

**ALLEGATIONS AGAINST EXECUTIVE DIRECTOR OF  
THE DIVISION OF SCHOOL SAFETY ZACHARY TUMIN:  
SUMMARY OF INVESTIGATIVE RESULTS**

September 1994

Board of Education officials referred to the Special Commissioner of Investigation for the New York City School District (hereafter, this "office") information involving possible wrongdoing by the executive director of the Division of School Safety (hereafter, "DSS")--Zachary Tumin.<sup>1</sup> The information concerned Tumin's awarding of four consulting contracts, only two of which are made part of this investigation.<sup>2</sup> As set forth in footnote 2, below, investigation disclosed no wrongdoing respecting the other two contracts. The consulting contracts at issue then are two \$14,900<sup>3</sup> contracts awarded without competitive bidding to BOTEC Analysis Corporation and Wasserman Associates Inc.--each a Boston-based business and each with pre-existing ties to Tumin, and to each other.

After many interviews, both in New York and Boston, and the review of countless and hard-to-locate documents, this office established that Tumin awarded "no-bid" contracts to those with whom he had long-standing, prior relationships. There is, however, no evidence to suggest any corrupt motive on Tumin's part. He was facing the daunting task of reorganizing DSS before the fast-approaching start of the next school year. Further, there is no question that the consultants involved--William Bratton (now Commissioner of the New York City Police Department), who performed the work under the BOTEC contract, and

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<sup>1</sup>Zachary Tumin's appointment as executive director of DSS was effective September 24, 1992.

<sup>2</sup>The two consulting contracts not elsewhere discussed in this document are a \$9,975 contract with John Jay College of Criminal Justice and a \$9,000 contract with Criminal Justice Technologies Inc. Interviews and an examination of all materials relevant to the awarding and performance of these contracts suggested no wrongdoing.

<sup>3</sup>The \$14,900 price of each contract, as explained more fully below, is significant for two reasons: absent special justification, consulting contracts in excess of \$250 require competitive bidding, and consulting contracts in excess of \$15,000 require specific Board of Education approval.

Robert Wasserman--were completely qualified and that they fully performed their obligations under the contracts.

Nonetheless, it is clear that Mr. Tumin engaged in a pattern of activity designed to circumvent BOE regulations in the letting of consulting contracts. In doing so, he was blind to the appearances of a conflict of interest. This insensitivity to appearances is more troubling given that Mr. Tumin was taking over DSS as a result of improprieties by its previous top managers. As a result, we recommend that the Chancellor take appropriate disciplinary action against Mr. Tumin.

Tumin is Hired After 1992 Investigation by SCI  
Reveals Improprieties in DSS's Top Management

Unfortunately, this is not the first time that this office has been called upon to investigate an executive director of DSS.<sup>4</sup> In a report dated July 1992, we illustrated widespread wrongdoing by DSS top executives: we concluded that at least 38 school safety employees, including the deputy executive director, had collected their pension and salary in violation of New York State law. More than \$3,000,000 in unauthorized city monies was paid to these employees, in some cases spanning more than 10 years.

This office also found that the executive and deputy executive directors sat in review of their next in command, the chief of operations, respecting an arrest and conviction of the latter for Criminal Possession of Stolen Property. The executive director recommended retaining his chief of operations. Court records regarding the conviction and the Board of Education's records of the subsequent review demonstrate significant misrepresentations by the chief of operations during the review and, at best, negligent acceptance of the story by the executive director. Further, in violation of the City Charter, the same chief of operations entered into a financial and business relationship with the executive director respecting a real estate transaction and misrepresented the nature of that relationship to the chancellor and SCI. Finally, the deputy executive director had 12 of his relatives--a brother, son, nieces and nephews--employed by School Safety. The executive director had been aware of, and approved, the employments.

As a result of our investigation, DSS's executive director, deputy executive director, and chief of operations resigned their employment. At the same time, then-Chancellor Fernandez commissioned an outside Advisory Panel on School Safety led by Jeremy Travis, former New York City deputy police commissioner and current director of the President's National Institute of Justice in Washington D.C. The advisory panel ultimately released a report critical of DSS's overall operations and recommended sweeping reform.

