

SPECIAL REPORT

Department of Transportation
Right-of-Way Division

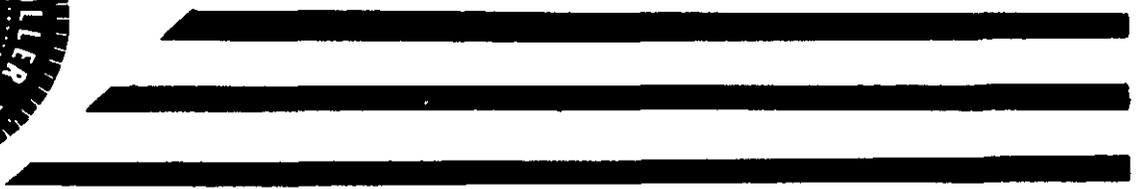
Improper and Inept Manipulation of Contracts to Obtain
Computer Programming Services and Computer
Equipment

May 2000



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

Department of Audit
Division of State Audit



Arthur A. Hayes, Jr., CPA, JD, CFE

Director

Glen McKay, CIA, CFE

Assistant Director

Chas Taplin, CPA, CFE

Audit Manager

Shay Smith, JD, CFE

Jim Intermaggio, JD

Audit Investigators

Amy Brack

Editor



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

State Capitol
Nashville, Tennessee 37243-0260
(615) 741-2501

John G. Morgan
Comptroller

May 4, 2000

The Honorable Don Sundquist, Governor
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and

The Honorable J. Bruce Saltsman, Commissioner
Department of Transportation
James K. Polk Building, Seventh Floor
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is a special report on our review of the alleged improper use of appraisal and consultant contracts by the staff of the Right-of-Way Division of the Department of Transportation. The review was conducted in collaboration with the Department of Transportation's internal audit staff.

On March 25, 1999, the Internal Audit Division of the Department of Transportation notified the Division of State Audit of an allegation that staff in the department's Right-of-Way Division had improperly used supplemental agreements to an appraisal contract to acquire computer programming services for the Right-of-Way Division.

Our review determined that division staff improperly used supplemental agreements to Appraisal Contract Number 1 of Williamson County Project Number 94014-2221-04 to pay for computer programming services designed to update and improve the division's computerized appraisal tracking software. The underlying appraisal contract was originally entered into on September 19, 1996, with Mr. John M. Hahn, Jr., a private appraiser, for appraisal work in Williamson County. However, division staff added six supplemental agreements to Mr. Hahn's contract, totaling \$34,908.60, to purchase computer programming services.

By using supplemental agreements as a payment vehicle for these computer programming services, division staff circumvented proper procurement procedures. First, competitive bids were not solicited for the award of the contract. Second, there was never a written contract between the division and the computer programmers. Third, division staff did not seek required approval from the department's Information Technology Division before procuring the services. As a result, the

Information Technology Division was excluded from participation in the acquisition or performance of the computer programming work. In addition, Mr. Hahn, the private appraiser through whose appraisal contract the services were acquired, was paid an inappropriate fee of \$3,478.60 to "manage" the contract. In fact, the only duties Mr. Hahn performed in exchange for this fee were submitting six invoices to the department and mailing or hand-delivering six checks to the computer programmers who actually performed the programming work. Mr. Hahn and division staff acknowledged that he had no computer expertise and that his "management" role was only to ensure the programmers were paid in a timely manner. According to Mr. Hahn, this meant that he paid the programmers himself and then obtained reimbursement from the division.

We interviewed three Right-of-Way Division staff responsible for acquiring these computer programming services: Mr. Marty Kennedy, Director; Mr. Rex Jenkins, then a Transportation Manager 1; and Mr. Tim Weaver, Chief Review Appraiser. Mr. Jenkins stated that after he and Mr. Kennedy were approached by Mr. Weaver with the idea to update the division's appraisal tracking program, he suggested using supplemental agreements to pay for the programming work. Mr. Jenkins told us that he made the suggestion based on the division's prior use of supplements to purchase other nonappraisal items in the past. Mr. Kennedy said that he authorized Mr. Weaver to proceed with the acquisition based on this information because he had only been director of the division for a short time and trusted Mr. Jenkins' judgment on the issue. Mr. Kennedy and Mr. Jenkins both acknowledged that, in retrospect, the method of acquiring the computer programming services was improper and circumvented established procurement procedures. All three assured the auditors that they derived no personal benefit from using supplemental agreements to purchase these services and we found no evidence to the contrary.

It should be noted that during our first interview with Mr. Weaver, he denied involvement in contracting for the computer programming services. When confronted with contradictory information in the second interview, however, Mr. Weaver explained that he had understood our use of the word "contracting" to mean actually filling in the blanks of the preprinted supplements used to pay for the services, which he did not do. Mr. Weaver then admitted handling most of the other tasks involved in the division's acquisition of these services. As such, Mr. Weaver's omission of critical information during his first interview appears to have been an inappropriate attempt to minimize or conceal the extent of his involvement in the division's procurement of these services.

During our review of payment documentation for the computer programming services, we determined that Mr. Hahn billed the division twice for services rendered under supplement "F" to the contract. Division staff mistakenly paid from the same invoice on two occasions because they failed to verify that Mr. Hahn's numbered invoice had not already been paid. Mr. Hahn was questioned about the double payment on April 6, 1999, more than six months after receiving the improper payment. He stated that his submission of a duplicate invoice had been an inadvertent error on his part. He repaid the full amount of the second payment, \$5,342.20, in the form of a cashier's check on April 7, 1999.

In explaining his suggestion to use supplemental agreements to pay for computer programming services, Mr. Jenkins told us that the division had also used supplements in the past to purchase other services, such as training for division staff, hazardous waste studies, and remainder sales studies. Our review determined that in 1990 and 1991, six supplemental agreements to Appraisal Contract Number 3 of Project Number 17155-2207-04 in Crockett County were used to acquire training services for division staff at a total cost of \$22,265. When asked why supplemental agreements to an appraisal contract were

used, Mr. Jenkins said the training became immediately necessary for staff to comply with the "Real Estate Licensing and Certification Act" of 1990 and the division didn't have funds available in its training budget at that time. No "management fee" was paid to facilitate the acquisition of these training services. According to division staff, hazardous waste and remainder sales studies are often contracted for, are completed in the course of, and directly related to, appraising specific tracts of real property. Unlike the computer programming and training services, the nature of these studies appears sufficiently related to the underlying appraisal contracts to be appropriately included in supplements to those contracts.

During our interviews with Mr. Kennedy, Mr. Jenkins, and Mr. Weaver, an unrelated issue was raised concerning the division's use of right-of-way consultant contracts to acquire computer equipment. "Consultant" contracts differ from "appraisal" contracts in that the former is used for right-of-way acquisition and related services and the latter is limited to appraisals of specific tracts of property. Our review of this issue determined that, from April 1990 to April 1998, 51 consultant contracts contained language requiring the consultant to provide a computer system (CPU, monitor, and printer) to the division as part of his or her performance of the contract. This acquisition method circumvented established procurement procedures requiring the purchase of computer equipment through the department's Information Technology Division.

Each of the 51 contracts was signed by the Commissioner and General Counsel serving at the time the particular contract was executed. Current Commissioner J. Bruce Saltsman and then General Counsel, Mr. Tim Gary, both stated that they had never seen the computer acquisition provisions and would not have signed the contracts had they been aware of them. Mr. Gary explained that the General Counsel's office approves over 3,000 contracts a year and, as such, reviews right-of-way consultant contracts primarily for legal effect and to protect the department's interests. Commissioner Saltsman stated that, because of the volume of contracts submitted for his approval, he relied on the General Counsel and General Counsel staff to appropriately scrutinize these consultant contracts before presenting them for his signature.

Current division staff assumed that this method of acquiring computers for staff use was proper because the practice had been in place for so long and had never been questioned by either the Commissioner or general counsel. Staff identified Mr. Don Minnigan, former director of the division, as the individual responsible for implementing this practice in the early 1990s. During an interview at his home on June 21, 1999, Mr. Minnigan admitted that he began including computer acquisition provisions in consultant contracts in 1990 while in charge of Right-of-Way. He did not seek approval of this purchasing method from his superiors at the department, nor did he specifically inform the Commissioner or general counsel that computer acquisition language was included in the consultant contracts. Mr. Minnigan told us that he decided to purchase computers in this fashion because he did not want to develop the required long-range purchase plan and await its approval by the department's Information Technology Division.

To confirm the existence and location of the equipment received under these contracts, we conducted an on-site inventory of all consultant-acquired computer equipment located at the four regional Right-of-Way offices. However, the lack of record keeping and internal controls made our inventory of this equipment largely ineffective. Most of the equipment was not tagged as inventory of the state and was not entered on the department's property listing. In addition, many of the component parts of the computer systems were split up and used separately by division staff, transferred to other regional offices, or disposed of when outdated.

May 4, 2000
Page Four

Of the 51 computer systems contracted for in right-of-way consultant contracts, we could not locate approximately two-thirds of the equipment received from consultants. We have roughly estimated the total cost of the computer systems to be \$79,050 and the cost of the missing equipment to be \$48,850. Division staff in all four regions stated that, to their knowledge, none of the computer equipment had been sold or removed from the office for personal use.

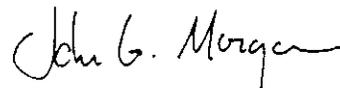
Staff speculated that this missing equipment had probably been removed from the office as junk when it became outdated. We could not identify items given to regional property officers for disposal in our inventory because division records for this untagged consultant-acquired computer equipment were insufficient to reconcile with departmental surplus records.

In addition to circumventing departmental purchasing procedures, this improper procurement method had several consequences that should have been easily foreseeable by division staff. First, the "immediate need" cited by Mr. Minnigan and current division staff as the reason for the practice was not satisfied by using consultant contracts to acquire the equipment. This is because the computer provisions did not require the consultant to turn over the computer system to the department until his or her project neared completion. These right-of-way acquisition projects sometimes lasted as long as two years or more. Second, many of the computers turned over by consultants were outdated when received by the division or quickly became so. This is because the computer specifications included in the consultant contract, even though current when written, were out of date by the time the project ended and the consultant turned over the computer to the division. Lastly, because most of the equipment was not tagged or entered on the department's property list, it was exposed to an increased risk of misappropriation.

