

R424
19852
part 6

PUBLIC HEARING

before

ASSEMBLY LAW, PUBLIC SAFETY & DEFENSE COMMITTEE

on

(DMV Computer System)

October 28, 1985
Room 400
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph L. Bocchini, Jr., Chairman
Assemblyman Frank M. Pelly
Assemblyman William P. Schuber
Assemblyman Thomas P. Foy,
(Appointed to temporarily
serve on Committee by
Assembly Speaker Alan J. Karcher)

ALSO PRESENT:

Aggie Szilagyi
Office of Legislative Services
Aide, Assembly Law, Public Safety
and Defense Committee

New Jersey State Library

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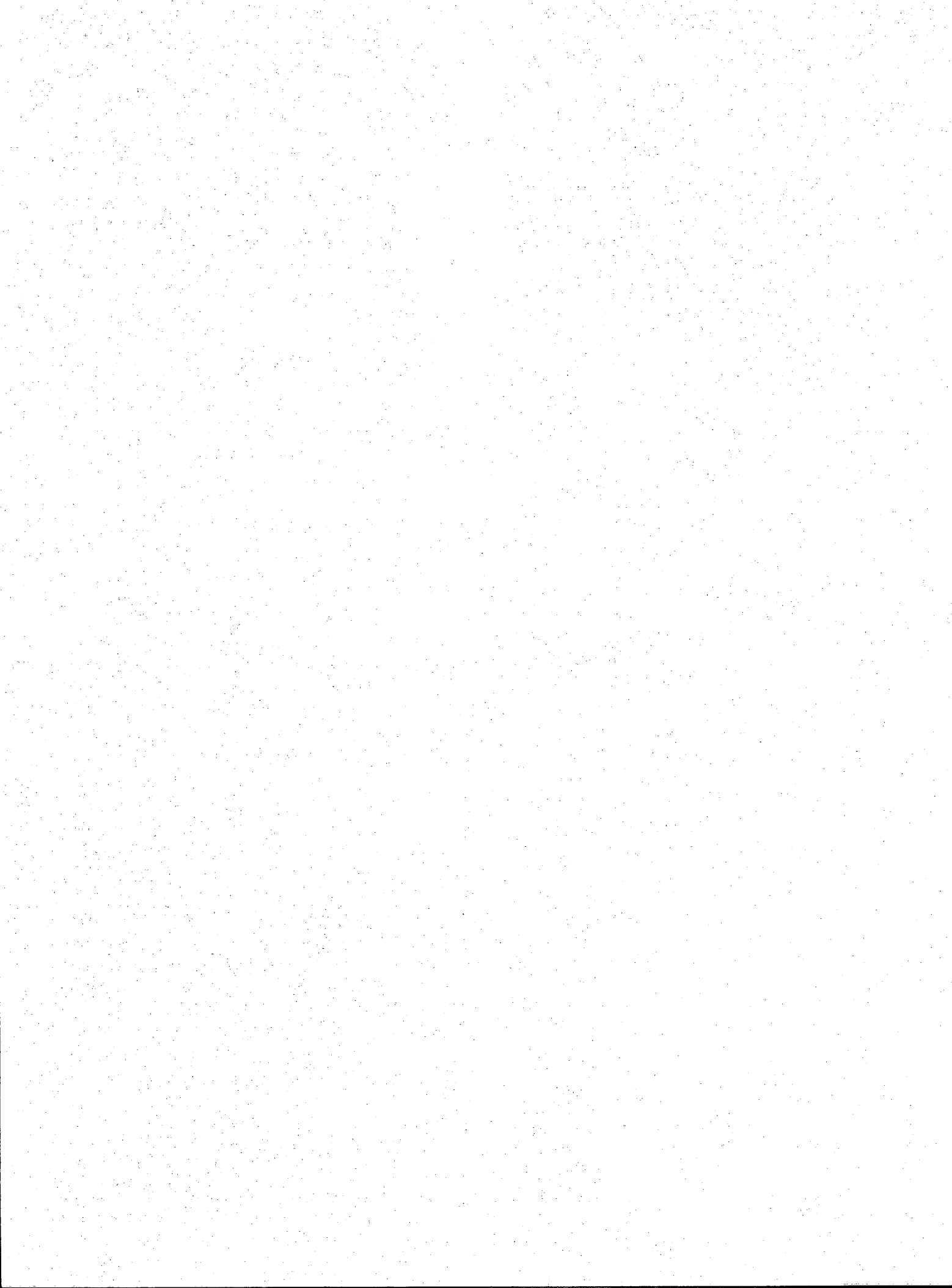
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ASSEMBLYMAN JOSEPH L. BOCCHINI, JR. (Chairman): May we get started, please?

Good morning, ladies and gentlemen. This is a hearing of the Assembly Law, Public Safety and Defense Committee. It is the sixth public hearing to be held by the Committee for the purpose of investigating problems with the new computer system within the Division of Motor Vehicles.

During this hearing, the Committee will focus on bid waiver procedures for State contracts.

Our first witness this morning will be--

ASSEMBLYMAN FOY: Before we begin, Mr. Chairman, I have a housekeeping matter I would like to take care of.

ASSEMBLYMAN BOCCHINI: I have one also.

ASSEMBLYMAN FOY: I've spoken to my Republican colleagues, and for once--

ASSEMBLYMAN BOCCHINI: Excuse me. This (holding up letter from Assembly Speaker Alan J. Karcher) will serve to confirm that you have been reappointed to the Committee.

ASSEMBLYMAN SCHUBER: I don't think that was what he had in mind, Mr. Chairman. (laughter)

ASSEMBLYMAN FOY: I've consulted with my Republican colleagues, and for once I find myself in complete agreement with them on an issue of importance to the Committee. Specifically, after one of the last hearings, the Chair kissed a man, and there is concern regarding the potential for the spread of disease. (laughter) I am going to join with my Republican colleagues and move that the Chair refrain from planting any kisses on any of the witnesses today. I think it would be a service to our State Treasurer and former--

STATE TREASURER MICHAEL M. HORN: (from audience): I second the motion. (laughter)

ASSEMBLYMAN FOY: Can I get a second on that, Pat?

ASSEMBLYMAN SCHUBER: We'll second that. I know Mike has been asking us about it. (laughter)

ASSEMBLYMAN FOY: I concur with that.

ASSEMBLYMAN BOCCHINI: I don't think I will ever live that one down. The tough part was when my wife said to me, "I never knew it." (laughter)

Notwithstanding that, our first witness this morning is Earl Josephson. Mr. Josephson, if you'll press the button in front of you, fine. We'll be able to pick up your voice.

Mr. Josephson, previously all people testifying in front of the Committee in relation to this matter did so under oath. Do you have any problem with that? If you would, please raise your right hand. Do you understand that the testimony you are giving today is being recorded, will be transcribed, and may be used in other proceedings?

EARL JOSEPHSON: I do.

ASSEMBLYMAN BOCCHINI: Do you understand that the testimony you give today will be voluntary, and do you swear that the testimony you are about to give will be true and correct?

MR. JOSEPHSON: I do.

ASSEMBLYMAN BOCCHINI: All right. Thank you. Mr. Josephson, what is your present position in State government?

MR. JOSEPHSON: Public Information Officer for the Administrative Office of the Courts.

ASSEMBLYMAN BOCCHINI: How long have you been in that position?

MR. JOSEPHSON: Since June 24th.

ASSEMBLYMAN BOCCHINI: And, prior to your present position with the Administrative Office of the Courts, what position did you hold in State government?

MR. JOSEPHSON: Well, there were several. The last position was in a staff capacity in the Division of Purchase and Property from May of 1983 to August of 1984. Prior to that, Acting Director of the Division from July 1975 until late May, 1983. Prior to that, a year and a half in a staff capacity in the Treasurer's office.

ASSEMBLYMAN BOCCHINI: In relation to your position in the Division of Purchase and Property, were you responsible for approving State contracts?

MR. JOSEPHSON: Yes.

ASSEMBLYMAN BOCCHINI: And bid waivers?

MR. JOSEPHSON: Not bid waivers. Bid waivers are approved by the State Treasurer. Review of those for submission to the State Treasurer--

ASSEMBLYMAN BOCCHINI: In relation to your position, what policies and procedures, to be a little more explicit, governed the issuing of bid waivers during your tenure with the Division of Purchase and Property?

MR. JOSEPHSON: Can you put that in a little sharper focus? That is a very broad question, and it would take a good hour to go into.

ASSEMBLYMAN BOCCHINI: Assemblyman Foy?

MR. JOSEPHSON: They are statutorily delineated now. I am sure you don't want me to repeat all of the statute, especially from memory.

ASSEMBLYMAN FOY: Mr. Josephson, the staff was going to present you with a memo dated February 11, 1981 written under your signature. I am going to review it with you and ask you some questions about the material that is set forth in the memo. If you want to take a minute to refamiliarized yourself with it-- It is dated February 11, 1981. It is from the Division of Purchase and Property. It is signed by you as Special Assistant in Charge, which I assume was your title at that particular time. Is that correct?

MR. JOSEPHSON: Yes, that was a term of art because I was Acting.

ASSEMBLYMAN FOY: Okay. The memorandum is to Assistant Commissioners and Directors of Administration, and the subject is, "Request for Waiver of Advertising." Could you advise us as to what was the genesis of this particular memo? Why was it sent out at this particular time?

MR. JOSEPHSON: Well, this was done in conjunction with the creation of a form -- a request for a waiver -- to attempt to focus the material that you needed to review the waiver. Previously, they would come in, and in a very ad hoc kind of way -- informal letters from Cabinet officers or other officials, sometimes with key attachments

missing -- in an attempt to make sure we had all the essential information. We created this form, and in conjunction with the form and the basic kinds of information that would be filled out--

ASSEMBLYMAN FOY: I note from the date that it is-- Excuse me, go ahead.

MR. JOSEPHSON: We updated the procedure really to codify many of the things we had been doing for quite some time.

ASSEMBLYMAN FOY: I note from the date that this was early on in the new Administration. Was part of the basis for issuing the memo to familiarize the new Commissioners and the new Directors?

MR. JOSEPHSON: Excuse me. This was dated February, 1981.

ASSEMBLYMAN FOY: That is right.

MR. JOSEPHSON: Which new Administration, are you talking about?

ASSEMBLYMAN SCHUBER: It would be the end of the old Administration.

ASSEMBLYMAN FOY: Well, when did the new Governor take office?

MR. JOSEPHSON: January, 1982.

ASSEMBLYMAN FOY: Nineteen eighty-two. Oh, I'm sorry. I've got the wrong date on that. All right. It wasn't to familiarize the new Commissioners. This was to familiarize the old Commissioners. All right.

Let's go over the memo. It says, "The attached waiver policy and procedures have been developed over the past several months and will be effective March 1, 1981. The objectives of the procedures are to:

- 1) Speed up and simplify paperwork and processing;
- 2) Eliminate a separate waiver letter and consolidate other data transmittals;
- 3) Give agencies greater insight and advice on what information the Purchase Bureau needs to process a waiver without having to send it back for missing information."

Were all of these things problems that occurred during the Byrne Administration?

MR. JOSEPHSON: Through the processing time, yes. The processing time was inordinate because of the separate waiver letter, and when you have to have a busy Cabinet officer write a special letter containing information in it, it can be incorporated on a form that he can sign. That takes time.

When they have to keep writing back for attachments, that takes time.

ASSEMBLYMAN FOY: All right. It says--

MR. JOSEPHSON: Finally, when you have people who don't realize that the grounds for a waiver are set forth in a statute, via public exigency or sole source of supply, that you wanted him to focus in that information on exactly how they determined it was a sole source, what the emergency really was-- This was a processing thing to simplify the procedure and make it less painful so that the vendors could be paid, because they wouldn't get paid unless this thing was approved. As a result of that, the time was reduced in half on the average, as I recall.

ASSEMBLYMAN FOY: All right. The memo goes on to say, "Consistent with the availability and degree of competition practical, the granting of a waiver of advertising does not lessen our mutual responsibilities to (1) articulate requirements, (2) negotiate the most favorable arrangements in the State's best interests, and (3) obtain the best prices."

Could you elaborate on what you meant by "negotiate the most favorable arrangements in the State's best interests?"

MR. JOSEPHSON: In those situations where options are available -- and, not all waiver situations are the same obviously -- what we were simply articulating there was a long-held view that simply because it is a waiver of advertising, which simply means that you don't put a newspaper advertisement out in connection with the procurement, it doesn't change the fact that it is just another contracting arrangement -- one of several -- and that all of the standards of contracting apply to a waiver, as they would to a formal bid situation, a lease, or whatever. There are standard things that you do in terms of the stages of the procurement and attitude that

somehow your waiving advertise competition didn't mean that you were waiving everything else in connection with purchasing. That was what this was designed to do.

ASSEMBLYMAN FOY: All right. It then continues, "Many times it is possible to obtain informal solicitations in very short periods of time. However, our experience is that agencies wait too long before contacting the Purchase Bureau. This contributes to a crisis atmosphere and a breakdown of effective communication. It is important to notify the Purchase Bureau as soon as need is determined. Such practice would go a long way to helping us perform our mutual responsibilities."

Did the Purchase Bureau maintain lists of vendors and consultants in various areas of expertise?

MR. JOSEPHSON: Oh, yes. There is a bidders list, which is compiled and updated from time to time, and that is the source of knowing who is out there.

ASSEMBLYMAN FOY: So, if an agency were to say, "We have a problem regarding our computer operations, and we have a time frame that is very limited. We want to go to a bid waiver," you would be able to supply them with potential consultants for the specific duties they need performed.

MR. JOSEPHSON: On that or any other procurement.

ASSEMBLYMAN FOY: Okay. And then--

MR. JOSEPHSON: I might add that that list did not pretend to be an exclusive list because it depended a great deal on expressions of interest by people in the marketplace. They might have been an "added to" based on buyer knowledge, but it certainly wasn't an exhaustive list by any means.

ASSEMBLYMAN FOY: All right. It says, "As with any new procedure, there undoubtedly will be questions and circumstances that have not been properly addressed. We want to remain open and receptive to these situations and any other suggestions you may have on how to improve the process. Over the next several weeks, staff members of the Purchase Bureau will be arranging sessions with various agencies to produce a better understanding of and to answer any questions you may have about the new system."

Was that follow-up, in fact, done as far as the sessions with the various departments?

MR. JOSEPHSON: I believe it was, yes. That was at a fairly low level, and it was geared pretty much to the paperwork side.

ASSEMBLYMAN FOY: Right, to the basic staff people in the departments and divisions. Do you recall whether it was done in the Division of Motor Vehicles?

MR. JOSEPHSON: I have no recollection of who they talked to.

ASSEMBLYMAN FOY: All right. Do you know whether or not Motor Vehicles', during the time you were there, administrative people contacting you regarding problems with respect to the implementation of the bid waiver process?

MR. JOSEPHSON: I don't recall them contacting me directly any more than anybody else.

ASSEMBLYMAN FOY: All right. The flip-side of that letter is a document entitled, "Procurement Circular. Subject: Request for Waiver of Advertising." It is a memo to all Using Agencies and Fiscal Officers, with an effective date of March 1, 1981. It is from you as Special Assistant. Now, you drafted this particular thing, or did you have staff develop this for you?

MR. JOSEPHSON: With staff.

ASSEMBLYMAN FOY: With staff. Okay. Number one, where it says, "Policy," it says, "All products and services are to be obtained through the process of formal advertised bidding." Then in capital letters it says, "WAIVERS OF FORMAL ADVERTISING ARE AN EXCEPTION TO THIS POLICY AND ARE EXPRESSLY LIMITED BY STATUTORY DESIGN."

Was it your understanding that basically waivers were of an extraordinary nature and were to be only implemented on a limited basis?

MR. JOSEPHSON: That statement in there called "Policy" really reflects what the statute says. Without attempting to put any judgment on a limited basis, the statute says what the statute says -- that if it isn't done by advertise procurement, a waiver of advertise procurement is required by law, and it is permitted under a certain situation set forth in the statute, with the approval of the Attorney

General to determine whether it, in fact, meets the letter of that standard.

ASSEMBLYMAN FOY: So, the ultimate determinant is the Attorney General's opinion as to whether or not the specific waiver request is justified pursuant to the statute. Isn't that correct?

MR. JOSEPHSON: No, that is not quite correct. The Attorney General's role, as I recall, is to determine whether the facts on the paper especially meet the standards set forth in the statute.

ASSEMBLYMAN FOY: Well, then who makes the determination that a waiver should be granted?

MR. JOSEPHSON: After the Attorney General signs, attesting that it is according to form and legality -- that is the limit of that determination -- the decision is by the State Treasurer.

ASSEMBLYMAN FOY: All right. Do you know whether the State Treasurer consults with anyone else in the Administration, or makes it on his own?

MR. JOSEPHSON: Of course, I can only speak for the State Treasurers that I worked for.

ASSEMBLYMAN FOY: How about the ones you worked for?

MR. JOSEPHSON: It varied on their need to know. Some asked questions; some sent it back; some wouldn't approve. Sometimes they signed them, apparently satisfied with the level of justification. It varied from case to case.

ASSEMBLYMAN FOY: How long did you serve in the Division of Purchase and Property?

MR. JOSEPHSON: From July, 1975 until May 30th -- I think -- of 1983.

ASSEMBLYMAN FOY: Would you characterize the requests for waivers as being a frequent occurrence during that time?

MR. JOSEPHSON: I wouldn't put a value judgment on it. I can only deal with the statistics. They generally ranged in those years, a fairly regular-- A thousand to 1200 a year, and a number of them, I think, were presumed to have been eliminated by statutory change under the bid ceiling.

ASSEMBLYMAN FOY: All right. Did you frequently get requests for waivers for contracts in excess of \$6 million?

MR. JOSEPHSON: I don't know what you would mean by frequently. There is--

ASSEMBLYMAN FOY: Well, how often then?

MR. JOSEPHSON: Occasionally, including some as high as \$50 million, if you include utilities.

ASSEMBLYMAN FOY: Can you remember or name any specific ones?

MR. JOSEPHSON: No.

ASSEMBLYMAN FOY: All right. Number four--

MR. JOSEPHSON: Well, as I mentioned, it runs anywhere from Prudential and Blue Cross for the Medicare Program, to Bell Telephone, if you want to put that in. Some of the waivers are called blanket waivers for a multitude of vendors, but the overall amount is large. So, there are a number of ways to look at the numbers. I don't remember any specific--

ASSEMBLYMAN FOY: Did you differentiate at all between service contracts and consulting contracts?

