL DISTRICT*

MORACE G. FRALIN, ROANOKE, *SALEM DISTRICT*

WILLIAM E. ANDERSON, DANVILLE, *LYNCHBURG DISTRICT*

WILLIAM F. MOHR, RICHMOND, *RICHMOND DISTRICT*

WILLIAM T. ROOS, YORKTOWN, *SUFFOLK DISTRICT*

WILLIAM T. ROBINSON, WEST POINT, *FREDERICKSBURG DISTRICT*

WILLIAM B. WRENCH, SPRINGFIELD, *CULPEPER DISTRICT*

ROBERT S. LANDES, STAUNTON, *STAUNTON DISTRICT*

T. RAY HASSELL, III, CHESAPEAKE, *AT LARGE-URBAN*

CHARLES S. HOOPER, JR., CREWE, *AT LARGE-RURAL*



COMMONWEALTH of VIRGINIA

DEPARTMENT OF HIGHWAYS & TRANSPORTATION

1221 EAST BROAD STREET
RICHMOND, 23219

LEO E. BUSSEY, III
DEPUTY COMMISSIONER & CHIEF ENGINEER

J. T. WARREN
DIRECTOR OF ADMINISTRATION

J. M. WRAY, JR.
DIRECTOR OF OPERATIONS

H. R. PERKINSON, JR.
DIRECTOR OF PROGRAM MANAGEMENT

W. L. BRITTLE, JR.
DIRECTOR OF ENGINEERING

OSCAR K. MABRY
DIRECTOR OF PLANNING

IN REPLY PLEASE REFER TO

May 21, 1980

Mr. Ray D. Pethtel
Director
Joint Legislative Audit and
Review Commission
Suite 1100, 910 Capitol Street
Richmond, Virginia 23219

Dear Ray:

This is in reply to your letter of May 14, 1980 transmitting your exposure draft report on "Management and Use of Consultants by State Agencies."

Generally, I am in agreement with the recommendations contained in your report with the exception of competitive bidding for engineering consultant services.

In the area of engineering services performed by consultants, as your report points out, a form of "competitive negotiation" is utilized by VDHT.

Our Departmental Policy Manual - DPM 6-8 (Section 5.2) requires that we make an evaluation of the reasonableness of costs. In so doing, we are to "... consider such cost standards as cost of similar work performed by the selected or other organizations, the cost of similar work performed by the Department (of Highways and Transportation), ratio of engineering costs to construction costs, when applicable, and average cost standards developed by professional associations, such as the American Society of Civil Engineers' Manual 45."

What this means is that VDHT has to have a "ball park" figure to use as a basis for negotiation. This is an extremely important control feature. Usually, an estimate of what the service should cost is prepared. Without this, we could not negotiate.

As your report points out, VDHT does not use "competitive bidding" in procuring consultant services, but instead uses a form of "competitive negotiation". Your report, Page 22 refers to the American Bar Association's Model Procurement Code to suggest that for procedures to become more competitive, it is not necessary to rely on cost as the "only factor for consideration". The code (ABA) "clearly notes that cost and the ability of the consultant to deliver a satisfactory product, as evidenced by the consultant's proposal and reputation, are both elements of the procurement decision."

Mr. Ray D. Pethtel
Page 2
May 21, 1980

From this, we assume that you do not feel that automatically awarding the contract to the lowest bidder form of pure "competitive bidding" is necessary for engineering consultant services, but rather some form of technical (qualification, reputation, etc.) competition which includes cost data.

It is our opinion that it is not necessary to consider cost data prior to the negotiation process, but that it obviously must be a factor during it.

If cost proposals are merely a factor in the decision process, then they are only necessary to ensure that the cost of the services will be "reasonable" or in the "ball park", since the lowest will not automatically be chosen.

As pointed out, our DPM 6-8 requires an evaluation of reasonableness of cost which, in our opinion, compensates for the fact that cost proposals are not obtained prior to negotiation.

It should be pointed out that the usual output of the engineering consultant hired by VDHT is the plans and specifications for construction of a road and/or bridge. It is these plans and specifications that allow us to consider the lowest bid automatically when awarding a construction project, since all contractors are bidding on the same thing. In obtaining consultant services, since no plans or specifications yet exist (hence the need for the consultants' services in the first place), the consultants are not bidding on the same thing and no standard exists for objective comparison of cost proposals.

For these reasons, we feel that engineering consultant services should be exempted from any legislation calling for "competitive bidding".

In another area, at Page 18, your report may create the impression that there is no relationship between the personnel studies undertaken by the Division of Motor Vehicles, Department of Rehabilitative Services and this Department with the help of a consultant recommended by the Department of Personnel and Training. Actually, these studies are closely related inasmuch as they will result in the same methodology being applied to the statement of job qualification standards for a significant group of benchmark positions represented in the three agencies. Our study was undertaken on a pilot basis, to establish a process for agency personnel to follow in the future. I imagine this could be the effect of the three contracts on State personnel management, more generally.

I hope the above will be of value in developing your final report recommendations.