On March 25, 1999, Mr. Kennedy sent a memorandum to Mr. Jenkins stating that the practice of using appraisal contracts to acquire services unrelated to the property appraisal would not be approved in the future. Mr. Jenkins retired from the department on April 1, 1999. During our June 16, 1999, interview with Commissioner Saltsman and Mr. Gary, they stated that the general counsel's office had increased the scrutiny given to all contracts to prevent the inappropriate acquisition of equipment in this manner.

The report contains recommendations relating to the appropriate use of appraisal contracts and consultant contracts to the resolution of issues resulting from the circumvention of proper procurement procedures.

Sincerely,



John G. Morgan
Comptroller of the Treasury

JGM/mb

State of Tennessee

A u d i t H i g h l i g h t s

Comptroller of the Treasury

Division of State Audit

Special Report

Department of Transportation

Right-of-Way Division

**Improper and Inept Manipulation of Contracts to Obtain
Computer Programming Services and Computer Equipment**

May 2000

REVIEW OBJECTIVES

The objectives of the review were to determine the nature and extent of any impropriety relating to the use of supplemental agreements to appraisal contracts to purchase computer programming services for the Right-of-Way Division; to examine the division's internal controls over the use of supplemental agreements to appraisal contracts to procure items other than property appraisals; to determine the nature and extent of any impropriety relating to the use of Right-of-Way consultant contracts to acquire computer equipment; to report our findings to department and division management; and to refer the results of our review to the Office of the State Attorney General and other relevant state entities.

RESULTS OF THE REVIEW

The review revealed that the department had misused two types of contracts. Division staff improperly used supplemental agreements to Appraisal Contract Number 1 of Williamson County Project Number 94014-2221-04 to pay for computer programming services designed to update and improve the division's appraisal tracking computer software. Staff also improperly used consultant contracts, circumventing established procedures, to obtain computer equipment that was purportedly needed immediately. As noted below and discussed in the report, that approach was not only improper but completely ineffective because the computers were obsolete by the time the department received them.

The appraisal contract was entered into on September 19, 1996, with a private appraiser, Mr. John M. Hahn, Jr., for appraisal of four tracts of land in Williamson County. However, division staff added six supplemental agreements to the underlying contract. Those agreements were all for the purpose of purchasing computer programming services, and resulted in a \$34,908.60 total supplement to Mr. Hahn's contract.

In using supplements to an appraisal contract as a payment vehicle for these computer programming services, division staff circumvented proper procurement procedures:

- Competitive bids were not solicited for the award of the contract.
- There was no written contract between the division and the computer programmers for the services. Instead, division staff selected the providers of these services, authorized them to begin work, and then used supplements to Mr. Hahn's appraisal contract as a way to pay for their services.
- Division staff did not seek required approval from the department's Information Technology Division before procuring the services.
- Mr. Hahn, the private appraiser through whose contract the services were acquired, was paid an inappropriate fee of \$3,478.60 to "manage" the contract.
- Mr. Hahn's "management fee" was not disclosed on the supplements, but was discovered by the auditors when the amount invoiced by the programmers was compared to the amount that the division paid Mr. Hahn.
- In exchange for this fee, Mr. Hahn had only submitted six invoices, mailed two checks, and hand-delivered four checks.

During the review of payment documentation for the computer programming services, the auditors determined that division staff mistakenly made payments pursuant to the same invoice on two occasions, because they failed to verify whether the numbered invoice submitted by Mr. Hahn had already been paid. Mr. Hahn stated that he had inadvertently submitted the duplicate invoice and he repaid the full amount of the second payment, \$5,342.20.

In explaining his suggestion to use supplemental agreements to procure computer programming services, Mr. Rex Jenkins, Transportation Manager 1, told the auditors that the division had also used supplements to purchase training for division staff, hazardous waste studies, and remainder sales studies in the past.

The auditors reviewed relevant documentation and found that division staff, under former director Mr. Don Minnigan, procured training for division staff through supplemental agreements during 1990 and 1991 totaling \$22,265. When asked why the division used supplemental agreements to this contract instead of generating a separate contract to procure the training services, Mr. Jenkins told the auditors that the division did not have funds available in its training budget for training that was immediately necessary.

According to division staff, the division often contracts for remainder sales studies and hazardous waste studies in supplemental agreements to appraisal contracts. Unlike the computer programming and training services discussed earlier, the nature of these services appears sufficiently related to the underlying appraisal contract to be appropriately included in a supplement to the contract.

During interviews with department staff, an unrelated issue was raised concerning the division's use of right-of-way consultant contracts to acquire computer equipment. "Consultant" contracts differ from "appraisal" contracts in that the former is used for right-of-way acquisition and related services and the latter is limited to appraisals of specific tracts of property. The auditors found that, from April 1990 to April 1998, 51 consultant contracts contained language requiring the consultant to provide a computer system (CPU, monitor, and printer) to the division as part of his or her performance of the contract. This acquisition method circumvented established procurement procedures requiring the purchase of computer equipment through the department's Information Technology Division.

Current staff identified former director Minnigan as the individual responsible for implementing this practice in the early 1990s. Mr. Minnigan admitted that he began including computer acquisition provisions in consultant contracts in 1990 while in charge of Right-of-Way. He stated that he did not seek approval of this purchasing method from his superiors at the department, and did not specifically inform the Commissioner or General Counsel that computer acquisition language was included in the consultant contracts. Mr. Minnigan explained that division staff had an immediate need for computer equipment and he did not want to develop the required long-range purchase plan and await its approval by the IT Division. He told the auditors that he would have stopped including computer provisions in consultant contracts if the equipment had become more easily accessible to the division through proper channels.

In addition to circumventing departmental purchasing procedures, this improper procurement method had several consequences that should have been easily foreseeable by division staff. In spite of the rationale given for circumventing the normal channels to acquire this computer equipment, that the division had an immediate need that could not otherwise be met, their chosen procurement method did not accomplish that goal. The computer equipment provisions of the consultant contract required the consultant to turn over a computer system as the last step of his or her performance of the contract. Because performance of these consultant contracts could take as long as two to three years, the division's "immediate need" for the computers was not met by the language of the computer provisions. Further, many of the computers provided by consultants were outdated when received by the division or quickly became so. This is because the computer specifications included in the consultant contracts, even though current when written, were out of date by the time the computers were turned over to the division at the end of the project. Lastly, because most of the equipment was not tagged or entered on the department's property list, it was exposed to an increased risk of misappropriation.

Current Commissioner J. Bruce Saltsman and then General Counsel, Mr. Tim Gary, both stated that they had never seen the computer acquisition provisions and would not have signed the contracts had they been aware of them. In a memorandum dated March 25, 1999, division management stated that the practice of using appraisal contracts to acquire services unrelated to the underlying property appraisal would not be approved in the future.

We recommend that Right-of-Way Division management ensure that supplemental agreements to appraisal contracts be used only for projects directly related to the underlying appraisal contract. Additionally, the department's Information Technology Division should conduct a review of the Right-of-Way Division's appraisal tracking program to ascertain the quality of the

programming work paid for by the division. Right-of-Way Division management should also ensure that future purchases of computer equipment or services are approved by the department's Information Technology Division. Lastly, all computer equipment received through consultant contracts should be tagged as inventory of the state and entered into the department's inventory records. The department's Office of General Counsel should continue efforts to (1) stop the turnover of computer equipment by consultants whose right-of-way projects are not yet complete, and (2) receive credit for the cost of computers that have not yet been received by the division.

**Department of Transportation
Right-of-Way Division
Improper and Inept Manipulation of Contracts to Obtain Computer
Programming Services and Computer Equipment
May 2000**

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Origin of the Review	1
Objectives of the Review	1
Scope of the Review	2
Background	3
DETAILS OF THE REVIEW	3
Appraisal Tracking Program	3
Analysis of Supplemental Agreements	4
Procurement Violations	5
Other Uses of Supplemental Agreements	9
Acquisition of Computer Equipment by the Division	12
RECOMMENDATIONS	18
Exhibit A	19
Exhibit B	20
Exhibit C	21
Exhibit D	22
Exhibit E	24
Exhibit F	25

**Department of Transportation
Right-of-Way Division
Improper and Inept Manipulation of Contracts to Obtain
Computer Programming Services and Computer Equipment
May 2000**

INTRODUCTION

ORIGIN OF THE REVIEW

On March 5, 1999, the Internal Audit section of the Tennessee Department of Transportation (TDOT) received information regarding supplemental agreements to Appraisal Contract Number 1, Williamson County Project Number 94014-2221-04. The appraisal contract, dated September 19, 1996, was between the Right-of-Way Division and Mr. John M. Hahn, Jr., a private appraiser, to appraise four tracts of land in Williamson County. The total contract price for Mr. Hahn's appraisal of the tracts was \$2,400. However, six "Supplemental Agreements to Make Appraisals" had been added to Mr. Hahn's appraisal contract. Each of these supplemental agreements stated that Mr. Hahn was responsible for acquiring computer programming consulting services for the division and that payment of the consultants would be charged and paid to Mr. Hahn against Tract No. 1, Project Number 94014-2221-04, in Williamson County. The six supplemental agreements added \$34,908.60 to the contract price.

On March 25, 1999, the Division of State Audit was contacted by the TDOT Internal Audit Director concerning the improper use of supplemental agreements to appraisal contracts by staff of the Right-of-Way Division to purchase computer programming services. The Internal Audit Director stated that the purchase of consulting services in this manner circumvented the department's bid process and improperly excluded its Information Technology Division from participating in the acquisition.

This review was conducted jointly by staff from the Division of State Audit and the TDOT Internal Audit section.

OBJECTIVES OF THE REVIEW

The objectives of the review were

- to determine the nature and extent of any impropriety relating to the use of supplemental agreements to appraisal contracts to purchase computer programming services for the division;
- to examine the division's internal controls over the use of supplemental agreements to appraisal contracts to purchase items other than property appraisals;

- to determine the nature and extent of any impropriety relating to the use of Right-of-Way consultant contracts to acquire computer equipment;
- to report our findings to department and division management; and
- to refer the results of our review to the Office of the State Attorney General and other relevant state agencies.

SCOPE OF THE REVIEW

Our review included interviews with relevant former and current department staff; Mr. John M. Hahn, Jr., the private fee appraiser who facilitated payment on behalf of the division; and Ms. Mary Garrison and Mr. Alexander Batsuk, the independent contractors who performed the computer programming work for the Right-of-Way Division.

