

OFFICE OF THE CITY AUDITOR

City and County of Honolulu
State of Hawai'i



Audit of the City's Personal Services Contract Practices

A Report to the
Mayor
and the
City Council of
Honolulu

Report No. 06-02
February 2006

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Submitted by

THE CITY AUDITOR
CITY AND COUNTY
OF HONOLULU
STATE OF HAWAII

Report No. 06-02
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Foreword

This audit was initiated by the Office of the City Auditor as provided in the Revised Charter of Honolulu. The City Auditor selected the city's personal services contract practices for review because of on-going concerns about the city's use, and level of information and reporting, of personal services contracts. This audit provides new information and analysis on the justification for personal services contracts, how much departments spend, and other management issues.

We wish to acknowledge the cooperation and assistance provided to us by the staff of the Department of Human Resources and others whom we contacted during this audit.

Leslie I. Tanaka, CPA
City Auditor

EXECUTIVE SUMMARY

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This audit was initiated by the Office of the City Auditor as provided in the Revised Charter of Honolulu. The City Auditor selected the city's personal services contract practices for review because of on-going concerns about the city's use, and level of information and reporting of personal services contracts. This audit provides new information and analysis on the justification for personal services contracts, how much departments spend, and other management issues.

Background

The Revised Charter of Honolulu authorizes the city to enter into personal services contracts for certain temporary employment needs without having to comply with civil service hiring procedures. Generally, city agencies and departments requesting employer-employee personal services contracts must establish that a required service is unique and essential to the public interest, justify why the personal services contract method is preferable to hiring through the civil service system, and ensure that the need is temporary, not to exceed one year. Requesting agencies must also establish duties, assess qualifications, and set compensation for contract employees. The departments of human resources and budget and fiscal services have primary responsibility to review and approve contract requests. In FY2004-05, the city employed a total of 1,909 personal services contract employees, which represented approximately 20 percent of the city's entire workforce, at a cost of nearly \$10.9 million.

Summary of Findings

This report reviews and assesses the city's personal services contract practices. Specifically, personal services contract practices were examined to determine compliance with applicable city charter provisions, ordinances, council resolutions, and departmental policies and procedures. The report also assesses the personal services contract process' accountability by scrutinizing contract management practices and information disseminated by various agencies and departments. Finally, the report reviewed personal services contract practices to identify those that are questionable and suspect. Through our

examination, we found that the city's personal services contract practices violate charter and ordinance provisions, the contract process lacks accountability, and several contract practices are questionable and suspect.

Finding 1: The City's Misuse of Personal Services Contracts Violates Charter Intent and Ordinance Provisions

- Executive agencies maintained long-term contracts in violation of charter intent. Section 6-1103(g), Revised Charter of Honolulu, states that personal services contracts issued pursuant to this section should be of a temporary nature, where the need does not exceed one year, and that recruitment through normal civil service procedures is not practicable. We found that city agencies and departments virtually ignored these charter limitations through practices such as hiring retirees, accessing capital improvement funds for certain salaried positions, utilizing contract employees while pursuing privatization of city functions, and centralizing information technology positions.
- The annual reporting requirement assigned to the Department of Budget and Fiscal Services has been ignored since 1997. City ordinance requires budget and fiscal services to provide detailed information on personal services contracts and issue annual reports regarding personal services contracts. The department based its non-compliance on a corporation counsel opinion, which we determined did not preclude issuing annual reports. As a result, the personal services contract process lacks the transparency desired by the council.

Finding 2: Personal Services Contract Process Lacks Accountability

- Quarterly reports issued by the Department of Human Resources are inadequate. The council adopted a resolution in 1997 that established reporting requirements. Although the department complied with those requirements, we found that the reports lack meaningful information. We also found that errors in the department's reports are not corrected. Also, the Department of Human Resources prepares its own internal analysis, but the analysis is not shared with the council or the public.

- Departments do not adequately monitor personal services contracts. In a survey of city departments and agencies, many claimed that contract monitoring was unnecessary. We also found that personal services contract employees do not receive formal performance evaluations.
- Personal services contract costs are not accurately tracked or reported. We found that some departments and agencies failed to keep accurate account of their personal services contract costs. In most instances, departments and agencies only track contract employee salaries; fringe benefit costs are not identified or reported separately.
- Council receives only advisory information regarding unbudgeted personal services contracts. Our random sample indicated that over 90 percent of personal services contracts are unbudgeted and, therefore, may not be reviewed by the council during the annual departmental budget process. Oversight for a majority of personal services contracts is uncertain.

Finding 3: Some Departments' Personal Services Contract Practices are Questionable

- Executive departments and agencies generally complied with personal service contract request procedures. However, their compliance with technical requirements did not prevent questionable practices.
- Mayor and managing director's personal service contract approvals and practices are suspect. We found that there was no basis for the mayor's and managing director's offices' determination to bypass Department of Human Resources review of contract requests. We also found that unauthorized staff approved personal services contract requests and that some contracts received same-day approvals.
- Other agency personal services contract practices are questionable. We found that some contractors are paid by one agency, but perform duties for another agency. The city's accounting division uses personal services contracts to make back payments to former city employees.

- Some contractors received high compensation. Although our sample indicated that requesting departments and agencies set contract salaries within prescribed limits, we found that some contract salaries exceeded salaries of regular employees filling a similar position and that the former administration set particularly high salaries for contract liquor inspectors.
- Personal services contracts are perceived as rewarding political insiders. We found that former elected officials on the city payroll through personal services contracts and that other select individuals are awarded lucrative contract positions, some with questionable credentials.
- Practically all personal services contracts positions are unadvertised. The most common recruitment method for personal services contract positions is “personal reference”.

Recommendations and Response

We made several recommendations to the Department of Human Resources to improve its reporting and accountability of personal services contracts. We also made recommendations to the Department of Budget and Fiscal Services related to reporting of personal services contract data. Specifically, we recommended that the Department of Human Resources should ensure that city departments and agencies use personal services contracts in accordance with applicable city laws, rules, policies and procedures. We also recommended that requesting city agencies provide complete and accurate information to the human resources department before contracts are approved, including salaries of permanent workers in the same or similar position being requested to fill with a contractor and academic and professional credentials of highly paid contractors. We also recommended the department continue to direct city agencies to fill long-term personal services contract positions permanently or through limited-term civil service appointments as appropriate. In the area of reporting, we suggested that the human resources department ensure that its reports contain complete and accurate information, supplemental analyses, and other important information. The report also recommended that budget and fiscal services should report personal services contract information as required by city ordinance, report salary and fringe benefit costs, post public notices of contract awards, and cease using personal services contracts to make retroactive payments to former city employees.

In response to our draft audit report, the Department of Human Resources expressed general agreement with the audit findings and recommendations. The department further commented that it welcomed our report, which it plans to use to strengthen its role in ensuring accountability in the city. In addition to its general comments, the department provided clarifying information on topics discussed in our report, which, as appropriate, have been incorporated into the final report.

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Chapter 1

Introduction

This self-initiated audit was conducted pursuant to the authority of the Office of the City Auditor (OCA) as provided in the Revised Charter of Honolulu. The audit is consistent with OCA's Annual Work Plan established for FY2005-06, which was communicated to the city council and mayor in June 2005.

The impetus for this audit stemmed from ongoing concerns about the city's use, and level of information and reporting of personal services contracts. In 1996, the city council acted upon its concerns that the city hired people on long-term personal services contracts, practiced favoritism, and ignored contractors' lack of qualifications by introducing Bill 102, designed to prevent such practices by initiating various procedural and reporting requirements.

The mayor vetoed the bill based on corporation counsel concerns. The council overrode this veto, enacting Bill 102 as Ordinance 97-54. Disagreements continued. Two days after the council enacted the bill, corporation counsel threatened to file a lawsuit seeking relief from the ordinance.

Asserting its need for information to oversee the city's personal services contracts while acknowledging the administration's concerns over Ordinance 97-54, the council adopted Resolution 97-319. The resolution requested that the Department of Human Resources prepare a quarterly report of personal services contracts maintained by the city.

Although the Department of Human Resources distributes this report to council members listing all active personal services contracts, the report does not contain comprehensive information, evaluation, or analysis of personal contracts; nor is this information provided elsewhere. Furthermore, there does not appear to be any periodic review of the contracts.

This audit provides new information and analysis on the justification for these contracts, how much departments spend on personal services contracts, and related issues. The information is intended to assist the council in evaluating executive budget requests and determining appropriations, as personal services contracts are not reflected in departments' position counts.

Background

The Revised Charter of Honolulu authorizes the city to enter into personal services contracts for certain temporary employment needs, without having to comply with civil service hiring procedures. The two most common types of personal services contracts are *employer-employee contractors* and *independent contractors*. Agencies that request employer-employee personal services contracts must justify the need, establish duties, and set compensation for such contracts. The departments of human resources and budget and fiscal services must review and approve contract requests.

Revised Charter of Honolulu promotes a civil service workforce

The Revised Charter of Honolulu (RCH) makes a clear declaration that the city intends to promote a system of personnel administration based on merit principles. Section 6-1102, RCH states:

"It is hereby declared to be the purpose of this chapter of the charter to establish in the city a system of personnel administration based on merit principles and generally accepted methods governing the classification of positions and the employment, conduct, movement and separation of public officers and employees."

The charter lists the following merit principles for the city:

- "(a) Equal opportunity for all regardless of age, race, sex, religion or politics.
- (b) Impartial selection of the ablest person for government service by means of competitive tests which are fair.
- (c) Just opportunity for competent employees to be promoted within the service.
- (d) Reasonable job security for the competent employee, including the right of appeal from personnel actions.
- (e) Systematic classification of all positions through adequate job evaluation.
- (f) Proper balance in employer-employee relations between the people, as the employer, and employees, as individual citizens, to achieve a well trained and productive working force."

Although the city promotes a civil service workforce, the council has recognized there may be instances where employees are needed on a temporary basis to quickly fill positions. The city charter therefore permits personal services contract employees to be hired outside of civil service requirements.

Revised Charter of Honolulu establishes guidelines for personal services contracts

Under certain conditions, city agencies can hire employees without meeting civil service requirements. The city charter establishes personal services contracts as a means to supplement its workforce on a temporary basis. City agencies must establish that a required service is unique and essential to the public interest; justify why the proposed contract is preferable to hiring via the civil service system; and ensure that the need is temporary, not to exceed one year.

Types of personal services contracts

There are two primary types of personal services contract relationships: 1) employer-employee and 2) independent contractor. The process for engaging each type of contractor is different and governed by different legal authority.

Employer-employee contractor

An employer-employee contractor provides personal services as an individual and is supervised and paid on payment schedules similar to regular employees. Under this type of contract, agencies control what services will be performed and how they will be accomplished.

Individuals on employer-employee contracts are typically hired to fill positions on a temporary basis, work at the requesting agency, and are paid through the regular payroll system. An example of an employer-employee contract proposal is the corporation counsel's request to employ a part-time messenger for a period of twelve months while it goes through the civil service recruitment process to fill permanent, part-time messenger positions.

Independent contractor

An independent contractor is a person hired to provide technical, expert, or professional services to the city. Common examples include architects, engineers, lawyers, and certified public accountants.

Independent contractors are not supervised or directed by the city on a daily basis and may work concurrently with other private employment. They are not paid on the payment schedule applicable to regular employees.

Categories of employer-employee contracts

The Department of Human Resources’ personnel manual stipulates that personal services contracts should be used only when absolutely necessary and must be justified in accordance with Sections 6-1103(f), (g), and (h), RCH. The department also issues personal services contracts to student hires under Section 6-1103(e), RCH. The requirements for each of these sections are described in Exhibit 1.1.

