



**STATE OF HAWAII**  
**DEPARTMENT OF EDUCATION**

P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

March 7, 2006

MEMO TO: Complex Area Superintendents, Assistant Superintendents, Principals,  
and Directors  
FROM: Patricia Hamamoto, Superintendent  
SUBJECT: Procurement & Contracting Guidelines

The Procurement and Contracting Guidelines, effective March 1, 2006, is attached for your information and use. These guidelines are based on procurement laws promulgated by the legislature and administrative rules established by the State Procurement Office. These guidelines serve as a reference document for all procurement and contracting activities of the Department of Education (DOE). These guidelines supersede all previously-issued guidelines relating to procurement and contracting procedures for the DOE and shall remain in effect until rescinded.

Within the context of this document, procedures have been clarified and forms revised to integrate the entire "Decision Making → Procurement → Contracting → Payment" process. The clarification of this total process should bring greater awareness, understanding, and appreciation of the various methods of procurement and contracting.

Please pay particular attention to the following sections of this document:

1. an updated "Delegation of Authority" which is the document that officially assigns procurement authority to Assistant Superintendents, Complex Area Superintendents, Principals, and Directors;
2. the section entitled "Outsourcing of Services" that differentiates between procurement contracts and personal services contracts;
3. the section dedicated to miscellaneous agreements; and
4. a newly created "Contract for Small Purchases" located in the Forms section.

The Procurement and Contracts Branch (PCB) will provide training to cover the significant portions of these guidelines. Individuals who procure goods, services and/or construction are also encouraged to contact PCB with specific questions or concerns.

PH:cb

Attachment

**GUIDELINES  
FOR  
PROCUREMENT  
AND  
CONTRACTING**

Department of Education  
Office of Business Services  
Procurement & Contracts Branch

Waipahu Civic Center  
94-275 Mokuola Street, Room 200  
Waipahu, Hawaii 96797

Telephone: 808-675-0130  
Facsimile: 808-675-0133  
email: [DOEprocure@notes.k12.hi.us](mailto:DOEprocure@notes.k12.hi.us)

Last updated July 2009

**Department of Education  
Office of Fiscal Services  
Procurement and Contracts Branch**

**GUIDELINES FOR PROCUREMENT AND CONTRACTING**

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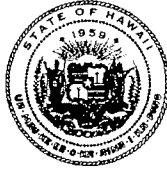
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**SUPERINTENDENT'S  
DELEGATION OF AUTHORITY  
FOR PURCHASING AND  
CONTRACTING**

Department of Education  
Office of Business Services  
Procurement & Contracts Branch

Waipahu Civic Center  
94-275 Mokuola Street, Room 200  
Waipahu, Hawaii 96797

Telephone: 808-675-0130  
Facsimile: 808-675-0133  
email: [DOEprocure@notes.k12.hi.us](mailto:DOEprocure@notes.k12.hi.us)

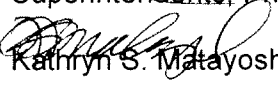


STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

January 4, 2012

TO: Deputy Superintendent, Assistant Superintendents, Complex Area Superintendents, Principals, Directors, and Section Administrators

FROM:  Kathryn S. Matayoshi, Superintendent

SUBJECT: Delegation of Procurement and Contracting Authority for Chapters 103D and 103F, Hawaii Revised Statutes (HRS)

In accordance with Chapters 103D and 103F, Hawaii Revised Statutes (HRS), the central procurement and contracting authority for the Department of Education (DOE) rests with me as the DOE's chief procurement officer (CPO). This authority may be delegated in order to complete all procurement needs of the DOE in an effective and efficient manner.

I hereby designate and delegate procurement and contracting authority as described herein. This delegation of authority:

- shall take effect on the date of this memo,
- shall remain in effect until amended or rescinded, and
- shall supersede all previously issued delegations of procurement authority.

I. Delegation of Authority to the Assistant Superintendent and Chief Financial Officer, OFS

Procurement and contracting authority is hereby delegated to the assistant superintendent and chief financial officer (CFO) of the Office of Fiscal Services (OFS), for all methods of procurement and dollar threshold levels of goods, services, and construction as follows:

- A. Preparation of and posting of public notices advertising solicitations
- B. Award of contracts
- C. Approval and execution of contracts
- D. Approval and execution of supplemental agreements
- E. Approval and execution of contract modifications/amendments
- F. Approval and execution of change orders
- G. Approval and execution of novations/assignments
- H. Approval of extensions of time on contracts
- I. Approval of brand name/restrictive specifications

- J. Correction or withdrawal of bids based on bid mistakes
- K. Cancellation of awards or contracts based on bid mistakes
- L. Cancellation of solicitations
- M. Approval of exceptions to requirements for cost or pricing data
- N. Approval of restrictive/prohibitive use of contracts
- O. Use of price lists
- P. Use of bid/performance bonds
- Q. Resolution and issuance of written determinations in procurement protests
- R. Resolution and issuance of written determinations in contract controversies
- S. Procurement violations

The assistant superintendent and CFO of OFS may further delegate this authority in whole or in part, in order to complete all procurement needs of DOE in an effective and efficient manner, provided that the delegation is made in writing.