MR. JOSEPHSON: Did I differentiate?

ASSEMBLYMAN FOY: Did your Division? You personally, I am not interested in.

MR. JOSEPHSON: Only-- There was a procedural-- The term of consultants had some meaning within the Treasury procedures because there had been -- at least when I was there -- an approval by Budget and Accounting when someone was to hire a consultant. An approval was, I think, to the question of whether the funds were available and whether the service could be performed in-house.

ASSEMBLYMAN FOY: And, that was a key question as far as consulting services, whether or not the job could be done by an existing State agency?

MR. JOSEPHSON: That was an issue that Budget and Accounting was required to evaluate before we could begin a procurement.

ASSEMBLYMAN FOY: Okay. Number four under "Policy," it says, "Informal competitive bidding among multiple suppliers is encouraged for all purchases, even if a waiver of formal advertising is granted."

Would that apply also to consulting contracts?

MR. JOSEPHSON: Yes, if the time was available.

ASSEMBLYMAN FOY: There was no distinction. I mean, suppliers seems to intimate just goods as opposed to services. This memo, in effect, applied to all contracts. Isn't that correct? It wasn't limited just to the purchase of goods.

MR. JOSEPHSON: I believe that was the intent there, although the term "suppliers" is probably somewhat ambiguous.

ASSEMBLYMAN FOY: But, effective March 1, 1981, the policy of the State of New Jersey, through the Department of the Treasury, Division of Purchase and Property Purchase Bureau, was to encourage, even where waivers were granted for the advertising requirement, informal competitive bidding from the people on your list basically. Isn't that correct?

MR. JOSEPHSON: Well, that was the policy long before 1981. It was just an attempt to codify the policies and put people on notice and restate it and reinforce it. That had been the policy for as long as I was there.

ASSEMBLYMAN FOY: Now, was there a requirement that someone who received a bid waiver for design work, that they would not be permitted to bid on their own specifications?

MR. JOSEPHSON: No. When you say design work, what did you have in mind?

ASSEMBLYMAN FOY: Well, for example, let's take the Price Waterhouse contract. The initial bid waiver that they got dealt with their, in a sense, design of a concept or a system. Subsequent thereto, they, in a sense, received the contract to implement their own design. Wasn't there some sort of exclusivity provision set forth by your Division regarding that?

MR. JOSEPHSON: Well, let me digress a bit. You may not be aware of a letter that I sent to the Chairman Bocchini. And, I think to put this in a context for--

ASSEMBLYMAN BOCCHINI: He is aware of it.

MR. JOSEPHSON: You are aware of it. All right.

ASSEMBLYMAN BOCCHINI: Each member of the Committee has a copy of that letter, I believe.

MR. JOSEPHSON: So, I think it should be clear on the record that I am not going to discuss anything directly or indirectly in connection with this contract, which is a matter which may be litigated. As an officer of the Judiciary, I cannot comment on matters pending litigation.

In addition, I can only comments on matters involving this subject contract that I was involved with when I was in a position of accountability, and that was one contract in late 1981, which I would be glad to discuss with you as near as I can recollect.

ASSEMBLYMAN FOY: I'm going to show you a policy--

MR. JOSEPHSON: So, now, do you want to restate your question?

ASSEMBLYMAN FOY: I'm going to withdraw that question, and I am going to pose a new question to you that will not deal with the Price Waterhouse situation, but rather will deal with what the policy was in effect at the time you were there for all contracts.

MR. JOSEPHSON: Fine, good.

ASSEMBLYMAN FOY: Let me show you the memo. It is dated April 24, 1985, and it is from Director Rosenberg. It is dealing with the same subject, "Waiver of Advertising Procedures." Let me direct your attention to Page 2, the seventh full paragraph. It says, "Consulting firms will be required to accept an exclusivity clause which will void their right to bid on the actual design and implementation contract."

Do you recall whether or not that policy was ever put into effect while you were in the capacity of either Special Assistant or Acting Director of the Division of Purchase and Property back in -- from 1975 until when you left?

MR. JOSEPHSON: No, we had no restrictions of that type.

ASSEMBLYMAN FOY: You didn't have an exclusivity clause that said that the person who designed it couldn't ultimately implement it also?

MR. JOSEPHSON: No.

ASSEMBLYMAN FOY: Okay. I don't have any further questions?

ASSEMBLYMAN BOCCHINI: Gentlemen? Any questions?

ASSEMBLYMAN SCHUBER: No questions.

ASSEMBLYMAN PELLY: I have just one or two questions, Mr. Josephson. Following up what Mr. Foy had to say about the exclusivity clause, to your knowledge, was that issue ever addressed or discussed during your tenure?

MR. JOSEPHSON: Not in that context. The question of implementing someone else's design is not a real world contract situation that I can recall coming up. The issue was that after someone did a feasibility study or a needs analysis -- a master plan -- could they then proceed to do a design and implementation or other activities? I think at that stage of the procurement, there was never-- At that stage of the procurement, that issue didn't come up.

ASSEMBLYMAN PELLY: I didn't quite understand what you said with respect to going from the very beginning, the development of a master plan.

MR. JOSEPHSON: Usually you would find in doing what some would call a master plan -- it is not a very scientific term--

ASSEMBLYMAN PELLY: I understand those phases--

MR. JOSEPHSON: Or a needs analysis or a feasibility study. That was usually the first phase of any of those activities.

ASSEMBLYMAN PELLY: Okay. At any time--

MR. JOSEPHSON: Before a design was ever done.

ASSEMBLYMAN PELLY: Right. At any time, was there any discussion during your tenure with respect to the inappropriateness or the impropriety of one company doing a needs analysis master plan and then going to the implementation stage?

MR. JOSEPHSON: Or the next stage.

ASSEMBLYMAN PELLY: Yes.

MR. JOSEPHSON: Okay.

ASSEMBLYMAN PELLY: Taking it any further.

MR. JOSEPHSON: We looked at that fairly carefully, and discussed it with the Attorney General's office. We came to the conclusion that as long as all of the materials developed in the first phase and possession of the vendor -- all of the work papers, all of the end products -- were incorporated in the specifications and made available to all potential bidders so that they had access to the same

information that was developed, that there was no jeopardy to the equal footing in a competitive situation.

ASSEMBLYMAN PELLY: Okay. I can understand that. What about going from the needs analysis master plan to a sole source contract? Was that a concern or an issue discussed during your tenure?

MR. JOSEPHSON: Oh, yes.

ASSEMBLYMAN PELLY: You had taken me through the process of a multiple contract put out of competitive bidding. Now I am asking you the question with respect to sole source.

MR. JOSEPHSON: Yes, that was a very complex issue. In the earlier days, we tried it both ways. What we had found in one particular instance was that after someone had done extensive work and developed a great deal of knowledge about one of these projects, we weren't going to get any competition from other consultants when we did put out the bid. In fact, in a number of instances, the only one who bid was the one who had the work because there is a tremendous advantage in the learning curve that that company acquires by having had all of that access to the records and interviews with employees. Even though the information is put down in a form that other people can read, it is quite one thing to be able to read that cold and quite another thing to be able to assemble staff to internalize it and be in a position to work in the same time cycle as the initial vendor.

In addition to that, it costs a great deal of money to enter into one of those competitions. What we found by interview with a number of the vendors who we thought we might have been interested in bidding is, they weren't going to spend \$25,000, \$30,000 or \$40,000 to go through a bid process that they thought was non-productive.

As a result of that, we went to a process of having some form of initial competition, a key phase of procurement, and then if that vendor performed satisfactorily in that phase, we proceeded, through a sole source procurement, to future phases. That was done several times.

ASSEMBLYMAN PELLY: Do you recall any instances during your tenure of actual experiences where you had the opportunity to have one person do a needs assessment master plan and then go out to bid on the

implementation of that to find that there were no bidders? You've actually gone through that process, haven't you?

MR. JOSEPHSON: There was one in particular. It involved the Department of the Treasury's automated accounting system. There were actually two bidders then.

ASSEMBLYMAN PELLY: There were two bidders?

MR. JOSEPHSON: Two bidders out of the Bid 8.

ASSEMBLYMAN PELLY: And, that led you to believe-- That led you to the inescapable conclusion that there was no need-- That bidding would be an act of frustration and did not produce enough--

MR. JOSEPHSON: Well, that wasn't the only one. There were several others.

Also, the other factor that I think entered into that policy decision was the simple factor of time. Usually these computer contracts tended to be on a fast track. When you are talking about a formal competitive process, you are talking about a intervening period of four or five months.

ASSEMBLYMAN PELLY: I'm somewhat confused over the fact of your having taken that position, and that position being the prevailing position during your tenure, and then according to the memorandum of April 24 of 1985 -- and, I am not asking you to justify that -- suddenly some things happened whereby the procedures are abruptly changed.

MR. JOSEPHSON: I can't speak to those procedures, Senator.

ASSEMBLYMAN PELLY: Of course. I recognize that. Okay, thank you.

ASSEMBLYMAN BOCCHINI: Mr. Josephson, in relation to the-- You know, the Treasurer made the final bid waivers -- is that correct? -- according to your testimony?

MR. JOSEPHSON: That is correct.

ASSEMBLYMAN BOCCHINI: Is it an accurate statement that you made recommendations -- that your Division would make recommendations concerning those bid waivers?

MR. JOSEPHSON: Oh, yes. There is a whole chain of recommendations and approvals.

ASSEMBLYMAN BOCCHINI: As a policy, did you approve bid waivers, especially without competition involved?

MR. JOSEPHSON: What is that again, sir?

ASSEMBLYMAN BOCCHINI: As a policy, did your Division approve bid waivers without competition being involved?

MR. JOSEPHSON: It depended upon the grounds for the waiver. Obviously, in sole source waivers, there was no competition. In cases of public exigency, there may not even be time for informal competition. It depends on the--

ASSEMBLYMAN BOCCHINI: Let's take a--

MR. JOSEPHSON: (continuing) --grounds for the waiver. Where competition was practical, available, and there was time for it, we sought it.

ASSEMBLYMAN BOCCHINI: Let's take as an example the Price Waterhouse bid waiver.

MR. JOSEPHSON: The one I am familiar with and was responsible for?

ASSEMBLYMAN BOCCHINI: Well, even the one you are not familiar with. Any examples similar to that. The one you say you are not familiar with-- I think everybody in the world is familiar with it at this point that lives in New Jersey.

MR. JOSEPHSON: Well, familiar in the sense that I am not responsible for it, and I only can evaluate documents that I am paid to evaluate, and where it is my responsibility under the law to evaluate, not by what newspapers say about them.

ASSEMBLYMAN BOCCHINI: How about contracts not necessarily the same, but similar to the Price Waterhouse sole source contract? Were there any others during your tenure that you can think of that were approved that would have been sole source that had sufficient amount of time to allow for competitive bidding?

MR. JOSEPHSON: Well, let me add to the first part of your question first. The Price Waterhouse contract that I was familiar with and responsible for, there was informal competition. As far as were there others without formal competition, I think I need a little more focus on questions like that. There may have been small ones in the

whole general area called computers where there wasn't, and there may have been a reason for it.

Basically, the approach to major projects of this type was in the phased system that I described to you.

ASSEMBLYMAN BOCCHINI: Did you ever approve a sole source contract for \$6 million to your knowledge?

MR. JOSEPHSON: In what kind of area?

ASSEMBLYMAN BOCCHINI: In any area.

MR. JOSEPHSON: As I mentioned before, telephones, electric bills--

ASSEMBLYMAN BOCCHINI: In relation to consulting--

MR. JOSEPHSON: And, also I think you should understand that in the interest of eliminating all of this paper, we tended to shift the procedure in this fashion: When I got there, there was a belief that you could only have a waiver covering a fiscal year, a single fiscal year, so if you had a million-dollar contract in March, you would have a waiver for \$200,000. Then next July, you get another piece of paper that says you have a waiver for \$800,000, and in order to eliminate that, we began to get multi-year waivers to cover the period at least served by the Treasurer in order to just telescope this bureaucratic paper process.

So, it might tend to be misleading, unless you-- If you are doing comparisons about how many waivers-- There may have been--

What I am trying to say is, there may have been a \$6 million waiver over three years that I might have approved that I wouldn't have any way of recalling now. At the end of that three-year period, we would have been approving the \$6 million waiver.

ASSEMBLYMAN BOCCHINI: Are there any further questions from any members of the Committee?

ASSEMBLYMAN SCHUBER: No.

ASSEMBLYMAN BOCCHINI: That you, Mr. Josephson. The next witness will be New Jersey Treasurer, Mr. Michael Horn. Would it be possible for Mr. Rosenberg also -- James Rosenberg, the Director of the Division of Procurement and Central Services -- to come up with you?

TREASURER HORN: Yes. Mr. Chairman, I have with me, in addition to James Rosenberg, James Kennedy, who is Acting Director of the General Services Administration and who was also involved in the waiver process. I think between the three of us, we ought to be able to answer all of your questions.

ASSEMBLYMAN BOCCHINI: Treasurer Horn, do you mind taking an oath prior to your testimony?

TREASURER HORN: No, not at all.

ASSEMBLYMAN BOCCHINI: There is no need for you to stand. Do you swear and affirm that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief?

TREASURER HORN: I do.

ASSEMBLYMAN BOCCHINI: Thank you. As a matter of fact, why don't we just go right down the line.

Mr. Rosenberg, for the record, will you give your full name and title, please?

JAMES J. ROSENBERG: James J. Rosenberg, Director of Purchase and Property, Department of the Treasury.

ASSEMBLYMAN BOCCHINI: Do you swear and affirm that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief?

MR. ROSENBERG: I do.

ASSEMBLYMAN BOCCHINI: And, sir, you are?

JAMES B. KENNEDY: James B. Kennedy, Administrator, General Service Administration.

ASSEMBLYMAN BOCCHINI: Do you swear and affirm that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief?

MR. KENNEDY: I do.

ASSEMBLYMAN BOCCHINI: Do you want to start?

ASSEMBLYMAN FOY: Yes. Let me--

TREASURER HORN: Mr. Chairman, I was told that I would be given the opportunity to make an opening statement. Would this be the appropriate time for that opening statement?

ASSEMBLYMAN BOCCHINI: I think we would love to hear your opening statement.

TREASURER HORN: Thank you. Mr. Chairman and--

ASSEMBLYMAN BOCCHINI: Do you have copies of that available?

TREASURER HORN: Yes.

ASSEMBLYMAN BOCCHINI: Could they be circulated to the Committee members, please? (Treasurer Horn complies)

TREASURER HORN: Mr. Chairman and members of the Committee, I am here today, as requested by you last week, to give the Committee an overview of the procedures and policies followed when authorizing a bid waiver. The Committee must understand that Treasury's policy is that all products and services are to be obtained through the process of formal advertised bidding.

Waivers of advertising are an exception to that policy and are limited to the following statutory exceptions:

1) N.J.S.A.52:34-9(A), services to be performed are of a technical and professional nature

2) 9(B), the purchase of perishable foods or subsistence supplies;

3) 9(C), the lease of such office space, office machinery, specialized equipment, buildings, or real property as may be required for the conduct of the State's business;

4) 9(D), the acquisition of any real property by gift, grant, purchase, or any other lawful manner in the name of and for the use of the State for the purpose of the administration of the State's business in accordance with the appropriations made therefor when moneys are required for the acquisition;

5) 9(E), supplies or services, for which the prices after advertised bidding are not reasonable or have not been independently arrived at in open competition;

6) 10(A), the purchase is to be made from, or the contract to be made with, the Federal or any State government or any agency or political subdivision thereof;

7) 10(B), the public exigency requires the immediate delivery of the articles or performance of the service;

8) 10(C), only one source of supply is available;

9) 10(D), more favorable terms can be obtained from a primary source of supply;

10) 10(E), articles of wearing apparel which are styled or seasonal in character;

11) 10(F), commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action;

12) 10(G), the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

This list, I might add, appears on the back of each page of the Request for Waiver of Advertising document. I believe that is the document Mr. Josephson referred to in his testimony.

It is essential for the Committee to understand that when a waiver of advertising procedures is approved in most instances, competitive bidding is sought. No products or services are to be procured by agencies without formal advertised bidding conducted by the Purchase Bureau unless (1), prior written or verbal authorization to waiver of advertising is obtained from the Purchase Bureau, or (2), the agency procurement is performed in accordance with the current procedures providing for the delegated direct purchase, special procurement, or term contract purchasing.

The procedure to be followed by the user agency is to first contact the Purchase Bureau by submitting a complete waiver application. This should be accompanied by a brief explanation of the waiver request by providing the Purchase Bureau with a clear and concise summary of the nature and the purpose of the waiver. The synopsis should include a statement of the scope of the service to be performed or the nature of the product to be obtained and what the agency wishes to accomplish.

At this point, agencies are required to seek as much competition as is reasonable and practical under the circumstances of each waiver of advertising requested. The information should include (1) the number of firms contacted, (2) the method used in choosing the firms contacted, for example, the industry data, previous experience, etc., (3) the number of proposals received, including prices, and (4)

the reasons for selecting the recommended vendor. If a required product or service is available from only one source of supply, this should be fully documented.

The request for the waiver and the accompanying data is reviewed by the Supervisor of the Purchase Bureau, the Director of Purchase and Property, the Attorney General's office as to form, and my office as Treasurer. Statutorily, the Treasurer may designate his approval to an appropriate designee. Presently, GSA Administrator Jim Kennedy has this responsibility. It is my feeling that this process should be designated to someone with the expertise and time to thoroughly review each request for waiver of advertising.

Most of the statutory exceptions which allow for a waiver of advertising are clear and specific. Public exigency is perhaps the one whose definition is least clearly stated. Because of this, we have adopted policy guidelines for public exigency. Only when the following conditions prevail and are thoroughly documented by the using agency are bid waiver applications accepted.

The conditions are: (1) competition is not practical or cannot be obtained; (2) a potential health or safety hazards exists. This guideline was used recently when a roof was severely damaged at Trenton State Prison by Hurricane Gloria. Obviously, there was not time to develop an RFP to advertise and to go out for bid; (3) a critical agency mandate statutory or operational requirement must be fulfilled; and, (4) competitive specifications, placing all bidders on an equal footing, cannot be developed because sufficient lead time to develop bid specifications is not available. Any agency that wishes to apply for a bid waiver under these circumstances must justify the request with pertinent detail and focus the justification on the consequences of non-delivery of the item of services within the time frame specified by the using agency.