**Exhibit 1.1
Personal Services Contract Categories Authorized By City Charter**

RCH Section	Requirements	Prohibitions
6-1103(e)	<ul style="list-style-type: none"> Positions of a temporary nature filled by students 	None
6-1103(f)	<ul style="list-style-type: none"> Contract must be for special or unique services and essential to the public interest Contracted personnel cannot be obtained through normal civil service recruitment procedures Contract must be limited to one year 	Contract may not be granted for professional, technical, clerical, or blue collar staffing needs where the job requirements and duties are similar to an existing job
6-1103(g)	<ul style="list-style-type: none"> Contract must be for services that are of a temporary nature and required in the public interest Hiring personnel through normal civil service recruitment procedures is not practicable Contract must be limited to where the need does not exceed one year in duration 	<ul style="list-style-type: none"> Contract extensions are prohibited New contracts for the same job require justification as to necessity and why the position has not been filled from civil service recruitment
6-1103(h)	<p>Contract must be for contractual, fixed fee or piecework services performed by persons who:</p> <ul style="list-style-type: none"> ➤ May lawfully perform such duties concurrently with a private business, profession or other private employment; and ➤ Perform duties that may require only a portion of their time, where it is impracticable to ascertain or anticipate the amount of time required by the city 	None

Source: Revised Charter of Honolulu; Department of Human Resources' Personnel Manual

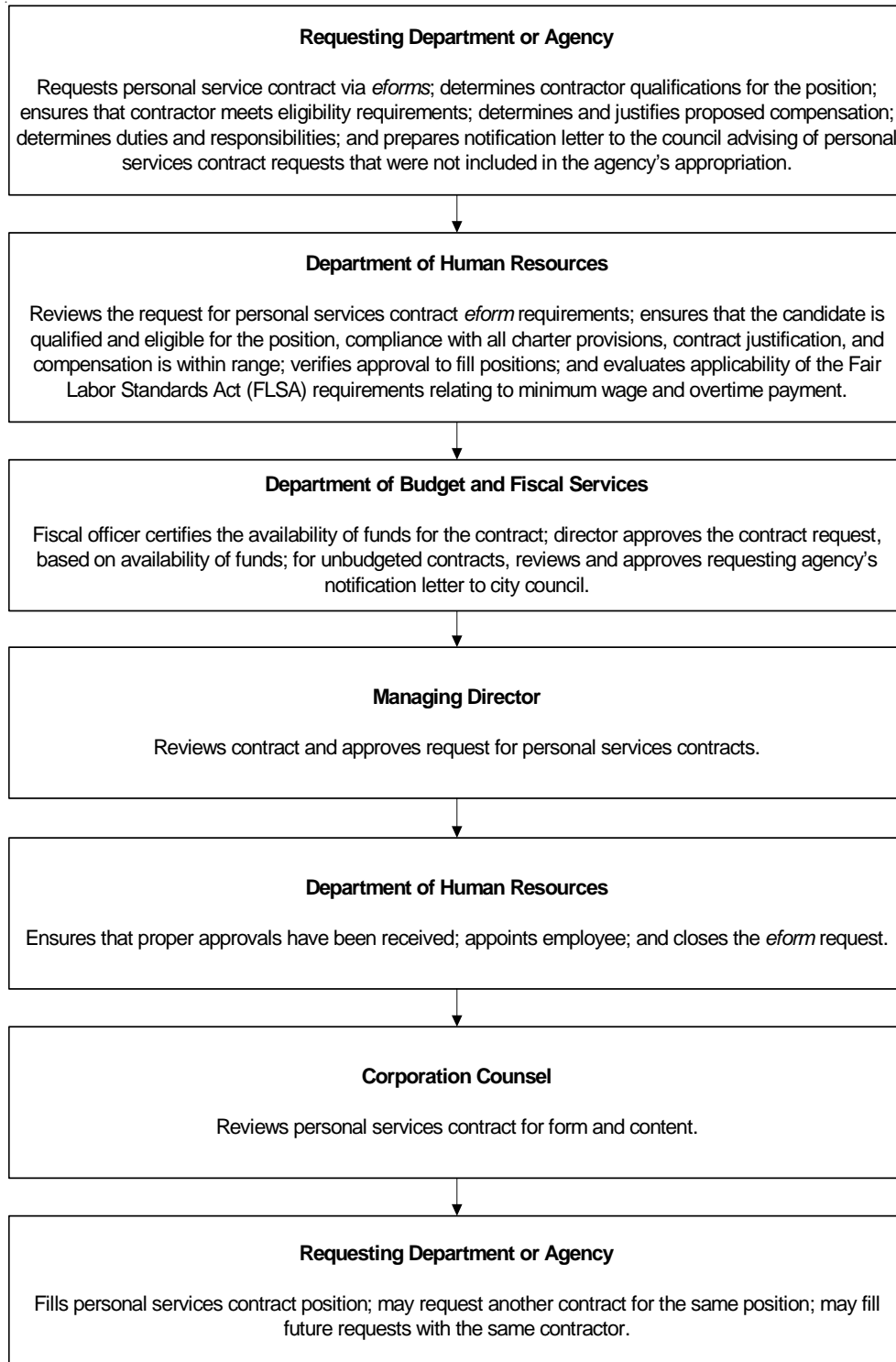
Our audit focused primarily on employer-employee contracts issued by the city under Section 6-1103(g), RCH during the period FY2002-03 to FY2004-05.

Personal Services Contract Procedures in the Executive Branch

When an agency requires services that existing civil service staff cannot provide, or is in the process of filling a civil service position, it can request the use of a personal services contract.

The personal services contract process begins with a request by a city department or agency. The request is reviewed by the Department of Human Resources and Department of Budget and Fiscal Services for approval. The managing director and corporation counsel also have responsibilities in the personal services contract approval process. City council notification is required when a contract was not included in the agency's appropriation. Exhibit 1.2 illustrates the contract approval process, which is identical for personal services contracts under sections 6-1103(e), (f), (g), and (h), RCH.

Exhibit 1.2 Request for Employer-Employee Personal Services Contracts Process



Source: Department of Human Resources' CS-C1 workflow process

Responsibilities of the requesting department or agency

The requesting agency has primary responsibility for a contract from initiation to completion. Each requesting department or agency must complete a Request for Personal Services Contract explaining why the personal services contract method is justified and preferable to obtaining services through the regular civil service system. The department or agency must also ensure the proposed contract complies with Section 4-104(4), RCH regarding employment qualifications and eligibility. The department or agency must also:

- Identify the duties and responsibilities to be assigned and performed by the contractor;
- Determine and justify the amount of compensation proposed;
- Ensure the candidate hired meets suitability requirements for the position;
- Determine whether the contract complies with federal Fair Labor Standards Act (FLSA) provisions, including minimum wage and overtime payments; and
- Monitor the contractor's work over the term of the contract.

Responsibilities of the Department of Human Resources

The Department of Human Resources is responsible for assisting requesting agencies, ensuring legal compliance, and overseeing the personal services contract request system. The department also certifies requests for personal services contracts submitted by departments or agencies. Human resources reviews the contractor's proposed duties and responsibilities and determines an appropriate compensation range. The department also:

- Ensures candidates' qualifications and eligibility for positions;
- Reviews contracts for compliance with all charter provisions, reasons for submittal, and justification for personal services contracts instead of hiring permanent employees;
- Verifies approval to fill positions; and
- Evaluates contractors' status regarding Fair Labor Standards Act (FLSA) requirements, including minimum wage and overtime.

The department must also prepare quarterly reports of the city's personal services contracts pursuant to Resolution 97-319.

Responsibilities of the Department of Budget and Fiscal Services

The Department of Budget and Fiscal Services determines whether a requesting agency has funds available for a personal services contract and approves notification letters to the council whenever such a contract is not within the requesting department's budget. The department also provides guidance to departments and agencies pertaining to authority to fill civil service positions and personal services contracts as required by city ordinance.

In addition, the chief budget officer is required by Ordinance 97-54 to submit an annual report to the council regarding all employer-employee contracts of the city's executive agencies. The report must include justifications for personal services contracts, names of contractors, statements of qualifications, total amount of compensation paid, and state whether or not sufficient funds are included in the city's executive budget program and/or ordinance for the current fiscal year.

Responsibilities of the managing director and corporation counsel

The managing director's office oversees Department of Human Resources' activities and may instruct that certain personal services contracts require managing director's approval. In some cases, the managing director may delegate approval authority to the Department of Budget and Fiscal Services. Additionally, Section 9-305, RCH requires all written contracts to which the city is a party to be approved by the corporation counsel as to form and legality.

City Workforce and Personal Services Contract Employees in the Executive Branch, FY2002-03 to FY2004-05

The City & County of Honolulu categorizes its workforce into three types of workers: 1) permanent and temporary, 2) exempt, and 3) personal services contractors. The Department of Human Resources reported that the city's executive departments and agencies hired 1,860 individuals to fill personal services contracts in FY2002-03; 1,917 in FY2003-04; and 1,909 in FY2004-05, at a cost of between \$9 million and \$11 million annually. Exhibit 1.3 illustrates the distribution of personal services contracts in the executive branch for FY2002-03 to FY2004-05.

Exhibit 1.3
Personal Services Contracts in the Executive Branch
FY2002-03 to FY2004-05

<i>Executive Department Or Agency</i>	<i>Number of Individuals On Personal Services Contracts</i>			
	<i>FY2002-03</i>	<i>FY2003-04</i>	<i>FY2004-05</i>	<i>Average</i>
Budget and Fiscal Services	7	11	5	8
Civil Defense	1	2	2	2
Community Services	65	63	60	63
Corporation Counsel	6	5	6	6
Customer Services	4	45	1	17
Design and Construction	16	18	15	16
Emergency Services	61	16	1	26
Enterprise Services*	196	178	172	182
Environmental Services	2	14	3	6
Facility Maintenance	11	13	3	9
Fire	3	4	0	2
Human Resources	26	36	40	34
Information Technology	0	2	0	1
Managing Director	0	0	2	1
Mayor	1	0	2	1
Medical Examiner	0	0	1	0
Neighborhood Commission	1	0	0	0
Parks and Recreation*	1,362	1,397	1,512	1,424
Planning and Permitting	0	0	0	0
Police	0	29	2	10
Royal Hawaiian Band	95	83	81	86
Transportation Services	3	1	1	2
Total	1,860	1,917	1,909	1,895

Source: Department of Human Resources

Notes:

The Department of **Enterprise Services'** personal services contracts include a large number of on-call, intermittent contractors.

Many of the Department of **Parks and Recreation's** personal services contract employees are on-call, intermittent, or specific to summer-hire status.

Distribution of city employees in the executive branch by employment category

The three categories of employees in the city’s executive branch workforce are as follows:

1. **Permanent and temporary.** These are regular civil service employees filling both permanent and limited-term positions.
2. **Exempt.** The city charter exempts certain positions in specific departments and agencies from civil service requirements. Exempt positions include elected officials, heads of departments, positions within the mayor’s office, employees of the civil defense agency and Royal Hawaiian Band, and deputies of the corporation counsel.
3. **Personal services contract.** These are employees hired outside of the civil service process and protections. Unlike “exempt” positions, which apply to specific departments and agencies, personal services contract positions may be used by any city agency but must meet certain conditions as provided by city charter.

Some personal services contracts are entitled to bargaining unit benefits such as sick days, vacation days, holidays, medical insurance and other related benefits. Other contracts are “excluded”, such as contracts of fewer than 90 days; contracts where an individual works fewer than 20 hours per week; and contracts involving top level or confidential employees. Benefits for personal services contract employees who are excluded from a bargaining unit vary.

In FY 2004-05, the city employed a total of 9,577 employees in the executive branch. Of those, 1,909 (nearly 20 percent) were employees on personal services contracts. Exhibit 1.4 shows the distribution of city employees in the executive branch in FY2004-05.

Exhibit 1.4
Distribution of City Employees in the Executive Branch
FY2004-05

<i>Executive Department / Agency</i>	<i>Number Of Employees</i>			<i>Total Employees FY2004-05</i>	<i>Percent Of Workforce On Personal Services Contracts</i>
	<i>Permanent And Temporary</i>	<i>Exempt</i>	<i>Personal Services Contract</i>		
Budget and Fiscal Services	270	4	5	279	1.8%
Civil Defense	8	0	2	10	20.0%
Community Services	132	2	60	194	30.9%
Corporation Counsel	36	41	6	83	7.2%
Customer Services	224	2	1	227	0.4%
Design and Construction	188	4	15	207	7.2%
Emergency Services	351	2	1	354	0.3%
Enterprise Services	189	4	172*	365	47.1%
Environmental Services	814	4	3	821	0.4%
Facility Maintenance	543	4	3	550	0.5%
Fire	1,042	4	0	1,046	0.0%
Human Resources	71	2	40	113	35.4%
Information Technology	114	2	0	116	0.0%
Managing Director	0	24	2	26	7.7%
Mayor	0	8	2	10	20.0%
Medical Examiner	12	3	1	16	6.3%
Neighborhood Commission	0	14	0	14	0.0%
Parks and Recreation	683	3	1,512*	2,198	68.8%
Planning and Permitting	236	4	0	240	0.0%
Police	2,504	5	2	2,511	0.1%
Royal Hawaiian Band	36	1	81	118	68.6%
Transportation Services	76	2	1	79	1.3%
Total	7,529	139	1,909	9,577	19.9%

Source: Department of Human Resources

*The large number of employees on personal services contracts reflects summer hires, on-call, or part-time workers not exceeding 19 hours per week.

***Personal services
contract costs in
FY2002-03 to FY2004-05***

During each of the last three fiscal years, the city spent between \$9 million and \$11 million on personal services contracts. Funding sources for personal services contracts include general funds, special funds, capital improvement project (CIP) funds, and state and federal funds. The Department of Budget and Fiscal Services was not able provide a breakdown of personal services contract costs by funding source. While some personal services contract positions are included in each department's annual budget, a large proportion of personal services contracts are unbudgeted, and often rely on savings from position vacancies for funding. Exhibit 1.5 shows dollars spent by executive departments and agencies on personal services contracts between July 1, 2002 and June 30, 2005.