Also during this period, Fernandez commenced a search for a new executive director of DSS. Zachary Tumin interviewed for the position in the trouble-plagued division and won the job on September 11, 1992. He brought with him stellar credentials--chief administrator of the New York State Organized Crime Task Force, research fellow at Harvard University's John F. Kennedy School of Government, and special assistant to Elizabeth Holtzman, former Kings County District Attorney and New York City Comptroller.

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<sup>4</sup>The Division of School Safety is charged with maintaining the security of our schools and the safety of our schoolchildren. Its executive and administrative offices are located on East 6th Street in Manhattan, separate from other Board of Education offices, and it employs about 3,200 officers, many with arrest authority. DSS is as large as the country's ninth largest police department.

Tumin's immediate objective, stated in a memo by Fernandez, and made clear to him by high-ranking Board of Education officials, was to "create a safe environment in the school system--a prerequisite for creating an environment conducive to learning." Fernandez and former Deputy Chancellor Stanley Litow strongly urged Tumin to reorganize DSS for the next school year, 1993-1994, consistent with the then-not yet released findings and recommendations of the Chancellor's Advisory Panel on School Safety (hereafter, the "Panel"). Of course, Tumin could not react to nor implement the Panel's conclusions until they were determined and released. The Panel did not release its results until approximately April 1, 1993, thus leaving Tumin with a twofold problem: he had only five months until the new school year to react to, adjust if necessary, and implement the Panel's comprehensive recommendations; and he had only three months remaining in the fiscal year to decide what monies would be necessary to implement a school safety plan not even finalized.

### Tumin Seeks Consultants to Help Reorganize DSS

Faced with this challenge, Zachary Tumin sought the help of outside experts. In early January 1993, Tumin met with a former associate of his from Boston--William Bratton, then the Superintendent-in-Chief of the Boston Police Department. Tumin also sought the assistance of Robert Wasserman--a former Boston employer of Tumin's and nationally recognized criminal justice expert.

### Tumin's Relationship with Bratton and Wasserman

Tumin explained to this office that he first met Bratton in the early 1980s when both were involved with the concept of community policing through the sponsorship of Harvard University--Tumin as a research fellow and Bratton as a Boston Police lieutenant. Tumin added, and Bratton corroborated in an interview with this office, that a professional relationship continued, but that there was no social component to it. Tumin and Bratton had no formal business or financial dealings together. Their contact was limited, largely through a loose network of criminal justice experts associated in one way or another with Harvard. There is no evidence known to us to suggest otherwise.

Wasserman was also part of this network of criminal justice experts. His relationship with Tumin, according to each, dates back to (at least) 1979 when Tumin began working for Wasserman as a public safety consultant/senior associate in Boston. The employment lasted until 1983. Since that time, they have had limited contact and no business or financial dealings.

## BOE Regulations

While Bratton and Wasserman were unquestionably qualified for the work for which Tumin was seeking them, obstacles stood in the way. BOE regulations could require competitive bidding, central board review and a limitation on daily compensation for individual consultants. Further, Tumin's prior relationships with Bratton and Wasserman would at least raise, especially in the absence of competitive bidding, the question of whether they were being favored improperly.

The BOE regulations governing the awarding of consulting contracts to a "group, corporate body, institution or individual who is incorporated" are contained in its Standard Operating Procedures Manual (hereafter, "SOPM"). The SOPM requires that "wherever possible acquisition of professional and consulting services must be made by public solicitation and awarded to the responsible bidder whose bid ... is lowest in price. Any exceptions to the competitive bidding requirement require a detailed written justification statement setting forth the reason for such exceptions," and the statement must be kept on file at the respective financial management center--in this case, DSS. When the expected cost of consulting services is \$15,000 or greater, central Board of Education members must authorize the contract by formal resolution. The SOPM goes on to caution that due to the relatively large sums of money involved, the awarding of contracts must be consistent with all rules and regulations.

Contracts with "individuals as consultants" are subjected to special rules set out in Chancellor's regulation C-190. Of particular significance here is that such consultants are limited in their compensation to \$200 per day. Requests for variances from this rule must be made to the chancellor or a deputy chancellor.