As you know, there is full monthly public disclosure. All approvals of bid waivers are published in a monthly report which is available to the Legislature, the press, and the general public. Once the waiver is approved, the using agency has the responsibility of monitoring the work.

When I became Treasurer a year and a half ago, I saw that there were weaknesses in the existing system and sought to tighten up the procedures. For example, it is now the adopted policy that no bid waiver request may be submitted by anyone other than a Cabinet member or a Division Director. My feeling on this is that if the issue is important enough to seek a bid waiver, it is important enough to have the head of the department or division's knowledge and approval. Any such request that is submitted to Purchase and Property, having not been signed off by the Cabinet member or the Director, is immediately returned.

My policy and that of GSA, which has been made clear to all the using agencies, is that all procurements are to be accomplished through the competitive bid system, and waivers must always be considered the exception and not the rule in agency acquisitions. Further, even if an advertising bid waiver is approved, competitive bidding is still sought.

I hope the foregoing will provide you with an overview of the statutorily authorized waiver process. When I became State Treasurer, I was keenly aware that it was my responsibility to see that the process is carried out in accordance with the statutory standards. We have done so.

With me this morning is GSA Administrator James Kennedy and Director of the Purchase Division, James Rosenberg.

Before we submit to any questions you may have, I would like to finally review the process in detail with a somewhat typical waiver which was submitted the Office of Legislative Services. As I had indicated--

ASSEMBLYMAN BOCCHINI: Mr. Horn, we appreciate what you are going to do. I would request that-- I noticed you said "detailed." I enjoy detail, but I hope it can also be as expeditiously as possible.

ASSEMBLYMAN FOY: Let me ask a question. Since the focus of this hearing is on the Price Waterhouse situation, could we have the Treasurer take the actual Price Waterhouse thing and go through that process? I think that would be a lot more fruitful from my perspective and for the public's perspective than going over OLS. That is not in

question, and while I appreciate paradigms and examples, I'd like the real McCoy.

Our questions are going to be directed towards what happened with Price Waterhouse, and it would seem to me to make a lot more sense in terms of conserving our limited time and getting to the facts of the situation if you did precisely what you propose to do within an example with the real thing.

TREASURER HORN: Assemblyman, my invitation from this Committee indicated that I would have the opportunity to make an opening statement. I'd like to have the permission of the Chair to complete my opening statement.

ASSEMBLYMAN FOY: Well, I thought that was your statement.

TREASURER HORN: No, my statement includes taking the Committee through the chairs on a typical bid waiver. Now, you may not want to hear a review of a bid waiver prepared by the Office of Legislative Services, but it is my prerogative--

ASSEMBLYMAN BOCCHINI: I believe this bid waiver--

TREASURER HORN: (continuing) --as Treasurer to include in my opening statement a typical bid waiver process.

ASSEMBLYMAN FOY: I don't want you to eat up our time, Mr. Treasurer. Our time is valuable, as is yours.

TREASURER HORN: Well, I'm very busy too, and I took some time to be here with you today.

ASSEMBLYMAN FOY: I understand. Price Waterhouse is what is under investigation, not the Office of Legislative Services.

TREASURER HORN: The form which Mr. Josephson indicated--

ASSEMBLYMAN FOY: Now, are you attempting to stonewall the hearing, Mr. Treasurer?

ASSEMBLYMAN SCHUBER: Mr. Chairman--

TREASURER HORN: Mr. Chairman, I'm not going to listen to a two-bit politician.

ASSEMBLYMAN BOCCHINI: Gentlemen, gentlemen, Mr. Horn, Mr. Horn?

ASSEMBLYMAN FOY: Well, two bits, four bits, six bits, a dollar, all for this Administration stand up and holler. Now, we are

here to get to the facts, not to have you give us a lot of nonsense about OLS.

ASSEMBLYMAN BOCCHINI: Assemblyman Foy, Assemblyman Foy?

TREASURER HORN: Mr. Chairman, I'll testify here if I'm treated the way I treat the members of the Committee.

ASSEMBLYMAN BOCCHINI: Assemblyman Foy, Treasurer Horn, gentlemen, I understand. I believe the description you were going to provide us at this point, Mr. Horn, would be through the-- Is that the Wang contract with the computerization?

TREASURER HORN: It is the first two parts of the Wang contract.

ASSEMBLYMAN BOCCHINI: All right. Could I ask you, do you anticipate how long it is going to take you to go through that?

TREASURER HORN: Thirty seconds.

ASSEMBLYMAN BOCCHINI: Please do so. I think we could save some time, and I think in relation to that also, Assemblyman Foy, I would hope that you would take the time to go back and ask some questions in relation to how that process worked with Price Waterhouse.

ASSEMBLYMAN FOY: Always delighted to hear our Treasurer.

TREASURER HORN: My reason for selecting the OLS request for the Wang contract was, it had some very good analogies to the Price Waterhouse contract. Just as the Price Waterhouse contract started off with a request under the previous Administration for a study to be made in connection with ultimate implementation, so did the OLS request, signed on June 27th of 1985, to provide the Legislature with a systems planning study. All it was was a systems planning study.

ASSEMBLYMAN BOCCHINI: Excuse me, Mr. Horn, could you bring your mike a little closer? That is the one you need for the transcription? (speaking to hearing reporter) All right.

COMMISSIONER HORN: As I indicated, my reason for providing the OLS as a sample bid waiver is to provide the analogies between the OLS request for bid waiver and the Department of Motor Vehicles' request for a waiver in connection with Price Waterhouse.

Question 10 under the form which was designed by Mr. Josephson, does indicate, "Give a brief explanation of the waiver."

Just like the initial request for a waiver, Price Waterhouse came with a planning study: "This is to request a systems planning study which will project its current and future needs relative to word and data processing."

The important thing to point out about this is that it must be signed -- as I indicated earlier -- by the head of the Division. In this case it happened to be Mr. Porroni. Also, in order for a bid waiver to be accepted, it must have come from the Attorney General's office -- which signs as to form -- it must go to the Purchase Bureau's Supervisor to accept it, up to the Director of the Division of Purchase and Property, and, finally, on behalf of the State Treasurer. This particular form was finally approved by the State Treasurer's office in October of 1984.

Subsequent to that time -- as often happens in consulting contracts -- the Office of Legislative Services again recommended Coopers & Lybrand to continue the study. And in Question 10, which I mentioned earlier, it says to expand waiver C246 for the completion of a detailed RFP for the new legislative word and data processing system, submitted in November of '84 and signed in January of 1985. Thank you, Mr. Chairman.

ASSEMBLYMAN BOCCHINI: Mr. Foy?

ASSEMBLYMAN FOY: Yes. I have some questions, Mr. Treasurer, which deal specifically with the Price Waterhouse contract.

First, with respect to the statutory provision for waiver, do you happen to have a copy of the request for waiver of advertising for the Price Waterhouse contract?

COMMISSIONER HORN: I don't have that in front of me, Assemblyman.

ASSEMBLYMAN FOY: Do you know specifically what statutory section was cited -- what sections were cited -- as to why there should be a waiver of advertising in this particular instance?

COMMISSIONER HORN: My review of the material which has been submitted to this Committee -- that part of it which I have -- would have indicated exigency would have certainly been one of them.

ASSEMBLYMAN FOY: What if I told you in fact that--

ASSEMBLYMAN MARTIN: Mr. Foy, before we go-- Could we just get a background as to what this particular witness was doing at that time? He said he was Treasurer for a year and one-half. I think we should at least have him explain what familiarity, if any, he has with Price Waterhouse, just so we can set the stage if you don't mind -- a little background, I would hope.

ASSEMBLYMAN FOY: No. Treasurer, feel free to tell us.

COMMISSIONER HORN: I guess what I would like to indicate to the Board is that I was not State Treasurer at the time the Price Waterhouse approvals were given. I was the Banking Commissioner of the State. What I tell you -- if I can be of any help to you whatsoever; and I would like to be a help to you -- is solely based on my review of that portion of it which I reviewed, but at the time I was Commissioner of Banking.

ASSEMBLYMAN MARTIN: All right. Just so I am clear with the questions--

ASSEMBLYMAN FOY: Let me just, so we can clear it up for everybody-- How about your subordinates here? Were they also-- Did they come on board afterwards? Was anybody around during the critical time?

MR. KENNEDY: I am not sure what the critical time was, but I do not believe I was with the State during that year.

ASSEMBLYMAN MARTIN: We are talking about the summer of 1983.

MR. KENNEDY: I was not an employee of the State during that period of time.

ASSEMBLYMAN FOY: How about Mr. Rosenberg?

MR. ROSENBERG: Neither was I.

ASSEMBLYMAN MARTIN: So, the information you are going to give to the questions which I believe-- Mr. Foy has indicated he is going to speak specifically about the Price Waterhouse contract, or just based upon procedure and review of documents you have in your office. Is that correct?

COMMISSIONER HORN: That's right. We have no personal knowledge of anything having to do with those contracts.

ASSEMBLYMAN FOY: You weren't involved in the review process for the Price Waterhouse contract?

COMMISSIONER HORN: Not- None. Not whatsoever.

ASSEMBLYMAN FOY: Who was Treasurer at the time. I don't even remember.

COMMISSIONER HORN: Ken Biederman was the Treasurer.

ASSEMBLYMAN FOY: He is gone to greener pastures. Who was head of Purchase and Property? Because we are going to have to develop an additional witness list.

COMMISSIONER HORN: I think it was Dick Kaempfer. He is no longer with State government.

ASSEMBLYMAN FOY: Okay. And, GSA wasn't in existence at that time was it?

COMMISSIONER HORN: No. Correct.

ASSEMBLYMAN FOY: So, it was just the Treasury, and then Purchase and Property?

COMMISSIONER HORN: Right.

ASSEMBLYMAN FOY: All right. Realistically, I don't want to question you all about Price Waterhouse if you didn't have direct involvement. What I would question you about and redirect the focus of the inquiry to, is the current policy, because one of the missions of this Committee -- at least I assume -- is to look at the overall process and determine whether legislatively we are going to have to move in a direction that will either tighten it up or assist the Administration in revising the guidelines through some statutory procedures.

I have in front of me -- and I assume you have them -- memos dated December 3, 1984 and April 24, 1985, both under the signature of Mr. Rosenberg.

COMMISSIONER HORN: Yes, we have those before us as well.

ASSEMBLYMAN FOY: Let me ask some questions about them, starting with the December 3, 1984 memo. It is to all Cabinet members and Directors of Administration. It is regarding requests for waiver of advertising. "We have revised procurement circular number 25, request for waiver of advertising, effective March 1, 1981, which reflects a serious concern in the area of confirming unauthorized waiver requests." Now that is the one Mr. Josephson testified-- That was generated back in February and in effect March of '81.

Let me ask you this question, right after that first paragraph. You issued this memo and revised the old one because of a serious concern in the area of confirming unauthorized waiver requests. What was happening, Mr. Rosenberg? Why was it necessary to do this revision and to set for this memo? What generated the concern?

MR. ROSENBERG: Coming from a local government agency, and there are also contracts awarded without competitive bidding -- or advertised competitive bidding -- I was a little alarmed at the volume that I got, and the reasoning-- I felt more of it could go through the normal competitive bid process.

ASSEMBLYMAN FOY: Did you have expressions of concern from members of your staff, or was it from the Department heads themselves?

MR. ROSENBERG: Yes, both.

ASSEMBLYMAN FOY: Both. All right. Then it says, "The policy of the General Services Administration is to avoid waivers of advertised bidding whenever possible." When did the GSA come into effect?

MR. KENNEDY: Effectively in August of that year.

ASSEMBLYMAN FOY: In August of '84?

MR. KENNEDY: Correct.

ASSEMBLYMAN FOY: Okay. All procurements-- And, it is now a Purchase and Property Bureau within GSA?

MR. KENNEDY: It is presently a Division within the General Services Administration.

ASSEMBLYMAN FOY: A Division within the GSA, okay. "All procurements are to be accomplished through the competitive bid system and waivers should be the exception not the rule in agency acquisitions." So, the policy that you are reiterating is a fact that these are unusual situations and ought not to be considered as a frequent way to circumvent the bidding process, is that correct?

MR. ROSENBERG: That's correct.

ASSEMBLYMAN FOY: "I strongly suggest better planning from our using agencies. A large number of waiver requests involve emergency conditions resulting from poor planning." Let me ask you this: There are a number of sections set forth in the statute, and the

Treasurer mentioned the exigency provision; I think that is 10(b). Is that the most frequent one that is cited in your request for waiver of advertisings? Have you ever done a survey to determine what it is that these various division heads or department heads set forth as to their principal basis for requesting the bid waiver, the waiver of advertising?

MR. ROSENBERG: That is not the most frequently one used. The one that was used most frequently was the ones that were under \$7,500.

ASSEMBLYMAN FOY: Okay. Have you had occasion to review the paperwork in the Price Waterhouse situation, the \$6.5 million bid waiver?

MR. ROSENBERG: No, I have not.

ASSEMBLYMAN FOY: Have you, Mr. Kennedy?

MR. KENNEDY: No, I have not.

ASSEMBLYMAN FOY: How about you, Mr. Treasurer?

COMMISSIONER HORN: No. All I have reviewed is what's been submitted to you by Don Bianco, but I haven't reviewed the Price Waterhouse situation at all.

ASSEMBLYMAN FOY: All right. Well, for the record the Price Waterhouse situation was a 9(a) and 10(b) request: 9(A) being service distribution form of a technical and professional nature, and 10(b) for more favorable terms that can be obtained from a primary source of supply. That derives from a memo that Mr. Snedeker sent over, specifically outlining those two provisions. We've gone through that with Mr. Kline earlier.

Neither one of those is the exigency basis, and perhaps it was oversight on their part. I can't account for it. That is a question for other people. But, the documentation reflects that they did not seek the public exigency requirement. Your indication was that's not the largest one; it is the under \$7,500 exception?

MR. ROSENBERG: At that time.

ASSEMBLYMAN FOY: At the time, okay.

Then you go on to say, "Given sufficient lead time, the Purchase Bureau could prepare specifications and obtain the required

products and services through the competitive bid process." Do you find that consulting is the area in which you have a great deal of these requests for waiver of advertising? What is your biggest area? Have you done any analysis of that?

MR. KENNEDY: If the Committee would bear with us, it might be helpful if we went through categories as to--

ASSEMBLYMAN FOY: Yes, I would find that information useful.

MR. KENNEDY: The figures I am working off were provided to Senator Weiss last March. Their final genesis is that clever chart that is developed in the front of me. This information was made available to the Legislature about six--

ASSEMBLYMAN FOY: What do you find clever about the chart?

MR. KENNEDY: Because I think it is inaccurate. But as I run through the figures, I can point quickly to the Committee as to why.

In terms of bid waivers, you are really dealing with two elements. One, you are dealing with the total number of waivers; and, two, you are dealing with the total cost.

In terms of number of waivers, there has actually been a dramatic reduction over the last four years from in Fiscal Year 1981, when there were 1200 bid waivers--

ASSEMBLYMAN FOY: Fewer waivers more money, is that what it is?

MR. KENNEDY: Much fewer waivers, 1200 in Fiscal Year '81 to Fiscal Year '85 where there were 800. So, there has been a reduction of over 400 in the number of waivers over a four year period.

ASSEMBLYMAN FOY: Didn't we raise the threshold around that time?

MR. KENNEDY: Not late enough in Fiscal Year '85 for it to be significant in those figures. In the current Fiscal Year it will be significant -- the increase from \$2500 to \$7500 -- but not really reflected in Fiscal Year '85.

In terms of the larger dollars -- and there has been a dramatic increase in cost -- I assume that the Committee is not using constant 1981 dollars, and there is no attempt on that chart to make any adjustments for inflationary costs.

ASSEMBLYMAN FOY: No. The 3.2% inflation that our President lays claim to?

MR. KENNEDY: Also, I assume that based on--

ASSEMBLYMAN MARTIN: I believe that is this year, right, Mr. Foy?

ASSEMBLYMAN FOY: The inflation?

ASSEMBLYMAN MARTIN: The figure we have had that you are referring to. You are referring to this year?

ASSEMBLYMAN FOY: Yes, this year's inflation's been pretty consistent.

ASSEMBLYMAN MARTIN: It wasn't in 1981 I don't believe.

ASSEMBLYMAN FOY: No, I don't know what the inflation was in 1981. Do you know?

MR. KENNEDY: My assumption is that is real dollars, and it is not adjusted for 1981.

ASSEMBLYMAN FOY: Let me ask you a question in terms of making the adjustments. What was the inflation in '81, '82, '83, and '84? That will account for it. I mean you can do a regression factor on there.

MR. KENNEDY: We were running double digit inflation in '81, high single in '82, six in '83, and about 5.4 in '85, so it does make a difference.

The third point -- and I think to directly answer the Assemblyman's question as to what categories are involved -- a waivering includes both sole source and competition. We have increased from Fiscal Year '83 to Fiscal Year '84 the amount of competition in waivers from \$7.5 million in fiscal year '83 to over \$30 million in Fiscal Year '84. That's reflected in an increase on your chart, but in all fairness the increase is also a reflection of an almost \$23 million increase in the amount of competition that we presently experience in waivers over that period of time.

If you take sole source contracts such as telephone and electricity, which are defined by franchise areas, there was an increase from \$61 million to \$87 million, fully a \$26 million increase which is indicated on the graph in front of me. Those costs are almost

all inflationary in nature, all dealing with tariffs, and very much not within our control.

In terms of transactions with other government agencies, quasi-government agencies, religious, educational, and non-profit, an increase of \$17 million to \$22 million; sole source, \$15 million to \$22 million. In terms of public exigency, the number in 1984 was \$17 million, 110 waivers; for technical services, a decrease from \$36 million in '83 to \$26 million. Largely, that decrease is a reflection of the higher competition in the first category.

In terms of consultants for general and financial management, a decrease from \$17 million to \$15 million, again largely as a result of competition in the first category. In terms of equipment and real property, \$24 million to \$32 million, largely reflective of the fact that the State is leasing more property.

And, in the last category, hospital, medical, and legal, an increase from \$15 million to \$23 million, almost an entirety of that is sole source -- Blue Cross, Blue Shield, Prudential -- providing medical insurance benefits for State employees.