We examined the TDOT "Agreement to Make Appraisals" Contract Number 1, State Project Number 94014-2221-04, Williamson County, dated September 19, 1996. This agreement was signed by Mr. John M. Hahn, Jr., the appraiser, and Mr. Rex Jenkins, then a Transportation Manager 1 in the Right-of-Way Division. Mr. Jenkins was authorized to sign such agreements on behalf of Commissioner Saltsman. This material also included a copy of each of the six "Supplemental Agreements to Make Appraisals" attached to this appraisal contract and signed in the same manner.

We reviewed copies of all invoices submitted to Mr. Tim Weaver, a TDOT Chief Review Appraiser, by Mr. Hahn requesting payment for his part in acquiring the computer programming services for the division. We also examined copies of all the invoices submitted to Mr. Hahn by the two computer programmers, Ms. Garrison and Mr. Batsuk, for their services. We reviewed copies of the payment authorizations approved and submitted to the Right-of-Way Central Office by Mr. Weaver for each of the payments made to Mr. Hahn under this contract and its supplements. We examined the TDOT Project Ledger File maintained by the TDOT Finance Office for Project Number 94014-221-04 to obtain the "Object Detail," "Account," and "Charge Unit" numbers for all expenditures related to Mr. Hahn's acquisition of computer programming services for the division. We then traced these expenditures to the State Accounting and Reporting System (STARS) and confirmed payments to Mr. Hahn totaling \$34,908.60 under these six supplements to Project Number 94014-2221-04.

During our interviews, an unrelated issue was raised concerning the division's use of right-of-way consultant contracts to acquire computer equipment. "Consultant" contracts differ from "appraisal" contracts in that the former is used for "Right-of-Way acquisition and related services," and the latter is limited to appraisals of specific tracts of real property. We reviewed all of the division's consultant contracts for the period January 1, 1990, through December 31, 1998, for any evidence of computer equipment acquisition language. Our review of this issue also included interviews with relevant former and current department staff. There were no computer equipment vendors to interview because the right-of-way consultants purchased the

computers from traditional sources. Additionally, we performed an on-site inventory of any consultant-acquired computer equipment located at the four regional Right-of-Way offices.

BACKGROUND

The Right-of-Way Division is a subdivision of TDOT's Bureau of Planning and Development and is responsible for the appraisal and acquisition of land needed for state highway construction. The division is divided into four geographical regions and maintains a central office in Nashville, Tennessee.

DETAILS OF THE REVIEW

APPRAISAL TRACKING PROGRAM

The auditors interviewed the three TDOT Right-of-Way Division staff identified as responsible for the purchase of the computer programming services: Mr. Marty Kennedy, Director; Mr. Rex Jenkins, then Transportation Manager I; and Mr. Tim Weaver, Chief Review Appraiser. Mr. Jenkins and Mr. Kennedy stated that, soon after Mr. Weaver came to work for the division, he approached them with the idea to contract on an hourly basis with a private computer programmer to update and enhance the division's appraisal tracking program. Mr. Weaver began his employment with the division in May 1996. Mr. Kennedy stated that he approved the project because he had seen similar appraisal tracking programs implemented successfully in other states and believed it had significant potential to aid the division in monitoring the progress of its right-of-way projects throughout Tennessee.

Mr. Weaver confirmed that, shortly after beginning work at the Right-of-Way Division in May 1996, he approached Mr. Kennedy and Mr. Jenkins with the idea to update the division's computerized appraisal tracking program from an "antiquated" Q&A database to a Microsoft Windows-based database. He explained that the division uses a computerized appraisal tracking database to track its progress on division projects throughout the state. According to Mr. Weaver, he began working on converting the division's appraisal database into a Windows-based Access format after attending state-sponsored training on Microsoft Access database software. He told us that he had difficulty with the complex nature of the programming and often enlisted the aid of his instructor, Ms. Mary Garrison.

During our April 16, 1999, interview with Ms. Garrison at the offices of Sensible Communications Inc. ("SCI"), in Nashville, she confirmed Mr. Weaver's account of the events that led to her performing computer programming services for the division. She stated that Mr. Weaver's programming questions became so frequent that she offered to do some of the work herself on the division's appraisal database.

Mr. Kennedy told us that when Mr. Weaver asked how the division could most quickly get started on the appraisal tracking system, Mr. Jenkins suggested paying for the programming services through an appraisal contract. Mr. Kennedy said he asked, "Can we do that?" and Mr. Jenkins replied, "Yes, we've done it before." Mr. Kennedy stated that, based on Mr. Jenkins' statement, he authorized Mr. Weaver to proceed.

During our March 30, 1999, interview with Mr. Jenkins, he confirmed that he made the suggestion to use supplemental agreements as a payment vehicle for the computer programming work on the appraisal tracking system. Mr. Jenkins explained that the division had used supplements to appraisal contracts on several occasions in the past to procure services other than property appraisals.

ANALYSIS OF SUPPLEMENTAL AGREEMENTS USED AS A PAYMENT VEHICLE TO PURCHASE COMPUTER PROGRAMMING SERVICES

The six supplemental agreements in question are attachments to Williamson County Project Number 94014-2221-04 and are labeled "B," "C," "D," "E," "F," and "G." The total amount paid under these six supplements was \$34,908.60. Supplemental Agreement A of Project 94014-2221-04 was for Mr. Hahn's appraisal of four tracts of land in Williamson County and, thus, is not related to his procurement of computer programming services for the division.

Supplemental Agreement B

Supplemental Agreement B, dated February 27, 1997, states, "Mr. John M. Hahn Jr. is responsible for obtaining the services of SCI, Inc. [Ms. Mary Garrison] to develop an appraisal tracking program for the Right-of-Way Division." Further, the agreement states, "Payment for SCI, Inc. services for which the appraiser is responsible for obtaining through the said SCI, Inc. is to be charged and paid to Mr. John M. Hahn, Jr. against Tract No. 1 of the subject project 94014-2221-04, Williamson County." The amount to be paid to Mr. Hahn for these services, \$12,000, appears in the body of the supplement under the heading "added Tract No. 1X." Mr. Hahn signed this supplemental agreement on March 8, 1997, and Mr. Jenkins signed it "J. Bruce Saltsman Sr., by RHJ" on March 24, 1997.

Supplemental Agreement C

Supplemental Agreement C, dated April 8, 1998, states that Mr. Hahn is to receive \$500 for "computer-programming consulting service from SCI, Inc. Hired by and managed by Mr. John M. Hahn, Jr. Payment for invoice No. 1302 as billed by SCI, Inc." Mr. Hahn signed this supplemental agreement on May 16, 1998, and Mr. Jenkins signed it "J. Bruce Saltsman Sr., by RHJ" on May 19, 1998.

Supplemental Agreement D

Supplemental Agreement D, dated April 14, 1998, states that Mr. Hahn is to receive \$4,930 for "computer-programming consulting service from A.B. Batsuk and Co. [M.: Alexander Batsuk]. Hired by and managed by Mr. John M. Hahn, Jr. Payment for invoice No.

980402001." Mr. Hahn signed this supplemental agreement on May 16, 1998, and Mr. Jenkins signed it "J. Bruce Saltsman Sr., by RHJ" on May 19, 1998.

Supplemental Agreement E

Supplemental Agreement E, dated May 27, 1998, states that Mr. Hahn is to receive \$5,490 for "additional work performed for computer-programming consulting service from A.B. Batsuk and Co. Hired by and managed by Mr. John M. Hahn, Jr. Payment for invoice No. 980506001." Mr. Hahn signed this supplemental agreement on June 25, 1998, and Mr. Jenkins signed it "J. Bruce Saltsman Sr., by RHJ" on June 29, 1998.

Supplemental Agreement F

Supplemental Agreement F, dated July 29, 1998, states that Mr. Hahn is to receive \$5,342.40 for "additional work performed for computer-programming consulting service from A.B. Batsuk and Co. Hired by and managed by Mr. John M. Hahn, Jr. Payment for invoice No. 9806190002." Mr. Hahn signed the supplemental agreement on August 2, 1998, and Mr. Jenkins signed it "J. Bruce Saltsman Sr., by RHJ" on August 27, 1998.

Supplemental Agreement G

Supplemental Agreement G, dated August 3, 1998, states that Mr. Hahn is to receive \$6,646.20 for "Final Work performed under this contract for computer-programming consulting services from A.B. Batsuk and Co. Hired by and managed by Mr. John M. Hahn, Jr. Payment for invoice No. 9807290002." Mr. Hahn signed this supplemental agreement on August 26, 1998, and Mr. Jenkins signed it "J. Bruce Saltsman Sr., by RHJ" on September 4, 1998.

When asked if he had the authority to sign these supplemental agreements on behalf of Commissioner Saltsman, Mr. Jenkins stated that he did. Mr. Jenkins provided a copy of a memorandum, dated April 8, 1996, from the commissioner authorizing Mr. Jenkins to sign supplemental agreements to make appraisals on his behalf. This memorandum was printed on the Commissioner's letterhead and contained Commissioner Saltsman's handwritten initials "JBS." (Exhibit A).

PROCUREMENT VIOLATIONS

In using supplements to an appraisal contract as a payment vehicle for these computer-programming services, division staff circumvented proper procurement procedures. First, division staff did not solicit competitive bids for the award of the contract. Second, there was never a written contract between the division and the computer programmers for the services. Instead, division staff selected the providers of these services, authorized them to begin work, and then used supplements to Mr. Hahn's appraisal contract as a way to pay for their services. The computer programmers, Ms. Mary Garrison and Mr. Alex Batsuk, were selected by Mr. Tim Weaver, Right-of-Way's Chief Review Appraiser, after he attended a training course taught by Ms. Garrison.

The acquisition of these services did not comply with the division's procurement rules as outlined in chapter 3 of the TDOT Right-of-Way Manual. Chapter 3 addresses the division's rules on contracting for goods and services. It states that "all procurement transactions, without regard to dollar value will be conducted in a manner that provides maximum free and open competition." Specifically, the chapter's "Small purchase procedures" section sets out the procedures that must be utilized when procuring "services estimated to cost less than \$25,000 in the aggregate." Among other requirements, a solicitation list containing a minimum of three potential suppliers must be prepared and a proposal sent to the potential suppliers. The proposal should provide a date that bids will be opened and evaluated. The small purchase procedures then state that "the contract will be awarded to the lowest bid." These rules would appear to apply to each supplement's procurement of services for the division, even if the need for six supplements totaling over \$34,000 was not anticipated at the outset. If all six supplemental agreements are viewed as one purchase of computer programming services in the amount of \$34,908.60, however, the Right-of-Way Manual additionally requires that the invitation to bid be publicly advertised. In contravention of these rules, division staff did not solicit bids for any portion of the contract.