II. Delegation of Authority to the Deputy Superintendent, Assistant Superintendents, Complex Area Superintendents, Directors, Section Administrators, and School Principals

Procurement and contracting authority is hereby delegated to the deputy superintendent, assistant superintendents, complex area superintendents, directors, section administrators, and school principals for the procurement of goods, services, and construction as follows:

- A. Exempt purchases as provided by the Hawaii Revised Statutes and/or Hawaii Administrative Rules
- B. Price and vendor list purchases and their resultant contracts (if any)
- C. Small purchase solicitations and their resultant contracts (if applicable)
- D. Contract modifications for small purchase contracts
- E. Change orders for small purchase contracts
- F. Agreements for the use/rental of non-DOE Facilities

This authority may not be further delegated except where the deputy superintendent, assistant superintendents, complex area superintendents, directors, section administrators, and school principals will be out of the office for an extended length of time and the timely administering of procurement and contracting functions would be impacted. In this case, *the delegation of the procurement and contracting authority granted herein must be made in writing and filed with the Procurement and Contracts Branch prior to the exercise of such authority by the new designee.*

III. Authority Reserved to the Superintendent

Notwithstanding the foregoing, procurement and contracting authority is not delegated for the following, and my approval is required in all cases:

- A. Procurement exemptions requiring CPO approval
- B. Granting concessions under Chapter 102, HRS
- C. Sole source/restrictive procurements
- D. Emergency/crisis procurements

Deputy Superintendent et al  
January 4, 2012  
Page 3

- E. Alternates to competitive bid process
- F. Alternates to competitive sealed proposal process
- G. Written determinations of requests for reconsideration under section 103F-502, HRS

Further questions shall be directed to:

Office of Fiscal Services  
Procurement and Contracts Branch  
94-275 Mokuola Street, Room 200  
Waipahu, Hawaii 96797  
Telephone: (808) 675-0130  
Facsimile: (808) 675-0133  
email: [DOEprocure@notes.k12.hi.us](mailto:DOEprocure@notes.k12.hi.us)

KSM:ABA:ld

c: Complex Area Business Managers



[PRINT ON LETTERHEAD]

Insert today's date

**MEMORANDUM FOR THE RECORD  
Delegation of Authority**

Subject to the terms of this memorandum, I, insert first and last name of Administrator do hereby delegate the authority bestowed upon me by and through my position as insert Administrator's title, of insert name of school or office branch and section to insert first and last name of Designee, insert Designee's title. This delegation of authority shall provide for the orderly and timely operations of the insert "school" or identify the organizational unit (i.e. branch, section, etc.) and include the duties and responsibilities of the insert Administrator's title, of insert name of school or office, branch and section, as follows:

- Administrative supervision of clerical and professional staff normally under my supervision, including approval of leave requests;
- Budget preparation and planning;
- Fiscal expenditure tracking and reporting;
- Procurement and contracting authority as delegated to me by the Superintendent; and
- Other: \_\_\_\_\_  
\_\_\_\_\_

The term of this delegation is effective as of insert commencement date through insert termination date. The employment of this delegation of authority shall be discretionary on the part of the acting designee and used in situations that cannot wait until I return.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title/School or Office

c: Procurement and Contracts Branch (fax 675-0133)  
Vendor Payment Section (fax 586-3135)

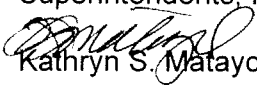


STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
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HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

January 4, 2012

TO: Deputy Superintendent, Assistant Superintendents, Complex Area Superintendents, Principals, Directors and Section Administrators

FROM:  Kathryn S. Matayoshi, Superintendent

SUBJECT: Authority to Contract

This memo shall take effect on the date of this memo and shall remain in effect until amended or rescinded. This memo shall also supersede all previously issued authority to contract memos.

I. Contracting and Signing Authority Reserved to the Superintendent

In accordance with the Delegation of Procurement and Contracting Authority, dated January 4, 2012, I have delegated the procurement authority for specific types of purchases to various administrators, but I have retained full contracting and signing authority for the following:

- Memoranda of agreement (regardless of cost);
- Memoranda of understanding;
- Lease-to-own agreements (regardless of cost);
- Contracts for services resulting from sole source/restrictive procurements; and
- Contracts for services resulting from emergency/crisis procurements.

II. Delegation of Contracting and Signing Authority to the Deputy Superintendent in my Absence

In my absence, full contracting and signing authority and responsibility is delegated to the deputy superintendent, and the deputy superintendent may sign final approval on my behalf.

III. Delegation of Contracting and Signing Authority to the Deputy Superintendent, Assistant Superintendents, Complex Area Superintendents, Directors, Section Administrators and School Principals

The deputy superintendent, assistant superintendents, complex area superintendents, principals, directors and section administrators have been granted approval and signing authority for a variety of contract agreements within their established procurement threshold limitations, including lease or finance agreements, rental agreements, and rental agreements for use of non-DOE facilities.

IV. Contract Administration

Along with this delegation, administrators are responsible for the administration of their contracts. Contract administration involves those activities performed by department officials after a contract has been awarded to determine how well the department and the contractor performed to meet the requirements of the contract. It encompasses all dealings between the department and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes (if any) have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the government gets what it paid for.

In contract administration, the focus is on obtaining supplies and services, of requisite quality, on time, and within budget. The specific nature and extent of contract administration varies from contract to contract. It can range from the minimum acceptance of a delivery and payment to the contractor to extensive involvement by program, audit and procurement officials throughout the contract term. Factors influencing the degree of contract administration include the nature of the work, the type of contract, and the experience and commitment of the personnel involved. Contract administration starts with developing clear, concise performance based statements of work to the extent possible, and preparing a contract administration plan that cost effectively measures the contractor's performance and provides documentation to pay accordingly.