Those are the kinds of categories we deal with. Those are the dollar amounts, in some instances, as to the number of waivers that are processed.

Basically, what you see is reduction in the total number of waivers, an increase in cost, which is almost reflective of higher inflationary costs, and costs that are passed on for sole source vendors.

ASSEMBLYMAN FOY: All right. The concern I have is not so much with Blue Cross and Blue Shield or a telephone company where you have fixed costs. Everybody experiences them. You know, our focus in terms of this Committee is the highly unusual nature for the award of the Price Waterhouse contract. Our concern is whether or not there has been a repeat of that kind of activity since that time in the State Treasurer's office.

Now, I really want to hone in on your statistics regarding consultants. Do you have that refined in terms of the number of -- not just sole source but the number of consulting contracts that were awarded as a result of the request for a waiver of advertising?

MR. KENNEDY: In terms of the most current information which would be for '84, calendar year '84, 95-- total number of waivers, total dollar amount of \$15 million.

ASSEMBLYMAN FOY: There were 95 waivers in 1984 for \$15 million? Now you don't have any statistics for the year Price Waterhouse received their \$6.5 million waiver, do you?

MR. KENNEDY: Which year was that?

ASSEMBLYMAN FOY: Was that '83? 1983.

MR. KENNEDY: No.

ASSEMBLYMAN FOY: You don't have that available? Would you be able to make that available to the Committee? Because if there were 95 waivers in 1984--

MR. KENNEDY: When was it in '83? Do you have the month?

ASSEMBLYMAN FOY: July.

MR. KENNEDY: Oh, yes, I do then. There is a confusion between converting calendar years to fiscal years. There was 71 waivers in that year for a total of \$17 million.

ASSEMBLYMAN FOY: Seventy-one total waivers--

MR. KENNEDY: Seventeen million dollars.

ASSEMBLYMAN FOY: Seventeen million dollars, and Price Waterhouse's waiver reflected fully one-third of the value of all the waivers that were provided in 1983, is that right?

MR. KENNEDY: Correct.

ASSEMBLYMAN FOY: The other 70 waivers amounted to approximately \$10.5 million, and this one waiver amounted to \$6.5 million?

MR. KENNEDY: Correct.

ASSEMBLYMAN FOY: You weren't there to be able to advise whether you would think that would be unusual?

MR. KENNEDY: If the circumstances happened today, I would not think it to be unusual.

ASSEMBLYMAN FOY: Okay. And the circumstances that are set forth in the statute require a citation to the specific area that they think generates or justifies the waiver, is that right? The statute calls for what they can get a waiver for and you examine that when it comes into your office on that form, is that correct?

MR. KENNEDY: That's correct.

ASSEMBLYMAN FOY: Do you go back to the Division head or the Department head and say, you know, "Tell us why this is a public exigency"?

MR. KENNEDY: I can only speak to, obviously, the situation since my appointment, and that is very much the process. The Treasurer at the time of my appointment, the Governor's office at the time of my appointment, made it very clear that we should look not in terms of overall procurement for specifically waivers in a very critical and a very analytical fashion. That was the genesis for Director Rosenberg's CIRCLA letters, both for December and April the following year.

ASSEMBLYMAN FOY: In the Treasurer's statement on the second page -- I'm sorry, the third page, the first full paragraph -- he says, "At this point, agencies are required to seek as much competition as is reasonable and practical under the circumstances of each waiver of advertising requested." What is the Treasurer's follow-up procedure to determine whether or not something is reasonable and practical in terms of the solicitation of competition? What do you do to determine whether a Division director is really going out and trying to get some competition?

MR. KENNEDY: To start with, there is the process which the Treasurer explained in his introductory statement, which Earl Josephson explained quite well as the previous witness. Those documents are examined not only by a representative of the Attorney General on the Director Division level by Mr. Rosenberg, and on the Bureau level, by Mr. Mazzone, but they are also reviewed by the Treasurer, and, at the current time, by myself on the Treasurer's behalf.

We do a couple of things. One is, there is a fair amount of verbal communication between the various players and the Cabinet officer or his representatives. There is an exchange of correspondence. There is meetings if it looks like it is a crucial enough issue for us to push it to that point where we sit down and actually discuss it over a table.

A lot depends on the dollar amount. A lot depends on how well documented the original application is.

ASSEMBLYMAN FOY: What I am trying to focus on is, who makes the final determination that the request to waive is both reasonable and practical under the circumstances?

MR. KENNEDY: At the current point in time it has always been the Treasurer's statutory responsibility. He has the ability to delegate it. At the present point in time that final decision is mine.

ASSEMBLYMAN FOY: All right. So that under the administration now, you as head of the GSA examine the request and you make the determination based upon your review as to whether or not their request for a waiver is reasonable and practical under the circumstances?

MR. KENNEDY: Correct.

ASSEMBLYMAN FOY: All right. And they set forth these circumstances -- they being the department heads who are requesting it -- in writing to you with accompanying supporting data, is that correct?

MR. KENNEDY: Correct.

ASSEMBLYMAN FOY: All right. Do you know whether or not that was the situation with respect to the Price Waterhouse award?

MR. KENNEDY: I am not familiar with the Price Waterhouse situation, other than what I read in the newspapers.

ASSEMBLYMAN FOY: All right. Now, you said earlier that you would do the same thing if Price Waterhouse came about.

MR. KENNEDY: No. The question was asked earlier, "Did you think it was unusual for \$6.5 million to be that large a percentage of the total \$17 million total," and the answer was, "No, I do not think that is unusual."

ASSEMBLYMAN FOY: Now I am a little confused. The original request was-- Well, it is incidental.

The Treasurer further goes on to say, "If a required product or service is available from only one source of the supply, this should be fully documented." What do you mean, or what does the Treasurer mean by "fully documented"? What do you look for? What is your current policy in terms of what you ask for?

MR. KENNEDY: That's a difficult situation to come to grips with because what you are asking the operating agency is to prove that no one else in the world sells that project. It is a lot easier to prove that somebody else does, so you try to use common sense.

If they come up with a vendor who has a patent-- Many of the pharmaceutical products that we buy on behalf of Human Services or Health are sole source. That's a rather easy situation if it is copyrighted. There are sole source books. If you have a copyright on a book, you can't buy that book unless it comes from the copyright vendor. Common sense normally prevails as to whether it is reasonable to expect that somebody else is in the position to deliver that product.

ASSEMBLYMAN FOY: Well, does the Department of The Treasury maintain a list of computer consultants available to the State of New Jersey?

MR. KENNEDY: We have a vendor's list that would not by any means be exhausted, of everyone who is in a position to provide services.

ASSEMBLYMAN FOY: They have more people in there than Price Waterhouse, don't they?

MR. KENNEDY: Correct.

ASSEMBLYMAN FOY: Okay. Now, you also say in the paragraph, "The information regarding the waiver should include, one, the number of firms contacted." To your knowledge, the only firm contacted in the Price Waterhouse situation was Price Waterhouse, was it not?

MR. KENNEDY: Correct.

ASSEMBLYMAN FOY: Okay. And it says, "The method used in choosing the firm contacted, for example industry data, previous experience, etc." Do you know what Price Waterhouse's previous experience was with respect to computer consulting contracts?

MR. KENNEDY: I think--

ASSEMBLYMAN MARTIN: Mr. Foy, I think he has already indicated he has no familiarity-- I mean, I think it is pointless to ask him questions that he can't really answer, except by secondhand hearsay.

ASSEMBLYMAN FOY: You don't really have any familiarity with that at all?

MR. KENNEDY: No.

ASSEMBLYMAN FOY: All right. Now, going down further in the Treasurer's memo, he says: "The public exigency is perhaps the one whose definition is least clearly stated. Because of this, we adopted policy guidelines for public exigency only when the following conditions prevail and are thoroughly documented by the using agency or bid waiver applications, etc." Again, when you say "thoroughly documented," what are you looking for in terms of the justification?

MR. KENNEDY: I think the illustration which the Treasurer used in terms of OLS is a classic example. A using agency comes to us and says that if we can have a product, and we can't have it by a specific point in time, our ability to provide services to the public is going to suffer. Again, you use a test of reasonableness as to whether or not that representation is a reasonable representation.

ASSEMBLYMAN FOY: You did have some involvement in the approval of the OLS situation, is that correct?

MR. KENNEDY: Yes, I signed it.

ASSEMBLYMAN FOY: All right. In fact, OLS engaged in extensive solicitation of competition, did they not?

MR. KENNEDY: OLS did a couple of things, one in terms of Coopers & Lybrand. They indicated that it was a competitive process, as was the case with Price Waterhouse.

ASSEMBLYMAN FOY: It was competitive with Price Waterhouse?

MR. KENNEDY: My understanding on the first award of the contract was that it was competitive.

ASSEMBLYMAN FOY: I'm talking about the \$6.5 million.

MR. KENNEDY: Again, in the instance of OLS, when the feasibility study was completed and it became time to do the implementation stage, the second waiver which I signed on behalf of OLS was not competitive, and that is a fairly routine, fairly common practice.

It is very much the exception and not the rule that anyone other than the agency -- the vendor that provided the feasibility study -- will do the follow-up work.

ASSEMBLYMAN FOY: Well--

MR. KENNEDY: Now in terms of the Wang contract, which we didn't discuss this morning, that was competitive, and that was competitive under a waiver. OLS in that particular instance did not award to the lowest vendor. Having spent a considerable amount of time and discussion reviewing it, they skipped over several vendors who provided a lower price for a quality product. Again, that is not an unusual situation.

ASSEMBLYMAN FOY: But the fact of the matter remains that OLS solicited people other than Coopers & Lybrand initially for the work that was to be performed.

MR. KENNEDY: As in the instance of Price Waterhouse, correct. As in the second phase, there wasn't a solicitation, correct.

ASSEMBLYMAN FOY: Right. For the \$6.5 million there was no solicitation. It was a sole source award, is that right?

MR. KENNEDY: Meaning Price Waterhouse, correct.

ASSEMBLYMAN FOY: Right. Okay.

MR. KENNEDY: And, again, not a very unusual practice, historically, going through two administrations at this point, for the State to undertake.

ASSEMBLYMAN FOY: Let me ask you this question. You say it is not an unusual practice, but evidently something has occasioned some activity in your Department regarding this whole issue of waiver of advertising procedures. It is a very sensitive area, is it not?

MR. KENNEDY: Extremely sensitive, that's why we are here today.

ASSEMBLYMAN FOY: You all have great concern regarding this, do you not?

MR. KENNEDY: Yes.

ASSEMBLYMAN FOY: And it occasioned a memorandum, dated April 24th, from Mr. Rosenberg, which I will refer to now. And he indicates-- And this is, I guess, about five months after his original one which set forth-- which revised the Josephson memo and reiterated in rather strong terms the fact that this was a highly unusual situation, that there was going to have to be a lot of justification

for these kinds of things, that they are not something that is to be routine practiced among administrators in government, isn't that correct? That is the real thrust of that first memo, Mr. Rosenberg, am I right? You wanted these people on notice that they weren't going to be running around buying things through caprice or whim or fancy, that there were procedures that were going to be followed, that if they were going to seek an extraordinary method, such as waiver of advertising, no bid, sole source, that they better have every "T" crossed and every "I" dotted, isn't that your position?

MR. ROSENBERG: That's correct.

ASSEMBLYMAN FOY: Okay. So, we come to the April 24th memo, and it says, "Although a revised procurement CIRCLA governing request for waivers of advertising was distributed on December 3, 1984" -- and that's this one -- "it appears as though many departments and agencies still do not clearly understand the design procedures governing waivers."

Let me ask you a question. What happened after the December 3rd, '84 memo? Did you still-- Were you still experiencing difficulties with the various departments?

MR. KENNEDY: Excuse me, Assemblyman. Both of those CIRCLA letters were sent at my instruction, and the genesis for their distribution largely rested what was on my mind at the time.

Again, getting back to where I assumed the position in August, I was appointed by a Governor to work for a Treasurer who was the former, I guess, Chairman of the Ethics Committee. And one thing that was drummed into me at the time of that appointment was a kind of ethical standards that Treasury should be expected to follow.

ASSEMBLYMAN FOY: Who was doing the drumming?

MR. KENNEDY: My Treasurer and members of the Governor's office, his staff.

ASSEMBLYMAN FOY: Who in the Governor's office?

MR. KENNEDY: Mr. Stevens and Mr. McGlynn. That Treasury was not a place to play loose with the public dollars, and I was to take every precaution that that not happen. Both of those CIRCLA letters really are reflective of that point. Their intent was not to say that the system is broken. The system wasn't broken.

The guidelines that Mr. Josephson put into effect at the end of the Byrne Administration in 1981 were sound guidelines. They were guidelines that were followed by this Administration for three years.

What we attempted to do in '84 and '85 was to make a good system even better, and to protect the public, that that system would work.

I was concerned not that anything horrible was happening. I was concerned that not the best was happening, that we couldn't do things better, that you couldn't achieve an ultimate goal of not having any questions, not having anything in the system that could not be addressed in terms of improvements. That's where those CIRCLA letters came from.

ASSEMBLYMAN FOY: It was your concern of doing better, in a sense, more expeditious handling and proper handling in terms of an unusual situation.

MR. KENNEDY: I think my concern was based on two levels. One is, obviously we want to get the best product at the lowest possible cost, and that is something that on the Executive side we should be involved in on a day-to-day basis. But, the other was the real sensitivity that if we didn't protect the Executive by having stringent guidelines that were stringently enforced, we would end up before a Committee, such as this, trying to explain the misunderstanding.

ASSEMBLYMAN FOY: Okay. Let me ask you this question. At the time, did the Price Waterhouse situation have anything to do with the issuance of these memos?

MR. KENNEDY: I wasn't aware of Price Waterhouse being a situation until Mr. Bocchini brought it to my attention.

ASSEMBLYMAN FOY: When was that?

MR. KENNEDY: Sometime over the summer, reading The Trenton Times.

ASSEMBLYMAN FOY: All right. Now, continuing on with the memo, it says specifically, "It must be understood that all products and services are to be obtained through the process of formal, advertised bidding. Waivers of advertising are an exception -- and

that is underlined and put in quotations -- to the policy and are limited -- and that is underlined -- by statutory design, as indicated in the listing below: 52,34-9(a), technical and professional services; 9(b) perishable foods or subsistence supplies; 9(c) leasing of equipment and office space; 9(d) acquisition of real property; 9(e) unreasonable bid prices; 34,10(a) contract with a government agency; 10(b) public exigency; 10(c) sole source; 10(d) primary source; 10(e) seasonal wearing apparel; 10(f) fair trade commodities; 10(g) existing equipment compatibility."

Then it goes on, "I have noted that departments and agencies continue to request proposals for professional services directly from private sector firms. This practice creates an environment wherein the potential vendors believe they have the sole right to a contract. As such, this is to be discontinued."

What, Mr. Rosenberg, was happening with respect to that? Give me an example of what you are talking about.

MR. ROSENBERG: Well, what I was trying to address in that paragraph was that departments would discuss a typical commodity or a typical service with a vendor, and then expect that that contract would be finalized prior to coming to my Division, or through the normal process. Then, after it would be turned down -- which several are -- then it makes a very unhappy vendor and also a department, and a waste of a lot of time.

ASSEMBLYMAN FOY: All right. That mostly happened with equipment, or did it happen with consulting services?

MR. ROSENBERG: Oh, every category.

ASSEMBLYMAN FOY: Every category. So, some department had a consultant they liked and wanted to have the contract and they got turned down, or somebody had the "hots" for an IBM computer and ended up having to take a Wang or something like that?

MR. ROSENBERG: Exactly.

ASSEMBLYMAN FOY: You were basically admonishing them to end that practice and consult with you first, isn't that correct?

MR. ROSENBERG: That's correct.

ASSEMBLYMAN FOY: All right. Then it says, "When a department is in need of specific professional services, they should contact the Purchase and Contracting Bureau's Professional Services Unit. Upon contact with the Professional Services Unit, an individual -- or individuals -- will be assigned to work with your department on developing a clearly defined scope of work. The scope of work will be developed to address all phases of the professional services required, feasibility study design, implementation, and evaluation." This policy was not in force at the time of the Price Waterhouse contract, was it?

MR. ROSENBERG: Not to my knowledge.

ASSEMBLYMAN FOY: Because I didn't see anything like this in Mr. Josephson's memo, and that was the policy until this became the new policy, isn't that correct?

MR. ROSENBERG: Correct.

ASSEMBLYMAN FOY: There is no intervening CIRCLA or memo regarding this, is there?

MR. ROSENBERG: Not to my knowledge.

ASSEMBLYMAN FOY: All right. Then you go on to say, "Even when it becomes feasible to procure the required services through a waiver of advertising, competition is the rule in selecting the best firm for the project." That's what you stressed to your people since April 24th of this year, is that correct?

MR. ROSENBERG: That's correct.

ASSEMBLYMAN FOY: How many sole source contracts have been awarded since April 24, 1985 for consulting purposes?

MR. ROSENBERG: I cannot answer that question.

ASSEMBLYMAN FOY: Okay. It says, "Attached please find an addendum to Purchasing CIRCLA 25(a) which clearly delineates the steps to be used whenever a waiver is necessary for professional services. Is computer consulting considered a professional service?"

MR. ROSENBERG: Most likely, it can be.

ASSEMBLYMAN FOY: Well, I am not sure what you mean by that. I mean it can be-- You can--

MR. ROSENBERG: In most cases it would be.

ASSEMBLYMAN FOY: Okay. The Department would take the position that that is a professional service -- computer consulting?

MR. ROSENBERG: Correct.

ASSEMBLYMAN FOY: All right. "Request for waivers of advertising should be authorized and endorsed directly by the Cabinet Officer or Executive Agency Director. Request for waivers of advertising not properly endorsed will be returned for the appropriate signature. Request for waivers of advertising for professional services shall, in those instances where feasible, restrict a consulting firm to providing the needs analyses and/or feasibility studies." Is that what happened with Price Waterhouse? (no response) You don't know?

MR. KENNEDY: We weren't here for Price Waterhouse.

ASSEMBLYMAN FOY: Your effort now though is to very narrowly focus what consulting work is going to be done, isn't that correct?

MR. ROSENBERG: That's correct.

ASSEMBLYMAN FOY: You don't give out big expensive contracts?