## Avoiding Central Board Review

Tumin jumped his first hurdle--review by the central Board of Education--by pricing each contract at \$14,900, just below the \$15,000 threshold. An early January 1993 meeting between Tumin and Bratton was memorialized in a January 27, 1993 letter from Bratton to Tumin where Bratton proposed developing "a new [DSS] organizational structure, field deployment strategy and training for school safety officers ... the same sort of field strategy as [Bratton] developed for the New York City Transit Police Department."<sup>5</sup> Bratton offered, at the time, to complete the work in four months at a total "consulting" cost of \$16,000. Bratton's daily fee was listed at \$700. Shortly thereafter, on February 2, Bratton submitted a second down-sized proposal to Tumin. This proposal required less work of Bratton and the total cost was, correspondingly, less--\$13,800. Again, though, Bratton set his daily fee at \$700. The proposal was revised a third time with the final cost at \$14,900, with no changes in Bratton's compensation rate.

Tumin stated to this office that he asked Bratton for the revised proposal in order to bring the cost under \$15,000 and so avoid the central Board of Education review process. Tumin felt this process would have been too time consuming. Bratton also said that this was the explanation given him by Tumin.

At the same time that Tumin was negotiating a consulting contract with Bratton, Tumin authorized, on March 25, 1993, a "no-bid" contract with his former employer--Robert Wasserman.<sup>6</sup> The stated price was \$14,900 and it required Wasserman to "develop an implementation plan, ... detailing the major strategies to be adopted, such as field service strategy ... training strategy ... organization strategy ...," and other items.<sup>7</sup> In two invoices dated April 7 and May 3, 1993, Wasserman billed the BOE \$14,900 and was paid on May 7 and June 14, respectively.<sup>8</sup>

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<sup>5</sup>Bratton, as former chief of the New York City Transit Police Department, is widely credited with improving the effectiveness and morale of that department. And, as the former superintendent-in-chief and, later, commissioner of the Boston Police Department, followed by his current position as commissioner of the New York City Police Department, there can be little doubt that Bratton was qualified to assist DSS in its reorganization.

<sup>6</sup>Like Tumin, Bratton is a long-time associate of Robert Wasserman.

<sup>7</sup>Although Tumin denied any impropriety, the requirements of this contract were similar to those of the BOTE/Bratton contract which required a "field deployment strategy and training." The Wasserman work product though, as set forth in a lengthy document from Tumin to Fernandez, is also comprehensive and seemingly in accord with the cost.

<sup>8</sup>Wasserman Associates Inc., the president of which is Robert Wasserman, is a Boston-based organization with broad experience in assisting public agencies in developing plans for implementation of community-oriented approaches to their work. In fact, Robert Wasserman consulted with former New York City Police Commissioner Lee Brown in the development of

The Wasserman contract price was set for the same reasons as the Bratton proposal. Wasserman explained to this office that Tumin called him in early March 1993 regarding the consulting services. He continued that Tumin emphasized that the total cost could not exceed \$15,000. Wasserman understood that this would avoid the need for competitive bidding and allow him to start the project more quickly since there was a need, stated by Tumin, to finish quickly. And, as Tumin was aware, keeping the cost just under \$15,000 also avoided BOE involvement, and oversight.

In neither the Bratton nor the Wasserman consulting relationships did Tumin make efforts with the BOE or the chancellor to determine if an expedited approval process was possible given the unquestioned need for immediate action in implementing reorganization before the coming school year. He simply sidestepped central board review by negotiating the two contracts for consulting services at \$14,900 each.

### Bratton's Compensation

Bratton's proposal set his compensation at \$700 per day, a rate consistent with that of consultants of his stature and expertise. BOE regulations, however, limit compensation of individual experts to \$200 per day, barring a waiver from the chancellor's office..

In reviewing the setting of Bratton's compensation rate, a dispute arose between Tumin's version of the events and that of his chief administrator of support services, Robert Ascher. The dispute between Tumin and Ascher raises a significant issue: did Tumin know the rule limiting the compensation for individual consultants and choose to ignore it, or did Tumin misunderstand the rule and think he could be in compliance by associating Bratton with a corporation?