The Right-of-Way Manual's Small Purchase Procedures also allow for award of contracts through competitive negotiation instead of bid solicitation where the services cost less than \$2,500 in the aggregate and written solicitation is not feasible. Even if each supplement is treated as a separate contract, the competitive negotiation rules do not apply to five of the six supplements because were they for amounts greater than \$2,500.

Third, Mr. Kennedy, Mr. Jenkins, and Mr. Weaver acknowledged that they did not seek approval from TDOT's Information Technology Department or the Office of Information Resources, Department of Finance and Administration, before procuring these computer programming services. As a result, the department's Information Technology Division was excluded from participating in the performance or acquisition of the programming services. According to Mr. David Doyle, the current Director of TDOT's Information Technology Division, software design services such as those procured here must be approved by and purchased through the Information Technology Division and the Office of Information Resources. Mr. Doyle explained that each division of the department does not have its own information technology budget and, therefore, services of this nature must be procured by the Information Technology Division.

Mr. Doyle stated that in his opinion the hourly fees charged here, \$65.00 and \$47.50, appeared reasonable, assuming an average level of competency in this type of programming on the part of the consultants. As of January 4, 2000, Mr. Doyle had not examined the improved appraisal tracking system and, as such, could not express an opinion on the quality of the work performed by the computer programmers. As stated later in this report, we recommend that the IT Division examine the appraisal tracking system to determine exactly what the division received for its expenditure of these funds.

When asked if his approval of this purchasing method circumvented the department's procurement procedures, as he now understands them, Mr. Kennedy said, "Yes, it certainly did." He explained that, at the time he approved use of the supplemental agreements, he had only been

director of the division for a short time and trusted Mr. Jenkins' judgment on the issue. Mr. Kennedy acknowledged that, in hindsight, the division's use of supplemental agreements to an appraisal contract was an improper means by which to pay for the computer programming services. He assured the auditors that he derived no personal benefit from the method of payment for these services.

Mr. Jenkins explained that he did not consider this use of supplemental agreements improper at the time because the division had used them in the past to purchase other items and services unrelated to the underlying appraisal contracts. Mr. Jenkins told us that, in retrospect, using an appraisal contract to purchase computer programming services was a mistake in judgment. He pointed out, however, that the division never tried to hide the true nature of the services acquired on the supplemental agreements and that he derived no personal benefit from the chosen method of payment.

Mr. Weaver told us that, at the time of Mr. Jenkins' suggestion, he had never heard of supplemental agreements and did not question their use in this manner. Further, Mr. Weaver stated that he considered their use here proper because the practice was approved by his immediate supervisor, Mr. Jenkins, and then by the director of the division, Mr. Kennedy. Mr. Weaver also assured us that he derived no personal benefit from purchasing the consulting services in this manner.

During our first interview with Mr. Weaver, he directly stated that he was not involved in contracting for the computer programming services. In subsequent interviews, however, Mr. Hahn and Mr. Jenkins stated that the acquisition of these computer services was "Mr. Weaver's project." When confronted with this contradictory information in a second interview, Mr. Weaver explained that he had understood our use of the word "contracting" to mean actually filling in the blanks of the preprinted supplements used to pay for the programming services. Mr. Weaver then admitted that he worked directly with and managed the computer programmers, received and verified their invoices, acted as an intermediary between the programmers and Mr. Hahn, and told Mr. Jenkins how much to pay Mr. Hahn on at least two occasions. As such, Mr. Weaver's omission of critical information during his first interview appears to have been an inappropriate attempt to minimize or conceal the extent of his involvement in the division's procurement of these services.

Inappropriate Management Fee

When we compared the total contract price of the six supplements, \$34,908.60, to actual invoices submitted by the computer programmers to Mr. Weaver as proof of their work, we determined that the contract price and amount paid to Mr. Hahn was \$3,478.60 greater than the total amount invoiced by the programmers, \$31,430. The computer programmers confirmed that Mr. Hahn paid them in full for their services. During interviews with Mr. Hahn, Mr. Weaver, and Mr. Jenkins, we confirmed that, of the \$34,908.60 paid by the division under these six supplements, Mr. Hahn retained \$3,478.60 (11% of the actual cost) as a "management fee." (See Exhibit B.)

Mr. Hahn's "fee" was not disclosed as such in the supplemental agreements, but was instead included in the contract price for the computer programming services. We calculated the amount of the fee by subtracting the amount invoiced by the computer consultants from the amount listed on each supplemental agreement and billed by Mr. Hahn on invoices he created and submitted to the department for payment. For example, Ms. Garrison's invoice showed an amount due of \$10,140 for work she completed from November 19, 1996, to February 6, 1997. Pursuant to Supplemental Agreement B and Mr. Hahn's invoice, Mr. Hahn was paid \$12,000 for work completed by Ms. Garrison during this period. Mr. Hahn confirmed that each of the invoices he submitted to the division for payment included the amount invoiced by the computer programmers and an additional amount representing his "management fee."

During our interviews with Mr. Jenkins, Mr. Weaver, and Mr. Hahn, they admitted Mr. Hahn was paid \$3,478.60 (his "management fee") simply for facilitating payment of the computer programmers. Mr. Jenkins and Mr. Weaver explained that, because an appraisal contract was the mechanism of payment for the programming services, an appraiser had to be paid for "managing" the computer programmers. They said that Mr. Hahn was chosen for this role because he was a long-time contractor trusted by division staff. In addition, Mr. Hahn speculated that he was selected to "manage" the procurement of these services because he could afford to pay the programmers before he received payment from the state.

Mr. Hahn told us that when Mr. Weaver called him in early 1997 and asked him to "manage" the contract, he informed Mr. Weaver that he had no computer expertise and, in fact, was barely computer literate. According to Mr. Hahn, Mr. Weaver said the management was not "hands on" and that all they wanted him to do was "make sure the programmers got paid." Mr. Hahn told us that he did not consider his role improper and agreed to the contract because he wanted to help the division. Mr. Hahn described his duties under the agreement as limited to mailing two checks to Ms. Garrison at SCI, Inc., and hand-delivering four checks to Mr. Batsuk of A.B. Batsuk and Co. Mr. Hahn stated that he paid the computer programmers at the conclusion of their work under each supplement and often had to wait more than a month before he received payment from the division. When asked if he should have received \$3,478.60 for these services, Mr. Hahn replied, "Yes, I performed 100% of my responsibilities under the contract."

Mr. Hahn's "management fee" fluctuated from a high of 18% under Supplement B, to a low of 6% under Supplements F and G. Mr. Hahn told us that he was not responsible for setting the amount of his management fee and could not explain its fluctuation. Mr. Weaver and Mr. Jenkins stated that they could not remember who set the fee or why it changed during the contract. When shown a note in his handwriting directing Mr. Jenkins to draft Supplements C and D for \$500 and \$4,930, Mr. Weaver acknowledged that he set Mr. Hahn's fee, but only for those two supplements. He explained that he probably just estimated a similar percentage to that used by Mr. Jenkins in the first supplement and rounded the number off. However, this explanation is not supported by the facts because the fee under Supplement B, allegedly set by Mr. Jenkins, was 18%, whereas the fees set by Mr. Weaver for Supplements C and D were 9% and 10%, respectively. Although Mr. Jenkins actually drafted each of the supplements, it is unclear who determined the amount of Mr. Hahn's fee under the remaining supplements because of the apparent latitude afforded Mr. Weaver in directing this project.

Double Payment of Supplement F

As a result of our review of the invoices, payment documentation, and our interviews with Mr. Hahn and Mr. Joe Payne, TDOT Region 3 Manager, we established that Mr. Hahn billed the division twice for services rendered under Supplemental Agreement F. The state's accounting and records system shows that a payment of \$5,342.40 was made to Mr. Hahn under this supplement on August 14, 1998, and in the same amount on September 22, 1998.

On April 6, 1999, the auditors asked Mr. Payne to review payment documentation in his possession for a possible double payment of Supplement F. During our interview with Mr. Payne the next day, he said that he discovered that the division had mistakenly authorized payment twice from the same invoice. When the auditors asked Mr. Hahn about the double billing, he said that he was not aware that he had been paid twice for his services under Supplement F until contacted by Mr. Payne on April 6, 1999, more than six months after he had received the improper payment. Mr. Hahn explained that he probably received two checks from the division in the same envelope, one for Supplement F and another for an unrelated Warren County appraisal project he was working on at the time. Mr. Hahn said that because he did not pay attention to the project numbers listed on the checks and did not note receiving payment for Supplement F, he requested payment for Supplement F again by submitting the same invoice a few days later. Mr. Payne acknowledged that he failed to verify whether the numbered invoice submitted by Mr. Hahn had already been paid.

On April 7, 1999, Mr. Hahn reimbursed the division the full amount of the overpayment, \$5,342.40, in the form of a cashier's check made payable to the State of Tennessee. This reimbursement thereby reduced the actual amount expended by the division on these computer-programming services from \$40,251 to \$34,908.60.

OTHER USES OF SUPPLEMENTAL AGREEMENTS

In explaining his suggestion to use supplemental agreements to appraisal contracts to procure the computer programming services discussed above, Mr. Jenkins told us that the division had used supplements in the past to purchase services other than property appraisals. Specifically, Mr. Jenkins identified three types of services that the division acquired through supplemental agreements: (1) training for division staff, (2) remainder sales studies, and (3) hazardous waste studies.

When asked if they were aware of any nonappraisal items procured by the division through supplemental agreements (other than the computer programming services discussed above), Mr. Kennedy, Mr. Payne, and other division staff confirmed only those three areas identified by Mr. Jenkins. To verify this information, on March 29, 1999, the auditors requested that Mr. Tommy Hart, Assistant Commissioner, TDOT, provide a list of every supplemental agreement used by the Right-of-Way Division to procure nonappraisal goods or services. In response to our request, Mr. Hart provided the auditors a list prepared by Mr. Kennedy of every appraisal assignment undertaken by the division from January 1, 1996, to March 31, 1999. Mr. Kennedy highlighted each appraisal contract on this list that included supplemental agreements

and made handwritten comments characterizing each as “tract-related” or explaining the nature of the services acquired with the supplement. Based on interviews with division staff, available documentation, and the list of appraisal projects provided by Mr. Kennedy, the division’s use of supplemental agreements to purchase items other than appraisal services appears limited to the computer programming services addressed earlier and the three types of services identified by Mr. Jenkins.