MR. ROSENBERG: It depends on the situation.

ASSEMBLYMAN FOY: Ah ha. How about-- The next sentence says, "Consulting firms will be required to accept an exclusivity clause which will void their right to bid on the actual design and implementation contract." Is that now being followed as a policy of this Administration?

MR. ROSENBERG: I believe that says "where feasible" it was my intent.

ASSEMBLYMAN FOY: Well, it doesn't say that. It says, "Consulting firms will be" -- and these are your words -- "consulting firms will be required" -- will be required -- "to accept an exclusivity clause which will void their right to bid on the actual design and implementation contract."

MR. KENNEDY: That language was included after a considerable amount of internal discussion within the General Service Administration. And, the logic follows to a large part what was previously testified by Mr. Josephson. Traditionally, historically, you have always had situations where a firm will come in and do a feasibility study. More often than not that will be in a competitive situation. The implementation study will be awarded without competition.

As Mr. Josephson indicated in several examples during his tenure in the position, we too have tried to make competitive the implementation study. In one specific example that occurred about the time of the drafting of that CIRCLA letter with Taxation for their data processing needs, there was an implementation third or fourth phase that the Division Director indicated that he would like to have processed in a non-competitive fashion through waivers.

We insisted that even though the waiver process was to be used, that it be competitively bid. We went out. We had RFPs on the street. We sought competition in that instance and got one vendor's response, and that was the firm that did the original phases.

When we began to talk both amongst staff and vendors as to why no one bid on it-- Here we did precisely what the Committee would have liked to have us do in the Price Waterhouse situation: Go out on the street. Ask for competition. We did in Taxation. Nothing came back, and the response was much the same that Mr. Josephson indicated. It is expensive on the part of the vendor to prepare a response to a bid. It takes time. It takes money, and he has to make a business judgment as to whether or not there is a reasonable chance he is going to be the low bidder.

When they looked at in the taxation case, they made a judgment and they didn't bid. The reason they didn't bid is they knew that the vendor that did the feasibility -- did the first phases -- had an incredible (inaudible) situation.

I have no reason to expect that if that same situation had occurred in the Price Waterhouse-- Within the Division of Motor Vehicles, if we had gone on the street we would have got anything back more than one bid.

The language that you refer to there was an attempt on the part of the Division Director to try something different. We have no idea whether or not that is going to be effective, whether or not that is the best public policy for the State of New Jersey to follow in the long run. But we wanted to try it at least once to find out what would happen if we barred firms that did the feasibility study from participating in the implementation phase.

My own personal feeling is, what is going to happen is you are not going to get the best people doing the feasibility study. But the next contract that comes up where that is appropriate to implement, we are going to try it; we are going to see what the results are.

ASSEMBLYMAN FOY: Okay. So, this is a novel experiment for your division of State government?

MR. KENNEDY: An experiment, novel-- I don't personally think it is going to be that effective. My staff members do, and I was persuaded to allow it to go into the CIRCLA letter to at least give it one chance.

ASSEMBLYMAN FOY: Well, it is a grand idea. Whose idea was it?

MR. KENNEDY: Mr. Rosenberg's.

ASSEMBLYMAN FOY: And you are going to take a shot and see if you can separate the feasibility phase of consulting work from the implementation phase. It hasn't really been done yet?

MR. KENNEDY: It hasn't been done yet. You have to wait for the right example to work. I mean you don't want to try that kind of an experiment in the Division of Motor Vehicles where if it fails the public suffers too directly. You have to find a department where it is a little less critical in terms of day-to-day activities.

ASSEMBLYMAN FOY: I'm not so sure it could be any worse than it is right now, given the situation. Of course, I only know what I read in the papers.

Then you go on to say, "Subsequent to the award of the contract, the consultant shall submit quarterly narrative and financial project reports to the department head and a copy to the Division of Purchase and Property." Is this the new policy?

MR. ROSENBERG: Yes, it is. As I know of it, what we are trying to do is also look at-- You know, after the department manager oversees the project continuously, that we would also get a copy for the main file, and also to review.

MR. KENNEDY: We are looking at it not in terms of project control, because we have no statutory authority in that role, but in terms of how we deal with that particular vendor or how we deal with a particular type of contract in the future.

ASSEMBLYMAN FOY: But as of April 24, 1985, you're receiving quarterly reports from the consultants, such as Price Waterhouse, regarding the projects that they are involved with, is that correct?

MR. KENNEDY: We are beginning to receive them. Obviously, with a quarterly basis, we really haven't had much of an opportunity.

ASSEMBLYMAN FOY: Would you go back and check your records to determine whether from April 24, 1985 you have been receiving from Price Waterhouse copies of those reports?

MR. KENNEDY: Gladly.

ASSEMBLYMAN FOY: I'd be interested to see if they are adhering to these new rules. In fact, I'd like copies of those reports made available to the Committee.

ASSEMBLYMAN BOCCHINI: Will you do that, Mr. Horn?

COMMISSIONER HORN: We'll certainly do that, yes.

ASSEMBLYMAN BOCCHINI: When was the implementation of that monitoring?

MR. ROSENBERG: This was in April, to go in contracts after that date.

ASSEMBLYMAN BOCCHINI: If I may for a moment, Mr. Foy, Acting Director Kline indicated in his testimony -- and if you covered this while I was out, just cut me short -- that bills and expenses were processed through and eventually there was approval that came from the Treasurer's office. Based on that, would the \$500 thousand in expenses that were alluded to in the last Committee meeting have been approved by your office, with the cars and the maids, etc., etc.?

COMMISSIONER HORN: I don't know whether he said that or not. We do not, at the present time, review expenses. We leave all implementation to the using agency.

ASSEMBLYMAN BOCCHINI: Excuse me. Is my representation inaccurate? You weren't here, but, Bob, you were here.

ASSEMBLYMAN MARTIN: I'm not sure if he said specifically that, but I think he made reference to the fact that there is some form of review made by the Department of Treasury, but I--

COMMISSIONER HORN: Treasury cuts the check, and so it is possible that the agency would send the list of expenses to the

Division of Budget and Accounting. But it certainly doesn't go through Purchase and Property.

ASSEMBLYMAN MARTIN: I know he made reference to the fact that there was a figure. There were two figures tossed around, but the one in the documents we have today talks about an 8.8% figure, or part of the total contract which would be allowed for personal expenses for those employees who were brought over here from Price Waterhouse who didn't live in the area to do consulting work. Would you look into figures like that, as far as whether the 8.8% was a right calculation in the amounts that were submitted to your office?

COMMISSIONER HORN: We will do that. We should point out that requests for reimbursement of out-of-pocket expenses is not an unusual situation. Again, getting back to Coopers & Lybrand, the submission which accompanied the request specifically said, "We will bill monthly for fees and expenses incurred." It is a recognized procedure.

But, in answer to your question, yes, we will provide that information.

ASSEMBLYMAN BOCCHINI: It is a recognized procedure. In relation to the recognition of the procedure, is there any framework or groundwork that your Department follows, or guidelines that you have sent out to other departments and agencies as to what should be considered reasonable under the circumstances of expenses?

COMMISSIONER HORN: Well, I would suggest that what they do-- First of all, the best way to do it would be to specify them in the RFP itself, or in the-- Yes, in the RFP itself and in any waiver which is granted. I think that you would agree with me that that would probably be the best way, that is to list specifically what are the kinds of expenses that are anticipated to be done. Failing that, I would suggest that they use IRS guidelines as to what's an allowable business and travel type expense. But I think the better way to do it would be to specify in the contract itself, "These are the kinds of expenses that we anticipate: housing, telephone, car, whatever."

ASSEMBLYMAN BOCCHINI: But presently there is no structured guideline from your Department to any department or agency within State government?

MR. KENNEDY: Not unless it is provided by OLS. I'm not sure but I would think that the audit unit within the Office of Legislative Services may have some guidelines.

ASSEMBLYMAN BOCCHINI: But you pay the bills. That's why I am asking Mr. Horn and you. My question is, is there anything from within the Department of Treasury, people who say "We are paying the bills and we think you should be setting up some specific guideline"? That is nothing to that extent at this juncture, is that correct?

MR. KENNEDY: Well, there is a general guideline that is fairly emphatic that it has to relate to performance under the contract. But in terms of whether a specific category or a specific item is appropriate, that has been left to departmental review by the using agency.

COMMISSIONER HORN: The other control would be that Budget and Accounting will not pay the bill unless it comes within the authorized expenditure.

ASSEMBLYMAN BOCCHINI: Excuse me for one second. We had requested from Mr. Kline at the last hearing-- He was going to provide us with the supplemental page of the contract.

MS. SZILAGYI: Everybody has it.

ASSEMBLYMAN BOCCHINI: We all have that? All right. I haven't skimmed through it yet.

ASSEMBLYMAN MARTIN: It speaks of 8.8%, Mr. Chairman.

ASSEMBLYMAN BOCCHINI: You have in front of you a letter dated July 28, 1983. As a matter of fact, we probably should also give to Mr. Horn the second part of it that was attached to it. The letter indicates:

"This letter is the second supplement to the Price Waterhouse Proposal for the design and implementation of the New Jersey Merit Rating Plan Surcharge System and the Comprehensive On-Line Driver/Owner Information and Management System.

"Price Waterhouse, by this supplement, amends the proposal to a contract amount not to exceed \$6.5 million, including out-of-pocket expenses incurred in connection with the assignment. Out-of-pocket expenses include such costs as transportation, lodging, per diem for

out-of-town staff and other miscellaneous expenses and will not exceed 8.8% of professional fees."

There is also an attachment that goes to that, which is entitled "State of New Jersey, Division of Motor Vehicles, Supplement to July 12, 1983 Proposal to DMV for the Design and Implementation of, New Jersey Merit Rating Plan Surcharge System, Comprehensive On-Line Driver/Owner Information and Management System," dated July 21, 1983, which contains a memo to Mr. Snedeker, then Director.

In relation to this type of amending, as I presume it was -- it was intended to be an amendment to the contract -- do you find that in your judgment-- I understand that you may not have been in control of it at that time, but do you find that to be sufficient? Let's strike that. Do you find that to be good business practice from the standpoint of a contractual relationship with any vendor?

MR. KENNEDY: I think it is a valid business practice, and you really have to make--

ASSEMBLYMAN BOCCHINI: Excuse me. My question was in relation to the--

MR. KENNEDY: I think it is a good business practice, and you really have to make the observation that you are going to be charged and billed one way or the other. If you don't break out your expenses, they are going to roll it into their fee.

At least in breaking out the expenses, you have an opportunity to control it. There is no free lunch if there are costs incurred on a project. They are going to put those costs somewhere.

ASSEMBLYMAN BOCCHINI: No free lunch? We had about \$150,000 to \$300,000 worth of free lunches in this contract.

MR. KENNEDY: Well, except for the Legislature--

ASSEMBLYMAN BOCCHINI: I don't know if you'd choose to rephrase that.

MR. KENNEDY: You are going to pay it either in terms of the fee, or you are going to pay it in terms of the expenses. If you can break out the expenses if they are specified as they were in this particular instance, which is fairly strong language -- much stronger than was present in the OLS example -- and, you cap it so that there is

no up-side risk to the State in terms of the total expenses, you are practicing good business practice.

ASSEMBLYMAN BOCCHINI: Let me ask this. Would you be characterizing what occurred in the Price Waterhouse contract as good business practices?

MR. KENNEDY: I would categorize any expense language that is incorporated in any contract that has specifications as to the categories that can be charged against, and it has an up-side cost in terms of the total percentage against the contract, as a good business practice -- as good contractual language. It is much stronger in this case than in the OLS example where neither of those two elements are present.

ASSEMBLYMAN BOCCHINI: Would you say then in relation to this that the charging of maids and recreation fees, etc. are legitimate business practices?

MR. KENNEDY: I'm not aware of any of those situations. Again, I have no direct knowledge of the Price Waterhouse contract.

ASSEMBLYMAN BOCCHINI: The Treasury has been paying those bills up through-- Well, when did you start with Treasury?

MR. KENNEDY: I've been with the Department of the Treasury since April of 1984.

ASSEMBLYMAN BOCCHINI: They have paid out through March of 1985.

MR. KENNEDY: But, again, maybe it is because the Treasurer's responsibilities are so all-encompassing. Whatever they are paying out is not going to through the General Services Administration or back through the Division of Procurement. But, I have no direct knowledge of that process.

ASSEMBLYMAN BOCCHINI: Do you think that some type of more stringent guidelines. I don't care whose contract it is, if it is OLS's or whomever's, as far as when it comes to the paying of additional expenses. We need to analyze that more closely and become more specific with it.

MR. KENNEDY: Yes.

ASSEMBLYMAN BOCCHINI: Any other questions?

ASSEMBLYMAN MARTIN: Yes, I have a few questions. With respect to that area, this contract that the Chairman just read to you list a figure of 8.8% for a maximum cap on personal expenses. Based upon your experience, you indicated that it is a good business practice to have an upper limit. Would you find this 8.8% to be reasonable, unreasonable, or how would you comment on that as a figure?

MR. KENNEDY: That is actually, in terms of State contracts where there are caps, a fairly low cap, but you can't go by the percentage itself. You really have to take into consideration the nature of the assignment.

If a corporation -- a vendor -- is going to bring in a large number of out-of-town staff where they are bringing in computer specialists from out of state, where they have to put them up through a Monday through Friday kind of operation, that percentage is going to tend to be higher. But, 8.8% is the lower part of the middle of the range as to what we normally pay for expenses.

ASSEMBLYMAN MARTIN: All right. When you are talking about these areas, is it common to expect that living expenses would include lodging and meals?

MR. KENNEDY: Assemblyman, it gets back to what I said before. You are going to pay one way or the other. If you paid in the rate, part of what you are paying for in the base rate is for lodging, is for meals, is for living expenses. If you break out the expenses, you have an opportunity to control it. It is not at all uncommon to pay for hotel rooms. If you pay for hotel rooms, what is rolled into the rate of the hotel rooms is maid service, is television. There are those extras.

From what the Assemblyman just brought to my attention, it seems that those may have been broken out in the Price Waterhouse instance. That is a little bit unusual to break them out, but almost any contract where you are putting up professionals in some kind of public lodging, those expenses are paid for.

ASSEMBLYMAN MARTIN: All right. I have a question for the Commissioner. I understand from the previous questioning that the gist of these memos which came out through your Department were to toughen

up the bid waiver process. I know it is a relatively short period time since April of 1985, but apparently there was also an attempt in April of 1984 through the earlier correspondence. Can you comment at all, if you can, about any success as far as this process goes and the attempt to--

MR. KENNEDY: I think we can clearly say that we've taken a good process, which both the Byrne Administration and the Kean Administration has followed, and made it better, both in terms of the control on waivers and in terms of the total amount of waivers that are actually approved and the dollar amounts involved, particularly in bringing competition to the waiver process where appropriate.

In many instances, competition is not appropriate and can end up costing the taxpayers of the State more money. But, I think what you really have to do is compare our waiver process to the waiver process on the county and municipal level.

I am both a former county administrator and a municipal administrator. Mr. Rosenberg is a former procurement officer for Morris County. We have a considerable amount of direct experience on the local government level.

The State of New Jersey by far, both as a result of the practices that were established in the Byrne Administration and the strengthening of those practices during the current Administration, has tougher, more stringent, more competitive standards than counties or municipalities in the area of procurement. That is where we--

TREASURER HORN: Let me supplement. I guess some of the proof is in the pudding, and that is the reduction in the number of waivers. But, I'll tell you this. I am going to predict that the amount waived -- the chart you have before you -- will not necessarily change. I think the trend will continue to increase in terms of the dollar amount.

State government-- Those who were in State government 10 years ago don't recognize the mission -- the changes in the mission -- that State government has today. Ten years ago, we didn't have a PJP Landfill in Jersey City to clean up. State government 10 years ago didn't have a DMV system that was falling apart. State government 10

years ago didn't have demands by the Legislature that the JUA Surcharge System be up and operating within a certain number of months.

So, to the extent that this Committee and OLS and the State Auditor can and should follow the subject we have been talking about this morning, don't look for the amount to come down. The emergencies are increasing rather than decreasing -- the toxic wastes, the cleanup.

When we hire a consultant to prepare a feasibility study on the cleanup of a toxic waste site, quite frankly, if we are going to lose six months by advertising that, we will not advertise it. We will solicit informal bids, and we'll hire the best company for it.

So, yes, we are succeeding in the numbers, but the total amount of bid waivers I suspect will increase rather than decrease, and for very good reasons.

ASSEMBLYMAN MARTIN: Just one more question, Mr. Kennedy, if I may. I see the chart here, and I appreciate graphics. I wasn't privy to seeing it earlier, but just to help me understand your perspective the chart, can you point out specifically on that chart what you believe to be inaccurate, Mr. Kennedy?

MR. KENNEDY: When you take a very complicated situation, and you try to make it simple, very often you end up with garbage. Those figures, in terms of years, in terms of dollar amounts, are accurate. Maybe they portray what the graphic artist wanted them to portray, but they don't really portray the reality of the situation because it doesn't show a couple of things.

It doesn't show that you are not dealing in 1981 constant dollars, and takes into consideration inflation. It makes no attempt to separate where there is competition in waivers from where there is not competition in waivers. I would think that every member of the Committee would encourage us to be as competitive as possible in the process.

Fully, \$23 million in terms of increase on that chart is because of increased competition. It cannot take into consideration sole source. The fact that we are required by the PUC to deal with Jersey Central Power and Light for electricity, or Bell Telephone prior

to the divestiture for our telephone costs, is rolled into those numbers and at a very heavy element of those numbers -- over \$87 million in the last calendar year.

The fact that there are, almost on a monthly basis, elements of legitimate public exigency where waivers are the only way to go in terms of meeting public demand--

One of the first things that I was required to sign was a multi-million dollar waiver for toxic waste cleanup after I assumed my position. The reason that we went through the waiver process was because of the insurance situation. It would have meant throwing out probably 44 toxic waste cleanup projects. They were competitive. We ran into an insurance problem at the last moment, and had to use a waiver. Those kinds of situations are rolled into that cumulative figure.

I would make the point, if you really wanted to be fair, you can't do it in one chart. Maybe it is going to take 10 or 12 charts. Maybe it is going to take--

ASSEMBLYMAN BOCCHINI: Would you like to put those charts together for us so we could have a more accurate depiction then?