Exhibit 1.5
Executive Department/Agency Expenditures on Personal Services Contracts
FY2002-03 to FY2004-05

<i>Personal Services Contract Expenditures</i>				
<i>Department/Agency</i>	<i>FY2002-03</i>	<i>FY2003-04</i>	<i>FY2004-05</i>	<i>Average Annual Cost</i>
Budget and Fiscal Services	\$126,223	\$139,936	\$127,324	\$131,161
Civil Defense	\$61,095	\$71,454	\$88,150	\$73,566
Community Services	\$1,760,967	\$2,056,661	\$2,235,290	\$2,017,639
Corporation Counsel	\$37,391	\$47,586	\$82,148	\$55,708
Culture and Arts (MOCA)	\$74,558	\$41,018	\$42,633	\$52,736
Customer Services	\$377,836	\$361,472	\$447,133	\$395,480
Design and Construction	\$947,785	\$581,541	\$519,753	\$683,026
Emergency Services	\$891,236	\$928,434	\$1,310,686	\$1,043,452
Enterprise Services	\$1,319,007	\$1,253,284	\$1,333,874	\$1,302,055
Environmental Services	\$164,263	\$370,778	\$548,286	\$361,109
Facility Maintenance	\$242,672	\$191,351	\$235,695	\$223,239
Fire	\$63,924	\$59,339	\$131,918	\$85,060
Human Resources	\$52,278	\$59,378	\$90,157	\$67,271
Information Technology	\$229,497	\$204,249	\$390,581	\$274,776
Liquor Commission	\$302,024	\$204,765	\$200,052	\$235,614
Mayor/Managing Director	\$92,539	\$137,818	\$65,692	\$98,683
Medical Examiner	\$22,921	\$0	\$10,617	\$11,179
Neighborhood Commission	\$18,000	\$0	\$18,000	\$12,000
Parks and Recreation	\$1,384,049	\$1,551,047	\$1,472,455	\$1,469,184
Planning and Permitting	\$94,806	\$90,868	\$85,731	\$90,468
Police	\$1,179,436	\$1,336,893	\$1,333,029	\$1,283,119
Royal Hawaiian Band	\$50,100	\$28,600	\$27,744	\$35,481
Transportation Services	\$130,451	\$158,771	\$78,997	\$122,740
Total	\$9,623,058	\$9,875,243	\$10,875,945	\$10,124,746

Source: Office of the City Auditor, based on data provided by each department/agency

Audit Objectives

The objectives of the audit were to:

1. Review and assess the city's personal services contract practices.
2. Make recommendations as appropriate.

Scope and Methodology

We reviewed applicable laws, policies, and procedures relating to personal services contracts. These included Internal Revenue Service guidelines, Hawai'i Revised Statutes (HRS), the Revised Charter of Honolulu (RCH), Revised Ordinances of Honolulu, council resolutions, and policies and procedures from the departments of human resources and budget and fiscal services.

We also reviewed union contracts pursuant to personal services contract eligibility for employment benefits. Our review of the city's personal service contract practices focused primarily on employer-employee contracts requested by executive departments and agencies pursuant to Section 6-1103(g), RCH and issued between July 1, 2002 and June 30, 2005. To test contract compliance, and for information purposes, we also examined contract requests made under Section 6-1103(e), (f), and (h), RCH during the same time period.

We reviewed a random sample of agency requests for personal services contracts and tested for compliance with applicable charter and ordinance provisions, as well as policies and procedures in the Department of Human Resources' personnel manual, and contract justification practices.

We surveyed all executive departments and agencies to assess their personal services contracts practices and the total cost, by fiscal year, of their personal services contracts for the period July 1, 2002 to June 30, 2005. We interviewed administrators and staff regarding their responses to our survey and reviewed personal services contract files. We also obtained information on the prevalence of practices such as the use of retirees, departments paying contractees who performed work for other agencies, and contract positions that exceeded 12 months. We reviewed contract files to assess the departments' contract monitoring and employee evaluation activities.

Finally, we interviewed Department of Human Resources and Department of Budget and Fiscal Services administrators and staff regarding personal services contract reviews, certifications, and approvals. We also spoke with staff from the Department of Information Technology regarding coordinated activities related to the management of personal services contract data and its role in preparing the quarterly personal services contract reports.

This audit was conducted in accordance with generally accepted government auditing standards.

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Chapter 2

The City's Misuse of Personal Services Contracts Violates the Intent of the City Charter, Lacks Accountability, and Promotes Questionable Contract Practices

The City and County of Honolulu maintains a workforce of approximately 9,500 employees at any given time, of which 20 percent are employed through personal services contracts. The city charter establishes personal services contracts so that the city can hire workers to meet temporary needs, particularly when a department is in the process of recruiting and filling an existing civil service position or establishing a new civil service position.

However, we found that charter regulations have been virtually ignored, with many agencies commonly maintaining contracts exceeding the one-year limitation. Departments reported questionable practices including bypassing required reviews, high salaries for politically connected individuals, and unauthorized staff approving personal services contracts.

From July 1, 2002 to June 30, 2005, the city maintained personal services contracts with 1,800 to 1,900 individuals annually at a cost of approximately \$9 million to \$11 million. This information, though available, has never been reported to the council. And while the Department of Human Resources' reports are incomplete and inaccurate, the Department of Budget and Fiscal Services' required reporting is non-existent. As a result, the council cannot rely on the city's information nor hold it accountable for its use of personal services contracts.

Summary of Findings

1. The city's misuse of personal services contracts violates the intent of the charter. Executive agencies have maintained long-term contracts, many exceeding three years, contrary to the charter's intent to limit personal services contracts to staffing needs of a temporary nature. The Department of Budget and Fiscal Services has not complied with reporting requirements for personal services contracts.

2. The city's personal services contract process lacks accountability. Quarterly reports from the Department of Human Resources are inadequate. Executive departments do not adequately monitor their personal services contracts or track contract costs. We also found that most personal services contract costs are unbudgeted.
3. Some departments' personal services contract practices are questionable. We found that some personal services contract approvals and practices are suspect. Some contractors received high compensation and other contracts are perceived as rewarding political insiders. Practically all personal services contract positions are unadvertised.

The City's Misuse of Personal Services Contracts Violates Charter Intent and Ordinance Provisions

We found that the city's executive departments and agencies routinely maintain long-term personal services contracts commonly exceeding one year of employment, in violation of the city charter. Charter limitations are virtually ignored by agencies that request personal services contracts and departments responsible for approving them. Departments cited a hiring freeze that prevented hiring permanent employees through civil service, a reliance on retirees, desire to use capital improvement project funds to pay certain salaries, privatization negotiations, and other various reasons for perpetuating the need to hire contract employees. Furthermore, the Department of Budget and Fiscal Services has never complied with a 1997 ordinance to report annually on the city's personal services contracts.

Executive agencies have maintained long-term contracts in violation of charter intent

The Revised Charter of Honolulu (RCH) clearly establishes that the city's personnel system is based on merit principles of equal opportunity and impartial selection, among others. A corporation counsel opinion rendered in 1997 on a bill related to personal services contracts acknowledges that the city's preference is to support a civil service workforce. To ensure city services are provided in the most efficient manner possible in times of need, the charter provided the city flexibility to supplement its workforce with personal services contract employees, separate from civil service hiring requirements.

Currently, Section 6-1103(g), RCH specifies that personal services contracts of a temporary nature may not exceed one year. This limit was established by the citizens of Honolulu through a charter amendment as reported by the Charter Commission of 1991-92.

Prior to the amendment's ratification, personal services contracts were limited to 90-day terms, but extensions were permissible. In proposing the amendment, the commission rationalized that recruitment through normal civil service procedures is not always practical for particular kinds of services of a temporary nature. The maximum of 90 days plus extensions was deemed insufficient for lengthy and multi-stage projects such as the conversion of paper records to computer systems. The proposed charter amendment was to allow the maximum period to be increased to one year, but without extensions. The commission asserted that abuses would be prevented by the continuing requirement that contracts be certified by the director of civil service (now the director of human resources).

In addition to the charter provisions, the Department of Human Resources' personnel manual notes that as a general management policy, the personal services contract method of employment should be used only when absolutely necessary and must be justified in accordance with charter provisions. The Department of Budget and Fiscal Services also establishes a management policy reiterating that the personal services contract method of employment should be resorted to only as provided by the charter.

The primary intent of the charter is to provide the city with a temporary means to fill positions which are, or will become, civil service positions. In some situations, a temporary position may be filled by a personal services contractor until a civil servant can be recruited for the position. Alternatively, it may be necessary to establish and classify a new civil service position, which can be filled temporarily with a contractor. We found, however, that the city's personal services contract practices violated the charter intent by using personal services contracts for long-term needs and purposes other than filling permanent civil service positions.

For the period of July 1, 2002 to June 30, 2005, we identified 251 separate individuals who filled personal services contract positions for a period beyond 12 months (excluding on-call or seasonal employment). Over half the individuals identified (159 contractors) held a personal services contract for over two years. A total of 56 individuals were employed through a personal services contract for the entire three-year period between July 1, 2002 and June 30, 2005.

An official with the Department of Human Resources acknowledged that some personal services contracts have gone on for as long as 10 years.

Another Human Resources official conceded that while there is no official definition of “long-term”, any contract lasting more than one year is considered long-term.

Executive departments and agencies attributed their need for contracts exceeding more than one 12-month period or for multiple, consecutive contract renewals to the administration’s freezing of civil service hiring for vacant positions and approving only contract hires; the need for retirees’ expertise to assist regular staff; the desire to use capital improvement funds to pay contract salaries; privatization negotiations; and the centralizing of information technology positions.

Prior administration prevented departments and agencies from filling vacant civil service positions

During FY2002-03, the administration refused funding for a total of 995 vacant positions, resulting in a cut of \$32.1 million to the operating budgets of executive agencies. In FY2003-04, 837 vacant positions were left unfunded, saving another \$26.8 million. Strict spending controls were also imposed through operating budget execution guidelines issued by the Department of Budget and Fiscal Services in fiscal years 2003 and 2005 that required approvals by the department or the managing director to create new positions or fill existing positions.

We surveyed 23 departments and agencies in the executive branch to identify the top three reasons for requesting personal services contracts between FY2002-03 and FY2004-05. Five agencies reported that restrictions on filling vacancies or other administrative directives necessitated personal services contracts. In some cases, departments issued memoranda to the Department of Budget and Fiscal Services requesting exemptions from the hiring freeze to fill personal services contracts.

One department administrator acknowledged his department had previously used part-time civil service employees to supplement full-time workers, but the prior administration asked the department to reduce position counts. As a result, the part-time civil service positions were eliminated and replaced with employees hired on personal services contracts. The director of another department confirmed that the prior administration achieved its objective of promoting lower position counts and “smaller government” by not converting personal services contract positions to civil service positions. A human resources official also confirmed that the prior administration had frozen civil service positions and only approved personal services contracts. These directives were

given to departments orally; there was no written document issued by the administration.

As a result of budget restrictions on filling vacancies or creating new positions, departments filled needed positions through personal services contracts. A human resources official emphasized that if positions were not filled, city departments and agencies would not be able to carry out their missions or provide needed services to the public. While these circumstances may meet the charter intent of using personal services contracts in the public interest, such positions did not meet the criteria that contracts be of a temporary nature where the need does not exceed one year, since the hiring freeze was on-going and the contract positions were used to replace regular positions and their functions.

Agencies' use of retirees to bolster their workforce perpetuates long-term contracts

Executive departments favor retirees to fill personal services contracts. Because of their experience, retirees do not require additional training and save the department money because they do not qualify for certain benefits. In our survey, 18 of 23 executive departments and agencies reported hiring one or more city retirees between FY2002-03 and FY2004-05. A total of 120 personal services contract positions were filled by retirees in the executive branch during this time period.

While retirees can provide distinct benefits to departments and agencies, their use in personal services contract positions perpetuates long-term contracts in violation of the charter. According to an official at the Department of Human Resources, retirees must work fewer than 90 days at a time, or fewer than 20 hours per week to ensure they do not qualify for health and other benefits that would conflict with their retirement status. As a result, retirees cannot fill regular, full-time positions; but they can fill personal services contract positions.

One example of a department using retirees in long-term contracts is the Honolulu Police Department for its Central Receiving Officer positions. Between July 1, 2002 and June 30, 2005, the department contracted with 24 retirees to fill central receiving officer positions under Section 6-1103(g), RCH. In fact, the department's practice of hiring retired police officers for this position has been ongoing since 1996. To facilitate the use of retired police officers, the city entered into an agreement with the State of Hawai'i Organization of Police Officers (SHOPO), despite SHOPO's objections to using retired officers without first negotiating with the union on their use.

Receiving desk officers control all entrances and exits to the station and cell block, monitor security cameras, search prisoners, prepare reports, fingerprint and photograph non-violent prisoners, assign cells to incoming prisoners and track movements, and assist public walk-ins to the station. Candidates hired for these contract positions must be familiar with departmental policies, the Standards of Conduct of the Honolulu Police Department, procedures, and other information applicable to the position.

In this case, the department specifically requested the contractual services of retired police officers. According to an official with the police department's Human Resources Division, without these contract hires the department would have had to take officers off the street and assign them to the receiving desk. This would be unacceptable to both the council and the public. The department official acknowledged that personal services contracts should be of a temporary nature and that continued use of retirees is problematic. The department would like to fill the positions permanently, but based on current position requirements, candidates must have a police background.

The police department's use of long-term personal services contracts is in direct conflict with the charter, yet was approved by the Department of Human Resources and managing director's office. Although there is clearly a need for receiving desk officers, that need exceeds one year and the positions are not temporary in nature. Because the positions were requested under Section 6-1103(g), RCH, the police department as well as the Department of Human Resources and managing director's office should abide by the limitations of the section's provisions. The current managing director's office has reviewed the department's use of personal services contracts to staff the central receiving desk over the long-term and worked with the department to remedy this chronic problem. In response, the department proposes to maintain the contract positions until full-time police officer positions can be established to replace them through the normal budget process.

As long as the police and other departments rely on retirees to fill contract positions, there is little incentive to fill positions permanently. Retirees can only fill contract positions and departments will continue to violate the intent of the charter by maintaining retirees on long-term contracts. Instead, the departments should utilize retirees and their expertise on short-term contracts, to train inexperienced employees to fill on-going needs permanently.

Some agencies use personal services contracts to access capital funding

We found that the departments of design and construction and transportation services routinely hire some employees on personal services contracts so that capital improvement program (CIP) funds can be used. In 2002, the city council approved Resolution No. 02-140, amending the city's debt and financial policies to allow the use of CIP funds for certain salaried positions. Specifically, CIP funds were authorized to fill contracts for engineering and design professionals under a personal services contract with a definite termination date; however, paying salaries of civil service employees was prohibited.

In the department of design and construction, CIP funds are used for project managers' salaries. Between July 1, 2002 and June 30, 2005, the department maintained eight project managers using CIP funds. Three project managers held contract positions for 30 months or more and five others filled positions from 13 to 17 months.