In a memorandum dated May 17, 1993 Tumin told his chief administrator of support services, Robert Ascher, that "Chief Bratton will assist the Division" as a consultant. Along with the memorandum, Tumin transmitted a letter dated May 17 from Bratton to Tumin, which served also as the proposal for contract. Ascher explained that he began completing the paperwork to contract with Bratton. He did not complete it, though, because he learned from Tumin that Bratton required a daily fee in excess of \$200--the maximum set by BOE regulation. After some limited discussion, Tumin asked Ascher, according to Ascher, how could they "accomplish" paying Bratton more than \$200 per day. Ascher explained that only individuals are thus limited and that corporations have no such restriction--apparently implying that if Bratton were incorporated in some fashion then he could receive \$700 per day.

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the New York City Police Department plan for community policing.

Tumin denied this and claimed that Ascher said nothing about the \$200 per day limit. Rather, Tumin claimed that Ascher told him that the SOPM does not allow for consulting contracts with individuals--only corporations. When asked by this office about the more than 50 consulting contracts not exceeding \$200 per day DSS presently holds with individuals, Tumin explained that he believed Bratton's contract fell into a different category.<sup>9</sup> He explained that the DSS consulting service contracts were restricted to "training," and that Bratton's consulting contract was "administrative" in nature.<sup>10</sup> Tumin insisted to this office--incorrectly--that, except for the aforementioned DSS contracts with individuals, the Board of Education prohibited paid consulting with individuals. Tumin claimed that Ascher told him this, and that even though it made little sense to him at the time, he did not question Ascher or anyone else further on the subject. Nor did he consult the actual SOPM regulations. Ascher consistently denied to this office what has been attributed to him by Tumin and insists that he told Tumin that individuals, as contrasted to corporations, could not receive more than \$200 daily.<sup>11</sup>

It is impossible to resolve with certainty whether Tumin knew there was a \$200 per day limit on individual compensation, or whether he instead believed contracts with individual consultants were barred. What is clear, however, is that Tumin structured the contract through a corporation which acted essentially as a shell.

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<sup>9</sup>DSS routinely hires individual consultants to train its new officers and pays them no more than \$200 per day. Presently, they have about 50 such consultants of which Tumin is aware.

<sup>10</sup>The BOE has six categories of consultants: two of these are education and administrative, with education including all services that could be considered training in nature. There is no distinct category for training.

<sup>11</sup>In assessing the credibility of these conflicting stories, it must be noted that the relationship between Tumin and Ascher has been a strained one since Tumin's arrival at DSS and that Tumin intended, under his restructuring, to demote Ascher. Tumin's intention was known to Ascher prior to his speaking with our office. Further, it should be noted that this office criticized Ascher in its July 1992 investigation of DSS. See Report of The Special Commissioner, *Private Interest Over Public Trust: An Investigation into Certain Improprieties by the Leadership at the Division of School Safety*, (July 1992), p. 75.



## DSS Structures Its Relationship with Bratton Through the BOTEC Corporation

Whether it was to avoid the individual compensation limit, or a perceived ban on individual consultants altogether, Tumin sought a corporate entity to act as a shell for Bratton's work. Tumin admitted that he would have preferred to link Bratton with Wasserman Associates Inc., citing the longstanding relationship between Bratton and Robert Wasserman, but was prevented from doing so because he had already contracted with Wasserman for \$14,900. Further contract costs with Wasserman would have triggered central BOE involvement. Again, in order to avoid this result, Tumin chose the BOTEC Analysis Corporation.

BOTEC is a research group based in Boston whose president is Mark Kleiman, a former supervisor of Tumin's in Boston's Office of Management and Budget and an associate of Tumin's and Bratton's at Harvard. BOTEC's area of expertise, by its own description, is drug policy.<sup>12</sup> The arrangement was simple: BOTEC would now submit the proposal for consulting services and bill the BOE; Bratton would do the actual work and would receive his \$700 daily fee from BOTEC. BOTEC and Bratton had never before been involved in a business venture, nor have they since the DSS project.