MR. KENNEDY: If the Committee would want graphics, I would be more than happy to provide it to them. But, again, I point out that the information--

ASSEMBLYMAN BOCCHINI: We would like any information, Mr. Kennedy, that is going to be available to us--

MR. KENNEDY: The information you are working off of was information that was provided to Senator Weiss by Treasurer Horn as part of the JAC process last March. It is inconceivable to me that if there was any real concern on the part of the Legislature, they would have withheld that information for six months before presenting it last week in a press conference.

ASSEMBLYMAN MARTIN: Just to get on a larger framework, the State of New Jersey-- I am familiar with the budget this year. I wasn't in the Legislature in 1981, but how much has government increased overall in the State since the time that the chart makes reference to?

ASSEMBLYMAN BOCCHINI: Are you talking about numbers of employees, or in reference to what?

ASSEMBLYMAN MARTIN: No, I'm talking about dollars as far as costs to the State budget as well.

TREASURER HORN: Our budget now is close to \$9 billion. I've been Treasurer for a year and a half. I've been through two budgets, and it was, I guess, around \$7 billion, more or less. Again, that is a figure that gets very complicated too because the--

ASSEMBLYMAN MARTIN: Well, I'm just trying to compare, in the process of looking at the bid waivers, the increase in cost and how that might relate to the overall State budget.

TREASURER HORN: I would guess over the four years, the budget has grown by maybe \$3 billion over the four years of this Administration.

ASSEMBLYMAN MARTIN: Just one other question, if I may. You referred to a second level before in terms of the analogy used.

ASSEMBLYMAN BOCCHINI: So, it has gone from about \$5 billion or \$5.5 billion to \$8.5 billion?

TREASURER HORN: Roughly.

ASSEMBLYMAN MARTIN: You referred to a second level before in which there was no longer competition as far as the analogy that you had used. Was that a bigger dollar contract at the second level where the use of the computers for the Administrative Office of the Courts?

MR. KENNEDY: In this case, it was actually smaller. The real analogy is this. If you are an attorney, if I go to you and ask you to prepare a case for myself for a criminal matter, and you go through the entire process, do all the background, do all the research, prepare the briefs, get it all the way up to the point where it is going to be argued, and I say, "I no longer want to do business with you," and I dump it on somebody else, you are going to have a tremendous advantage in that process because you fully understand the process. It is not the same as shopping for a second opinion in a medical situation. It is much more analogous to the legal profession where you have done all of that groundwork, where you have put together the briefs, and now you turn it over to a second who is not

familiar with it. Regardless of the dollar amount, it almost always the prudent thing in terms of the real economics to stick with the first vendor.

ASSEMBLYMAN MARTIN: To get back to where Mr. Foy would probably direct--

ASSEMBLYMAN BOCCHINI: Excuse me, excuse me, excuse me, Mr. Martin. Are you aware of where when someone pays a lawyer, and they want to move their file from one lawyer to another, that they are entitled to take the documents contained in those files, which would include briefs or whatever other information is involved in that?

MR. KENNEDY: Oh, absolutely. It is the case with our present contracts. You move from one vendor to the other.

ASSEMBLYMAN BOCCHINI: All right. So, you can't say you are leaving lawyer "x" and going to lawyer "y," and walking in with nothing.

MR. KENNEDY: But, the first thing that the second lawyer does is, he charges you for reading those files. That is where the real cost is. There is a learning curve that that second lawyer then charges his client, and that is the review of the files that you don't have in the first instance. That is the real weakness in moving from one vendor to the other.

ASSEMBLYMAN BOCCHINI: So, you're saying we saved money then because we stayed with Price Waterhouse? Is that what you are trying to tell me?

MR. KENNEDY: I'm saying that in many instances, when you stay with your first vendor who does the feasibility study and goes to the implementation stage, you--

ASSEMBLYMAN BOCCHINI: But, are you saying that in relation to Price Waterhouse?

MR. KENNEDY: In all likelihood, we saved money with Price Waterhouse, without being familiar with the specifics.

ASSEMBLYMAN PELLY: Mr. Rosenberg? Excuse me. Do you agree with that, Mr. Rosenberg?

MR. ROSENBERG: I'm really not that familiar with it enough to say that.

MR. KENNEDY: It is just--

ASSEMBLYMAN PELLY: I'm trying to understand why you have inserted the exclusivity clause in your memorandum of April 24, 1985. Mr. Rosenberg certainly approved of it, and Mr. Kennedy is arguing the other side of the issue. I'm trying to understand where we are going to be going, or where we expect to be going in the next year or so with respect to this. Are we going to have that clause in, or is it going to be removed, or are we going to continue to argue it?

MR. KENNEDY: Assemblyman, we are going to do it at least once, and we are going to see what the results are. The discussion you just heard was very similar to the internal debate within our Department as to whether or not that is going to be an effective provision. The simple truth of the matter is, until you try it once, no one knows.

I don't think it is going to be an effective provision. Director Rosenberg does. We are going to find an appropriate example and find out.

ASSEMBLYMAN PELLY: Would a Price Waterhouse type of situation be an appropriate type?

MR. KENNEDY: Absolutely not. You don't want to do it in a situation that is so critical.

ASSEMBLYMAN PELLY: Not appropriate. Do you agree with that, Mr. Rosenberg?

MR. ROSENBERG: I don't think that would be the appropriate manner. It is too critical of a project and too large.

ASSEMBLYMAN PELLY: Too what?

MR. ROSENBERG: Too critical and too large in scope.

ASSEMBLYMAN PELLY: Too critical and too large in scope. If that Price Waterhouse were to come up again, you would have gone through the same process, that is, not sought out your internal communications people to do the job, but have gone out as you--

TREASURER HORN: Assemblyman, have you read the material which Mr. Bianco submitted to the Committee?

ASSEMBLYMAN PELLY: Yes, I did.

TREASURER HORN: And, if you did, you have seen the very very-- Just the dialogue we are having right now. The same kind of

dialogue went on within the Administration. They were faced with an emergency on one hand. They were faced with pressure press releases coming out of the Assembly Majority Office to get a system up and running by a certain time. They were faced with a system that was literally breaking down.

You were getting some of the phone calls from your constituents, "I can't get anything out of Motor Vehicles." I don't think we can sit here and second guess what was a decision at the time to go forward with the company and save six to nine months or so to get a new system up and going, particularly when that company was a Big 8 outfit.

I'll give you another example. Had this dialogue--

ASSEMBLYMAN PELLY: But, the company-- Excuse me, sir. That company was a Big 8 accounting firm, not a computer firm.

TREASURER HORN: All of the Big 8--

ASSEMBLYMAN PELLY: Which, if you had read the testimony, has never done a Division of Motor Vehicles' computer system anywhere in the world prior to our New Jersey experience.

TREASURER HORN: They were hired by a previous Administration to do a feasibility study to see if the system could be--

ASSEMBLYMAN PELLY: Absolutely.

TREASURER HORN: Let me give you another example of the same kind of dialogue that we're having now. One of the candidates for Governor, in an effort to indicate that toxic waste could be cleaned up better, has said he wanted to set up a NASA-type agency--

ASSEMBLYMAN BOCCHINI: I think we will exclude that. I think we will exclude that.

TREASURER HORN: Was I cut off, Mr. Bocchini?

ASSEMBLYMAN BOCCHINI: Yes, you have been.

TREASURER HORN: Well, you have no right to cut me off.

ASSEMBLYMAN BOCCHINI: As long as I am Chairman of this, I have the ability to sit up here--

TREASURER HORN: I have the right to answer the questions.

ASSEMBLYMAN BOCCHINI: (continuing) --and to direct the testimony.

TREASURER HORN: I would like the press to take note that I've been cut off by Mr. Bocchini.

ASSEMBLYMAN BOCCHINI: If you want to, Mr.-- If you want to go back on, Mr. Horn--

TREASURER HORN: Mr. Shapiro's suggestion--

ASSEMBLYMAN BOCCHINI: Mr. Horn, if you want to debate Mr. Shapiro on behalf of Governor Kean in relation to any of the toxic waste cleanups, or any of that other area of toxic wastes in the environment, I invite you to do that.

The comparison that you are about to give I do not believe is germane, and I wish you would stick with the topic of computers.

TREASURER HORN: All right. I'll stick with the topic if you'll turn my mike back on. (Chairman complies)

There are good arguments which can be made that the competitive bid process, in some instances, is inappropriate. Someone, and I won't mention his name, has suggested that that is the best way to do toxic waste cleanups.

I'm saying that the same kind of dialogue that we are having here now went on within the Administration with respect to Price Waterhouse, and a decision was made.

ASSEMBLYMAN PELLY: And you were part of that dialogue?

TREASURER HORN: No, I was not.

ASSEMBLYMAN BOCCHINI: No, he wasn't part of that at that time.

ASSEMBLYMAN SCHUBER: No, he has already testified that he wasn't.

TREASURER HORN: I was not, not in any way, shape, or form, but I've seen the same material that has been submitted to this Committee. All I know is what Mr. Bianco submitted to this Committee.

ASSEMBLYMAN BOCCHINI: Regardless of what our discussions lead to this morning, you have to agree, even though the hopes may have been-- It was pointed out from this Committee, Mr. Horn -- you weren't here during that testimony -- that DMV never came back to the Legislature and never made it known to anybody that they didn't think they would be able to make it.

They just felt that because of the pressure of the Legislature, they had the obligation to do it. That may have been well-intended; however, the facts still remain, to quote the Governor, "We're as screwed up today as we were when they entered into this a year and a half ago," as far as the DMV project is concerned.

Whether it be DMV this year, or Pensions next year or another division of government at another time, you know, I think putting the politics aside, hopefully we are all working in the same direction to see how we can avoid that and work more cohesively in achieving a final project that is going to work. It hasn't worked in this instance, and I'm certain that you as Treasurer, in relation to paying the bills of this State, would like to see the money spent in those areas for the purposes of the project -- the expeditious implementation of the project.

I know we could debate it back and forth as to where the fat is, etc., etc., but they are areas we are concerned about. I think they are areas that both sides of this table sitting up here-- We get concerned when our constituents come back to us and say, "Hey, what the heck is going on?" Five hundred thousand dollars and you see these types of expenses going on.

Then, in addition, here we are with \$5.1 million that has already been paid out; \$5.1 million of that \$6.5 million is there. It is in their pocket. They asked me, "How on earth, Joe, can you--" You see, they don't know that it is "you." You know, we are always pointing at each other. But, they are going to say to Schuber, "How can you," because we are their Assemblyman. "How can you allow that to happen?"

The only way we can find out how that happens is through this type of process.

TREASURER HORN: And I agree that we are both headed in the same direction and have the same types of goals at hand.

ASSEMBLYMAN BOCCHINI: Are there any other questions? I think your information has been helpful this morning, and we appreciate your being here.

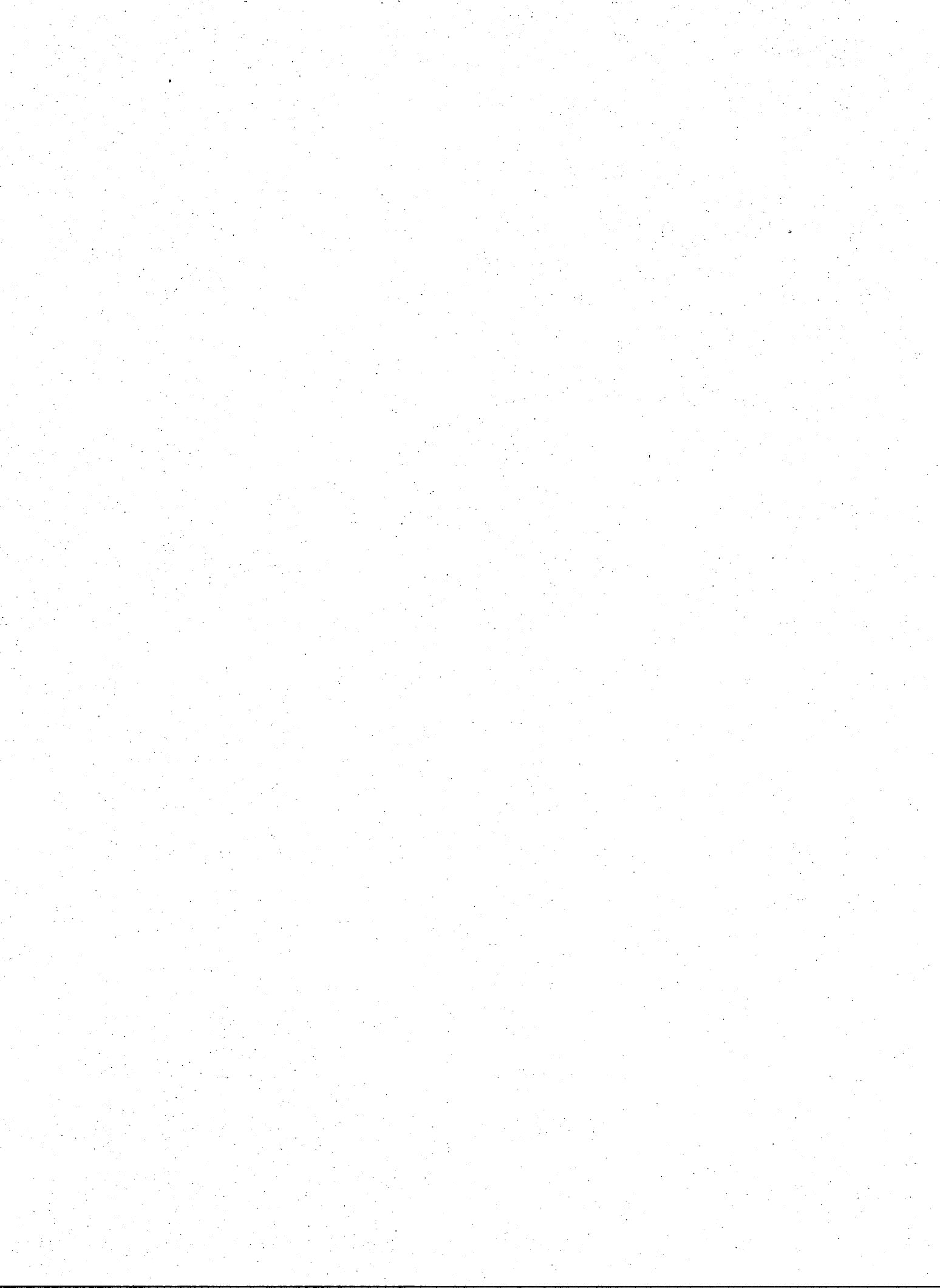
I think it has also become apparent at the same time -- I know you gentlemen are going to love to hear this, but I promise we won't be back before Election Day -- that immediately after Election Day, we should probably consider having Mr. Biederman in and his head of Purchase and Property to see where their thoughts were in relation to this.

Notwithstanding that, gentlemen, thank you for being here this morning. The meeting is concluded.

TREASURER HORN: Thank you all.

(HEARING CONCLUDED)

APPENDIX





GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

SPEAKER
ALAN J. KARCHER
ASSEMBLYMAN, DISTRICT 19 (MIDDLESEX)
61 MAIN STREET
SAYREVILLE, N. J. 08872
TEL. 201-238-8745
609-292-6411

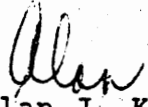
October 26, 1985

Honorable Joseph L. Bocchini, Jr.
Chairman
Assembly Law, Public Safety and Defense Committee
State House
Trenton, New Jersey 08625

Dear Joe:

I am appointing Assemblyman Thomas P. Foy to temporarily serve on the Assembly Law, Public Safety and Defense Committee on Monday, October 28. He will be substituting for Assemblyman Nicholas J. LaRocca.

Sincerely,


Alan J. Karcher
SPEAKER

gm

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS



CN-037
TRENTON, NEW JERSEY 08625

October 25, 1985

Joseph L. Bocchini, Jr.
Chairman, Assembly Law, Public
Safety and Defense Committee
CN-042
State House Annex
Trenton, New Jersey 08625

Dear Chairman Bocchini:

Your letter of October 23, 1985, inviting me to a hearing "to elicit information and to discuss bid waiver procedures for state contracts," advises that the Committee is investigating the "circumstances surrounding the selection and involvement of the firm of Price Waterhouse with the new computer system within the Division of Motor Vehicles."

In addition, Aggie Szilagyi of your staff advised my office by phone on October 23 that the Committee is interested in my answers to questions pertaining to bid waiver procedures while I was Director of Purchase and Property.

This is to advise you (and, hopefully, to save time) that I am not in a position to comment directly or indirectly on the subject contract, which I understand may be litigated; as a Judiciary employe, I am not permitted to comment on pending or impending court cases.

This is to further advise you that I am in a position to make knowledgeable comments only on matters arising during my tenure, which ended in May, 1983, and that I am not in possession of "any written information or documents which deal in general with the bid waiver process."

Very truly yours,

A handwritten signature in cursive script that reads "Earl Josephson".

Earl Josephson
Public Information Officer

/sel



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
CN 039
TRENTON, NEW JERSEY 08625

December 3, 1984

MEMORANDUM TO: CABINET MEMBERS AND
DIRECTORS OF ADMINISTRATION

SUBJECT: Request for Waiver of Advertising

We have revised Procurement Circular #25, Request for Waiver of Advertising, effective March 1, 1981, to reflect a serious concern in the area of confirming unauthorized waiver requests.

The policy of the General Services Administration is to avoid waivers of advertised bidding whenever possible. All procurements are to be accomplished through the competitive bid system, and waivers should be the exception not the rule in agency acquisitions.

I strongly suggest better planning from our using agencies. A large number of waiver requests involve emergency conditions resulting from poor planning. Given sufficient lead time, the Purchase Bureau could prepare specifications and obtain the required products and services through the competitive bid process.

I am asking for your assistance in directing agency personnel to comply with this policy.