Supplemental Agreements Used to Procure Training for Division Staff

During our interview with Mr. Jenkins, he stated that the division had used supplemental agreements to purchase several appraisal-related training courses and materials for its staff sometime in 1990 or 1991. He explained that division staff had an immediate need for this training because of new certification requirements imposed in 1990 for all individuals conducting property appraisals and/or appraisal reporting. As support for the division’s need for this training, Mr. Jenkins provided copies of internal memoranda that referred to an April 16, 1990, amendment of Titles 4 and 62 of *Tennessee Code Annotated* enacting the “Real Estate Licensing and Certification Act.” Under this Act, anyone who prepares an appraisal or an appraisal report relating to real estate or real property in Tennessee must first obtain a real estate appraiser’s license. According to memoranda provided by division staff, one of the requirements for licensure and certification was the satisfactory completion of a specified number of classroom hours related to appraisal studies.

According to documentation obtained from Mr. Jenkins and the division’s project files, six supplemental agreements to Appraisal Contract Number 3 of Project Number 17155-2207-04 in Crockett County were used to acquire training services for division staff at a total cost of \$22,265. Because of the age of these expenditures, signed copies of each supplemental agreement could not be located. Based on preliminary drafts of the supplements and invoices submitted by the training providers, the following courses and materials were purchased: (1) *2.1 Introduction to Income Property Appraising*, 26 students at \$300 each; (2) *2.2 Introduction to Income Property Appraising*, 26 students at \$300 each; (3) 26 textbooks for *Introduction to Income Property Appraising* at \$25 each; (4) *NAIFA Review Course*, 22 students at \$175 each; (5) An additional student added to the *NAIFA Review Course* at a cost of \$175; and (6) an NAIFA “plans interpretation” course at a cost of \$1,990 (number of students who attended is unknown). Payment documentation contained in the division’s files confirmed that six expenditures were made to procure these training services and materials in the amount of \$22,265.

This contract was entered into with Mr. James P. Murdaugh, who was the Tennessee State Director of the National Association of Independent Fee Appraisers at that time. The training services were purchased from the National Association of Independent Fee Appraisers. Mr. Murdaugh did not receive a “management fee” to purchase these training services for the division like that paid to Mr. Hahn for his part in procuring the computer programming services discussed earlier.

When asked why the division used supplemental agreements to an appraisal contract instead of generating a separate contract for the training expenditures, Mr. Jenkins said the

division didn't have funds available in its training budget and the training was immediately necessary for staff certification. He said that in his opinion the division received a good deal on the training services. Invoices note that the division received a 15% discount off of NAIFA member rates for course tuition.

Mr. Jenkins told us that he drafted these supplements at the direction of the former head of the Right-of-Way Division, Mr. Don Minnigan. During our interview with Mr. Minnigan at his home on June 21, 1999, he stated that he had no specific memory of the division's acquisition of these training services, but that Mr. Jenkins' account of the events was probably correct.

Supplemental Agreements Used to Procure Remainder Sales Studies and Hazardous Waste Studies

During our interviews with Mr. Kennedy and Mr. Jenkins, both stated that the division contracts for hazardous waste and remainder sales studies when needed. On November 11, 1999, we contacted Mr. Jim Zeigler, Assistant Executive Director, TDOT, who confirmed the division's need for these studies as part of its duty to properly appraise real property for road construction purposes.

According to Mr. Jenkins, the division publishes a compilation entitled *Remainder Sales Study*, made up of remainder sales reports submitted to the Right-of-Way Division by contract fee appraisers. The publication is used by division staff and is made available to private appraisers at no charge. This publication serves as an instructional manual providing detailed examples to accurately evaluate and assess severance damages and/or benefits for properties purchased by the state for highway construction projects. The division pays a fee to obtain the individual reports from private appraisers who develop this valuable information in the course of their appraisal work. Each report demonstrates the effect of a right-of-way on a piece of real property with "before and after" color photographs of the affected property, and analysis of property value changes resulting from the right-of-way. During our interviews with Mr. Kennedy and Mr. Jenkins, both stated that the *Remainder Sales Study* publication is a necessary tool used by the division and other agencies as a property assessment guideline. For example, in an August 2, 1995, letter from a Deputy Attorney General, Real Property and Transportation Division, to Mr. Jenkins, the Deputy Attorney General expressed the usefulness of Remainder Sales information, especially those studies including color photographs, as "exhibits in the eminent domain trials we conduct for the Department of Transportation."

Because of federal and state laws regulating the handling and disposal of hazardous waste, the Right-of-Way Division's appraisal of property sometimes includes an assessment of the environmental impact of hazardous waste removal on affected tracts. In addition, the mission of the Right-of-Way Division includes the "coordination of the proper removal of underground storage tanks from affected tracts of land."

Remainder sales and hazardous waste studies are often contracted for by the division in supplemental agreements to appraisal contracts. Unlike the computer programming services discussed above, these services appear sufficiently related to the underlying appraisal contract to be appropriately included in a supplement to the contract. This is because these services

provided by or through the contract fee appraiser are completed in the course of, and are directly related to, appraising specific tracts of real property for the Right-of-Way Division.

Subsequent Events and Corrective Action Taken by Management

Mr. Kennedy stated that he met with representatives of TDOT internal audit and Mr. Tommy Hart, Deputy Commissioner, TDOT, on March 24, 1999, to discuss questions surrounding the division's use of supplemental agreements to procure services unrelated to the underlying appraisal contracts. As a result of this meeting, Mr. Kennedy sent a memorandum to Mr. Jenkins, on March 25, 1999, stating that the practice of using appraisal contracts to acquire services unrelated to the project would not be approved in the future (Exhibit C).

Mr. Rex Jenkins voluntarily retired from the department on April 1, 1999.

ACQUISITION OF COMPUTER EQUIPMENT BY THE DIVISION

During our interviews with Mr. Kennedy, Mr. Jenkins, and Mr. Weaver, they provided information concerning an unrelated method used by the division to acquire computer equipment. They told us that the terms of certain right-of-way acquisition contracts required private consultants to turn over computer equipment to the division as part of their performance of the contract. Mr. Kennedy stated that this practice began in the early 1990s but was abandoned in early 1998 when computer equipment became more easily acquired from the Information Technology Division under the new leadership of its Director, Mr. David Doyle.

We reviewed all of the division's right-of-way acquisition contracts from January 1, 1990, to May 1, 1999, and found that 51 contracts (*See* Exhibit D) contained language requiring the consultant to provide a computer system to the division as part of his or her performance of the contract. (*See* Exhibit E.) The first contract containing such a provision was executed on April 12, 1990, and the last on April 14, 1998. The computer provisions typically appeared in the "Scope of Work" attachment to the contract and recited specifications for the CPU's processing speed, memory, data storage capacity, modem compatibility, monitor type, printer speed, and required software. The contracts were entered into with a variety of consultants and were not confined to any particular county. Of the 51 contracts, 3 were projects in Region 2 (Chattanooga); 31 were projects in Region 3 (Nashville); and 17 were projects in Region 4 (Jackson). There were no consultant contracts containing computer acquisition provisions associated with Region 1 (Knoxville).

Approval of Computer Equipment Acquisition Method

During interviews with the auditors, current Right-of-Way Division management and staff stated their belief that this method of acquiring needed computer equipment was proper at that time because it had been in place for so long and each contract had been approved by the TDOT Commissioner and General Counsel. Mr. Jeff Hogue, Transportation Manager 1, TDOT Right-of-Way, explained that the propriety of requiring consultants to turn over computers at the end of their contracts was never really discussed because each consultant contract was sent to the

General Counsel's office and the Commissioner's office for approval. Mr. Hogue stated that, during the time he has been charged with drafting these contracts, no one from the General Counsel's office or the Commissioner's office ever questioned the inclusion of the computer provisions.

Each of the 51 contracts was signed by the Commissioner and General Counsel serving at the time the particular contract was executed. (See Exhibit D.) Former commissioners Jimmy M. Evans and Carl Johnson each signed 16 of these contracts. Former General Counsel Henry K. Buckner, Jr., signed 36 of these contracts. The current Commissioner, Mr. Saltsman, signed 18 of these contracts and TDOT's then General Counsel, Mr. Gary, signed 15 of these contracts. Commissioner Saltsman and General Counsel Gary both stated they had never seen the computer provisions and would not have signed the contracts had they been aware of them.

When asked how the computer provisions escaped his notice, Mr. Gary told us that the department approves over 3,000 contracts per year under extreme time pressure. He said that, as a result, right-of-way consultant contracts were reviewed primarily for legal effect and to protect the department from any inappropriate attempt by the consultant to limit his or her liability. Mr. Gary also explained that the computer provisions were somewhat hidden by their placement in the "Scope of Work" attachment to the contract. Mr. Gary stated that he could not remember if the Scope of Work attachments accompanied the consultant contracts when presented for their signature, but he informed us that office policy requires all referenced attachments to be present when the contract is signed.

Commissioner Saltsman stated that, because of the large number of contracts submitted for his approval by the department's divisions, he relied on TDOT's General Counsel and General Counsel staff to appropriately scrutinize these consultant contracts before presenting them for his signature.

Commissioner Saltsman and Mr. Gary both stated that requiring right-of-way consultants to turn over computer equipment to the division was an improper method of acquiring this equipment because it circumvented established departmental purchasing procedures. Specifically, Mr. Gary said that the General Counsel's office should not have approved the contracts as written because the computer provisions circumvented competitive bidding rules, excluded the department's Information Technology Division and the Office of Information Resources from participating in the process, and was an inefficient use of the department's resources.

Origin of the Acquisition Method

Interviews with Mr. Kennedy, Mr. Jenkins, and Mr. Payne revealed that the acquisition of computer equipment through consultant contracts began during the time Mr. Don Minnigan was in charge of the division. Mr. Minnigan retired from the department in 1993. We interviewed Mr. Minnigan at his residence on June 21, 1999.

