Decision Summary

(This summary is not part of the text of the technical decision.)

The Department of Transportation (MDOT) requested and received approval under Standard A from the Department of Civil Service (DCS) for the disbursement of funds for construction engineering and testing services. Approximately 10% of MDOT’s work in this area is contracted out on the basis of its intermittent and irregular nature. Both United Technical Employees Association and Michigan Professional Employees Society objected to the approval of this CS-138 and requested this technical review. These engineering services are supplemental to the regular work in this area and are both intermittent and irregular in nature. It would be inefficient to employ classified workers to perform these services. CS-138 No. 591S8000337 is approved under Standard A.

Issue

The sole issue in this matter is whether or not CS-138 No. 591S8000337 merits approval under Standard A of Civil Service Commission Rule 4-6.3.
CS-138 No. 591S8000337, an amendment to CS-138 No. 99-5914-2456, was approved by Department of Civil Service (DCS) staff under Standard A on April 28, 1998. The Michigan Department of Transportation (MDOT) submitted the original request for approval to disburse ten million dollars ($10,000,000) for construction engineering, inspection and testing services for the time period June 1, 1997 through November 1, 1997. Approval was granted under Standard A. The first amendment, CS-138 No. 5918000137, was filed in October of 1997, requesting an extension to June 1, 1999. This amendment was granted approval under Standard A on October 28, 1997. The CS-138 which is the subject of this review is a request for an increase of twenty million dollars ($20,000,000), resulting in approval to disburse a total of thirty million dollars ($30,000,000).

The services are described in detail by MDOT:

Construction engineering, inspecting and testing services are performed to provide oversight of a construction contractor's activities during while (sic) work is being performed. These services are aimed at assuring delivery of a quality product by documenting and testing the contractor's activities, materials and procedures. We must assure that the contractor implements the project per the plans, proposal, standards and guidelines. This documentation is used to determine proper reimbursement to the construction contractor. These services are required by State and Federal regulations. The services are performed out of offices located throughout the State so the individuals performing the services can be near the construction project.¹

Both the Michigan Professional Employees Society (MPES) and the United Technical Employees Association (UTEA) have objected to the DCS approval of this CS-138.

Discussion

MPES submits that this request does not meet the requirements of Standard A:

The request does not meet the temporary, intermittent or irregular definitions set forth in Standard A. This working (sic) is on a continuing basis from a previous approval and thus negating (sic) the temporary argument. The Department also brings the staffing issue into play but does not state the status of filing the vacancies left by employees who took early retirement.

Civil Service staff erred when it approved this request. This work is also not temporary with this amendment bringing (sic) the total number of years to three. The work is not unpredictable. The work is regularly performed by state employees².

UTEA argues that MDOT has failed to meet both the requirements of Standard A and the guidelines:

The Department request covers a period of three (3) years. By its own admission, it covers the total State and will be performed each year at a minimum between April and
Exhibit A

November. The Michigan Department of Transportation, (MDOT) currently and for many years in the past, has hired seasonal employees to work on construction projects performing the exact services to be performed under this contract during the period of April to November of each year. The Department has provided no justification as to why it would not be practical or efficient to utilize such employees to provide the services to be performed under this contract.

Considering the scope of services, the length of time involved, the fact that the Department knows the period of time during which the services are to be performed, this request meets neither the requirements of Standard A, nor the mandatory requirements of the guidelines contained within Standard A.

With respect to the UTEA’s reference to "the mandatory requirements of the guidelines," the Civil Service Commission has ruled as follows:

The guidelines are merely efforts to provide additional guidance about how rule 4-6 is to be interpreted and applied. The guidelines are not themselves rules and may not be interpreted in a manner that is inconsistent with the rules. ... If a departmental request satisfies one of the standards in rule 4-6.3 on its face, there is no reason to refer further to the guidelines.

Furthermore, the identical issue regarding whether or not CS-138 No. 591S8000337 merits approval under Standard A of Civil Service Commission Rule 4-6.3 has been submitted to this department for review in 1995 and again in 1997. In both of those cases the services were identical. Both of those requests were approved under Standard A.

MDOT has submitted this request with the following information:

We are now requesting the DCS's approval for additional monies of $20 million, or a total dollar value of $30 million to perform these same services through June 1, 1999. This increase in funding reflects additional construction funding that was not anticipated at the time of our original request. Approval of this increase is requested under Standard A. The basis for this request under this standard, is that the services continue to be needed in a sporadic, intermittent and unpredictable manner for projects statewide.

Enclosed are exhibits A and B, which show the number and location of all the contracts MDOT has executed or is in the process of being executed as of April 1, 1998. A total of 37 contracts in 11 counties statewide, for a total of more than $11,000,000. Again, these services are located sporadically throughout the state and the range in costs of services show how irregular they are. Also, last summer the majority of the contracts were in the metro Detroit region. This year the larger contracts are in the Grand Rapids region with the large number of contracts being evenly spread throughout the rest of the state.
Exhibit A

In addition, the work within each contract is sporadic and intermittent. On average, each contract has only one to three employees of the vendors working full time for the duration of the contract, which may be less than a month. In those contracts which last more than one year, the employees only work full time during the construction season. In fact, in contracts for services that span multiple construction seasons, consultant employees will perform less than 5% of the work during the winter months. This is because the services are only needed when the construction contractor is building the project which is generally from April to November. The only work during the winter shutdown is generally finishing paperwork which is less than 5% of the entire contract.

Since the duration, location and cost of these projects over the next few years continue to be sporadic or intermittent, the use of limited term or full time employees is not practical. For the contracts that span multiple construction seasons, if we hire full time employees, no work will be available for them during the winter season as construction activity ceases. Also, it takes approximately five years of field training to bring a new technician or engineer to a productive journey level. And, as exhibits A and B demonstrate, the needs for services are constantly moving. Therefore it would be unfair and impractical to hire an employee only to constantly move them to meet the need of the program.

In our original request, we emphasized that the use of these personal service contracts would only be used at times of funding surges when construction staff work capacity is exceeded due to a large number of construction projects. MDOT will only use vendors to augment the staff and not layoff employees or use personal service contracts when MDOT employees can do the work. MDOT makes every effort to handle as much of the work possible with available staff. We are in the process of also hiring over 300 limited term employees. It is considered a management tool only to be used when an increase in funds becomes available and an unexpected number of projects are programmed.

Decision

The construction engineering and testing services are short-term services needed on an irregular basis. Because of the irregular and intermittent nature of these services, recruiting, hiring, and training classified workers to perform these services would be highly inefficient. No staff have been laid off or otherwise adversely affected by this CS-138. MDOT is simply augmenting its staff for purposes of efficiency.

CS-138 No. 491S8000337 clearly meets the requirements of Rule 4-6.3, Standard A, and is approved.

Sara Basso, Technical Appeal Officer

An interested party may appeal this decision to the Employment Relations Board and the Civil Service
Exhibit A

Commission. An application for leave to appeal must be received by the Employment Relations Board within twenty (20) weekdays of the mailing date of this decision. Appeals should be addressed to the Employment Relations Board, Department of Civil Service, 2nd Floor, 400 South Pine Street, P.O. Box 30002, Lansing, Michigan 48909.

NOTE: A copy of this appeal must be served upon the responding party, Joseph A. Slivensky, Director, Bureau of Technical Review, Department of Civil Service, 3rd Floor, Capitol Commons Center, 400 South Pine Street, P.O. Box 30002, Lansing, Michigan 48909.

All applicable rules and regulations can be found at www.state.mi.us/mdcs.

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