While these contract positions are eligible for capital funding under Resolution No. 02-140, they violate the intent of the charter to limit personal services contracts to those of a temporary nature because the need clearly extends beyond one year. Since CIP funds cannot be used to pay civil service employee salaries, departments may continue to rely on personal services contracts regardless of the project or contract's length. We believe the practice of issuing personal services contracts under provisions Section 6-1103(g), RCH for project manager positions that exceed one year is a misuse of personal services contracts.

Some agencies have maintained or converted permanent positions to contract positions while pursuing privatization of city functions

Some department administrators have indicated they use personal services contracts as a tool to stabilize their workforces while the department considers full or partial privatization of a city function.

One example of vacated civil service positions being replaced by personal services contract employees was at the Pali Golf Course. Between July 1, 2002 and June 30, 2005, the Department of Enterprise Services maintained nine long-term personal services contracts for golf course groundskeepers. One contractor held the position for 30 months, four did so for 27 months, and one for 25 months. The remaining three contractors held their positions between 20 and 21 months.

According to an enterprise services official, the department was considering privatizing the Pali golf course and used personal services contracts for groundskeeper services while this took place. As permanent civil service positions at the golf course were vacated through attrition, they were replaced by persons hired on personal services contracts. The department planned to use incumbents in maintenance positions at Pali Golf Course to fill funded vacancies at other city golf courses when the Pali course's maintenance positions were privatized. In addition, various maintenance positions were held in vacant-but-funded status at other municipal courses. In January 2005, after two years of deliberation, the department finally decided privatization of the Pali Golf Course was not feasible. As a result, enterprise services is now filling the maintenance positions permanently through the civil service system.

The Department of Community Services also maintained personal services contract positions while one of its programs was considered for privatization. In one instance, a planner position for the O'ahu workforce investment board program, which was administered by community services under a five-year grant, was filled on July 1, 2002 for a one-year period. In justifying the position, the department noted "action will be taken to make this position limited term and this contract will be terminated when the temporary civil service position is established." However, the contract was renewed on July 1, 2003 and again on July 1, 2004—this time without reference to converting the position to a temporary civil service position as stated in the 2002 request.

The 2004 request also noted that staff positions had been filled with personal services contracts since July 2000, but because the board might evolve into a non-profit status, the department deemed it unfeasible to convert the contract positions to civil service. Community services' subsequent personal services contract request to fill the clerk position beginning July 1, 2005 made no reference to the board's status as a non-profit.

In these examples, departments entered into—and the Department of Human Resources approved—long-term personal services contracts despite the charter's intent to provide personal service contracts as a means of addressing temporary needs not exceeding one year. Personal services contracts were used as tools of convenience for purposes inconsistent with the charter's intent. The issue of future funding for federally funded positions notwithstanding, these positions could have

been filled with temporary civil service employees based on the fact that they were needed for multiple years.

City policy on information technology positions leads to long-term contracts

We also learned of a city-wide staffing policy that led to long-term personal services contracts. In June 1999, Mayor's Directive 99-1 tasked the Department of Information Technology with developing and directing an integrated network of computer resources providing data processing and telecommunications services to all city agencies. Specifically, the directive assigned the department the primary responsibility of managing all information technology (IT) resources and services in the city. To accomplish this goal, this directive allowed the department to supplement permanent staff with contractors, student help and volunteers with permission from the managing director. The city's policy is to have all IT positions established within the Department of Information Technology, with the exception of the fire and police departments. As a result of the directive, executive departments or agencies needing a dedicated individual(s) with IT expertise had three options:

1. The Department of Information Technology could give up one of its vacant positions to the requesting department or agency;
2. The requesting department or agency could give up an existing vacant position to the information technology department and fund the position; or
3. The requesting department or agency could hire an IT employee through a personal services contract.

Generally, neither the Department of Information Technology nor any requesting department or agency at the time of our fieldwork was willing to give up a vacant position. A personal services contract was thus more desirable because agencies could use funds from vacant positions without actually giving up those positions.

We found four individuals on personal services contracts with the Department of Information Technology who were paid with funds from other departments. In one example, the department requested to fill an Information Technology Support Technician II position funded by the Department of Parks and Recreation. This position was intended to help

alleviate the burden of additional IT support at remote parks. In justifying the request, an information technology official commented that the contract would be an ongoing service requiring either contract hire or added permanent positions within the department. The comment was based on the fact that the contractor had already filled a contract position with the information technology department since July 2003 and at the time was slated to continue the contract through June 2005.

The practice of issuing personal services contracts for long-term IT positions is problematic for two reasons. First, Mayor's Directive 99-1 circumvented the established Department of Human Resources' review so that only the managing director's approval was needed. In practice, however, we found that the Department of Information Technology complied with the established personal services contract process for IT positions. Second, because the need for IT-related services is ongoing, maintaining personal services contracts to fill them is a misuse of the process as authorized under Section 6-1 103(g), RCH.

We note that in some instances the Department of Human Resources has questioned the long-term use of personal services contracts. Additionally, the current deputy managing director reviewed recent personal services contract requests and advised certain agencies that the managing director's office wants positions established to prevent long-term contracts. A Department of Human Resources official explained that concerns expressed by the department or the managing director regarding lengthy contract requests are, at this point, advisory. The new administration is making a push to fill positions instead of maintaining long-term contracts. Although long-term contracts may have been an acceptable past practice, the official emphasized that if the department or managing director were to deny requests for some of these long-standing contracts the requesting departments and agencies might not be able to staff critical vacant positions or have difficulty fulfilling their mandated responsibilities. The managing director's advisories put requesting departments on notice that future personal services contract requests may not be approved.

We note that in all of these examples of long-term contract requests, none exceeded the charter's technical requirement limiting contracts to one year. Rather, we take exception to executive departments and agencies requesting, and the Department of Human Resources approving, multiple contracts for the same positions spanning more than 12 months in total, where the need for the position was clearly ongoing. Personal services contracts requested and approved under Section 6-

1103(g), RCH are allowed only when services are of a temporary nature, are needed in the public interest, and “where the *need* for the same does not exceed one year.” Furthermore, the charter commission of 1991-1992 clearly established its intent that personal services contracts should not be extended beyond one year. Our review indicates that the city has misplaced its contract compliance emphasis by ensuring that personal services contracts do not exceed one-year intervals, rather than one year total, and has ignored instances where the “need” for a service exceeds one year.

Annual reporting requirement has been ignored since 1997

In 1997, the council enacted Ordinance 97-54 to ensure that executive branch personal services contracts are awarded without favoritism and to qualified persons. As part of this effort to promote transparency in awarding personal services contracts, the council required the Department of Budget and Fiscal Services to prepare an annual report containing detailed information about the city’s personal services contracts. The department, however, has never complied with its mandated request, citing a corporation counsel opinion.

Ordinance requires the department to report data and issue annual reports

In October 1996, the council introduced Bill No. 102 to ensure that executive branch personal services contracts were awarded without favoritism and to qualified persons. The bill required the city’s budget director to:

1. review proposed employer-employee contracts prior to their approval to determine whether the services requested might be more appropriately procured through an independent contractor;
2. post a public notice of employer-employee personal services contracts not less than seven days before final approval of the request;
3. annually transmit to the council a report containing information on employer-employee personal services contracts; and
4. keep records of employer-employee personal services contracts and make them available for public inspection.

Specifically, the annual report was to include the following information for each executive department or agency’s personal services contracts:

- the name of the executive agency that procured the contractor's services;
- the nature of the services provided to the city under the contract and justification for procuring such services through an employer-employee contract;
- the name of the contractor;
- the qualifications of the contractor to provide the contracted services;
- whether the information provided relates to the original contract or to an amendment, extension or renewal of the contract;
- the total amount of compensation to be paid to the contractor;
- whether the contractor is working on a full- or part-time basis, and if the latter, the number of hours per week the contractor is working;
- the time period and duration of the contract;
- the applicable subsection of the Revised Charter of Honolulu Section 6-1103(f), (g), or (h) that provided the basis for the contract, amendment, renewal or extension;
- whether, in the immediately preceding fiscal year, the contractor was engaged in the same or any other employer-employee contract with the city;
- whether, in the immediately preceding fiscal year, the executive agency engaged the same or different contractor to perform the same or similar services for the agency; and
- whether funds are included in the city's executive budget program and/or ordinance for the current fiscal year for the same or similar contract, and, whether the contract is with the same contractor.

In August 1997, the mayor vetoed Bill No. 102 based on a corporation counsel memorandum raising concerns over provisions of the bill. In September 1997, the council overrode the veto and enacted Bill No. 102 as Ordinance 97-54, which was incorporated as Article 30, *Personal Services Contracts*, Revised Ordinances of Honolulu. Two days after the council's veto override, corporation counsel threatened to file a lawsuit seeking declaratory relief from the provisions of Ordinance 97-54.

In an effort to address the administration and corporation counsel concerns, the council adopted resolution 97-319, CD1 in December 1997, which assigned similar but not identical reporting requirements to the Department of Human Resources. In offering this resolution, the council acknowledged the administration's objections regarding Ordinance 97-54. Nevertheless, the council reiterated its desire for transparency in reporting information on personal services contracts. More importantly, it emphasized that the resolution should not be construed as acquiescence to the city administration's objections concerning the conflict of Ordinance 97-54 with the charter.

A budget and fiscal services administrator, however, reported that based on the corporation counsel opinion on Bill No. 102, the administration has not complied with Ordinance 97-54 and instead relies on the quarterly reports issued by the Department of Human Resources under Resolution No. 97-319.

In comparing the reporting requirements of the Department of Budget and Fiscal Services under Ordinance 97-54 and the Department of Human Resources under Resolution 97-319, CD1, we found that the resolution's requirements are not as comprehensive as the ordinance's. Of the 13 reporting requirements for the Department of Budget and Fiscal Services under the ordinance, the quarterly reports issued by the Department to Human Resources fully comply with six requirements, partially comply with three, and do not comply at all with four requirements. Exhibit 2.1 compares the two reporting requirements.

Exhibit 2.1

Comparison of Reporting Requirements for Personal Services Contracts

<i>Department of Budget and Fiscal Services' Reporting Requirements, Section 20-30.4, ROH</i>	<i>Department of Human Resources' Reporting Requirements, Resolution 97-319, CD1</i>	<i>Level of BFS Compliance</i>
(1) The executive agency that procured the services of a contractor	• The agency that procured the personal services contract	Full Compliance
(2) A brief statement of the nature of the personal services provided to the city under the contact and justification for procuring such services through an employer-employee contract	• No comparable reference	Non Compliance
(3) The name of the contractor	• The name of the person receiving the personal services contract	Full Compliance
(4) A statement of the qualifications of the contractor to provide the contracted services	• No comparable reference	Non Compliance
(5) A statement of whether the information provided relates to the original contract or to an amendment, extension or renewal of the contract	• Whether the contract is new or is an amendment, extension or otherwise a renewal of a previous contract	Full Compliance
(6) The total amount of compensation to be paid to the contractor	• The salary or wage payable to the personal services contractor	Partial Compliance
(7) A statement of whether the contractor is working on a full- or part-time basis, and if the latter, the amount of hours per week that the contractor is working	• A statement of whether the contractor is working on a full- or part-time basis, and if the latter, the amount of hours per week that the contractor is working	Full Compliance
(8) The time period and duration of the contract	• The duration of the personal services contract	Partial Compliance
(9) A statement identifying the subsection of Section 6-1103, RCH, that provided the basis for the contract, amendment, renewal, or extension	• A list of each personal services contract of an employer-employee nature which was authorized under Section 6-1103(f) or (g), RCH	Partial Compliance
(10) A statement as to whether, in the immediately preceding fiscal year, the contractor was engaged in the same or any other employer-employee contract with the city	• Whether in the immediately preceding fiscal year, the individual was engaged in any other employer-employee contract with the city	Full Compliance
(11) A statement whether, in the immediately preceding fiscal year, the executive agency engaged the same or different contractor to perform the same or similar services for the agency	• Whether, in the immediately preceding fiscal year, the agency engaged the same or different individual receiving a personal services contract to perform the same or similar services for the agency	Full Compliance
(12) A statement whether funds are included in the city's executive budget program and/or ordinance for the current fiscal year for the same or similar contract, and if so, whether the contract is with the same contractor	• No comparable reference	Non Compliance
(13) If a contractor provided personal services pursuant to more than one employer-employee contract with the city during the fiscal year, the report shall specify the number of contracts entered into, the type and service provided and the aggregate compensation received by the contractor under the various employer-employee contracts	• No comparable reference	Non Compliance

Source: Ordinance 97-54, Resolution 97-319, and Office of the City Auditor

We believe the city should report information on personal services contracts as directed by the city ordinance, and include additional information such as total cost of personal services contracts and appropriate analysis as necessary.

Corporation counsel opinion does not preclude annual reports

The Department of Budget and Fiscal Services justifies its non-compliance with the reporting requirements under Ordinance 97-54 based on a corporation counsel opinion prepared in response to Bill No. 102. Corporation counsel opined that the proposed bill violated the city charter and current state law. One of the counsel's objections was that the transfer of powers to the director of finance, to determine if a proposed service was to be provided by an independent contractor or personal services contract, would preempt the Department of Human Resources' authority over personnel decisions. The opinion added that the Department of Budget and Fiscal Services lacked the expertise to make such personnel determinations. The counsel also commented that the bill would place additional duties and functions on the director of budget and fiscal services, a power reserved for the mayor to grant, not the council.