Mr. Minnigan told us that in the late 1980s, the division was using a manual filing system to track its progress on right-of-way projects throughout the state. According to Mr. Minnigan,

by 1988 or 1989 the system had become outdated and too inefficient to adequately track the growing number of active projects in the Right-of-Way division. As a result, he stated that he went to Ms. Dianne Thorne, former Assistant Commissioner, and Mr. Tom Hayes, then Transportation Administrator for TDOT Central Services, and inquired as to how to get computers for Right-of-Way staff. Mr. Minnigan said they directed him to Mr. Jim Stewart, former director of the Information Technology division. Mr. Minnigan told us that when he asked Mr. Stewart about acquiring computers for his division, Mr. Stewart told him that the division would need to develop a long-term (three to five year) plan and submit it for approval. Mr. Minnigan admitted that, because his division needed computer equipment and did not want to wait for approval of a long-term purchase plan, he began including provisions in consultant contracts mandating that consultants provide a computer to the division at the end of the project. Mr. Minnigan told us that he authored the first consultant contract containing this provision in late 1989 while in charge of Right-of-Way and holding the position of Engineering Specialist 3.

Mr. Minnigan stated that he did not seek approval of this purchasing method from his superiors at the department. He also said that he did not specifically inform the commissioner or General Counsel of the computer acquisition language, other than by submitting each contract for their approval. When asked if he hid the computer acquisition language in the "Scope of Work" section of the contract, knowing that it would not be noticed during the General Counsel's review, Mr. Minnigan responded in the negative. He explained that the "Scope of Work" section of all right-of-way acquisition contracts contain specifications for computer files that must be turned over to the division by the consultant at the conclusion of the project. Mr. Minnigan said that, when division staff needed computer equipment, he just altered the specification language to require not only project files that met the computer specifications, but also the computers and associated equipment, such as monitors, printers and modems. In taking full responsibility for the acquisition of the computer equipment in this manner, Mr. Minnigan told us that he would have stopped including computer provisions in the consultant contracts if the equipment had become more accessible to the division.

Although Mr. Minnigan stated that he did not intentionally hide the computer acquisition language in the "Scope of Work" section, he made no effort to bring his change to the attention of his supervisors, Office of General Counsel staff, or the Commissioner. Moreover, Mr. Minnigan acknowledged that he deliberately embarked on his scheme because he did not want to wait for the development and approval of a long-term computer acquisition plan.

Several current Right-of-Way employees said that in their opinion the improper procurement method was justified because of the division's history of difficulty in getting needed computer equipment. There is no evidence, however, that former or current division management actually challenged the IT Division to meet their needs.

Location of the Computer Equipment

Interviews with division staff revealed that consultants typically turned in the computer equipment to the regional office associated with their right-of-way contract. To ascertain the location of this equipment, we conducted a physical inventory of the consultant-acquired

computer equipment located at each of the four regional Right-of-Way offices and interviewed relevant regional office staff. However, a lack of effective record keeping and poor internal controls made our effort to confirm the whereabouts of this equipment largely ineffective. For example, almost none of the computer systems received from consultants were tagged as property of the state or entered on the department's fixed asset property listing. In addition, only one of the four regional offices kept written records identifying the consultant or contract from which the computer equipment was received. Furthermore, many of the component parts of the computer systems (i.e., monitors, printers, and CPU's) were used separately by regional office staff or disposed of when they became outdated. Also, there was little or no documentation of transfer when this computer equipment was moved from one regional office to another.

Mr. Payne, Right-of-Way Region 3 Transportation Manager, was the only member of the division's staff that retained any written record of the source of the consultant-acquired computer equipment received by his region. When he received computer equipment from a consultant, according to Mr. Payne, he would indicate the computer equipment provided, its serial number(s), and its source on a list he maintained in his files. Mr. Payne told us that when he assigned the computer equipment to a member of his staff, he labeled it with a tag consisting of the initials of the consultant and the first few numbers of the state project number under which the computer system was purchased. For example, a label with the number "TFS 95" stood for Tennessee Field Services, Inc. (the consultant), Project Number 95840-2205-04. When asked why he did not put a state property tag on this equipment instead, Mr. Payne said that he did not think it could be tagged as property of the state because it was not purchased through the state's property system.

When we asked other management and administrative staff why they did not properly tag each piece of consultant-acquired equipment, they echoed Mr. Payne's belief that it would not be proper to tag equipment that had not been purchased through the department's Information Technology Division. This demonstrates that division staff at all levels recognized that acquiring computer equipment through consultant contracts, at a minimum, contravened the department's established computer equipment procurement procedures. Despite this knowledge, division staff continued to improperly include computer acquisition provisions in consultant contracts.

Inventory Methodology

We counted only those items of computer equipment that we could confirm were acquired from a consultant. Because three of the four regions kept no records distinguishing consultant-acquired equipment from the rest of their computer equipment, we considered circumstantial evidence of the equipment's source to include it in our inventory. For example, we counted items as having been acquired from a consultant if (1) regional staff stated that it had been received from a consultant, (2) it was not tagged, and (3) it was of a different brand or type from computer equipment typically procured by the IT Division.

We did not include in our inventory counts equipment that we could not physically locate at the regions. Staff in the regional offices explained that some of the computer systems received from consultants over the past eight years had probably been turned over to appropriate staff to be disposed of as junk and, thus, removed from the office. We did not count this computer equipment in our inventory, however, because untagged equipment could not be traced to state

surplus property records without a list of consultant-acquired equipment including serial numbers (which were not recorded by region staff at time of receipt from the consultant).

Inventory Results

Of the 51 computer systems (CPU, monitor, and printer) contracted for in right-of-way consultant contracts, we located 8 CPU's, 7 monitors, and 22 printers that appeared to have been turned in by consultants. At the time of our inventory, 8 of the 51 consultant contracts were not complete and, as such, 8 computer systems had not been received by the division. We could not confirm the location or existence of the remaining 35 CPU's, 36 monitors, and 21 printers.

We interviewed administrative staff and management at each of the Right-of-Way regional offices. All Right-of-Way staff interviewed stated that, to their knowledge, none of the computer equipment had been sold or removed from the office for personal use.

The current value of the 51 computer systems procured through consultant contracts is difficult to estimate. This is because pieces were purchased at different times over the nine-year period and the market value of used computer equipment fluctuated greatly during this time. We have, however, estimated the original cost of the inappropriately acquired computer equipment to be approximately \$79,050. (See Exhibit F.) This total represents 51 CPU's at an estimated cost of \$950 each, 51 monitors at an estimated \$200 each, and 51 printers at an estimated cost of \$400 each. Using these same amounts, we have estimated the total cost of the missing computer equipment to be approximately \$48,850. (See Exhibit F.) These estimates are based on an average price paid by the consultants for the computer systems, as shown on five computer equipment invoices found in the division's files. However, because only five such invoices could be located, these estimates are of limited reliability.

Propriety and Results of Acquiring Computer Equipment from Private Right-of-Way Consultants

According to Mr. Sam Mallory, Assistant Director of the TDOT Information Technology (IT) Division, computer equipment purchases must be made as part of a three-year plan developed by the requesting division and submitted to the IT Division for approval. Once approved, the requesting division need only submit a "TDOT PC Equipment Request" form each time an item of computer equipment is needed during the three-year period. This form contains fields for the date, unit number, type of equipment requested, justification for request, contact person, and a signature line for the Division Director's approval of the request. Mr. Doyle, the IT Division Director, told us the form is also used by the IT Division to log the date of the request, approval, and purchase order number for the requested equipment. Mr. Mallory provided us a chart showing the IT Division's computer hardware purchasing procedures used to acquire equipment requested by department staff. The purchasing procedures for equipment under state contract state that once an equipment request has been received and approved by the IT Division, a purchase order is forwarded to TDOT Finance, TDOT Purchasing, and the Office of Finance and Administration for approval. If the request is not approved by one of these offices, it is sent back to the originating division with an explanation of their denial of the request. If approved, the purchase order is sent to the vendor to fill the request. Mr. Mallory

stated that these procedures are substantially similar to those in existence when the Right-of-Way Division began acquiring computer equipment through consultant contracts in 1990.

In addition to circumventing the departmental purchasing procedures outlined above, this improper acquisition method had several consequences that should have been easily foreseeable by division staff. First, as addressed earlier in this report, the decentralized nature of the division's computer acquisition method and a lack of effective record keeping have made the equipment received from consultants difficult to identify and impossible to inventory completely. Because most of the equipment was not tagged or entered on the department's property list, it was exposed to an increased risk of misappropriation.

Second, despite the rationale given by Mr. Minnigan and current division staff for circumventing the normal channels to acquire this computer equipment, that the division had an immediate need that could not otherwise be met, their chosen procurement method did not accomplish this goal. The computer equipment provisions of the consultant contract required the consultant to turn over a computer system as the last step of his or her performance of the contract. Because performance of these consultant contracts could take as long as two to three years, the division's "immediate need" for the computers was not met by the language of the computer provisions.

Third, most of the computers provided by consultants were outdated when received by the division or quickly became so. This is because the computer specifications included in the consultant contracts, even though current when written, were out of date by the time the computers were turned in by the consultants at the end of their consulting contract. Two such computers were still in their original boxes, unopened. In fact, Mr. Kenny Carrell, Right-of-Way Region 4 Manager, told us that several consultants complained that it was difficult to purchase computers that satisfied the outdated specifications listed in their contracts. As a result, most of the computers received from consultants had a shorter useful life than equipment that could have been procured through the Information Technology Division.

Corrective Action Taken by Management

Division management and staff told us that the improper method of procuring computer equipment stopped in April 1998. This was not due to any second thoughts about the impropriety or inefficiency of the method, but was based on their opinion that computers had become easier to obtain through the IT Division. They stated that under the new leadership of Mr. Doyle, the IT Division Director, the IT Division has been proactive in meeting the division's equipment needs.

During our June 16, 1999, interview with Commissioner Saltsman and Mr. Gary, they informed us that the General Counsel's office had increased the scrutiny given to all contracts to prevent improper acquisition of equipment in this manner. Mr. Gary stated that the recent addition of a paralegal to the General Counsel's staff would aid in this intensified contract review process. He explained that all future contracts would be reviewed for these types of provisions by several members of the General Counsel's staff before they are approved by the General Counsel's office and sent to the Commissioner for his signature. During the same

interview, Mr. Gary told the auditors that he would contact the eight consultants whose contracts had not been completed to try to get them to forego purchasing the computers and credit the department for the price of the computer equipment.