While the legal requirements of the contract are determinative of the proper course of action of department officials in administering a contract, the exercise of skill and judgment is often required in order to protect effectively the public interest.

The Procurement and Contracts Branch (PCB) has created a table of the information that reflects effective contract administration practices and to assist you in the drafting of your contract agreement. PCB has also developed a tool for you to use when reviewing non-standard contract agreements. Non-standard agreements are agreements generated by external agencies or vendors and not by the DOE.

If, during your contract review, you are unsure of whether some provisions may/may not be objectionable, please contact the Procurement and Contracts Branch.

Should you have any questions regarding this matter, please contact the Procurement and Contracts Branch at (808) 675-0130.

KSM:ABA:ld

Attachments:

Responsibilities of the Purchasing Team  
Contract Administration – A Common Sense Approach  
Contract Language Showstoppers

c: Complex Area Business Managers

**Responsibilities of the Purchasing Team**  
**(Including Contract Administration)**

Role Groups	Responsible for
Administrators [sometimes called: Procurement Officer, Head of Procurement Agency, Program Manager, and Contract Administrator]	All functions related to management of a program or school, including establishing the vision, planning, making and authorizing decisions, providing direction, coordinating programmatic activities, deciding who does what – employees or outsource; and if outsourcing: <ul style="list-style-type: none"> <li>➤ Deciding, what, when, how, and how much to buy;</li> <li>➤ Documenting that the Contractor maintains the required insurance coverage (if applicable) and other vendor or licensing certificates (if required);</li> <li>➤ Monitoring and evaluating the Contractor's work;</li> <li>➤ Ensuring that services have been completed or goods delivered satisfactorily – ensures results; got what was paid for;</li> <li>➤ Resolving contract discrepancies and disputes*;</li> <li>➤ Processing payment for services rendered or goods delivered; and</li> <li>➤ Formal Contracts: contacting PCB in advance in the event any of the following are required**:</li> </ul> <ul style="list-style-type: none"> <li>✓ a change in contract scope</li> <li>✓ a change in the duration or the performance period of a contract</li> <li>✓ an increase or decrease in total compensation of the contract</li> <li>✓ any other changes in the contract terms</li> <li>✓ a change in the Contractor's name, address, federal or state tax identification numbers or any other changes which may impact the Contractor's performance</li> <li>✓ early termination of the contract for convenience, cause or by mutual agreement</li> </ul> <p>* In the event a contract discrepancy or dispute cannot be resolved amicably, contact PCB for legal enforcement immediately.</p> <p>** Any/all amendments and other contract changes to formal and small purchase contracts must be within the scope of the solicitation or offer (may not be material or substantial change), must be made in writing and signed by both parties, and must be timely (cannot be done after a contract expires).</p>
Procurement and Contracts Branch	<ul style="list-style-type: none"> <li>➤ Public advertisement and compliance with procurement code;</li> <li>➤ Acting as primary liaison with AG for the resulting contracts;</li> <li>➤ Approving and executing the resulting contract documents; and</li> <li>➤ Providing advice on procurement and contracting matters.</li> </ul>
Attorney General	<ul style="list-style-type: none"> <li>➤ Approving contracts as to form; and providing legal advice and representation (if required)</li> </ul>
Fiscal Staff and Support Services	(Includes fiscal and clerical staff under direction of the Administrator as well as state level support services) <ul style="list-style-type: none"> <li>➤ Providing budget, accounting, and payment support and assistance.</li> </ul>
Community	includes clients, users and other interested parties
Vendor/Contractor	<ul style="list-style-type: none"> <li>➤ Being responsible (can provide proof of insurance, tax clearance, other certificates and can meet other programmatic requirements);</li> <li>➤ Being responsive to the DOE's needs; and</li> <li>➤ Delivering Goods or Services in a satisfactory manner and as required by contract.</li> </ul>

CONTRACT ADMINISTRATION  
A Common Sense Approach

**A Contract Administrator:**

- Is responsible for all functions related to a given contract; and
- Ensures a given procurement results in getting what is paid for.

**Characteristics of an Effective Contract Administrator:**

- Plans well to contain costs, reduce risks
- Knows the contract and is an expert on the contract requirements;
- Is the primary liaison for all purchasing role groups for all contract issues:
  - Communicates with the purchasing team and keeps everyone informed of significant events;
  - Provides technical guidance to the Contractor and to the Purchasing Team
- Performs day to day operational oversight and monitoring of Contractor performance which may include but is not limited to:
  - Meets with the Contractor to review deliverables, milestones, identify responsibilities and obligations;
  - Makes observations and recommendations;
  - Reviews reports, logs and other performance documentation and records;
  - Evaluates performance satisfaction, tracks complaints and issues notices for improvement, correction or to cure;
  - Performs inspections of Contractor's work site, plant or facilities; and
  - Formally accepts deliverables are delivered, and ensures the deliverable is in accord with the contract requirements by verifying and documenting timely delivery and quality (note – some defects may not be readily discernable; implied acceptance once used or if acceptance is delayed);
- Responsible for contract payments (including but not limited to):
  - Ensures payments are made in a timely manner and in accordance with the contract terms;
  - Certifies satisfactory delivery of goods or performance of services;
  - Verifies the invoice for accuracy; and
  - Tracks payments so they do not exceed the total value of the contract;
- Maintains contract administration file and documentation which may include but is not limited to:
  - All related contract correspondence and related documentation including summaries of meetings/phone with parties and internal correspondence;
  - Reports;
  - A copy of the Contract and related documents (including the solicitation document, the proposal or offer, amendments, supplemental agreements);
  - Contract Administration worksheet (quick reference information and facts such as contact information, important dates, deadlines, contract expiration dates, contract reference numbers, contract value, ticklers, etc.); and
  - Encumbrance and payment documentation;
- Formally closes contracts in writing when complete. This process may include:
  - A formal closure letter (a sample contract closure letter is provided on the LN procurement icon);
  - An exit interview with Contractor;
  - A written evaluation of the Contractor as well as how well the contract met the needs of the purchasing program; and
  - A process to incorporate "lessons learned" into future projects as well as program purchases and requirements.