In reviewing the counsel's objections, we found no basis for budget and fiscal services' reason for not preparing annual reports on the city's personal services contracts as required in Ordinance 97-54. Furthermore, the department has responsibilities over city expenditures, including payroll. According to Section 6-203, RCH, the director of budget and fiscal services is to be the chief accounting officer of the city and must keep accurate and complete accounts of receipts and disbursements. Section 9-301, RCH states that the Department of Budget and Fiscal Services is responsible for the procurement of all services required by any agency of the city. The department must also establish policies and procedures for processing personal services contracts and certify funds for those contracts.

The Department of Budget and Fiscal Services has used corporation counsel's narrow opinion to avoid preparing annual reports regarding personal services contracts. Personnel-related issues notwithstanding, the department still reviews all personal services contracts, certifies the availability of funds, and has access to payroll information, which the human resources department may not have.

We found no evidence that the council intended for the reporting requirements assigned to the Department of Human Resources in

Resolution 97-319, CD1 to completely replace the reporting requirements of the Department of Budget and Fiscal Services in Ordinance 97-54. In fact, we note that the council did not adopt legislation to repeal Ordinance 97-54. Furthermore, resolutions do not have the force and authority of law as do city ordinances, and the Department of Budget and Fiscal Services should follow the intent of the law. This technical wrangling continues to be a distraction from achieving full transparency and accountability for personal services contracts as desired by the council.

Personal Services Contract Process Lacks Accountability

City departments and agencies reported a combined total cost of personal services contracts of between \$9 million and \$11 million annually on personal services contracts over the past three fiscal years. While city departments authorizing and managing these contracts should exercise prudent fiscal practices to ensure the highest level of accountability for their personal services contracts, we found that city agencies' personal services contract processes fall short in providing that accountability. Reports to the council regarding personal services contracts provide descriptive but not meaningful information. Known errors and limitations in the reporting process have gone uncorrected. City departments and agencies reported limited monitoring of their personal services contracts, including a lack of documented contract employee performance evaluations, as well as limited tracking of personal services contract costs. Current reporting fails to disclose actual contract costs and often underestimates those costs. Finally, we found that a significant proportion of the city's unbudgeted personal services contracts are approved without the council's oversight.

Quarterly reports issued by human resources are inadequate

The city council recognized that the charter authorized broad exemptions from civil service in providing hiring through personal services contracts. The city has used that broad exemption to hire numerous contract employees outside of civil service, some of whom have high-level responsibilities. In order to obtain information about the administration's use of personal services contracts, the council has required the Department of Human Resources to prepare quarterly reports with specified data. We found, however, that these reports are inadequate and inaccurate.

Council's desire for more information prompted the adoption of a resolution establishing reporting requirements

In December 1997, the council adopted Resolution 97-319, CD1 requiring the director of human resources to prepare a quarterly report that includes, among other data, a list of each personal services contract of an employer-employee nature authorized under Section 6-1103(f) or (g) of the charter effective during the quarter. The resolution was adopted following the mayor's veto of Bill 102 (1996), which imposed reporting requirements of personal services contracts on the Department of Budget and Fiscal Services. The council overrode the mayor's veto and Bill 102 was established as Ordinance 97-54.

The council acknowledged the city's objections to certain provisions in Ordinance 97-54, but noted that the administration was not opposed to providing the council with basic information on the administration's personal services contracts on a cooperative basis, and that Resolution 97-319 was intended to secure information on that basis. The council asserted that information about personal services contracts was necessary to exercise its oversight regarding the appropriateness and effectiveness of the city administration's use of its personal services contract authority.

Human resources' quarterly reports lack meaningful information

Resolution 97-319 required the Department of Human Resources to issue a quarterly report listing each personal services contract, identifying:

1. the agency that procured the personal services contract;
2. the name of the person receiving the personal services contract;
3. the duration of the personal services contract;
4. full-time or part-time status, and the number of hours worked per week if on part-time status;
5. the salary or wage payable to the personal services contractor;
6. whether the contract is new or is an amendment, extension or otherwise a renewal of a previous contract;
7. whether the individual was engaged in any other employer-employee contract with the city in the immediately preceding fiscal year; and

8. whether the agency engaged the same or different individual receiving a personal services contract to perform the same or similar services for the agency in the immediately preceding year.

We found that while the Department of Human Resources has fully complied with the resolution's reporting requirements, the reports provide descriptive but not meaningful information for adequate analysis. For example, current reports identify the duration of the contract, whether the contract is new or a renewal, and whether the contractor held another contract in the preceding fiscal year. However, this information does not disclose consecutive contract renewals spanning two or more years; and might indicate long-term staffing needs being met on a permanent rather than a temporary basis. Additionally, cumulative information regarding an individual's tenure and earnings in holding a variety of contract positions over a period of time might raise a red flag regarding potential favoritism or misuse.

Human resources department prepares internal reports analyzing the quarter's contracts

The lack of meaningful analyses in the current reports is evidenced by a separate analysis of the quarter's personal services contracts prepared by the Department of Human Resources. We found the department's examination branch prepares a brief supplemental analysis comparing the number of contracts by quarter for the preceding five quarters for human resources administrators. We reviewed an analysis report for the second quarter of FY2004-05. In its comparison with the preceding five quarters, human resources commented on the contract hiring trends of the Emergency Services Department, Board of Water Supply, Department of Community Services, Customer Services Department, and Department of Information Technology compared with the same quarter in the previous year. The internal report identified the following departmental trends:

- Emergency services hired 13 contract workers in the past quarter compared to one in the same quarter a year ago.
- Community services used six additional contract workers in the past quarter compared to five planners a year ago.
- Customer services had 13 contracts in the last quarter and eight in the same quarter a year ago. The net increase of five

contractors is mostly due to six driver license examiners who were not on board a year ago.

- Information technology also had five more contracts (16, versus 11 a year ago) caused by the hiring of three additional data processing systems analysts and two computer programmers.

Human resources' supplemental report is prepared for department administrators. While the information may be provided to city administration, it is not offered to the city council or the public. We believe human resources' supplemental analysis confirms that the existing quarterly reports are inadequate. The department's internal analysis provides some useful information and should be included in the quarterly reports on the city's personal services contracts.

Errors in reports are not corrected

The quarterly reports of personal services contracts issued by the Department of Human Resources are the primary source of information that the council and public receive regarding the city's use of personal services contracts. The data contained in the reports are the basis for the council to exercise its oversight regarding the appropriateness and effectiveness of the administration's use of its personal services contract authority. We found, however, that the quarterly reports contain errors that compromise the integrity of the data.

We compared the employment information contained in a statistically valid random sample of individuals holding personal services contracts between July 1, 2002 and June 30, 2005 with the information contained in the quarterly reports issued by the Department of Human Resources during the same time period. Of 29 individuals in our sample, we found three instances where an individual's personal services contract employment status was not reflected in the quarterly reports. Based on the statistical validity of the sample, this means up to ten percent of personal services contracts may not be accurately recorded in the quarterly reports.

We also compared departments' responses to our checklist with the quarterly reports and found that the quarterly reports listed fewer contractors for some departments. In one instance, three contractors from the fire department were missing from the April 1 to June 30, 2004 quarterly report. In another instance, human resources reviewed its own

quarterly reports and found 11 contractors missing from four of the 12 quarterly reports examined by our audit.

The employee responsible for producing human resources' quarterly reports acknowledged the reports are not very accurate because the Department of Information Technology obtains only *snapshot* data for the reports, taken on a particular day during the first week following the end of a quarter, showing personal services contracts in effect on that day only. As a result, some contractors will not be included, such as those contractors that are on 89-day contracts or between renewals.

For example, a department issues an 89-day personal services contract on April 1, 2005 that ends on June 28, 2005. For reporting purposes, the Department of Information Technology may pull up a list of all active contracts on July 1, 2005. Since the list captures only active contracts on that particular day, the quarterly report of personal services contracts for the period April 1, 2005 to June 30, 2005 will not include the contract issued on April 1, 2005 and ended June 28, 2005. According to Department of Human Resources staff, given their current software, it would be difficult to confirm accurate figures; a more accurate account could only be accomplished by manually tracking each department's personal services contracts every quarter. In addition to software limitations, a department administrator also noted that the timeliness of the requesting departments in submitting their contract information to human resources may affect their inclusion in the appropriate quarterly report. If an agency or department submits its list of contracts after the Department of Information Technology processes the information into the city's human resources system, it may not be reported until the following quarter. Alternatively, redundant reporting can occur if a contractor's employment bridges two quarters.

Despite knowing of errors contained in the reports and limitations of the existing software, neither the human resources nor information technology department corrects any inaccuracies. In addition, human resources personnel told us that the quarterly reports are not circulated to any city departments or agencies. Since requesting agencies and departments do not review these reports, they were generally unaware of any errors reported regarding their personal services contractors.

Departments do not adequately monitor personal services contracts

Monitoring is an essential part of the contracting process. Monitoring ensures that contractors comply with their terms, perform their work satisfactorily, performance evaluations are achieved, and any problems

are identified and resolved. Without sound monitoring, a contracting agency does not have adequate assurance it is receiving the services it requires. In addition to actually performing monitoring activities, documenting them is also essential. Because personal services contracts offer temporary employment and contractors can enter into multiple contracts with various city agencies, written documentation can be a useful tool in assessing a candidate's qualifications. We found that departments generally did a poor job of monitoring their personal services contracts.

Many agencies claim contract monitoring is unnecessary

In our survey of executive departments and agencies regarding personal services contract practices, nine of 23 agencies reported that no contract monitoring was necessary for their personal services contracts. Only four agencies reported evaluating contractors prior to contract renewal. One of the most common "monitoring activities" identified was to rely on contract renewals themselves as a basis for monitoring. Administrators told us that supervisors monitor contractors and therefore formal contract monitoring activities are not necessary because if there was a problem, the contract would be terminated during the contract period.

Personal services contract employees do not receive formal performance evaluations

One of the best practices in contract monitoring is evaluating a contractor's actual performance on the job against the duties and responsibilities of the position or a set of pre-established, standard criteria. In addition, a department or agency should retain a record of contract performance for future reference. Maintaining a record performance has the potential to be used as an evaluation tool in awarding future contracts.

None of the 23 executive departments or agencies we reviewed conducted any formal, written evaluations of its personal service contractor employees. Four agencies claimed to have completed either written or oral evaluations at either the end of a contract period or prior to a contract's renewal. We found, however, that these agencies conducted oral evaluations only and could not provide evidence that the evaluation was documented. Only the police department had a formal policy to evaluate personal services contractors, but our review of its files indicated that no written evaluations were conducted. A department official acknowledged it had not followed the department's employee evaluation procedures. Another department administrator commented

that when the department followed up with the human resources department regarding employee evaluations, a human resources staff indicated that past administrations had not supported evaluating contractors. Based on that remark, the department administrator did not prepare written evaluations of employees hired under personal services contracts.

A human resources department official explained that formal evaluations are neither feasible nor necessary for most contracts, particularly those that are on-call or intermittent in nature. The official also commented that performance evaluations for non-civil service employees could cloud the city's ability to end contracts for non-performance. While we acknowledge that performance evaluations may not be beneficial for contract positions that are student hires, on-call or intermittent in nature, such as those issued under Section 6-1103(e) and (h), RCH, if the city continues the practice of maintaining long-term contracts under Section 6-1103(g), RCH, performance evaluations may prove useful. We note later in this report instances where contractors are hired with questionable credentials and other contractors who were allowed to maintain their positions with dubious job performance. In these cases, if formal performance evaluations were conducted by the employing departments, human resources might have had the opportunity to review a documented justification for the continued employment of a contract employee. Such a review is consistent with the department's jurisdiction to ensure that only qualified individuals are appointed, or re-appointed, to city positions. We suggest that the human resources department consider implementing performance evaluations for contract employees whenever practicable.

Personal services contract costs are not accurately tracked or reported

Executive departments and agencies reported spending between \$9 million and \$11 million dollars on personal services contracts in each fiscal year between FY2002-03 and FY2004-05. We found, however, that departments reported salaries and wages but did not include benefits, meaning actual personal services contract costs are higher. Neither the departments of human resources nor budget and fiscal services specifically reports benefit costs for the executive branch's personal services contracts.

Only personal services contract salaries are reported

The quarterly reports of personal services contracts issued by the Department of Human Resources identify each contractor's monthly salary or hourly wage. In addition, line-item details for each fiscal year's

operating budget provide a breakdown of salaries and other cost items for each budget activity, including personal services contracts. However, there is no accounting for fringe benefit costs of personal services contracts. We note, however, that at least one agency reports its personal services contract fringe benefits costs separately.

According to the Department of Human Resources' workflow procedures, employees hired on personal services contracts are generally eligible for benefits such as sick pay, vacation pay and health benefits as provided by state law or bargaining unit contract. Some personal services contracts are excluded from bargaining units for reasons such as contract duration of fewer than 90 days, a contractor who works fewer than 20 hours per week, and top level administrative and confidential employees. The request for personal services contract, Form CS-C1, requires each requesting agency to identify if a contract is excludable. Because some contractors are eligible for certain employee benefits, and the city is required to pay the employer contribution, those figures should be reported in addition to salary figures. Exhibit 2.2 compares the various employee benefits provided to both regular and personal services contract employees, based on their employment status.