James J. Rosenberg
Director

Attachment

cc Michael Horn, Treasurer
James Kennedy, GSA Administrator

PROCUREMENT CIRCULAR

Subject REQUEST FOR WAIVER OF ADVERTISING

To ALL USING AGENCIES	Effective Date December 3, 1984
Approved by JAMES J. ROSENBERG, Director, Division of Purchase & Property 	

PURPOSE AND PERTINENT CHANGES

1. Supersedes Procurement Circular #25, dated March 1, 1981.

POLICY

1. All products and services are to be obtained through the process of formal advertised bidding. **WAIVERS OF FORMAL ADVERTISING ARE AN EXCEPTION TO THIS POLICY AND ARE EXPRESSLY LIMITED BY STATUTORY DESIGN.** No products or services are to be procured by agencies without formal, advertised bidding conducted by the Purchase Bureau unless (1) prior written or verbal authorization to waiver advertising is obtained from the Purchase Bureau, or (2) the agency procurement is performed in accordance with current procedures providing for delegated Direct Purchase, Special Procurement or Term Contract purchasing.
2. All requests to waive formal advertising must be submitted on Form PB-129, Request for Waiver of Advertising. In order to be processed, Part I of Form PB-129 must be completed in its entirety, supplemented by pertinent documentation required by the form, and this circular, and accompanied by the appropriation encumbrance request form (Form PB6/AR40, Requisition-Purchase Bureau or Form PB3/AR45-1, Agency Request to Obligate Funds). It should be noted that delays in processing waiver requests result basically from the lack of proper and complete information from the requesting agency.
3. For public exigency requests, where the life, safety or health of individuals must be maintained through the immediate performance of services or delivery of products, verbal authorization must be received by either the Director of the Division of Purchase & Property or the Purchase Bureau Supervisor prior to the actual purchase. If verbal approval is granted, agencies should submit all required paperwork to the Purchase Bureau within 48 hours of that approval.
4. Informal competitive bidding among suppliers must be obtained for all purchases even if a waiver of formal advertising is granted. Sole source requests must be fully and completely documented.
5. Agency personnel who proceed to obligate the State for the procurement of goods and services without the necessary prior authorization will be held personally liable for the expenditure.

6. Agencies should verify with the Purchase Bureau that requested products or services are not available under State contract, or that a blanket waiver has not been established prior to submitting requests for waiver to the Purchase Bureau.

PROCEDURE

Complete ALL items 1 thru 16, or write "not applicable" on Part I of Form PB-129 and attach documentation prepared in accordance with the guidelines given below. The completed Form PB-129, required attachments and the appropriate completed encumbrance document (Form PB6/AR40 or Form PB3/AR45-1) are to be forwarded directly to the Purchase Bureau Supervisor, 135 West Hanover Street, Room 303, Trenton, New Jersey 08625.

The following guidelines relate to the numbered items in Part I of the Request for Waiver of Advertising, Form PB-129.

Items 1-9 Are self-explanatory.

Item 10 BRIEF EXPLANATION OF WAIVER

The agency is to provide clear, concise summary of the nature and purpose of the waiver. The synopsis should include a statement of the scope of the service to be performed or the nature of the product to be obtained and what the agency wishes to accomplish.

Examples of the acceptable statements are provided below:

- a. "To procure the services of the National Center for State Courts to conduct a complete management study of the operations and procedures of the Appellate Division Clerk's Office for the purpose of investigating potential ways of improving the Appellate Court process."
- b. "For services as consultant optometrist during fiscal year 1979. Services will include fitting and adjusting spectacles, ocular first aid and glaucoma studies of inmates over 40 years of age."
- c. "To furnish equipment and expert personnel to provide hot water and steam to building #834 at the NJ Job Corps Center at Edison, NJ. This service is necessary for the operation of the food services facilities at the installation. It is temporary in nature pending installation of new boilers to replace two 50 H.P. boilers which have become unserviceable."

Item 11 COMPETITION

Agencies are required to seek as much competition as is reasonable and practical under the circumstances of each waiver requested. The information should include, (1) the number of firms contacted, (2) the method used in choosing firms contacted (i.e., industry data, previous experience, telephone directory, etc.), (3) the number of proposals received including prices, and (4) the reasons for selecting the recommended vendor.

If required product or service is available from only one source of supply, this should also be fully documented.

The results of all inquiries, including proposals, price quotations, denials, etc., must be attached to the waiver request form.

Item 12 PROGRAM CONSEQUENCES OF NOT MEETING THE DELIVERY DATE

A brief concise indication of the consequences of not meeting the desired delivery date noted in box 6 must be provided. If there are no adverse consequences, the agency should indicate "none". Presented below are representative statements:

- That XXX number of students will not have books.
- That funds in the amount of XXX to be received under Federal Grant YYY will be lost because . . .
- That there will be insufficient supplies of food to feed the agency population as of ZZZ date.

In this section the agency must also reference the initial date (item 8) when it learned that goods or services were required in light of the timing of the waiver request. The agency should also consider and indicate if better planning or foresight on its part could have prevented the necessity for the waiver requested and what action is being taken to prevent future occurrences.

Item 13 OTHER AGENCY APPROVALS

Procurement of consultants, data processing, word processing and telecommunications equipment, and/or training can only be made with the express approval of appropriate State agencies. Failure to provide approval documents with the waiver when required will result in automatic rejection and return of the waiver request.

Consultants and Professional Services

All requests to hire consultants to perform professional services must be approved by the Office of Management and Budget. For specific details, refer to Office of Management and Budget Circular Letter #84-7. Approvals must be submitted with the waiver request.

Data Processing, Word Processing, and Telecommunications

All waivers for consulting services and equipment acquisitions in the fields of data processing, word processing and telecommunications will be approved by the Division of Purchase and Property.

Item 14 VENDOR PROPOSALS

A vendor proposal must be attached and signed by the vendor. In order to be accepted, each proposal must contain the following information:

For Products

- Total price, unit price or rental rate quotations including all special terms.
- Complete description of the item including the name, type, brand, model and catalog name, number and date.
- Physical characteristics including height, weight, width, length, color, grade, size or thickness.
- Special purchasing, delivery location or installation requirements such as addresses, training, availability of utilities or site preparation.
- All special technical or performance specifications including vendor literature or performance data.

For Professional Services

- Total firm price (time and material contracts are not acceptable).
- Per diem rates by labor classification to include all general and administrative costs, overhead, and profit.
- A detailed scope of work divided into the logical tasks and subtasks of the project.
- A listing of the deliverable items that will be the end-products of the product.
- A project schedule including milestone or key dates.
- Corporate qualifications of the firm.
- A project organization chart giving names of assigned vendor staff.
- Resumes of assigned staff.
- References - evidence of past experience on similar projects.

For Technical Services

- Total firm price (time and material contracts are not acceptable).
- Method of payment (monthly, hourly, etc.).
- Outline of services to be performed by type and frequency.

- References - evidence of past experience on similar services.
- In those cases where State and Federal laws require licenses and certifications, proof of same must be submitted with quotations.

For Medical or Hospital Services

- Total firm price.
- Per diem or hourly rates.
- Scope of services by type and frequency.
- Names of individuals who will perform the required services.

Item 15 JUSTIFICATION STATEMENTS

The following guidelines identify the nature and type of information that should be included in the justification statements for each statutory citation.

52:34-9a Services to be performed are of a technical and professional nature.

As a matter of policy, waivers are not routinely granted for technical and professional services unless the following condition prevails and is documented by the using agency.

Competitive specifications, placing all potential bidders on an equal footing, cannot be developed because the scope of work is highly complex, technical, unique or specialized and/or sufficient lead time to develop the bid specifications is not available.

As a matter of policy, waivers will be granted for legal services, and medical services.

52:34-9b The purchase of perishable foods or subsistence supplies.

As a matter of policy, this citation should not be normally used by agencies except of the purchase of perishable or subsistence foods which are not available through the State Distribution Center or an existing State contract. Perishable or subsistence foods are those which spoil or deteriorate quickly and include fresh vegetables, meats, fish, dairy products, and bread items.

52:34-9c The lease of such office space, office machinery specialized equipment, buildings or real property as may be required for the conduct of the State's business.

As a matter of policy, these items will be bid competitively unless the following condition prevails and is documented by the using agency:

Competitive specifications, placing all potential bidders on an equal footing, cannot be developed because the scope of work is highly complex, technical, unique or specialized and/or sufficient lead time to develop the bid specifications is not available.

8x

As a matter of policy, waivers will be granted for leases of buildings and real property.

- 52:34-9d The acquisition of any real property by gift, grant purchase or any other lawful manner in the name of and for the use of the State for the purpose of the State's business in accordance with appropriations, made therefor when moneys are required for the acquisition.

As a matter of policy, this citation is reserved for use by the Division of Purchase & Property. Agencies should not request its use without prior consultation with the Purchase Bureau.

- 52:34-9e Supplies or services, as to which the bid prices after advertising are not reasonable or have not been independently arrived at in open competition.

As a matter of policy, this citation is reserved for use by the Division of Purchase & Property. Agencies should not request its use.

- 52:34-10a The purchase is to be made from, or the contract to be made with, the Federal or any State Government or any agency or political subdivision, quasi-state or other governmental agency.

Justification should focus on price competitiveness and document the contractors qualification as a federal or state, political subdivision, quasi-state or other governmental agency.

- 52:34-10b The public exigency requires the immediate delivery of the articles or performance of the services.

As a matter of policy, waivers are granted for public exigency when the following conditions prevail and are documented by the using agency:

- Competition is not practical or cannot be obtained.
- A potential health or safety hazard exists.
- A critical agency mandate, statutory or operational requirement must be fulfilled.
- Competitive specifications, placing all bidders on an equal footing, cannot be developed because sufficient lead time to develop bid specifications is not available.

Agencies should describe the above circumstances with pertinent detail and focus the justification on the consequences of nondelivery of the item of services within the time frame specified by the using agency. (Use Item 12 on Form PB-129)

52:34-10c Only one (1) source of supply is available.

Use Item 11 on Form PB-129 to document why the recommended contractor is the only available source which can provide the item or services required. A thorough explanation should be given of what attempts were made to obtain competition and the results included with the waiver request.

52:34-10d More favorable terms can be obtained from a primary source of supply.

This citation should be used in those instances where the intended purchase will be made directly from the prime manufacturer or supplier at a reduced cost which results from the elimination of middlemen, i.e., distributors, dealers and jobbers. This citation can also be used when special or spot purchases are obtainable at reduced or with more favorable delivery schedules.

Justification should focus on the cost-benefits of obtaining the more favorable terms of price reduction and delivery and why they are necessary or desirable.

52:34-10e Articles of wearing apparel are to be purchased which are styled or seasonal in character.

As a matter of policy, this citation is reserved for use by the Division of Purchase & Property. Agencies should not request its use.

52:34-10f Commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action.

As a matter of policy, this citation is reserved for use by the Division of Purchase & Property. Agencies should not request its use.

52:34-10g The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

As a matter of policy, these items will be bid competitively unless the following conditions prevail and are documented by the using agency:

- Competitive specifications, placing all potential bidders on equal footing, cannot be developed because the scope of work is unique or highly specialized and/or sufficient lead time to develop the bid specifications is not available.
- Alternate equipment or replacement parts will not function and perform at the level of service or quality required.

Item 16 DEPARTMENT CERTIFICATION

The certification box must be signed and dated by the Department head.

Confirming Waiver

The agency must indicate (by checking "Yes" or "No") whether or not the waiver requested is a confirming waiver; that is, has the vendor, prior to submission of the waiver document, been authorized to proceed with delivery of the product or service. If the vendor has, and prior approval has not been received from the Purchase Bureau, the Department head's signature certifies receipt of all or portion of the products/services, and that the prices charged are reasonable. The agency shall also type the words "Confirming Waiver" on the bottom of the Form PB-6/AR40 or PB-3/AR45-1. CONFIRMING WAIVERS ARE A VIOLATION OF STATE POLICY AND ARE NOT ENCOURAGED. The fact that a waiver is confirming does not lessen an agency's responsibility to complete the entire waiver request package.



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
CN 039
TRENTON, NEW JERSEY 08625

February 11, 1981

MEMORANDUM TO: ASSISTANT COMMISSIONERS AND
DIRECTORS OF ADMINISTRATION

SUBJECT: Request for Waiver of Advertising

The attached waiver policy and procedures have been developed over the past several months and will be effective March 1, 1981. The objectives of the procedures are to:

- Speed up and simplify paperwork and processing.
- Eliminate a separate waiver letter and consolidate other data transmittals.
- Give agencies greater insight and advice on what information the Purchase Bureau needs to process a waiver without having to send it back for missing information.

Consistent with the availability and degree of competition practical, the granting of a waiver of advertising does not lessen our mutual responsibilities to (1) articulate requirements, (2) negotiate the most favorable arrangements in the State's best interests, and (3) obtain the best prices. Many times it is possible to obtain informal solicitations in very short periods of time. However, our experience is that agencies wait too long before contacting the Purchase Bureau. This contributes to a crisis atmosphere and a breakdown of effective communication. It is important to notify the Purchase Bureau as soon as need is determined. Such practice would go a long way to helping us perform our mutual responsibilities.

As with any new procedure, there undoubtedly will be questions and circumstances that have not been properly addressed. We want to remain open and receptive to these situations and any other suggestions you may have on how to improve the process. Over the next several weeks, staff members of the Purchase Bureau will be arranging sessions with various agencies to produce a better understanding of and to answer any questions you may have about the new system.

Earl Josephson
Special Assistant in Charge

Attachment

12X

- That XXX number of students will not have books.
- That funds in the amount of XXX to be received under Federal Grant YYY will be lost because. . .
- That there will be insufficient supplies of food to feed the agency population as of ZZZ date.

In this section the agency must also reference the initial date (item 8) when it learned that goods or services were required in light of the timing of the waiver request. The agency should also consider and indicate if better planning or foresight on its part could have prevented the necessity for the waiver requested and what action is being taken to prevent future occurrences.

Item 13 OTHER AGENCY APPROVALS

Procurement of consultants, data processing, word processing and telecommunications equipment, and/or training can only be made with the express approval of appropriate State agencies. Failure to provide approval documents with the waiver when required will result in automatic rejection and return of the waiver request.

Budget and Accounting

All requests to hire consultants to perform professional services must be approved by the Division of Budget and Accounting. For specific details, refer to Budget Bureau Circular Letter #80-14. Approvals must be submitted with the waiver request.

Division of Data Processing and Telecommunications

All waivers for consulting services and equipment acquisitions in the fields of data processing, word processing and telecommunications must be approved by the Division of Data Processing & Telecommunications prior to submission to the Purchase Bureau.

Civil Service

Waiver requests dealing with vendor expenses related to Staff Training of employees must include an approved Civil Service Form CS-94. Approval documents must accompany the waiver request.

Item 14 VENDOR PROPOSALS

A vendor proposal must be attached and signed by the vendor. In order to be accepted, each proposal must contain the following information:

For Products

- Total price, unit price or rental rate quotations including all special terms.
- Complete description of the item including the name, type, brand, model and catalog name, number and date.
- Physical characteristics including height, weight, width, length, color, grade, size or thickness.
- Special purchasing, delivery location or installation requirements such as addresses, training, availability of utilities or site preparation.
- All special technical or performance specifications including vendor literature or performance data.

52:34-10(d) More favorable terms can be obtained from a primary source of supply.

This citation should be used in those instances where the intended purchase will be made directly from the prime manufacturer or supplier at a reduced cost which results from the elimination of middlemen, i.e., distributors, dealers and jobbers. This citation can also be used when special or spot purchases are obtainable at reduced cost or with more favorable delivery schedules.

Justification should focus on the cost-benefits of obtaining the more favorable terms of price reduction and delivery and why they are necessary or desirable.

52:34-10(e) Articles of wearing apparel are to be purchased which are styled or seasonal in character.

As a matter of policy, this citation is reserved for use by the Division of Purchase and Property. Agencies should not request its use.

52:34-10(f) Commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action.

As a matter of policy, this citation is reserved for use by the Division of Purchase and Property. Agencies should not request its use.

52:34-10(g) The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

As a matter of policy, these items will be bid competitively unless the following conditions prevail and are documented by the using agency:

- Competitive specifications, placing all potential bidders on equal footing, cannot be developed because the scope of work is unique or highly specialized and/or sufficient lead time to develop the bid specifications is not available.
- Alternate equipment or replacement parts will not function and perform at the level of service or quality required.

Item 16

DEPARTMENT CERTIFICATION

The certification box must be signed and dated by the Department head.

Confirming Waiver

The agency must indicate (by checking "yes" or "no") whether or not the waiver requested is a confirming waiver; that is, has the vendor, prior to submission of the waiver document, been authorized to proceed with delivery of the product or service. If the vendor has, and prior approval has not been received from the Purchase Bureau, the Department head's signature certifies receipt of all or portion of the products/services, and that the prices charged are reasonable. The agency shall also type the words "Confirming Waiver" on the bottom of the Form PB-6/AR40 or PB-3/AR45-1. CONFIRMING WAIVERS ARE A VIOLATION OF STATE POLICY AND ARE NOT ENCOURAGED. The fact that a waiver is confirming does not lessen an agency's responsibility to complete the entire waiver request package.

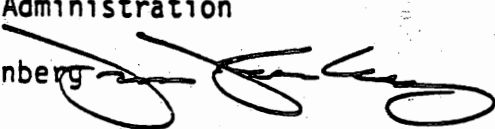


State of New Jersey
DEPARTMENT OF THE TREASURY
GENERAL SERVICES ADMINISTRATION
DIVISION OF PROCUREMENT AND CENTRAL SERVICES
CN 039
TRENTON, NEW JERSEY 08625

April 24, 1985

M E M O R A N D U M

TO: Commissioners, Executive Directors,
Directors of Administration

FROM: James J. Rosenberg 
Director

SUBJECT: Reminder: Waiver of Advertising Procedures

Although a revised procurement circular governing the requests for Waivers of Advertising was distributed on December 3, 1984, it appears as though many departments/agencies still do not clearly understand the designed procedures governing waivers.

Specifically, it must be understood that all products and services are to be obtained through the process of formal advertised bidding. Waivers of Advertising are an "Exception" to the policy and are limited by statutory design, as indicated in the listing below:

<u>Citation</u>	<u>Description</u>
52:34-9(a)	Technical & Professional Services
-9(b)	Perishable foods or subsistence supplies
-9(c)	Leasing of equipment & office space
-9(d)	Acquisition of real property
-9(e)	Unreasonable bid prices
52:34-10(a)	Contract with government agency
-10(b)	Public exigency
-10(c)	Sole source
-10(d)	Primary source
-10(e)	Seasonal wearing apparel
-10(f)	Fair trade commodities
-10(g)	Existing equipment compatibility

15x

I have noted that departments/agencies continue to request proposals for professional services directly from private sector firms. This practice creates an environment wherein potential vendors believe they have the sole right to a contract. As such, this is to be discontinued.