## Keys to Effective Contract Administration:

- Plan well
  - Know and evaluate market conditions and availability;
  - Be involved in the procurement process and understand the method of source selection; and
  - Participate in the evaluation process, contract planning and formation including determination of milestones, deliverables, outcomes and reports;
- Well written contract with clear deliverables, outcomes and responsibilities will:
  - Help to establish who is responsible for what;
  - Not address every possibility, however it does ensure that the parties' rights, responsibilities, and obligations are clearly established;
  - Help reduce risk of disputes and problems;
  - Help hold the Contractor accountable; but
  - Not replace a good plan and good contract administration but does ensure the agreement contains essential elements (just because it is in legalese does not mean regulations are met)
- Be familiar with the Contract
  - Read the Contract and any related documents (manuals, statutes, policies, etc); and
  - Understand the terms, conditions, provisions, and requirements of the Contract.
- Know the signs of potential problems:
  - Late, poor quality, or wrong stuff;
  - Target population/client not served;
  - Contractor doesn't understand requirements;
  - Contractor fails to respond;
  - Complaints;
  - Miscommunication or lack of communication;
  - Lack of monitoring or follow-up;
  - Specifications and/or contract are poorly written, poorly documented or weak;
  - Extraordinary or completely unforeseen conditions;
  - Poor planning; and
  - Lack of knowledge of laws, regulations, rules, policies and procedures.
- Know potential solutions
  - Don't procrastinate – nip it in the bud;
  - Resolve at lowest level possible – talk to the Section Supervisor instead of the President;
  - Ask for help from other team members;
  - Be objective and listen;
  - Amend the contract if allowed\*\*;
  - Enforce contract terms\* – issue written notices to correct or cure deficiencies, contracts may also include remedies such as warranties, performance bonds, liquidated damages, replacement; or
  - Terminate\* (last resort) for:
    1. Convenience (money not available, change in need or service requirements, etc.);
    2. Mutual Agreement; or
    3. Cause (deficiencies that cannot be remedied).

\* In the event a contract discrepancy or dispute cannot be resolved amicably, contact PCB for legal enforcement immediately.

\*\* Amendments and other contract changes must be within the scope of the solicitation or offer (may not be material or substantial change), must be made in writing and signed by both parties, and must be timely (cannot be done after a contract expires).

**DEPARTMENT OF EDUCATION  
PROCUREMENT AND CONTRACTS BRANCH  
CONTRACT LANGUAGE SHOWSTOPPERS**

Effective Date: July 2008

As the Department of Education (DOE) is responsible for the expenditure of public funds, it is always to our advantage to proffer for use our approved small purchase or formal contract templates once procurement requirements have been addressed, as they provide the greatest legal protection to the State of Hawaii (State) and the DOE.

Where a contractor is adamant that they must use their contract agreement, the contract administrator must read and analyze the proffered contract and ensure that the execution of the agreement does not pose a risk to the State or DOE.

The attorney general (AG) has identified several contract language provisions that are unacceptable to the State of Hawaii, and if any of these provisions are present in a contract agreement, the AG would not recommend approval of the contract. We want to make you aware of these provisions.

**\*\* Be advised that this is not an all inclusive list and this document should not be shared with any contractor, vendor or their legal counsel as this document contains privileged information and/or departmental contract negotiation strategies.\*\***

The following contract language provisions must be identified and addressed, either through language revision or deletion:

**I. INDEMNIFICATION<sup>1</sup>**

Please read the contracts to identify if they include an indemnification provision. Such provisions are not legally or constitutionally appropriate and as such, the State cannot enter into agreements which contain such language.

Specifically, indemnification agreements violate the provisions of Art. VII, Section 4 of the Hawaii Constitution, which requires that public monies be expended only by appropriations made by law. Indemnification provisions have the potential to create a debt or spending of public money without an appropriation. Although the Legislature has recognized that under certain circumstances the State may be required to agree to indemnify federal agencies, § 29-15.5, Hawaii Revised Statutes (HRS), such indemnification is very limited and does not apply to agreements entered into with a non-federal agency.

Therefore, when you discuss the indemnification provision:

First, always ask the owner/agency (use another example as city references are no longer the best to use) to remove the entire paragraph regarding indemnification. Only if the owner/agency refuses to do so or has problems with removing the paragraph, proceed with the next option.

Next, suggest alternative language which would have each side agreeing to accept liability and responsibility for the actions or omissions of its own employees or agents as provided by law. Such language is as follows:

---

<sup>1</sup> For agreements with the various City and County agencies, the indemnification recommendations as noted herein shall not apply. If you are entering into an agreement with a county agency, please contact the Deputy Superintendent at (808) 586-3316 for assistance.

The STATE shall be responsible for damages or injury caused by the STATE, STATE's agents, officers, and employees in the course of their employment to the extent that the STATE's liability for such damage or injury has been determined by a court or otherwise agreed to by the STATE, and the STATE shall pay for such damage and injury to the extent permitted by law.