**Exhibit 2.2
Employee Benefits for Regular and Personal Services Contract Employees**

Employment Status	Employer Contribution			Leave Benefits		
	<i>Social Security (FICA)</i>	<i>Retirement System</i>	<i>Health Fund</i>	<i>Vacation</i>	<i>Sick</i>	<i>Holiday²</i>
Regular, full-time employees (excluding police, fire and personal services contract employees)	X	X	X	X	X	X
Full-time contract worker, less than 90 days (excluding state or county retirees)	X				X	X
Full-time contract worker, more than 90 days	X	X	X ¹	X	X	X
Part-time contract worker, less than 20 hours per week (excluding state or county retirees)	X				X	X
Part-time contract worker, 20 or more hours per week and more than 90 days	X	X	X ¹	X	X	X
Full-time state or county retiree contract worker, less than 90 days					X	X
Part-time state or county retiree contract worker, less than 20 hours per week					X	X

Source: Department of Human Resources

Notes:

¹ Retirees working more than 90 days and 20 hours or more per week are eligible for Employer-Union Health Benefits Trust Fund (health fund) benefits. However, pension payments and health benefits would be terminated.

² Salaried employees are entitled to paid holidays; employees paid hourly, whether full- or part-time, do not qualify for paid holidays.

A budget and fiscal services official reported to us that the department does not calculate fringe costs before approving a personal services contract. If a fringe cost is needed, the department applies the standard employee fringe benefit rates applicable to all city employees. Furthermore, the department does not track fringe benefit costs for personal services contracts separately, nor for each department. Fringe costs are paid on the total city payroll and recorded in provisional accounts, but are not reported separately for contract positions.

Personal services contract costs comprise salaries and employee benefits, and therefore the Department of Budget and Fiscal Services should report the total costs of these contracts so that departments and agencies know and can accurately report the actual costs of their contracts.

Departments have failed to keep accurate accounts of their personal services contract costs

In a discussion with a department of budget and fiscal services administrator, we were advised that executive branch departments and agencies generally prepare their own budgets, which are reviewed by budget and fiscal services, approved by the mayor, and adopted by the city council. Departmental budget reports are generally prepared by budget and fiscal services with the exception of the police department, which has its own accounting section. Departments may also prepare their own budget and expenditure reports.

In our survey of 23 executive branch departments and agencies, we found that some had difficulty reporting their contract costs to us.

- One department reported its annual personal services contract costs for each fiscal year between FY2002-03 and FY2004-05. It later revised each of these annual costs after reviewing its accounting of personal services contract employees. In this instance, the department under-estimated its personal services contract costs by more than \$10,000 over the three-year period.
- Another agency also revised the personal services contract costs it initially reported to us after reviewing discrepancies in its figures. The agency reported spending \$31,092 in FY2004-05 while our calculation found the actual cost for that time period was \$65,692.

- One executive branch department was not able to readily identify the total cost of its personal services contracts for FY2002-03 to FY2004-05 and instead submitted three years' worth of personal service contractor time sheets for us to calculate.
- An official from a fourth agency acknowledged that two personal services contract positions were erroneously identified as belonging to another agency and revised its own contract costs to properly include them.

The error-prone personal services contract budgets maintained by executive departments and agencies provide little assurance that departments are accountable for their personal services contract costs. Although the Department of Budget and Fiscal Services does not separately track or report personal services contract cost information on behalf of the executive branch, the responsibility for keeping accurate budget and expenditure records is incumbent upon each department and agency.

Council receives only advisory information regarding unbudgeted personal services contracts

The executive branch is required to notify the council of unbudgeted personal services contracts pursuant to Ordinance 90-49. Specifically, departments or agencies requesting personal services contracts that were not included in their budgets must advise the council of their plans to hire a personal services contractor. Departments' letters are then forwarded to budget and fiscal services and the managing director's office for review and approval before being sent to the council. We emphasize that this notification is advisory only; the council does not have powers to approve or deny the executive branch's personal services contracts.

We reviewed a statistically valid random sample of individuals filling a personal services contract positions between July 1, 2002 and June 30, 2005 and found that 25 of 29 individuals' personal services contracts (comprised of 67 of 74 separate contract requests) were unbudgeted. In this sample, council received after-the-fact advisories for approximately 91 percent of the personal services contracts during those three fiscal years.

Some Departments' Personal Services Contract Practices Are Questionable

We found that generally, executive departments and agencies provided necessary information to evaluate their personal services contract requests. However, their compliance with technical requirements did not prevent questionable practices in recruiting and maintaining certain contracted employees. Practices such as the former managing director overriding Department of Human Resources' review of contracts for its office, unauthorized staff approving contract requests, and same-day contract approvals showed a breakdown in internal controls. Other agencies also maintained questionable practices, such as contractors working for multiple agencies and using personal services contracts to make back payments to former city employees. The executive branch's practice of offering high-compensation positions to individuals with questionable qualifications and political ties also cloud the contract process. The lack of position advertising also prevented the general public from applying for these sometimes lucrative contract positions.

Executive agencies have generally complied with personal services contract request procedures

We reviewed a statistically valid random sample of individuals holding a personal services contract in the executive branch between July 1, 2002 and June 30, 2005 and examined whether their personal services contract request process complied with applicable charter, ordinance, policies, and procedures provisions. The 29 individuals in our sample held 74 discrete contracts during our three-year review period.

Personal services contract requests we reviewed fully complied with nine key contract request requirements. We found that all requests had contract terms of one year or less and that requesting agencies established a salary or wage; proposed salaries that were within range; justified salaries; described the duties and responsibilities of the contractor; and identified the charter provision authorizing the contract. We also found the Department of Human Resources certified that all personal services contracts complied with charter provisions and the Department of Budget and Fiscal Services certified availability of funds.

The general compliance with charter provisions, policies, and procedures ensures that the departments of human resources and budget and fiscal services had adequate information to review and certify personal services contract requests. We note that while we found requesting agencies generally provided the requisite information in their contract requests, our testing did not extend to verifying that the information provided was accurate.

The mayor's and managing director's personal services contract approvals and practices are suspect

Unique to the mayor and managing director's offices' personal services contracts was the practice of exempting their own contracts from the Department of Human Resources' certification and approval process. We found that some personal services contracts requested by the mayor and managing director's office between July 1, 2002 and June 30, 2005 bypassed Department of Human Resources' review, with the former managing director claiming that the charter exempts those agencies from the regular personal services contract process. We also found that clerical staff approved personal services contract requests and some requests were approved on the same day, prior to human resources and budget and fiscal services review.

No basis for the former mayor and managing director's office determination to bypass Department of Human Resources' review

Almost all personal services contracts for the mayor and managing director's offices from the previous administration were not certified by the Department of Human Resources as required by city charter. The mayor and managing director's office cited Section 6-1103(b), RCH as exempting positions in the office of the mayor and managing director from civil service and removing the requirement of certification by the Department of Human Resources. However, Section 6-1103(b), RCH exempts from civil service "positions in the office of the mayor, but such positions shall be included in the position classification plan..." Section 6-1103, RCH, also states that "the director of human resources shall determine the applicability of this section of the charter to specific employment or services in the executive branch."

According to a Department of Human Resources administrator, there was no written instruction, procedure, agreement, or corporation counsel opinion stating the managing director's office could bypass human resources' certification of personal services contracts. In fact, a corporation counsel opinion emphasized that when a contract service is required, the first review the city must perform is to determine whether the position must be filled by a civil servant, or can be filled by a civil servant. The managing director's office bypassed this important review. Rather, the department had an *understanding* that the managing director's request and approval of personal services contracts did not require the director of human resources' certification.

Between FY2002-03 and FY2004-05, we found that nine personal services contract requests from the managing director's office circumvented human resources' review and certification. In one

instance, a personal services contractor was initially hired for a Planner I position in the managing director's office for a period of seven months. As a Planner I, the contractor earned \$2,350 per month on a full-time basis, or 40 hours per week. After seven months, the contract was renewed for an additional 12 months, but the contractor was promoted to a Planner VI. Under this contract, the contractor was paid \$30.03 per hour for 19 hours of work per week, amounting to \$2,471.65 per month – meaning greater overall pay but fewer hours worked. The promotion occurred without the review or certification of the Department of Human Resources.

As a result, the Department of Human Resources was not able to exercise its authority to certify contract provisions including appropriate compensation, determination of Fair Labor Standards Act applicability, suitability and qualifications of contractors, or compliance with charter provisions. In one instance, human resources staff expressed concerns over the inability to exercise authority over contracts requested by the managing director's office. An official with the Department of Human Resources, however, advised us that the current administration's contracts have been certified by the department in accordance with Section 6-1103(g), RCH.

Unauthorized staff approved personal services contract requests

Another questionable practice we identified were three instances where the managing director allowed his secretary to approve personal services contracts on his behalf. In September 2003, February 2004, and September 2004, the managing director's secretary approved personal services contracts on behalf of the managing director. All three contracts were used to fill personal services contract positions in the managing director's office, and two were filled by former council members.

A Department of Human Resources official explained that authority to approve a personal services contract must be delegated in writing. In the case of the managing director's secretary approving personal services contracts, there was no formal delegation of such authority on file, but the Department of Human Resources *understood* that the secretary's signature *for the managing director* was acceptable. The former managing director's practice to allow his secretary to approve personal services contracts on his behalf, and the Department of Human Resources' acceptance of this practice, expresses disdain for the charter's precepts for the city's personal services contracts approval process.

Some contract requests received same-day approvals

In addition to circumventing Department of Human Resources review and using unauthorized personnel to approve personal services contracts, some contracts requested by the mayor and managing director's office received same-day approvals. While reviewing personal services contracts issued by the mayor and managing director's office between FY2002-03 and FY2004-05, we identified five instances where contract requests and approvals were made by the managing director's office on the same day.

Since personal services contracts requested by the managing director were not certified by the Department of Human Resources, the office essentially requested and approved its own contracts as evidenced by the same-day requests and approvals. Although the Department of Budget and Fiscal Services also approved these contracts, its role is limited to certifying the availability of funds and authorizing expenditures for the contract. Tighter controls should be implemented to separate a requesting agency, including the managing director's office, from approving its own personal services contracts.

Other agencies' contract practices are questionable

Questionable practices regarding personal services contracts were not limited to the managing director's office. We found that some contractors were paid out of one agency's budget, but performed duties for another agency. We also found the city's accounting division uses personal services contracts to make adjustments (back payments) to former employees.

Some contractors are paid by one agency, but perform duties for another

Tracking personal services contract costs is further complicated by the city's practice of allowing departments or agencies to pay for personal services contracts of contractors who work for other city agencies. In our survey of 23 executive departments and agencies, five reported they have such arrangements involving part-time and full-time positions.

As noted previously in this report, the city's policy is to have all information technology positions administered by the Department of Information Technology. This has resulted in at least five instances where a personal services contractor was paid by one department or agency, but was hired and supervised by the information technology department. An administrator from another agency commented his

agency was not able to effectively monitor a particular contract because some contractors were working for a different agency. Although we did not identify a situation among these five personal services contracts where an agency was not satisfied with the work of a contractor paid by another agency, the possibility exists that the management oversight and accountability of the contracted employee could come into question.

In another example, a former city appointee who held numerous executive-level positions in city government was hired to fill a personal services contract position with the Department of Environmental Services. The contract position's duties stated that in addition to providing top level staff and executive assistance to the department's director and deputy director, the contractor would also assist the managing director and mayor on environmental programs.

The practice of allowing departments and agencies to pay for contract positions that split their work time and responsibilities elsewhere serves to blur the lines of contract responsibility and accountability.

Accounting division uses personal services contracts to make back payments to former city employees

During our compliance testing on a random sample of personal services contracts approved between July 1, 2002 and June 30, 2005, we found two instances where individuals who separated from city employment were temporarily re-hired on a "personal services contract" for one day. An employee at the Department of Human Resources advised us that the department sometimes brings a former employee back into service under a personal services contract status for purposes of making payroll-type transactions. Human resources' computer system only allows payroll adjustments for active employees, which has necessitated this *ad hoc* contract action. These individuals do not earn any additional pay or benefit as a result of their contract "status."

In one example, a former city employee was brought back into city service for one day so that the city could return a bonus supplement earned by the former employee totaling \$98.44. A budget and fiscal services' accounting division employee we spoke with noted that this retroactive bonus payment was provided to all bargaining unit 1 and 2 employees. Several hundred individuals who were eligible for this bonus had left city employment, which required the accounting division to bring them back to active status in order to make this payment.

The accounting division employee could not verify or produce written policies or procedures for using personal services contracts to bring former city workers into the payroll system to make back payments. In practice, former employees are brought back to active status via contract at a rate of \$1. The person does not actually receive the \$1, but a salary needs to be identified in the computer system in order to bring them to active status. Only the retroactive amount owed is paid. The accounting division does not fill out a request for personal services contract form or receive any approvals from the departments of human resources or budget and fiscal services for these *ad hoc* adjustments.

The reason for using personal services contracts to make retroactive payments to former city employees is because, until the middle of 2004, the city could pay former employees for up to one year after separating from the city. Since April 2005, however, the city converted to a different payroll system that only allows payment to those who have separated from the city within the previous three months. As a consequence, accounting began using *ad hoc* personal services contracts to make adjustments for employees who separated from the city.

While we did not find any evidence that this transaction resulted in a former employee receiving any compensation beyond what was owed, we find that the questionable use of personal services contracts in the manner described may over-represent the number of contract employees in the city. The accounting division employee confirmed that although individuals may not receive a salary from the city, if they are not taken off active status, they could show up on a personnel report as an active employee which, in this case, would over-report the personal services contract count. We identified two former city employees brought back to active status through personal services contracts and reviewed the quarterly reports issued by human resources to determine if their names were erroneously included on the list. We found that their names were not included in the quarterly reports.