RECOMMENDATIONS

Our review resulted in the following recommendations:

1. The Commissioner should take all steps necessary to set the proper tone throughout the department that policies are to be followed and short cuts involving circumvention of controls and policies are not to be tolerated in any operation of the department. When obstacles to efficient operations appear to be interfering with the procurement or other decisions, staff should elevate the problems to a level where the problems can be addressed, rather than merely finding an apparent way around the problem without correcting it.
2. Division management should ensure that supplemental agreements to appraisal contracts are used only for projects directly related to the underlying appraisal contract. Presently, invoices are compared to the contract from which they originate for accuracy prior to payment, but supplemental agreements are not compared to the underlying appraisal contract to ensure proper use of supplements.
3. The department's Information Technology Division should conduct a review of the Appraisal Tracking Program to ascertain the quality of programming work paid for by the division.
4. Division management should ensure that purchases of computer equipment and services follow all appropriate procurement policies and procedures, and are approved by the department's Information Technology Division and/or the Office of Information Resources.
5. All computer equipment identified as received from private consultants should be tagged as inventory of the state and entered into the state's inventory records/property list.
6. The department's Office of General Counsel should continue efforts to (1) stop the turnover of computer equipment by consultants whose right-of-way projects are not yet complete, and (2) receive credit for the cost of computers that have not been received by the division.
7. The Commissioner should consider how to obtain a more complete review of the contracts bearing his signature and that of the department's General Counsel. Furthermore, all contracts should be approved by the department's Fiscal Office after an appropriate review.

EXHIBIT A



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

SUITE 700, JAMES K. POLK BUILDING
NASHVILLE, TENNESSEE 37243-0349

J. BRUCE SALTSMAN, SR.
COMMISSIONER

DON SUNDQUIST
GOVERNOR

M E M O R A N D U M

TO: Mr. Harris Scott
Transportation Director

FROM: J. Bruce Saltsman, Sr. *JBS*
Commissioner

DATE: April 8, 1996

SUBJECT: Authority to Sign Specific Contracts/Agreements

On this date I have met with Mr. Martin Kennedy of your staff and our Department Attorney, Mr. Tim Gary. We have reviewed the following Agreements: (1) Agreement to make appraisals, (2) Supplemental Agreement to make appraisals, and (3) Agreement to make review appraisals.

I am granting either Martin Kennedy or Rex Jenkins authority to sign the aforementioned agreements on my behalf. Authority is also extended to the Regional Transportation Manager I positions to sign the MAP Agreements (Modified Acquisition Procedure) containing 1-15 tracts. I am requesting a quarterly listing of all agreements signed.

JBS/MK/pr

Source: Department of Transportation files

EXHIBIT B

Department of Transportation Right-of-Way Division Payments to Mr. John Hahn, Jr. for purchase of computer programming services (appraisal tracking system) under appraisal project number 94014-2221-04, attachments B-G

Attachmt #	Agreement Date	Comp. Programmer's Invoice Date(s)	Comp. Programmer's Invoice Amount	Hahn's Invoice Date	Hahn's Invoice Amount	Difference Retained by Hahn as His Fee	Percent of Original Invoice
B	03/24/97	12/3/96-2/14/97	\$10,140.00	05/01/97	\$12,000.00	\$1,860.00	18.34%
C	05/19/98	02/22/98	\$460.00	05/19/98	\$500.00	\$40.00	8.70%
D	05/19/98	04/02/98	\$4,480.00	05/19/98	\$4,930.00	\$450.00	10.04%
E	06/29/98	05/06/98	\$5,040.00	06/25/98	\$5,490.00	\$450.00	8.93%
F	08/07/98	06/19/98	\$5,040.00	07/29/98	\$5,342.40	\$302.40	6.00%
G	09/04/98	07/29/98	\$6,270.00	08/28/98	\$6,646.20	\$376.20	6.00%
TOTALS			\$31,430.00		\$34,908.60	\$3,478.60	11.07%

NOTES:

1. Mr. Hahn submitted a second invoice for services under supplement F in the amount of \$5,342.40 on August 2, 1998. The invoice was mistakenly paid because division staff failed to verify whether the numbered invoice submitted by Mr. Hahn had already been paid. This amount was repaid by Mr. Hahn on April 7, 1999, after we brought the matter to the attention of TDOT Finance Office staff.

Source: Division of State Audit analysis of Supplemental Agreements and Invoices



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
NASHVILLE, TENNESSEE 37243-0337

MEMORANDUM

TO: Mr. Rex Jenkins
Transportation Manager I, Headquarters

FROM: Mr. Martin L. Kennedy, Director *mlk*
Right-of-Way Division

DATE: March 25, 1999

SUBJECT: Consultant Appraisal Contracts

I attended a meeting yesterday in Deputy Commissioner Hart's office. Also present were Harris Scott and from Internal Audit, Bill Cravens and Keith Oliver. The purpose of the meeting was to inform me that our division was going to be audited by the Comptroller's office about certain practices that have occurred over the years in the Division concerning contracts. Other items will also be looked into as the result of a complaint.

For the past 10-15 years, it has been the practice of the Right-of-Way office, now division, to piggyback on consultant contracts for various services such as education, damage studies and computer consultants. While this type of action has been in practice for many years, we have been informed that this type of contracting must cease immediately. I met with you and the appraisal section yesterday and spoke to you about this issue.

This memo serves as notice that this practice will no longer be approved in the future. There will be times when such practices may occur but it will only be allowed for project specific items such as engineering studies, additional market studies, contractor estimates, etc.

Your cooperation with this effort will be greatly appreciated.

MLK/pr

Cc: Mr. Harris Scott

Source: Department of Transportation files

EXHIBIT D

COMPUTERS OBTAINED VIA ROW CONSULTANT CONTRACTS (Page 1 of 2)
(By region and date of agreement)

#	AGREEMENT NUMBER	PROJECT NUMBER	COUNTY	AGREEMENT DATE	REGION	CONSULTANT	AGREEMENT SIGNED BY:			AGREEMENT REQUIRED:			INVOICED COST	(1)
							COMMISSIONER	DEPT ATTORNEY	CONSULTANT	COMPUTER	MONITOR	PRINTER		
1	0052	26008-2226-04	Franklin	04/09/92	2	R/W Acquisition Associates	Jimmy M. Evans	Henry K. Buckner, Jr.	Donald H. Ellis	IBM Compatible	EGA Color	NLQ Dot Matrix		
2	0053	33044-2224-04	Hamilton	05/12/92	2	American Engineering Company	Jimmy M. Evans	Henry K. Buckner, Jr.	E. B. Gaither	IBM Compatible	EGA Color	5 PPM Laser		
3	0065	69002-2242-04	Pickett	03/11/93	2	Tennessee Field Service, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Ross A. Barfield	386DX	VGA Color	5 PPM Laser		
4	0033	75003-2218-04	Rutherford	04/12/90	3	Moreland Altobelli & Assoc. Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	D. J. Altobelli	IBM Compatible	EGA Color	NLQ Dot Matrix		
5	0034	95840-2205-04	Wilson	04/23/90	3	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
6	0035	51005-2209-04	Lewis	06/12/90	3	Moreland Altobelli & Assoc. Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	D. J. Altobelli	IBM Compatible	EGA Color	NLQ Dot Matrix		
7	0037	95011-2204-04	Wilson	09/06/90	3	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
8	0038	28068-2204-04	Giles	12/06/90	3	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
9	0039	95840-2206-04 & 75840-2205-04	Wilson & Rutherford	01/30/91	3	Moreland Altobelli & Assoc. Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	D. J. Altobelli	IBM Compatible	EGA Color	NLQ Dot Matrix		
10	0042	75840-2208-04	Rutherford	05/02/91	3	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
11	0046	75005-2226-14	Rutherford & Bedford	07/12/91	3	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
12	0049	83009-2277-04	Sumner	02/12/92	3	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
13	0060	28005-2208-04	Giles	02/04/93	3	H. C. Peck & Associates, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Helen Peck	386DX	VGA Color	5 PPM Laser		
14	0064	02003-2218-14	Bedford	04/30/93	3	Tennessee Field Service, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	VGA Color	5 PPM Laser		
15	0066	11005-2211-14	Chatham	08/16/93	3	O. R. Colan & Associates	Carl Johnson	Henry K. Buckner, Jr.	Elizabeth A. Colan	486DX	VGA Color	5 PPM Laser		
16	0069	83009-2283-04	Sumner	09/01/93	3	Capitol Consultants, Inc.	Carl Johnson	Nancy Crawford for HKB	Michael W. Young	486DX	VGA Color	5 PPM Laser	\$1,401.84	(2)
17	0073	19036-2213-14	Davidson	12/15/93	3	H. C. Peck & Associates, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Helen C. Peck	486DX	VGA Color	5 PPM Laser		
18	0059	19041-2258-04 & 95004-2235-04	Davidson & Wilson	03/04/94	3	Capitol Consultants	Carl Johnson	Henry K. Buckner, Jr.	Mike Young	486DX	VGA Color	5 PPM Laser	\$1,806.67	
19	0080	50001-2239-04 & 60002-2260-04	Lawrence & Maury	05/24/94	3	H. C. Peck & Associates, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Helen C. Peck	486DX	VGA Color	5 PPM Laser		
20	0082	75840-2213-04 & 94840-2214-04	Rutherford & Williamson	09/24/94	3	Capitol Consultants, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Michael W. Young	486DX	SVGA Color	6 PPM Laser	\$1,205.91	(2)
21	0083	22840-2203-04 & 41840-2201-04 & 95840-2211-04	Dickson & Hickman & Williamson	12/12/94	3	Stanfield Consultants, Inc.	Carl M. Wood, Jr.	Henry K. Buckner, Jr.	Jarrell Stanfield	486DX	SVGA Color	6 PPM Laser	\$1,243.80	
22	0086	94840-2213-04	Williamson	03/31/95	3	Stanfield Consultants, Inc.	J. Bruce Saltsman, Sr.	Henry K. Buckner, Jr.	Jarrell Stanfield	486DX	SVGA Color	6 PPM Laser	\$1,243.80	
23	0087	94840-2215-04	Williamson	05/15/95	3	Capitol Consultants, Inc.	J. Bruce Saltsman, Sr.	Henry K. Buckner, Jr.	Michael W. Young	486DX	SVGA Color	6 PPM Laser	\$1,757.96	
24	0091	94840-2216-04	Williamson	09/18/95	3	Capitol Consultants, Inc.	J. Bruce Saltsman, Sr.	C. Timothy Gary	Michael W. Young	486DX	SVGA Color	6 PPM Laser	\$1,757.96	
25	0096	19009-2162-44 & 19082-2209-54	Davidson	06/19/96	3	Capitol Consultants, Inc.	J. Bruce Saltsman, Sr.	C. Timothy Gary	Mike Young	486DX	SVGA Color	6 PPM Laser		
26	0097	63060-2503-54	Montgomery	06/19/96	3	R/W Acquisition Associates	J. Bruce Saltsman, Sr.	C. Timothy Gary	Robert L. Ferguson	486DX	SVGA Color	6 PPM Laser		
27	0098	60004-2261-04	Maury	08/02/96	3	R/W Acquisition Associates	J. Bruce Saltsman, Sr.	C. Timothy Gary	Robert L. Ferguson	486DX	SVGA Color	6 PPM Laser		
28	0099	50001-2247-14	Lawrence	11/15/96	3	Stanfield Consultants, Inc.	J. Bruce Saltsman, Sr.	C. Timothy Gary	Jarrell Stanfield	486DX	SVGA Color	6 PPM Laser		
29	0101	63015-2211-54	Montgomery	02/19/97	3	Carol A. Croft & Associates	J. Bruce Saltsman, Sr.	C. Timothy Gary	Carol A. Croft	486DX	SVGA Color	6 PPM Laser		
30	0102	60004-2262-04	Maury	02/19/97	3	Standifer & Associates	J. Bruce Saltsman, Sr.	C. Timothy Gary	Gary Standifer	486DX	SVGA Color	6 PPM Laser		
31	0105	56200-2202-04	Macon	11/20/97	3	Capitol Consultants, Inc.	J. Bruce Saltsman, Sr.	C. Timothy Gary	Michael W. Young	Pentium 200 Mhz	SVGA Color	6 PPM Laser or Color InkJet		
32	0106	91007-2214-14	Wayne	12/09/97	3	R/W Acquisition Associates	J. Bruce Saltsman, Sr.	C. Timothy Gary	Robert L. Ferguson	Pentium 200 Mhz	SVGA Color	6 PPM Laser or Color InkJet		
33	0107	51005-2219-04	Lewis	02/19/98	3	Right-of-Way Consultants, Inc.	J. Bruce Saltsman, Sr.	C. Timothy Gary	David Weaver	Pentium 200 Mhz	SVGA Color	6 PPM Laser or Color InkJet		
34	0108	75009-2230-04	Rutherford	02/19/98	3	W. D. Schock Co.	J. Bruce Saltsman, Sr.	C. Timothy Gary	Willard Schock	Pentium 200 Mhz	SVGA Color	6 PPM Laser or Color InkJet		
35	0036	27001-2225-04	Gibson	07/27/90	4	Coates Field Services, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	John Coates	IBM Compatible	EGA Color	NLQ Dot Matrix		
36	0040	17155-2209-04	Crockett	01/08/91	4	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
37	0041	17155-2207-04	Crockett	02/14/91	4	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
38	0045	23155-2203-04	Dyer	06/24/91	4	Tennessee Field Service, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	Ross A. Barfield	IBM Compatible	EGA Color	NLQ Dot Matrix		
39	0048	55001-2225-14	McNairy	11/26/91	4	Coates Field Services, Inc.	Jimmy M. Evans	Henry K. Buckner, Jr.	John Coates	IBM Compatible	EGA Color	NLQ Dot Matrix		