(Name of Agency) shall be responsible for damages or injury caused by (Name of Agency), (Name of Agency's) agents, officers, and employees in the course of their employment to the extent that (Name of Agency's) liability for such damage or injury has been determined by a court or otherwise agreed to by (Name of Agency), and the (Name of Agency) shall pay for such damage and injury to the extent permitted by law.

**II. GOVERNING LAW, VENUE OR JURISDICTION**

All contracts must be subject to the laws of the State of Hawaii. A contract cannot be governed by the laws of another state. In addition, contract language cannot require disputes to be litigated in courts outside of Hawaii or otherwise require the State of Hawaii/DOE to consent to the jurisdiction of courts in another state.

**III. ARBITRATION**

The AG will not approve contract language that subjects the State of Hawaii/DOE and the VENDOR/CONTRACTOR to decision making by an arbitrator. This contract provision must be deleted.

**IV. LITIGATION EXPENSE/ATTORNEY'S FEES**

Provisions requiring the State of Hawaii/DOE to pay the other party's litigation expenses or attorney's fees must be deleted.

**V. CONFIDENTIAL WORK PRODUCTS**

Provisions requiring DOE to keep confidential the VENDOR'S/CONTRACTOR'S data, work product, reports, recommendations, conclusions, documents, writings or other submittals (or any portions thereof), must be deleted, unless otherwise permitted by law.

**VI. INSURANCE/PROOF OF INSURANCE**

The State of Hawaii is self-insured, and State tort liability is governed by Chapter 662, Hawaii Revised Statutes. As part of a contract provision relating to insurance, schools/offices may be asked to provide a document supporting the claim that the State of Hawaii is self-insured. A request form, *Request for Statement of Self Insurance*, (available from the LN procurement icon) should be completed by the school principal, complex area superintendent, program manager, or assistant superintendent and submitted to the State of Hawaii Department of Accounting and General Services (DAGS) Risk Management Officer via fax to 808-586-0553.

**VII. PERSONAL GUARANTEE**

Some contracts may include a personal guarantee which requires the DOE administrator to be personally liable for ensuring payment or fulfillment of the DOE's obligations. DOE administrators should never sign a personal guarantee as part of any contract, agreement or other documents. If for any reason the contract is invalidated or the DOE administrator did not have contracting authority, the administrator who signed the personal guarantee may be liable for the full amount of the contract.



## BACKGROUND AND GENERAL GUIDELINES

### A. OVERVIEW

The Procurement and Contracts Branch (PCB), Office of Fiscal Services (OFS) is the office that represents the Superintendent of Education in procurement and contracting matters. These guidelines, prepared by PCB, provide a summary of the laws and administrative rules that govern the expenditure of public funds and the contracts associated with these purchases. These guidelines primarily focus on those procurement and contracting responsibilities that have been specifically delegated by the Superintendent, CPO of the Department of Education (DOE). Throughout this document, Schools and Offices are directed to contact PCB for assistance in those procurement and contracting areas that have not been delegated by the Superintendent.

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### B. PROCUREMENT & CONTRACTING REFERENCES

These guidelines have been developed to assist with the purchase of:

1. Goods, Services, and Construction in accordance with the following statutes and administrative rules (details of each are provided at the below-listed websites):
    - Chapter 103D, Hawaii Revised Statutes (HRS) – “Hawaii Public Procurement Code”  
[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/hrs0103D/](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/hrs0103D/)
    - Hawaii Administrative Rules for Chapter 103D, HRS  
[http://www.hawaii.gov/spo/SPO/Code/SPO/Code/AdminRules/index\\_html](http://www.hawaii.gov/spo/SPO/Code/SPO/Code/AdminRules/index_html)
    - Chapter 103F, HRS – “Purchases of Health and Human Services”  
[http://www2.hawaii.gov/spoh/HRS/103F\\_HRSall.htm](http://www2.hawaii.gov/spoh/HRS/103F_HRSall.htm)
    - Hawaii Administrative Rules for Chapter 103F, HRS  
[http://www2.hawaii.gov/spoh/HAR/HL\\_AdminRulesCh103F\\_Bkgrd.htm](http://www2.hawaii.gov/spoh/HAR/HL_AdminRulesCh103F_Bkgrd.htm)
    - Chapter 102, HRS – Concessions on Public Property  
[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0102/HRS\\_0102-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0102/HRS_0102-.htm)
    - Chapter 84, Standards of Conduct  
[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0084/](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0084/)
  2. Provide the processes and procedures to the various Schools and Offices of the DOE to assure compliance with the above statutes and administrative rules.
- 

### C. APPLICABILITY

These guidelines apply to all State and Federal appropriated funds.

All previous-issued guidelines related to procurement and contracting for goods and services are hereby rescinded and replaced by this document.

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## **D. ROLES AND RESPONSIBILITIES**

### **Assistant Superintendents, Complex Area Superintendents, Directors and Principals, and Designees**

The first step in the procurement process involves a “Make or Buy” decision: 1) will the School or Office make or deliver the good/service utilizing in-house resources and capacity or 2) will the School or Office obtain the good/service from an outside source. Administrators of Schools and Offices (ASO) have been delegated the responsibility and authority to make this decision based on factors including but not limited to State and DOE mandates, cost considerations, fluctuation in need for goods/ services, and flexibility of service configuration. Included in the decision-making process is the responsibility of determining the exact School or Office requirements, the “who, what, where, when, and how” of the procurement.