Bratton and Jenny Rudolph, BOTEC Managing Director, recalled receiving telephone calls from Tumin in early May 1993. Rudolph remembered Tumin telling her that he wanted to hire Bratton for consulting services commencing immediately but was prohibited from doing so by BOE regulation, which required that the consulting relationship be with a corporation. Tumin explained to her that the corporation--in this case, BOTEC--would act as a "back-up" in the event Bratton was unable to continue as a consultant and, further, that BOTEC would provide administrative support. Rudolph agreed to Tumin's proposal which contained as its main ingredient the requirement that Bratton perform the work, and at \$700 per day.<sup>13</sup> Rudolph added that she understood from Tumin that the contract price had to stay under \$15,000 in order to avoid competitive bidding--a time-consuming process not practical given that the work had to be completed in less than two months. Finally, Rudolph explained that the BOE paid BOTEC, who, in turn, paid Bratton--except for the \$321.76 administrative fee retained by BOTEC.

Similar to Rudolph, Bratton explained to this office that in May 1993 Tumin suggested the arrangement with BOTEC because the BOE prohibits, according to Tumin, consulting contracts with individuals. Bratton explained that he shortly thereafter met in

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<sup>12</sup>In its literature, BOTEC boasts that "drug and criminal justice research policy analysis have been the heart of [its] work since its founding in 1984."

<sup>13</sup>Rudolph explained that she viewed this as valuable exposure for BOTEC, even if BOTEC was not to profit directly on the DSS project.

Boston with Kleiman and Rudolph of BOTECH. They arranged a fee schedule and Bratton's "sub-contractor" relationship with BOTECH. Bratton, too, could not identify what services, if any, BOTECH performed under the contract.

Tumin, for his part, said that he arranged the relationship solely and simply because he believed that a corporation was a required party to BOE consulting contracts not falling strictly within the training category. He added that he did not know the policy reasons behind this but suspected they included the need for a "back-up" in the event an individual became "disabled." Tumin could not further explain this.

Tumin was further examined specifically about the instant contract and asked what role he foresaw BOTECH playing had Bratton been unable to perform under the contract. He admitted that he was uncertain and that he knew only of BOTECH's reputation for drug policy analysis. Tumin could not go to Wasserman, he told us, because this second project would have taken them over the \$15,000 threshold for central BOE review.

In any event, on May 28, 1993 BOTECH submitted to DSS a "Proposal to Develop New Organizational Structure, Field Deployment Strategy and Training for School Safety Officers." The proposal included a description of the work to be done, identical to that proposed by Bratton, identification and resumé of the staff assigned to the project, and a budget, among other items. Under the heading STAFF, only Bratton was mentioned and he was described as the Project Director. There was no mention anywhere in the proposal of other BOTECH associates assigned to the project. Further, under the heading BUDGET, only Bratton's fee of \$700 per day was listed as the expected labor cost, and the total project cost was listed at \$14,900. In fact, the final invoice, dated July 14, 1993, reflected a final purchase price of \$10,667.76,<sup>14</sup> with all but \$321.76 going to Bratton.<sup>15</sup> By all accounts, Bratton performed the work under this contract and received \$700 per day in compensation.<sup>16</sup>

Both Bratton and BOTECH representatives stated that Bratton had not worked for BOTECH either prior to or subsequent to the DSS project.

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<sup>14</sup>This invoice again lists Bratton's daily fee, as a BOTECH consultant, at \$700.00, and it reflects no expenses incurred by BOTECH for labor, materials, supplies, or copying. Further, the purchase price is significantly less than the proposed price of \$14,900.00 because the project was further scaled down to accommodate the June 30 fiscal year deadline.

<sup>15</sup>The \$321.76 is listed as a general administrative expense. BOTECH representatives could not provide to this office a comprehensive explanation of that expense item.

<sup>16</sup>Bratton performed the work under the contract, according to the invoice, from May 22 through June 27, 1993. Although not the focus of this investigation, neither payroll timesheets, Bratton's statements to this office, nor the statements of others suggest that Bratton engaged in any wrongdoing with respect to his Boston Police Department employment.

## The Written Justification: Required in "No-Bid" Awards

Confronted with another obstacle to his objective of hiring Bratton and Wasserman--competitive bidding--Tumin found yet another way to avoid the spirit and intention of the SOPM. As we pointed out above, the SOPM requires that contracts be awarded to the lowest responsible bidder. Exceptions require a detailed written justification statement setting forth the need to avoid competitive bidding. The rules seem designed for just such a case as this: where a division chief wishes to award consulting contracts without competitive bidding to individuals with whom he has prior relationships. Yet Tumin's attitude toward the justification statements seems casual at best.