Some contractors have received high compensation

Personal services contracts can be lucrative. Between FY2002-03 and FY2004-05, we found 27 individuals whose monthly salaries exceeded \$5,000. The highest of these, paid to two contractors, was \$7,782, or \$93,384 annually. Part-time work, too, can offer generous compensation. We identified ten individuals hired for part-time personal services contract positions during our review period who are paid more than \$30 per hour. The highest hourly wage paid by the executive branch during our review period was \$47 per hour. At 19 hours per

week, this contractor earned \$3,572 a month. City personnel rules grant requesting departments the discretion to set salaries within limits, but may exceed those limits if justified. We found that some contract salaries exceeded salaries of regular employees in similar positions and that the former administration set particularly high salaries for liquor inspectors.

Requesting agencies have the discretion to set salaries within limits

According to the Department of Human Resources, personal services contract salaries are based on a range allowable under the position's salary range (SR) rating. Each department has latitude in assigning a salary based on this range and must indicate on its request for personal services contracts whether the proposed salary is reasonable or within range.

Department of Human Resources' rules state that requesting departments may establish a salary above the minimum for the job class by justifying the nature of the work, expertise of the worker, need of the organization, and impact on other workers with the same job class performing similar services. Additionally, certain contracts may receive higher pay if they are excluded from bargaining units because they are of short duration, top-level management or administrative positions, confidential matter employees, mayor's office or city council employees, or for other justified reasons. If a position is excluded from a bargaining unit, then the proposed salary is not subject to established salary range limits for civil service positions. The Department of Human Resources is responsible for determining whether compensation is reasonable or within range.

In a statistically valid random sample of 27 individuals who filled personal services contract positions in the executive branch between July 1, 2002 and June 30, 2005, we found that all requesting agencies reported their personal services contract salary requests were reasonable or within the applicable salary range. Although proposed salaries were within range, some agency officials reported, however, that contract salaries may meet or exceed those of current employees doing the same or similar job.

Some contract salaries have exceeded salaries of regular employees in a similar position

An administrator with the Department of Customer Services advised us that one of the drawbacks in using personal services contracts is the animosity between existing civil service staff and contract hires. In some

cases, contract hires may receive the same pay and benefits as someone who has been in a permanent civil service position for several years. An official with the Department of Design and Construction also reported that in some instances, personal services contracts pay more than the same position filled by a permanent employee because the department has the discretion to set salaries and often pays the highest salary allowable to attract candidates. As a result, permanent employees become disgruntled. The scope of this audit was limited to personal services contract employees so we did not review salaries of permanent, civil service employees. Thus, we did not examine or verify the extent to which this practice occurs.

Former administration set high salaries for liquor inspectors

An administrator with the liquor commission reported that its personal services contract positions for liquor inspectors pay better than the permanent investigator positions. Unlike departmental practices noted previously where personal services contract compensation requests may exceed the salaries of current employees, the decision to set higher salaries was made by the former administration. The previous managing director formed a task force to address issues surrounding liquor inspectors who were indicted for committing illegal acts while employed by the city. This task force decided to pay contract investigators at the highest rate, even though it exceeded salaries of existing investigators, to make the position attractive to retired police officers whom it wished to fill the positions. We note that commission staff who participated in the managing director's task force had no formalized documents such as memoranda or meeting minutes that addressed the higher pay issue.

Personal services contracts are perceived as rewards for political insiders

The perception of misuse in the award of personal services contracts has been a long-standing concern. In 1996, the Office of Council Services issued a report entitled, *Procurement of Personal Services in the City and County of Honolulu*. The report stated that while a particular administrative directive contained some oversight requirements, it lacked sufficient safeguards against favoritism and misuse of employer-employee personal services contracts. In 1997, the city council approved Ordinance 97-54 and declared that the purpose of the ordinance was to ensure executive branch personal services contracts are awarded without favoritism and to qualified persons. In this audit, we found continued questionable personal services contract practices that favor those with political ties.

Former elected officials were found on the city payroll

Our survey of 23 executive departments and agencies revealed that six departments and agencies filled a personal services contract with a former elected city official, department director, deputy, or other appointee.

For instance, the Department of Environmental Services hired two former city council members on personal services contracts during our review period. One former lawmaker filled an Executive Assistant I position for a two-month, 28-day period beginning March 30, 2004 and ending June 26, 2004, at salary of \$5,833 per month. On June 29, 2004, the former council member filled another personal services contract that ended on September 25, 2004, but the monthly salary was increased to \$6,944. This salary is the fourth highest paid contract position between July 1, 2002 and June 30, 2005 and nearly double the \$3,613 salary the person earned as a council member. This former council member also served as an executive assistant in the managing director's office for four contract periods starting January 2, 2003 and ending March 26, 2004, earning a monthly salary of \$5,833, before the position was transferred to the Department of Environmental Services. We also note that this former city lawmaker began serving in a personal services contract position only three days after retiring from the city, having served on the city council for 12 years.

Another former council member was also hired on contract with the Department of Environmental Services. At the time of retirement, this contractor was the chair of the city council and earning \$4,038 per month. The department hired this former lawmaker as a Community Relations Specialist I for the period February 15, 2005 to June 30, 2005 at a monthly salary of \$3,030, which is \$1,008 less than the salary previously earned. Although the former council chair earned less money as a contractor, we found that this person received questionable work benefits. At the time of our fieldwork, the contractor had neither a desk or phone number at the department's offices in Kapolei Hale, and reportedly had a desk in Honolulu Hale but no assigned city phone number. When the department needs to contact the contractor, department staff call the contractor at home. In addition to former elected city officials, we also found a former state senator filling a personal services contract position with the Department of Community Services.

Select individuals are awarded lucrative contract positions, some with questionable credentials

In addition to former elected officials, we also found former city appointees and others with political ties who received personal services contracts. In one example, the former director of the city's Department of Parks and Recreation filled an acting administrator position for the O'ahu Civil Defense Agency for the period February 6, 2005 to June 30, 2005. While this contractor has experience in managing a city agency, we find the appointee's education and work experience is limited to the field of business and agriculture. According to Section 6-103, RCH, the civil defense administrator is to develop, prepare, and under disaster or emergency situations, assist in the implementation of civil defense plans and programs to protect and promote the public's health, safety and welfare. Given this agency's important role in public health and safety, the city should have selected someone with an emergency preparedness background to fill this position, even if on a temporary basis.

We also found some personal services contracts awarded to individuals who have political connections, but lack the ability to fulfill job requirements. For instance, one personal services contract was awarded by the customer services department to the spouse of a union executive. This contractor filled a senior clerk position in one of the city's satellite city halls starting June 13, 2000 at a monthly salary of \$1,740 and serving consecutive one year terms until resigning on July 16, 2004 at salary of \$1,901 per month. The justification for the contract was to "produce immediate results in meeting ever increasing workload demands."

We found, however, that the contractor was granted nearly 269.5 days of leave without pay during four years in the contract position. Working an average of five days per week, 20 days per month, and 240 days per year, this contractor took over one year of unpaid leave in addition to whatever vacation and sick days that may have accrued and been taken. It is difficult to understand how this contractor could "produce immediate results in meeting ever increasing workload demands" at the satellite city hall while being granted an inordinate amount of leave. Despite the contractor's poor attendance, this individual received five consecutive contract renewals and two salary increases during the four year period. When we questioned a department administrator about this contract, the administrator stated that the prior mayor asked the department to hire this particular person.

We also identified a questionable personal services contract maintained by the former managing director's office. In this instance, the contractor maintained personal services contracts from November 1, 2001 to January 1, 2005 and was paid a total of \$70,051. We did not find any signed contracts among the available official personnel documents for this contractor, but we were able to review the contract requests.

The contractor filled an initial personal services contract from November 1, 2001 to June 30, 2002 as a Planner I. The list of duties and responsibilities for the contract position, which included planning, organizing and coordinating events including Kuhio Beach torch lighting and hula shows, Waikîkî Brunch on the Beach, and building dedications and groundbreakings, are inconsistent with the city's Planner I specification.

The second contract request, for the period July 1, 2002 to June 30, 2003, elevated the contractor five levels, from a Planner I to a Planner VI. The class specifications for a Planner VI position call for a combination of education and experience substantially equivalent to graduation from an accredited college or university with specialization in planning, architecture, engineering, economics, or four years of professional work experience in city planning or related planning activities. At the time of our fieldwork, we could not locate any documentation indicating an academic record or professional work experience consistent with either a Planner I or Planner VI qualifications.

Listed on this individual's personal services contract as a Planner VI was an allocation of duties, which specified that 50 percent of the contractor's duties and responsibilities were to procure performers and musicians for city special events and performances; 20 percent for stage management services; five percent for attending event planning meetings, and the remainder was comprised of publicity, processing invoices, and procuring equipment and services. We discovered that this contractor has been involved with the local music industry as an agent and manager for a prominent local musical group.

We brought this contract to the attention of a Department of Human Resources administrator for clarification. The administrator stated that it is highly unusual for an employee to be hired at the I-level and be elevated five levels to a VI-level position within a one-year period. We note that this contract was not reviewed by the Department of Human Resources because the managing director's office claimed that its

personal services contract are exempt from human resources review, a practice which was discussed earlier in this report.

We found that this contractor's planning responsibilities fell short of a professional city Planner VI's responsibilities. Such personnel practices designating someone as a professional planner without proof of appropriate academic training, as well as promotion from a Planner I to a Planner VI after seven months on the job, makes a mockery of the established civil service classification system.

We emphasize that in the examples noted above, we did not evaluate the contractors' work product or contribution to the city. We merely question the circumstances that allowed these individuals to fill a personal services contract position. We further emphasize that we are not necessarily opposed to the city's practice of hiring former elected officials or appointees, or others with political ties or the appearance of political ties. In some cases, these individuals may have the most appropriate background, skills, and experience to fill employment needs. However, due to the inadequate reporting currently provided by the Department of Human Resources, the decision by the Department of Budget and Fiscal Services to not report on personal services contracts as required by city ordinance, and the former managing director's failure to seek Department of Human Resources review of contract requests, the council and public are left with little assurance that such individuals are, in fact, qualified to fill these city positions.

Because the mere appearance of impropriety can cast a cloud of suspicion on the personal services contract process, the executive branch would be better served by providing as much transparency as possible to assure the council and public that the best qualified candidates are indeed filling needed positions.

Nearly all personal services contract positions are unadvertised

Between July 1, 2002 and June 30, 2005, the city hired between 1,800 and 1,900 individuals each year to fill personal services contract positions at an annual cost of between \$9 and \$11 million. As noted previously in this report, some of these contract positions offer high salaries and benefits. However, recruitment for these positions is usually done from within city government; the general public rarely has the opportunity to apply for these positions.

Our survey of 23 executive departments and agencies asked respondents to identify the most common methods used to recruit and

identify candidates to fill personal services contract positions. The most common recruitment method, identified by all 23 departments and agencies, was “personal reference.” Several departments also reported consulting with human resources’ list of qualified applicants. Only five agencies reported using public notices or advertisements to recruit candidates. For example, the Department of Community Services hires between 60 and 65 individuals each year to fill personal services contracts, but does not advertise any of those positions. Instead, it relies on personal references and direct experience of candidates who may have worked with the department in previous years.

A Department of Human Resources official explained that each department has the discretion to hire its own contractors; there is no requirement that requesting departments advertise their positions because personal services contracts are exempt from competitive civil service recruitment standards. Additionally, human resources does not advertise positions on behalf of the requesting agencies and departments. However, human resources will assist departments in preparing advertisements for publication should they choose to advertise.

This issue of the lack of public notice for personal services contracts was raised in a 1996 report issued by the Office of Council Services. It appears to us that the council attempted to address this concern by establishing a public notice requirement. Section 2-30.3, ROH states:

“The chief budget officer shall post or cause to be posted public notice of the request to enter into an employee-employer contract not less than seven days before final approval of the request. The notice shall be posted in an area accessible to the public.”

As discussed earlier in this report, however, the Department of Budget and Fiscal Services has not complied with this ordinance requirement. Thus, there continues to be no public notice of personal services contract employment opportunities.

Conclusion

Personal services contracts can be a useful personnel tool to recruit and employ short-term contract employees to fill needed positions in city government, without having to follow rigorous recruitment standards and lengthy processes to establish positions in civil service. Lawmakers were mindful of this exemption and made their intentions clear by establishing

parameters for the use of personal services contracts in the city charter, and initiating reporting requirements through a city ordinance to provide transparency and accountability in the use of the personal services contract exemptions. We found, however, that the personal services contract practices of the city's executive branch stray from both the charter's intent and ordinance requirements.

We found that executive branch agencies have maintained long-term contracts for reasons that include the prior administration preventing departments and agencies from filling vacant positions, use of retirees, desire to pay for certain salaries with capital funds, contract employment while agencies considered privatization of city functions, and the city's policy on centralizing information technology-related positions. In addition to charter violations, the Department of Budget and Fiscal Services has neglected reporting requirements on personal services contracts as established by city ordinance, citing a corporation counsel opinion that did not mention reporting requirements.

In addition to non-compliance with city charter and ordinance provisions, we found that the personal services contract process lacks accountability. The quarterly reports issued by the Department of Human Resources are inadequate, lack meaningful information and are prone to errors that go uncorrected. We also found that executive branch departments and agencies do not adequately monitor personal services contracts or evaluate contract employees' performance. Also, departments and agencies do not accurately track or report personal services contract costs. The council, we found, may only receive advisory information on unbudgeted personal services contracts.

Although executive departments and agencies generally complied with personal service contract request procedures, we also found questionable contract practices. For instance, the mayor and managing director's personal services contract practices of bypassing human resources scrutiny, allowing unauthorized staff to approve contract requests, and performing same-day contract approvals are suspect. In other instances, we found questionable contract practices among executive departments and agencies including some contractors who are paid by one agency, but perform duties for another agency; and the accounting division's use of personal services contracts to make back payments to former city employees. We also found that some contractors have received high compensation and contract recipients include former elected and appointed city officials and other politically-

connected individuals. Finally, we found that nearly all personal services contract positions are unadvertised.