ASO's must allow adequate lead time for the various stages of procurement and contracting, including source selection, preparation of procurement documents, compliance with public notice requirements, and preparation and execution of the contract. “After the fact” contracts are not valid or binding and are in violation of DOE policies.

ASO's must also assure compliance with the following stipulations:

1. Goods or services to be procured are appropriate to meet the needs of the School or Office,
2. The desired outcome goals or program objectives as well as measurement and assessment tools are clearly stated in the procurement and contracting documents,
3. Good or services to be procured shall ultimately contribute to increased student performance,
4. Funds for all work under the contract are available, and
5. When applicable, Exemption from Civil Service has been approved.

## DEFINITIONS AND ACRONYMS

**“Administrator of School or Office (ASO)”** means any person with delegated authority to enter into and administer contracts and make written determinations with respect thereto. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the Chief Procurement Officer directly or through the head of a purchasing agency or designee to the procurement officer.

**“Advantageous”** see “Practicable and Advantageous”

**“After-the-fact”** means a request for approval, unless the context requires otherwise, for a procurement or contract action, made in violation of proper procedures.

**“Chief Procurement Officer (CPO)”** for the Department of Education is the Superintendent of Education, who is one of several CPOs representing all governmental bodies in the State of Hawaii, including all Counties.

**“Construction”** means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

**“Contract”** means all types of agreements for the procurement or disposal of goods, services, or construction.

**“Contract Administrator (CA)”** means the person designated to manage the various facets of contracts to ensure the contractor’s total performance is in accordance with the contractual commitments and obligations to the DOE are fulfilled.

**“Contract amendment or Contract modification”** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract, within the general scope of the original contract, and prior to commencement of the alteration.

**“Contract encumbrance”** is a method by which the Procurement & Contracts Branch certifies the funds for a specific agreement; the process is similar to issuance of PO except that, in most cases, the funds do not lapse

**“Contractor”** means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the DOE, and acting directly or through its agents or employees.

**“Designee”** means a person appointed by the ASO to act on his/her behalf with delegated authority.

**“Goods”** means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

### **“Hawaii Revised Statutes (HRS)”**

**“Chapter 103D, Hawaii Revised Statutes (HRS)”**, Hawaii Public Procurement Code, is the law enacted by Hawaii State Legislature on July 1, 1994 and referred to throughout this document as 103D, HRS.

**“Chapter 103F, Hawaii Revised Statutes (HRS)”**, Purchases of Health and Human Services, is the enacted by Hawaii State Legislature on July 1, 1998 and referred to throughout this document as 103F, HRS.

**“Hawaii Administrative Rules (HAR) for Chapters 103D and 103F, HRS”** is the administrative rule or policy adopted by the Procurement Policy Board which implements 103D or 103F, HRS.

**“Parceling”** means the artificial division or intentional division of a purchase of same, like, or related items of goods, services, or construction into several purchases of smaller quantities, in order to evade the statutory competitive requirements.

**“Personal Services Contract”** is a contract with an individual, the terms of which engage an “employer/employee (E/E)” relationship. Personal Services Contracts typically are processed through DOE’s Office of Human Resources.

**“Practicable”** and **“Advantageous”** shall be given ordinary dictionary meanings. “Practicable” means what may be accomplished or put into practical application. “Advantageous” means a judgmental assessment of what is in the DOE’s best interest. The use of competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the DOE’s best interest.

**“Procurement”** means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

**“Procurement Violation”** addresses purchases inconsistent with or contrary to existing law, rules, or procedures in procurement.

**“Procurement and Contracts Branch (PCB)”**, Office of Business Services is the office that represents the Superintendent of Education in procurement and contracting matters; is referred to throughout this document as PCB.

**“Procurement Policy Board”** is a seven member autonomous board that serves as the rule-making body for all procurement law. There is no direct reporting or oversight relationship between the Procurement Policy Board and the Chief Procurement Officers.

**“Procurement Notice System (PNS)”** is an internet site that provides public access to all governmental (State and County) procurement projects. All DOE procurement legal notices must be posted on the PNS located on the State Procurement Office’s website. The PCB is granted access to the PNS and is therefore responsible for posting of the DOE’s procurement legal notices. ASO’s shall contact PCB for assistance in this area.