When a department is in need of specific professional services, they should contact the Purchase & Contracting Bureau, Professional Services Unit. Upon contact with the Professional Services Unit, an individual(s) will be assigned to work with your department on developing a clearly defined Scope of Work. The scope of work will be developed to address all phases of the professional service required, i.e., feasibility study, design, implementation and evaluation.

Even when it becomes feasible to procure the required services through a Waiver of Advertising, competition is the rule in selecting the best firm for the project.

Attached please find an addendum to Purchasing Circular 25A, which clearly delineates the steps to be used whenever a waiver is necessary for professional services.

Requests for Waivers of Advertising should be authorized and endorsed directly by the Cabinet Officer or Executive Agency Director. Requests for Waivers of Advertising not properly endorsed will be returned for the appropriate signature.

Requests for Waivers of Advertising for Professional Services shall, in those instances where feasible, restrict a consulting firm to providing the needs analysis and/or feasibility studies.

~~Consulting firms will be required to accept an exclusivity clause which will void their right to bid on the actual design and implementation contract.~~

Subsequent to the award of contract, the consultant shall submit quarterly narrative and financial project reports to the Department Head and a copy to the Division of Purchase and Property.

Please inform your staffs of this procedure to insure adequate lead time for the Purchase Bureau to respond in a timely manner to meet your needs. Should you have any questions in relation to projected projects, please feel free to contact me. Finally, please remember, the greater the lead time provided, the more comprehensive the project design and, eventually, the more effective your operation.

jd
Attachment (PC 25B)

PROCUREMENT CIRCULAR

REQUEST FOR WAIVER OF ADVERTISED BIDDING FOR CONSULTANT/PROFESSIONAL SERVICES

Subject _____

ALL USING AGENCIES AND FISCAL OFFICERS

Effective Date

April 24, 1985

Approved by


JAMES J. ROSENBERG, Director, Division of Procurement & Central Services

I. PURPOSE AND PERTINENT CHANGES

1. Supplements Procurement Circular #25A dated December 3, 1984 as it pertains to requests for consultant/professional services.

II. POLICY

1. The Department of the Treasury, General Services Administration, (GSA), requires that Requests for Waiver of Advertising for consultant/professional services be granted only when competition has been received from at least three (3) or more firms.
2. In those situations where competition is not available or a public exigency exists, a decision will be made by GSA as to whether or not a waiver should be granted.
3. The Request for Proposal (RFP) will be developed jointly by Purchase and Contracting and the using agency. The scope of effort shall include the task(s) to be performed and delineate the need for any additional phases or tasks required subsequent to the initial effort. This is essential to place all vendors on an equal footing

III. PROCEDURE

- A. Competition is to be solicited from at least three (3) firms. All bid proposals are to be evaluated against the requirements of the Request for Proposal document.
- B. Form PB 129, Request for Waiver of Advertising, should be completed in accordance with Procurement Circular #25A, Request for Waiver of Advertising.
- C. A copy of the Request for Proposal document and copies of all bid proposals should be included with the waiver package.
- D. A justification describing the rationale for selecting the recommended vendor should be prepared and submitted with the waiver package.

- E. In accordance with OMB Circular Letter #85-30, Review of Consultant/Professional Requests By the Division of Management Services, Office of Management and Budget, the entire Request for Waiver package is to be forwarded to the Director of Management Services, OMB for review and approval. OMB will forward all approved requests to the Division of Procurement and Central Services, Purchase and Contracting for processing.
- F. Subsequent to the approval of the Request for Waiver and initiation of the project by the vendor, it is the using agency's responsibility to monitor the contractor's progress and to authorize payments.
- G. A progress report is to be submitted to the Purchase and Contracting on a quarterly basis delineating the contractor's progress.
- H. At the conclusion of the project a final written report is to be filed with the Division of Procurement and Central Services assessing the contractor's performance, i.e. ability to meet timelines, furnish deliverables, etc. The using agency should indicate in the report whether or not they would again engage the services of the contractor.
- I. The Request for Proposal document should incorporate the following information:

1. Purpose and Intent

The RFP should start with a statement of intent or purpose to acquaint the bidders with the general reason for the proposal.

2. Background

This should include a description of the function of the agency for which the services are required, a fairly detailed explanation of why the services are needed, a description of the method or system presently employed (including its deficiencies), the staff and resources available, and the objectives of the agency.

3. Information for Bidders

This should tell bidders how to fill out the proposal as well as alert bidders to the key dates that are needed such as bid opening, site visit, bidder's conferences, etc. A list of critical dates should be included such as:

- o Date, time and location of the proposal conference if one is to be held, and whether or not attendance is mandatory.
- o If no bidder's conference is held, the deadline date for written questions, if any.

- o Date, time and location of site inspection, if one is to be held, and whether or not attendance is mandatory.
- o Date, time and location of proposal submission.
- o Starting date of the project or, if the exact date is unknown, a statement such as:

"The project will start within 30 days of the award of the contract."

- o Project completion date or time limit, such as:

"Project must be completed on or before December 31, 1985."

4. Contractual Terms and Conditions

This section should contain, in great detail, the overall contractual terms and conditions. The contractual relationship between the State and the contractor is fundamentally established in this section and should therefore be completely and clearly written.

5. Scope of Work

This is a detailed, step-by-step description of the work to be performed by the contractor. It should be organized in a logical manner sequenced to reflect the order in which the work is to be performed. The sequence of work should be structured in a manner which identifies the major task headings and also the sub-tasks within each major task which are necessary in performing that piece of work. A task is defined as a discrete unit of work to be performed. Sub-tasks are defined as those detailed activities that comprise the actual performance of the task.

The sum total of all tasks and sub-tasks makes up the Scope of Work.

At the end of each major Task Section, there should be delineated the deliverable items that are produced as a result of successful completion of the task. A deliverable item is defined as tangible evidence that the work has been completed in a satisfactory manner in accordance with the task specifications. For example, in a feasibility study, a deliverable may be a report containing the data to be developed by the respective task.

Under the scope of work, each task to be performed is described as carefully and with as much detail as possible. Before this section is written, a thorough analysis of the problems that exist, the intended goals and some possible methods of achieving these goals should be made.

This section is the most important part of the RFP. A good specification will produce responsive proposals and ease the task of managing the project.

Each task should be described in a separate, numbered paragraph and there should be a deliverable product for each task. The tasks can be used as scheduled milestones and acceptance of the deliverable items will signify satisfactory completion of each task.

Deliverable products can be listed after each task, but must be listed in a summary schedule cross referenced by the appropriate task number.

6. Tasks to be Completed

All task performance will be specified, identifying the sequence of the activity, the necessary elements within each task, the relationships between tasks, the interdependencies and chronology of task completion and any restrictions or contingencies for proceeding at the end of a specified task.

7. Deliverable Summary and Schedule

There should be a summary section which lists all the various deliverable items together in their sequential order. This is desirable so as to review the project deliverables as a group. Also, if it is desirable to establish precise due dates for each deliverable this can be done here. All time lines should be expressed as commencing on the date of contract award and thereafter based on lapsed time days.

8. Proposal Preparation Instructions

The RFP must contain directions to the bidders on preparation of the proposal. These directions are important, and bidders must be made to understand that failure to follow the format may result in rejection of the proposal.

Typically, the proposal is divided into three major parts: the technical proposal, the cost proposal and the bidder's staff qualifications and experience.

9. Technical Proposal

The technical proposal should contain each task with an explanation of how the consultant plans to approach the task and the steps that will be taken to complete the task.

This portion of the proposal should close with a summary of problems which the bidder might reasonably expect and a proposed solution to all anticipated problems.

10. Cost Proposal

The cost proposal should contain at least the following information:

- o The cost for the entire project broken down by the activities or steps shown on the project schedule.

20x

- o Estimated periodic billing to the State based on the cost of the deliverable items.
- o Cost or pricing details:
 - Hours by category, hourly rates, and total labor broken out by professional and other by task. Rates are to include all overhead and profit.
 - Purchased Materials - items to be purchased, estimated unit costs and quantities by task.
 - Travel, lodging and other direct expenses by task.
 - Sub-contract costs by task.

Bidders should be instructed to show detailed costs by task as listed in the specification.

11. Staff Qualifications and Experience

The final section of the proposal should contain the vendor's organization, experience, both in general and in projects similar to the subject of the RFP, and resumes of the staff to be assigned to the project.

The bidder should list his headquarters and nearest offices and identify the office which will serve as the managing office for the project.

A chart of the bidder's organization which shows the level of responsibility of key project staff members within that organization should be required. Also, a chart of the project organization with the names of the staff to be assigned should be required.

The bidder should supply a list of personnel to be assigned, their function in the project, their labor category and a detailed resume for each person assigned showing quantified experience. Additionally the bidder shall state whether the staff will be working on-site or at the bidder's premises. The bidder's project manager who is responsible for the entire effort must be identified.

The bidder is to supply documentation clearly showing past experience in performing similar projects. Also a financial report or bank references of recent date should be furnished to permit evaluation of financial capability. Finally, the bidder should supply a manload chart for each task which will show the commitment of staff members to the project. Here again, a standardized form will be of help in obtaining proposals of a uniform structure for ease of evaluation.



STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
STATE HOUSE
CN 002
TRENTON, NEW JERSEY 08625

MICHAEL M. HORN
STATE TREASURER

August 15, 1985

MEMORANDUM TO: ALL DIVISION DIRECTORS
FROM: Michael M. Horn
State Treasurer
SUBJECT: Governor's Ball

Pursuant to the provisions of the Department of Treasury Code of Ethics, I have determined that it would not be appropriate to accept tickets to the upcoming Governor's Ball from any person or entity which does business with the Department of Treasury. If you have any questions regarding the interpretation of the foregoing, please contact me. Your cooperation is appreciated.

mmh
M. M. H.

MMH:jb

cc William L. Stringer
Susan M. Connell
John Fuchs
Felicia L. Garland
Jeri Warrick-Crisman
Stuart A. Weiss

RECEIVED

AUG 19 1985

DIRECTOR OF
ADMINISTRATION



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF MOTOR VEHICLES

25 SOUTH MONTGOMERY STREET
TRENTON, NEW JERSEY 08666

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

ROBERT S. KLINE
ACTING DIRECTOR

October 24, 1985

Aggie Szilagyi
Aide, Assembly Law, Public Safety
and Defense Committee
Room 347
State House Annex
Trenton, New Jersey 08625

Dear Ms. Szilagyi:

Pursuant to the request of your Committee, enclosed please find two letters from Price Waterhouse dated July 21, 1983 and July 28, 1983, which supplemented the Price Waterhouse contract with the Division of Motor Vehicles.

These letters had already been supplied to the Committee at an earlier date.

Please let me know if I can be of further assistance to you.

Sincerely,

Marc S. Galella
Executive Assistant

MSG:jm

Enclosures

cc: Robert S.Kline, Acting Director



65 MADISON AVENUE
MORRISTOWN, NJ 07960
201 540-8980

July 28, 1983

Mr. Clifford W. Snedeker, Director
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey 08666

Dear Mr. Snedeker:

Supplement to DMV Proposal

Dated July 12, 1983

This letter is the second supplement to the Price Waterhouse Proposal for the design and implementation of the New Jersey Merit Rating Plan Surcharge System and the Comprehensive On-Line Driver/Owner Information and Management System.

Price Waterhouse, by this supplement, amends the proposal to a contract amount not to exceed \$6,500,000.00, including out-of-pocket expenses incurred in connection with the assignment. Out-of-pocket expenses include such costs as transportation, lodging, per diem for out-of-town staff and other miscellaneous expenses and will not exceed 8.8% of professional fees.

Very truly yours,

Price Waterhouse

Price Waterhouse

STATE OF NEW JERSEY

DIVISION OF MOTOR VEHICLES

SUPPLEMENT TO JULY 12, 1983

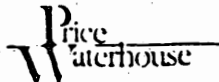
PROPOSAL TO THE DMV FOR THE DESIGN

AND IMPLEMENTATION OF:

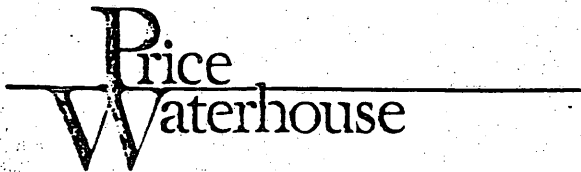
- New Jersey Merit Rating Plan
Surcharge System
- Comprehensive On-Line Driver/Owner
Information and Management System

* * * * *

JULY 21, 1983

The logo for Price Waterhouse, featuring the word "Price" stacked above "Waterhouse" in a serif font, with a horizontal line extending from the right side of "Waterhouse".

25x



65 MADISON AVENUE
MORRISTOWN, NJ 07960
201 540-8980

July 21, 1983

Mr. Clifford W. Snedeker, Director
Division of Motor Vehicles
25 South Montgomery Street
Trenton, NJ 08666

Dear Mr. Snedeker:

The purpose of this letter is to supplement the July 12, 1983 Price Waterhouse Proposal for the design and implementation of the New Jersey Merit Rating Plan Surcharge System and the Comprehensive On-Line Driver/Owner Information and Management System. The following information responds to questions which were raised by:

Division of Systems and Communications
Mr. Donald J. Bianco, Director
Mr. Robert Meybohm

Division of Data Processing and Telecommunications
Mr. LeRoy Weber, Director
Mr. Henry Murray

Office of the Attorney General
Mr. Dennis Bliss, Director of Administration

Division of Purchase and Property
Mr. Giulio Mazzone, Supervisor

during their individual reviews of the proposal document.

* * * * *

26x

July 21, 1983

1. Price Waterhouse will undertake the entire design, development and implementation, including program coding and testing, of the New Jersey Merit Rating Plan Surcharge System. The detail staffing plan for this effort appears as Attachment I of this letter.
2. Price Waterhouse will bill the State on the fifteenth of each month for the professional time and out-of-pocket expenses incurred during the preceding month. The billing will include a detailed breakdown of hours and expenses incurred and will be supported by a written progress report.
3. The scope of the project is outlined in the July 12th proposal and more precisely defined in the recently completed Requirements Definition Study document which is attached. Any significant deviations from these documents due to significant scope revisions or changes in requirements which impact the total proposed fee will be subject to renegotiation of the contract.
4. For the Merit Rating Plan Surcharge System, we will require space for at least three people at the Division of Systems and Communications Data Center beginning July 25. This number will increase to six by the end of August when we will also require four IBM 3270 equivalent terminals. Facility and terminal resources for the On-Line System development team will be identified and communicated to DMV and SAC during the latter part of August.
5. At this time, we anticipate no significant impact on the existing communications network to accommodate the Surcharge System. Network requirements for the Comprehensive On-Line System will be defined at a later date.

July 21, 1983

6. Attachment I contains the partner and senior manager commitments for the Surcharge System. Similar information for the On-Line System will be produced by the latter part of August. Designated members of the project team will meet their commitments to this engagement.
7. Detailed requirements and design of the Surcharge System will be completed on the planned dates indicated on Attachment I.
8. A final decision has not been made with respect to utilizing a data base management system for the Surcharge System. Should a DBMS be required, PW will make a best effort to utilize the Applied Data Research DBMS presently installed in the Division of Systems & Communications Data Center.
9. The State must rely on cooperation from the insurance industry in the capture and reporting of additional data elements such as driver license number and social security number. Preliminary discussions with several insurance companies have indicated their willingness to capture and report additional data in order to facilitate the proposed insurance company interface.
10. Price Waterhouse and DMV are keenly aware of the stringent controls which must be established in the interface with the municipal courts. Appropriate controls will be established as part of the overall security system for the On-Line System and initial implementations. A plan for subsequent implementations will be developed for the smaller courts after the DMV has had an opportunity to assess the impact of higher-volume courts inputting data directly into the On-Line System.

Mr. Clifford W. Snedeker
Director
Division of Motor Vehicles

-4-

July 21, 1983

11. We believe it will be more accurate, efficient and cost-effective to add new data elements to the file on a prospective basis, rather than performing a massive accumulation and conversion of new data elements during the system implementation phase.
12. A complete timetable, including detailed staffing and resource requirements, for the Comprehensive On-Line System will be developed and presented during the latter part of August, 1983.
13. Price Waterhouse will enter into a contract with the State of New Jersey which will guarantee delivery of the Surcharge System by January, 1984 and the On-Line System by June, 1985.

The specifics of the Price Waterhouse guarantee concerning the aforementioned delivery dates will be delineated under the terms of the contract to be entered into by the State of New Jersey and Price Waterhouse. In addition, the contract will specify the remedies available to each party in the event that these conditions and delivery dates are not met.

Should you have any requirement for additional information or clarifications, please contact Mr. W. J. Driscoll.

Very truly yours,

Price Waterhouse

Attachments - As Stated

29x

DIVISION OF MOTOR VEHICLES
MERIT RATING PLAN SURCHARGE SYSTEM
PRELIMINARY STAFFING PLAN

<u>TASK</u>	<u>START DATE</u>	<u>ESTIMATED END DATE</u>	<u>ESTIMATE OF EFFORT (HRS)</u>			
			<u>PARTNERS</u>	<u>SR MGRS</u>	<u>CONS.</u>	<u>TOTAL</u>
A. Finalize Project Plan	7/18/83	7/29/83	8	24	-	32
B. System Requirements Definition	7/19/83	7/29/83	24	112	40	176
C. Organization and Procedures Definition	8/1/83	8/31/83	8	40	-	48
D. Detailed System Design	8/1/83	8/31/83	40	160	240	440
E. Program Design	8/15/83	10/15/83	24	80	240	344
F. Programming and Unit Testing	9/1/83	11/15/83	40	160	1,280	1,480
G. System Testing	11/1/83	12/31/83	40	120	640	800
H. Procedure and User Documentation	10/1/83	10/31/83	24	120	80	224
I. Training	11/1/83	12/31/83	24	80	80	184
J. Implementation and System Acceptance	1/1/84	1/31/84	40	120	160	320
TOTAL:			272	1,016	2,760	4,048
<u>Personnel Allocations</u>						
		Bill Driscoll	25%	10%	Roy Levi	
		Ron Advani	50%	50%	Kishore Ramchandani	
		John Singel	25%	40%	Mandel Schragar	

NOTE: These hours are included in the July 1, 1983 - December 31, 1983 staffing estimate on page V-4 of our proposal.

