

Recommendations

Recommendation 1. The General Assembly should enact legislation prohibiting agencies and institutions from using personal services contracts.

As discussed in Finding 1, agencies and institutions have misused and abused personal services contracts. Agencies have circumvented state law by not obtaining the proper approval of the Governor and the Department of Administration's (DOA) Division of Purchase and Contract (P&C) for personal services contracts for consultant services. In addition, rates of compensation for personal services contracts have exceeded the highest paid executives in state government. This misuse and abuse is due in part to the lack of oversight over these contracts.

To address this issue, the General Assembly should enact legislation such that the policy of the State prohibits the use of personal services contracts. This policy would require DOA and the Office of Information Technology Services (OITS) to remove all references to personal services from the following sections of North Carolina Administrative Code:

- 01 N.C. Admin. Code 05B.1401,
- 01 N.C. Admin. Code 05B.1601,
- 09 N.C. Admin. Code 06B .0901, and
- 09 N.C. Admin. Code 06B .1301.

Within 30 days of passage of the law, DOA and OITS should be directed to

- modify procurement manuals and guidelines to reflect the changes to the law;
- notify agencies and institutions of the changes to the law; and
- provide sufficient guidance to agencies and institutions on existing mechanisms for procuring and acquiring services from an individual on a temporary or occasional basis.

Moreover, the Office of State Controller (OSC) should remove the references to "personal services" and "personal service contractors" from its Payroll Policy Manual and in the *Systems* section of its website.

The law should stipulate that current personal services contracts should be allowed to expire at the term designated by the contract. However, agencies should be prohibited from exercising any options to extend existing personal services contracts. Personal services contracts without term dates should be terminated within 60 days of passage of this law.

If the General Assembly chooses to eliminate the use of personal services contracts, the requirement for agencies and institutions to report annually on the use of personal services contracts found under N.C. Gen. Stat. § 143-64.70 should be repealed. In addition, the Office of State Budget and Management (OSBM) should be directed to notify agencies, departments, boards, and institutions of the elimination of the reporting requirement.

Recommendation 2. The General Assembly should enact legislation requiring all Executive Branch agencies, including Council of State agencies, to obtain non-IT supplemental staff through Temporary Solutions.

As explained in Finding 5, Executive Order 4 requires only Cabinet agencies and the Governor's Office to utilize temporary staffing through the Office of State Human Resources (OSHR) Temporary Solutions Program. The mission of Temporary Solutions is to achieve savings to the State by providing temporary staffing services in a time-efficient and cost-effective manner. The Program Evaluation Division estimates the State could have saved approximately \$963,702 in Fiscal Year 2012–13 if all Executive Branch agencies had used Temporary Solutions for staffing needs in lieu of using personal services contracts.

As a result, the General Assembly should enact legislation requiring all Executive Branch agencies to submit all requests for non-IT supplemental staff to OSHR to be filled through Temporary Solutions. If an agency's staffing needs cannot be met through Temporary Solutions, OSHR should direct Cabinet and Council of State agencies to fill temporary staffing needs by hiring supplemental staff.

To ensure proper implementation and adherence to the law, the General Assembly should direct OSHR to

- develop policies and procedures to guide how agencies hire and use supplemental staff when the use of Temporary Solutions is not feasible;
- perform periodic compliance audits to ensure acquisitions of supplemental staff comply with policies and procedures; and
- analyze and report biannually to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on agency use of supplemental staff and Temporary Solutions, including frequency and duration of use and whether the work being conducted could be best met by filling the position with a full-time state employee.

Recommendation 3. The General Assembly should enact legislation to require the Office of Information Technology Services to review and approve service contracts with individuals, report on a biennial basis, and conduct compliance reviews.

N.C. Sess. Law 2013-360, Section 7.8 ensures greater transparency and oversight of contracts with individuals for IT services by directing the Office of Information Technology Services (OITS) and the Office of State Budget and Management (OSBM) to review and approve IT personal services procured by Executive Branch agencies. However, the session law is set to expire on June 30, 2015. Therefore, the General Assembly should codify the session law.

The codification of N.C. Sess. Law 2013-360, Section 7.8 should include several modifications.

- The language referring to personal services should be modified to read “service contracts with individuals.”
- OITS should be directed to conduct regular compliance audits to ensure agency adherence to the established procedures and report the findings in the biennial report described below.
- To ensure continued oversight of the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division, OITS should be directed to prepare a biennial report that includes the number of individual contractors in each state agency, the cost for each contractor, and the comparable cost (including benefits) of a state employee serving in that capacity rather than a contractor.

Appendix

Appendix A: Personal Services Contracts Reported to the Office of State Budget and Management, Fiscal Year 2012–13

Agency Response

A draft of this report was submitted to the Department of Administration’s Division of Purchase and Contract, the Office of Information Technology Services, the Office of State Human Resources, and the Office of State Budget and Management to review. The Department of Administration, the Office of State Human Resources, and the Office of State Budget and Management prepared a consolidated response, which is provided following the report.

Program Evaluation Division Contact and Acknowledgments

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