The evidence is clear that Tumin had Wasserman and BOTEC prepare the justification statements necessary to avoid competitive bidding. Tumin admitted that the corporations "probably" prepared the statements, though representatives of neither corporation could recall whether they had or had not. The justification statement for Wasserman's contract is subscribed in bold, "Wasserman Associates, Inc." The statement for BOTEC, which is in a different type size and face from that of Wasserman, contains no subscription. Like the Wasserman statement, however, the BOTEC statement consists largely of a description of the company's expertise and plans for fulfilling the contract. In neither statement is there any discussion of DSS's need to avoid competitive bidding.

That the very companies which stood to benefit from a direct award of the contract were asked to prepare the justification for avoiding competitive bidding does not seem to have troubled Tumin, who told this office there was no one "means" of preparing these statements. The policy behind the requirement is clear, however. Competitive bidding reduces both cost and the risk of corruption. Exceptions to the preference for competitive bidding should be based on BOE's need, as stated by its top managers. To ask companies with a financial interest in the outcome to assess this need is unwise to say the least.

## Conclusion

In reviewing the evidence, we place great emphasis on the totality of Mr. Tumin's activities, which establishes a pattern of conduct designed to circumvent Board of Education regulations regarding competitive bidding and the letting of consulting contracts. Standing alone, each effort to evade regulatory obstacles might not justify a finding of misconduct. Taken together and seen in the full circumstances of this case, however, these actions demonstrate not only a disregard for competitive bidding and other regulations, but also a blindness to the appearance of improprieties they are designed to prevent.

There is no evidence to suggest any corrupt motive on either Mr. Tumin's part or that of the experts he sought to employ.<sup>17</sup> Further, there was an undeniable need for speed in completing the contracts. Nor could anyone question the qualifications of the experts he sought. Had Mr. Tumin sought to make a case for exceptions to any of the various regulations that stood in his way, he could likely have made a compelling one. This makes it all the more baffling that he chose not to do so, instead side-stepping each rule in a manner bound to invite suspicion. His argument that these measures were required by the pressures of time is undermined by his failure to seek anywhere an expedited review of the contracts.

The rules Mr. Tumin circumvented, in either letter or spirit, are not merely technical or bureaucratic. Competitive bidding, central board review and the other regulations involved in this investigation are designed to ensure that contracts of significant expense are necessary and are fairly awarded at the lowest possible price. Their logic is even more compelling where, as here, a high BOE official acting alone seeks to award contracts without competitive bidding to people with whom he has long-standing professional relationships. We note that BOE's consulting practices have recently been criticized by Comptroller Alan Hevesi's office for, among other things, creating an "appearance of favoritism."<sup>18</sup>

Indeed, Mr. Tumin's blindness to the appearance of impropriety is among the more disturbing aspects of his behavior. Given that he took over the office after his predecessors were forced to step down because of various acts of misconduct, it was incumbent on him to demonstrate his commitment to integrity. In this instance at least, he failed to do so. Further, his continued insensitivity to appearances is demonstrated by his recent public comment concerning these contracts: "I cut the orders. Bingo. And I'd do it again."<sup>19</sup> This

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<sup>17</sup>In fact, there is no evidence to suggest that the experts--William Bratton, BOTEC Analysis Corporation and Wasserman Associates Inc.--violated any BOE rule in the acquisition or performance of the contracts.

<sup>18</sup>Office of the Comptroller, "Audit Report on the Board of Education's Procurement of Individual Consultant Services," (June 27, 1994), p. 7.

<sup>19</sup>The quotation comes from an article in the August 2, 1994 edition of the New York Post. When asked by this office if he, in fact, said what was attributed to him, Tumin replied,

hardly sends the message of circumspection one would hope for in a person at his level of responsibility.

Having balanced the evidence carefully, we recommend that the Chancellor take appropriate disciplinary action against Mr. Tumin.

We also recommend that the Chancellor carefully consider an amendment to one of the regulations in this area. While the requirement of a detailed justification statement for exceptions to competitive bidding is sound, a special concern arises when members of the unit seeking the exception have professional or personal ties to the proposed consultant. Such ties should be disclosed in the justification statement, which would then require approval by the Chancellor's office.

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"That's correct. I did."