Reporting on the personal services contract process should be improved to provide better accountability of city funds and personnel management. The Department of Human Resources should ensure the accuracy and completeness of their reporting on personal services contracts and budget and fiscal services should start reporting on personal services contract information as directed by city ordinance. Current reports are inadequate, lack meaningful information, and do not provide the council or public with assurance that the city uses personal services contracts effectively or tax dollars are spent prudently. Lastly, executive branch departments and agencies should review their personal services contract practices and ensure they comply with city charter and ordinance provisions.

Recommendations

1. The Department of Human Resources should:
 - a. ensure executive departments and agencies use personal services contracts judiciously in accordance with the directives and intent of the Revised Charter of Honolulu, Revised Ordinances of Honolulu, and department policies and procedures;
 - b. ensure requesting agencies provide complete and accurate information before certifying all requests for employer-employee contracts;
 - c. ensure its quarterly reports of personal services contracts provide complete and accurate information, and that errors are corrected;
 - d. include supplemental analysis of personal services contracts information in its quarterly reports to the council and public;
 - e. report additional information with its quarterly reports, including total cost of contracts, number of contracts previously awarded to a contractor, and number of times a contract position has been renewed;
 - f. assert its authority to review and approve personal services contracts;

- g. require executive departments and agencies to report the minimum and maximum salaries of existing employees serving in the same or similar capacity to the position being requested as a personal services contract, at the time of the contract request;
 - h. require executive departments and agencies to submit official academic and professional credentials that ensure contractors meet class specifications for their appointments, especially when awarding contracts that exceed established compensation limits or positions that have no established compensation limits;
 - i. require executive departments and agencies to conduct formal, written evaluations of employees hired on personal services contracts whenever practicable; and
 - j. direct executive departments and agencies to continue requesting to fill long-term personal services contracts permanently or through limited-term civil service appointments, as appropriate.
2. The Department of Budget and Fiscal Services should:
- a. report information regarding all employer-employee contracts within 30 days following the end of each fiscal year as required in Section 2-30.4, ROH;
 - b. report additional annual information including the total cost of personal services contracts, salaries and fringe benefits, and funding sources;
 - c. post public notice of requests to enter into personal services contracts at least seven days before final approval of the request as required by Section 2-30.3, ROH; and
 - d. cease using personal services contract status to make retroactive payments to former city employees and develop an alternative method.

Response of Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Human Resources on January 11, 2006. A copy of the transmittal letter is included as Attachment 1. At our exit conference, we informed the director of human resources that the department would have ten workdays to prepare its written response to the draft report. On January 25, 2006, the director requested an extension to submit its response. The city auditor granted the department an extension to February 2, 2006 to submit its response. The department submitted a written response to the draft report on February 1, 2006, which is included as Attachment 2.

In its response, the Department of Human Resources expressed general agreement with the audit findings and recommendations. The department further commented that it welcomed our report, which it plans to use to strengthen its role in ensuring accountability in the city. In addition to its general comments, the department responded with several clarifying statements on topics discussed in our report. We offer the following comments to the department's response.

First, the department believed it important to distinguish the various types of personal services contracts authorized by city charter. The department notes that while contracts issued under Section 6-1103(g), Revised Charter of Honolulu (RCH), is the primary focus of our report, it comprises a relatively small percentage of the total number of personal services contracts approved each year. We do not disagree with the department's comments. However, we maintain that one of the shortcomings with personal services contracts is the lack of comprehensive information made available by city departments. In our report, we provide data on all personal services contracts, while focusing our evaluation on contracts issued under Section 6-1103 (g), RCH. We amended our report by referencing personal services contracts issued under Section 6-1103(e) to reflect the broad range of personal services contracts reviewed.

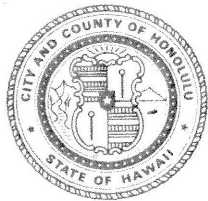
Second, the department expressed concern with wording that implied non-compliance with reporting requirements. We agree that one exhibit heading could be misinterpreted and adjusted the text accordingly.

Third, the department provided justification for its practice of hiring retirees through personal services contracts. The department cited the benefits of hiring retirees and made particularly favorable comments about the use of retired police officers to fill positions within the police department. Our report acknowledges the benefits that retirees provide to the city by returning to active service. The benefits and cost savings of utilizing retirees notwithstanding, we affirm our belief that the charter does not allow for such long-term contracts. Moreover, our report notes that the current administration, too, has expressed concerns about long-term personal services contracts and is in discussion with the police department to find alternatives to hiring retired police officers, long-term, to fill needed positions, and that a police department official we spoke with also acknowledged that the use of retirees is problematic and that the department is seeking a solution with the current administration.

Fourth, the department expressed concerns over our recommendation that executive departments and agencies conduct formal, written performance evaluations of its personal services contracts. Specifically, the department questioned the benefit of evaluating all of its contractors, particularly those that are on-call, and its desire to use contract termination as the tool to respond to contractor non-performance. We reiterate that adequate monitoring and evaluation are essential contracting best practices and that personal services contracts are in fact that—contracts. While we disagree with the department’s contention that having the option to terminate or not renew a contract is an adequate evaluation mechanism, we acknowledge the department’s concerns that conducting formal evaluations for all personal services contract categories may not be practicable. We amended our report text and recommendation to address the department’s concerns regarding the practicability of evaluating all of its personal services contractors.

Fifth, the department offered additional comments about the limitations of its current computer system and its plans to address problems identified in our report with a new computer system. We are encouraged that the department recognizes the system’s current limitations and is seeking ways to improve data resource management. Regarding the issue of additional staff, we believe that is an internal issue for the department to resolve.

Lastly, we made other non-substantive amendments for purposes of clarity and style.



OFFICE OF THE CITY AUDITOR
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LESLIE I. TANAKA, CPA
CITY AUDITOR

January 11, 2006

COPY

Mr. Kenneth Nakamatsu, Director
Department of Human Resources
650 South King Street, 10th Floor
Honolulu, Hawaii 96813

Dear Mr. Nakamatsu:

Enclosed for your review are two copies (numbers 12 and 13) of our confidential draft audit report, *Audit of the City's Personal Services Contract Practices*. If you choose to submit a written response to our draft report, your comments will generally be included in the final report. However, we ask that you submit your response to us no later than 12:00 noon on Thursday, January 26, 2006.

For your information, the mayor, managing director, and each councilmember have also been provided copies of this **confidential** draft report.

Finally, since this report is still in draft form and changes may be made to it, access to this draft report should be restricted to those assisting you in preparing your response. Public release of the final report will be made by my office after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script that reads "Leslie I. Tanaka".

Leslie I. Tanaka, CPA
City Auditor

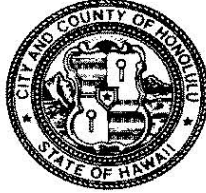
Enclosures

DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



KENNETH Y. NAKAMATSU
DIRECTOR

February 1, 2006

06 FEB -1 P2:03

Mr. Leslie I. Tanaka, CPA
City Auditor
Office of the City Auditor
City and County of Honolulu
1000 Uluohia Street, Suite 120
Kapolei, Hawaii 96707

C & C OF HONOLULU
CITY AUDITOR

Dear Mr. Tanaka:

Thank you for the opportunity to review a draft of your report on issues regarding personal services contracts. Thank you also for providing us with additional time to respond. Having been on the job for less than a year, I welcome this report and the information and suggestions it provides which may enable my Department to strengthen its role in ensuring accountability in the City.

I note that a number of concerns expressed dealt with the practices of the former Administration. I will not respond to those concerns here partly because the focus has changed, and more importantly, because I am satisfied (and your report bears out) that my staff acted within the law under the circumstances that existed at the time to assist departments in ensuring that adequate personnel were available to perform needed public services.

In responding to the report at hand, I reiterate that I believe this to be a good and useful report. However, I believe there are a few points where clarification may enhance understanding. These points are listed below:

- Distinctions Between Contracts—We believe it is important to distinguish the various types of personal services contracts authorized by the charter.
 - The focus of the report appears to be the “g-contracts” (referred to because they are authorized by Section 6-1103(g) of the charter). The language in this section specifically notes that the service is of a temporary nature.
 - E-contracts also use the term “temporary nature.” However, these contracts are specifically for students (such as those who work for the Parks Department in the Summer Programs).
 - F-contracts are not used as often as the other types of contracts and require that the service is special or unique.
 - H-contracts are used frequently for on-call employees.

The reason we believe it is important to make the distinction between contracts is that, as it is with this report, when the focus is on the g-contract employees, these contracts actually comprise a

smaller percentage of the total number of contracts than may be apparent. For example, in exhibit 1.4, Distribution of City Employees in the Executive Branch FY2004-05, it appears that contracts total approximately 20% of the total workforce. However, if it is understood that most of these contracts are for individuals who are on-call (such as Enterprise Services' ushers and for Human Resources, examination monitors) one can well understand that a large pool of contract employees is needed as individuals will not always be available on the days and times needed. To illustrate this, as of January 25, 2006, the City has 1858 personal services contracts, but only 228 are g-contracts. The vast majority, 1627, are for the on-call, intermittent type workers (and rounding out the total, three are for student hires).

- Ordinance 97-54—We note that attention has been focused on reports required under Ordinance 97-54, as compared to the reports my Department has been providing under Resolution 97-319, CD1. We believe it is unfortunate that exhibit 2.1 gives an impression that may not be reflective of the situation. In the exhibit, reporting requirements are compared, but rather than indicating whether requirements are comparable or not, the third column of the report uses the terms full, partial and non-compliant. This gives the impression of non-compliance while the text of the report notes my Department's compliance with the Resolution. As to Budget and Fiscal Services' decision not to provide reports, we believe their actions were based on a good faith reliance on Corporation Counsel direction at that time.
- Retirees on Contract—We find this report highlights the hiring of retirees, in particular the hiring of retired police officers. We welcome this as an opportunity to engage in new dialog regarding the re-hiring of retirees. This practice has often been maligned in the past. However, as an increasing number of baby boomers retire and competition for new employees increases most, if not all, employers will need to find ways to tap the vast resources of retired workers. The situation at HPD is an excellent example of using these retired workers in a way that benefits the employer. The jobs being performed require unique knowledge and skills and while the department (and very likely the retirees who have agreed to continue serving) would rather have the work performed by active police officers, the reality is that filling police vacancies is challenging here and nationwide. Accordingly, rather than taking officers off the beat to perform the duties, the department has recruited willing retirees to fill the need. We believe this arrangement should be highlighted for praise rather than cited as an area of concern.
- Performance Evaluations—We are concerned about your suggestion that contract employees be given performance evaluations. We believe that for most contracts such evaluations are neither feasible, nor necessary. For example, in my own Department we have a number of examination monitors. These individuals help on an on-call basis when tests are administered for civil service positions. Depending on the number and types of examinations needed during a year, an individual examination monitor may work on only one or two Saturdays in the year. It does not appear to us to be a judicious use of staff time to evaluate each monitor. Further, we do not believe there is an additional benefit—if one of the monitors does not perform well, that person will not be called to work on another test. In other cases, where individuals work more often and more regularly, we find the use of performance evaluations may provide an impression that will prove to be problematic. Performance evaluations are provided to civil service employees, in part, to warn employees of substandard performance. Under the law, we have some obligation to civil service employees to provide them with an opportunity to meet standards before taking action to dismiss them. No such obligation is required for contract employees and their contracts may be ended for non-performance. This is a right we would want to preserve and we would not want the issue clouded by the use of performance evaluations. We believe that this is an area where, on first

glance may seem like a good idea, but that upon further review may have more drawbacks than advantages.

- **Computer Systems Limitations**—We understand the confusion surrounding our reports and also the use of personal services contracts as a tool to make retroactive payments to employees who have left City services. We share your frustration and we consider it a priority that both these concerns be addressed with the new computer system. We understand that our reports, although accurate at the point in time they are run and compliant with Resolution 97-319, could be modified to provide additional information. However, until the new computer system is in place, manual compilation and checking would be required. This will require additional staffing. We are also in agreement with you that the use of personal services contracts as a tool for making retroactive payments is not the preferred method of handling these adjustments that occur when collective bargaining agreements are finalized long after they have expired and they provide for adjustments going back one or even two years. Given current staffing and technology, we believe that we are operating in the most efficient mode available to us at this time. The alternatives would prove to be very time consuming and may delay the required reports or payments to affected employees.

Your report concludes with a number of ideas for improving our reports and process. My intent is to take this a step further. My staff and I will work with our partners in the departments, Budget and Fiscal Services, and the City Council to refine the information flow so that, meaningful and focused information is provided. In addition, we will seek ways to best ensure compliance. I recognize, however, that implementing these initiatives will require additional staffing to monitor the information provided and to monitor compliance. (For example, additional staff will be needed if we are to assist departments with their obligation under section 4-104 of the charter to investigate for the purpose of ensuring that all persons appointed are “fully qualified by experience and ability to perform the duties of the person’s office...” by our review of each contract employee’s academic and professional credentials.) Pending these additional resources, my staff and I will prioritize the initiatives and implement those changes that can feasibly be done using our available staff and systems. This is in keeping with our overall commitment to accountability.

Thank you again for providing me with this opportunity to comment on the report. If you have any questions on my response, please do not hesitate to contact me.

Sincerely,



KEN Y. NAKAMATSU
Director of Human Resources