Sincerely,



Harold C. King, Commissioner



COMMONWEALTH of VIRGINIA

Department of Planning and Budget

Stuart W. Connock
Director

June 3, 1980

Post Office Box 1422
Richmond 23211
(804) 786 7455

Mr. Ray D. Pethtel, Director
Joint Legislative Audit and Review Commission
Suite 1100, 910 Capitol Street
Richmond, Virginia 23219

Dear Ray:

We have reviewed the exposure draft of the report, "Management and Use of Consultants by State Agencies." It focuses on many of the concerns that have surfaced on consultant usage since 1973.

As you may be aware, our Department and the Department of Management Analysis and Systems Development have been involved in a parrallel effort with Secretary Walker's office to address the use of consultants. The recently issued Administration and Finance Directive No. 2-80 is intended to convey the Executive Department's policies with regard to agency use of consultants, and we feel it addresses Recommendations (1), (2), (3), (5), (6), (9) and (11) in the report.

Our specific comments follow:

Recommendation (4): It could be considered extremely biased to have a comprehensive list of potential providers of consulting services; and, moreover, it would be difficult to compile. Such an approach would involve, at a minimum, establishing criteria for accepting a potential consultant listing and determining if claims of expertise were valid. In addition, in our view such a consulting listing would be of limited value unless it was based on a rating system which would require a certain amount of expertise to develop. Needless to say, maintaining such a listing would be a major undertaking for the agency assigned responsibility. In my opinion the advantages are insufficient to justify the effort.

Recommendations (7), (8) and (10): We agree there is a need for regulations and procedures. They should define how to determine when consulting services are justified; how to proceed in obtaining such services; how to develop a proper contract; and how to manage and control the contract services which would include defining agency responsibilities, such as designating an agency contract

Mr. Pethtel
Page Two
June 3, 1980

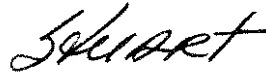
officer. The development of these guidelines and procedures is within the purview of the Department of Management Analysis and Systems Development. It is my understanding that they have been completed.

Recommendations (11) and (12): Directive No. 2-80 defines consulting, professional and individual services and directs our Department to establish the necessary subobjects which we are in the process of implementing for 1980-82. However, the subobjects will not capture ancillary costs associated with consultants. It is our feeling that maintaining this type of information is more properly the responsibility of the individual agency and guidelines should be included in the procedures for managing and controlling contract services.

Recommendations (13) and (14): We agree that the proper accounting codes should be used in reporting expenditures. Hopefully the new accounting codes will facilitate this. Accountability for proper use rests with the agency head and in our view, reviewing the propriety of such transactions rests with the Auditor of Public Accounts as part of the auditing function.

We hope you will find these comments helpful, and we appreciate the opportunity to provide them to you.

Sincerely,



Stuart W. Connock

SWC/lh



COMMONWEALTH of VIRGINIA

R. W. Miller
Director

*Department of Management Analysis
and Systems Development
201 Eighth Street Office Building*

Richmond, Virginia 23219
(804) 786-6041

May 23, 1980

MEMORANDUM

TO: Mr. Ray D. Pethtel, Director
Joint Legislative Audit Review Commission

A handwritten signature in cursive script, reading "R. W. Miller".

FROM: R. W. Miller

SUBJECT: Comments on the Joint Legislative Audit Review Commission (JLARC) Exposure Draft, "Operational Review: Management and Use of Consultants by State Agencies", and the Listing of Consultants and Associated Obligations by State Agency (Fiscal Year 1979)

In general, the Department of Management Analysis and Systems Development (DMASD) believes that the exposure draft represents a fair and reasonable portrayal of the use of consultant and professional services in the Commonwealth at this time.

The DMASD basically agrees with the recommendations set forth by the exposure draft which is consistent with Administration and Finance Directive 2-(80) dated May 9, 1980, and any additional policies, guidelines, and administrative direction that will be provided in the implementation of that Directive.

The Systems Development Division (SDD) of DMASD has initiated efforts to comply with the recommendation for written agreements to cover all of its services. However, there are considerations to be made, in the best interest of the Commonwealth, that may preclude strict conformity to standard documentation for both outside services as well as SDD services. Those considerations will be addressed with the assistance of the Attorney General, the Department of Accounts, and the Auditor of Public Accounts.

Aside from minor inaccuracies in dollar amounts and totals we believe that the \$791,002 best estimate of the DMASD actual consultant expenditures in fiscal year 1979 is overstated on page 51 of the exposure draft.

We believe that the \$135,443 difference between JLARC's determination and the Commonwealth's Accounting and Reporting System (CARS) is comprised largely of payments made to consultants by the DMASD on behalf of other agencies (actual service recipients) who, in turn, reimbursed DMASD for those payments.

It appears that the expenditures in that "pass through" process were recognized, but the recovery of those expenditures by the DMASD was not discovered. We believe that JLARC's determination of \$655,559 for the DMASD consultant expenditures is an accurate reflection that can be reconciled through CARS if recoveries are included.

We appreciate the opportunity for comment and if additional information is required, please let me know.

RWM/JKR/vev

cc: Secretary Charles B. Walker
Administration and Finance

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