COMPUTERS OBTAINED VIA ROW CONSULTANT CONTRACTS (Page 2 of 2)

(By region and date of agreement)

#	AGREEMT NUMBER	PROJECT NUMBER	COUNTY	AGREEMT DATE	REGION	CONSULTANT	AGREEMENT SIGNED BY:			AGREEMENT REQUIRED:			INVOICED COST (1)
							COMMISSIONER	DEPT ATTORNEY	CONSULTANT	COMPUTER	MONITOR	PRINTER	
40	0067	39005-2209-14 & 09-005-2212-14	Henderson & Carroll	08/13/93	4	H. C. Peck & Associates, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Helen C. Peck	486DX	VGA Color	5 PPM Laser	
41	0068	27004-2260-14	Gibson	08/23/93	4	R/W Acquisition Associates	Carl Johnson	Henry K. Buckner, Jr.	Robert L. Ferguson	486DX	VGA Color	5 PPM Laser	
42	0071	35001-2238-14	Hardeman	10/20/93	4	Tennessee Field Service, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Ross A. Barfield	486DX	VGA Color	5 PPM Laser	
43	0070	35001-2234-04	Hardeman	10/26/93	4	Tennessee Field Service, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Ross A. Barfield	486DX	VGA Color	5 PPM Laser	
44	0074	12001-2223-14 & 55002-2224-14	Chester & McNairy	11/05/93	4	H. C. Peck & Associates, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Helen C. Peck	486DX	VGA Color	5 PPM Laser	
45	0072	40012-2219-24 & 40012-2220-54	Henry	12/16/93	4	Capitol Consultants, Inc.	Carl Johnson	Henry K. Buckner, Jr.	Michael W. Young	486DX	VGA Color	5 PPM Laser	
46	0077	79190-2707-44	Shelby	01/11/94	4	Coates Field Service, Inc.	Carl Johnson	Henry K. Buckner, Jr.	John J. Coates, Jr.	486DX	VGA Color	5 PPM Laser	
47	0085	55004-2227-04 & 36001-2282-04	McNairy & Hardin	01/31/95	4	Stanfield Consultants, Inc.	J. Bruce Saltzman, Sr.	Henry K. Buckner, Jr.	Jarrell Stanfield	486DX	SVGA Color	6 PPM Laser	
48	0100	40010-2222-14	Henry	12/31/96	4	Stanfield Consultants, Inc.	J. Bruce Saltzman, Sr.	C. Timothy Gary	Jarrell Stanfield	486DX	SVGA Color	6 PPM Laser	
49	0103	09010-2203-14 & 40010-2221-14	Carroll & Henry	04/03/97	4	Stanfield Consultants, Inc.	J. Bruce Saltzman, Sr.	C. Timothy Gary	Jarrell Stanfield	486DX	SVGA Color	6 PPM Laser	
50	0104	55004-2233-14	McNairy	07/16/97	4	Stanfield Consultants, Inc.	J. Bruce Saltzman, Sr.	C. Timothy Gary	Jarrell Stanfield	Pentium 200 Mhz	SVGA Color	6 PPM Laser or Color InkJet	
51	0109	79052-2217-04	Shelby	04/14/98	4	Stanfield Consultants, Inc.	J. Bruce Saltzman, Sr.	C. Timothy Gary	Jarrell Stanfield	Not Specified	Not Specified	Not Specified	
												TOTAL:	\$10,417.94

NOTES:

- (1) Invoiced cost information was obtained from invoices found in files maintained by Mr. Joe Payne. Mr. Payne explained that some of the consultants provided invoices showing their purchase of the equipment from a computer dealer. The auditors could locate only seven such invoices.
- (2) Invoiced cost does not include printer.

Source: Division of State Audit analysis of consultant contracts

EXHIBIT E

State Agreement No. 0066

AGREEMENT BETWEEN

O.R. Colan & Associates

AND

THE STATE OF TENNESSEE, DEPARTMENT OF TRANSPORTATION

SECTION I: GENERAL RECITALS

THIS AGREEMENT, made and entered into as of this the 16th day of August, 1993, by and between O.R. Colan & Associates whose principal offices are located in South Charleston, West Virginia hereinafter referred to as the "CONSULTANT", and the STATE OF TENNESSEE, DEPARTMENT OF TRANSPORTATION, Nashville, Tennessee, hereinafter referred to as the "STATE".

- F. Maintain accurate parcel files and at the termination of the work on the project, turn over to the STATE all relocation and negotiation files, appraisal and appraisal review files and any other pertinent acquisition files, records or reports, computer and software. Q/A data files and any other pertinent acquisition files, records or reports shall be documented in accordance with the STATE'S and applicable federal requirements. During the proposed work all such files will be available at reasonable times for inspection by the STATE and by the Federal Highway Administration (if Federal funds are utilized on any phase of the project.
- (1) Computer Equipment compatible for use and information transfer with the Right of Way Office will require a IBM compatible 486DX computer with a minimum of 2MB ram and a minimum of 85MB fixed disk hard drive with a minimum of 30MHZ and 5.0 DOS and Basic, 5 1/4 floppy drive and 3.5 diskette with disk controller, color monitor (VGA) Communication modem with software compatible to Multitech 224 error correcting. Cartridge back up compatible to Cipher 5400 60MB. Laser printer with 5 pages per minute printing capability.
 - (2) The SYMANTEC Q&A database software version 4.0 will be required to maintain the computerized Right of Way information from the files listed in paragraph F.
 - (3) While DOT Right of Way Office believes the file structure is reliable and error free, the STATE is not responsible for loss of data by use of the file system. Cartridge backup will be required to ensure data is maintained in storage in case data is lost.

Source: Department of Transportation files

EXHIBIT F

**Department of Transportation Right-of Way Division
Inventory of Computers Acquired Via Right-of Way Consultant Contracts as of June 2, 1999**

<u>Type of Equipment</u>	<u>Estimated Cost Per Item</u>	<u>Total # Contracted For</u>	<u>Total Estimated Cost</u>	<u># Not Yet Received From Consultant</u>	<u>Total # Found</u>	<u>Total # Missing</u>	<u>Total Estimated Cost Of Missing Items</u>
CPU	(1) \$950	51	\$48,450	8	8	35	\$33,250
Monitor	\$200	51	\$10,200	8	7	36	\$7,200
Printer	\$400	51	\$20,400	8	23	20	\$8,000
TOTALS:	\$1,550	153	\$79,050	24	38	91	\$48,450

Notes:

- (1) "CPU" includes the computer case, motherboard, hard drive, processor, hard drive, internal modem, RAM, floppy disk drive, CD_ROM drive (where applicable), keyboard, mouse, and any other items typically installed in a computer "case."
- (2) The estimated were arrived at by averaging the cost per item listed on invoices in Mr. Payne's possession. Mr. Payne explained that invoices sometimes accompanied the computers turned over by consultants to the department. Only 5 such invoices could be located by department staff.
- (3) We counted only those pieces of computer equipment that we could confirm as acquired from a consultant and could physically locate in one of the four Right-of-Way regional offices.

Source: Division of State Audit analysis of Supplemental Agreements and Invoices