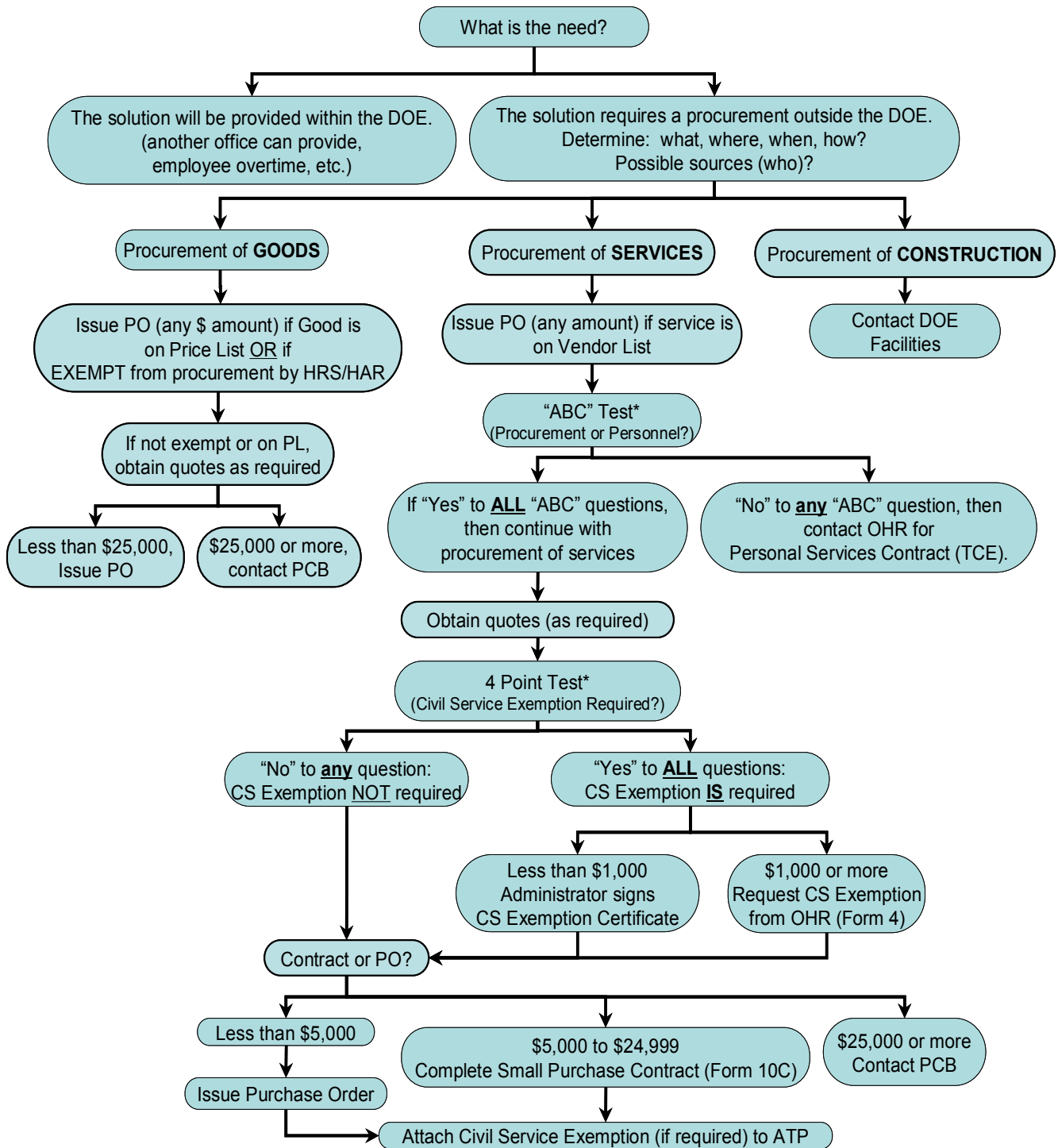
**“Professional Services Contract”** means those services within the scope of the practice of architecture, professional engineering, law, medicine, accounting, education, or any other practice defined as professional by the laws of the State of Hawaii or the professional and scientific occupation series contained in the United States Office of Personnel Management’s Qualifications Standards Handbook.

**“Services”** means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

**“State Procurement Office (SPO)”** is administratively attached to the Department of Accounting and General Services and is the entity responsible to assist, advise or guide governmental bodies in matters relating to the procurement process. SPO provides support to all departments of the state of Hawaii including the DOE, the legislature, the judiciary, the office of Hawaiian affairs, and the four counties.

The following chart provides an overview to the procurement process, from womb to tomb:

## Simple Steps to PROCUREMENT Flowchart

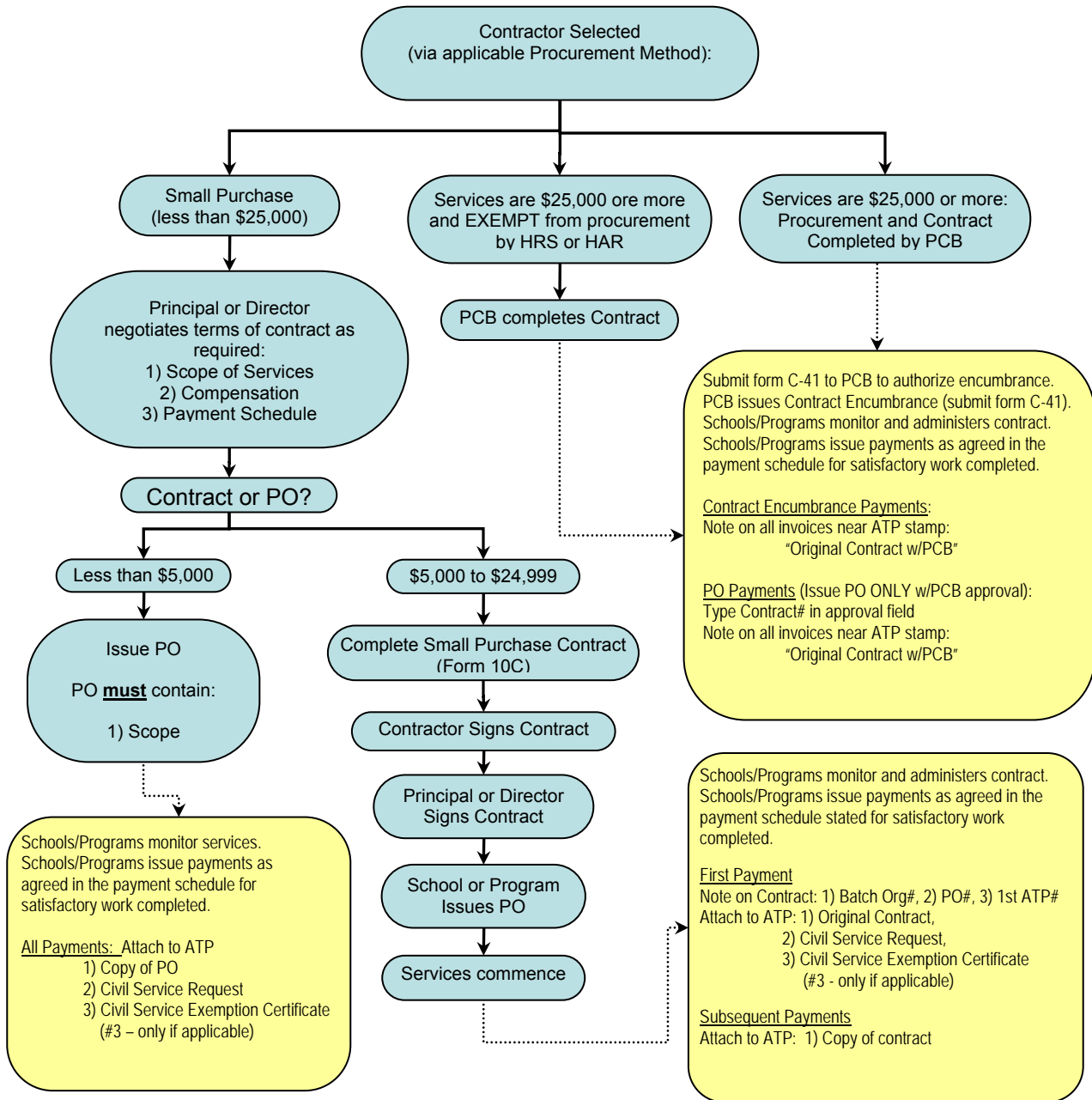


\*The “ABC” and “4 Point Test” are on the Form 4, Request for Civil Service Exemption.

For the complete “ABC” and “4 Point Test”, refer to the Introduction to Services Section of these Guidelines.

The following chart provides an overview to the contracting process, from womb to tomb:

## Simple Steps to CONTRACTING (and Payment) Flowchart



**QUICK REFERENCE MATRIX  
PROCUREMENT OF**

**GOODS**

METHOD OF PROCUREMENT:	EXEMPT BY HRS, HAR	PRICE LIST, VENDOR LIST	SMALL PURCHASE	CPO EXEMPT, SOLE SOURCE, IFB, RFP, EMERGENCY
\$THRESHOLD:	ANY AMOUNT	ANY AMOUNT	LESS THAN \$25,000	\$25,000 OR MORE
PURCHASING & CONTRACTING AUTHORITY:	Principal or Director	Principal or Director	Principal or Director	Superintendent
SCHOOL OR OFFICE IS REQUIRED TO:	Issue PO	1) Follow Price or Vendor List directions 2) Issue PO	Solicit quotes (Forms 10A and B): 1) <u>Less than \$5,000</u> - must be fair & reasonable. 2) <u>\$5,000 to \$14,999</u> - three quotes. 3) <u>\$15,000 to \$24,999</u> - three written quotes	Develop specifications and requirements; <u>Submit Form 18, Request for Procurement Services</u>
AWARD BASIS:	N/A	N/A	Most advantageous quote (usually lowest price)	Lowest price and/or evaluation criteria (as applicable to the Method)
CONTRACT:	Contract <u>OPTIONAL</u> If contract desired: -Complete Small Purchase Contract (Form 10C) for <\$25,000 -Contact PCB for contracts of \$25,000 or more	N/A	Contract <u>OPTIONAL</u> If contract desired, complete Small Purchase Contract (Form 10C)	PCB completes contract
ENCUMBRANCE:	School/Program Issues PO: cite 1) In terms – applicable HRS/HAR 2) In Approval Field – exact exemption #	School/Program issues PO: cite exact Price List number in the Approval field	School/Program Issues PO	PCB issues Contract Encumbrance
PAYMENT:	Final Payment for Exempt purchases of \$25,000 or more – attach an original tax clearance dated within 2 months of the payment date to final payment ATP	No special requirements	No special requirements	Final payment – attach an original tax clearance dated within 2 months of the payment date to final payment ATP
COMMENTS:		Exceptions to PL, Forms 5 or 6	Caution against parceling	
CAUTION:	Purchasers are cautioned against signing agreements issued by Vendors in conjunction with a purchase of goods (ex: licensing, use, credit agreements). The agreement may contain terms and conditions that conflict with the STATE's general conditions. Refer to the Miscellaneous Agreements" section of these guidelines for more information.			

**QUICK REFERENCE MATRIX  
PROCUREMENT OF  
SERVICES**

METHOD OF PROCUREMENT:	PRICE LIST, VENDOR LIST	SMALL PURCHASE & EXEMPT under \$25,000		EXEMPT, SOLE SOURCE, IFB, RFP, PROFESSIONAL SVC, OR EMERGENCY	MOA MOU
<b>\$THRESHOLD:</b>	ANY AMOUNT	Less than \$5,000	\$5,000 - \$24,999	\$25,000 or MORE	ANY AMOUNT
<b>PURCHASING &amp; CONTRACTING AUTHORITY</b>	Principal or Director	Principal or Director		Superintendent	
<b>EMPLOYER / EMPLOYEE RELATIONSHIP</b>	N/A	Take ABC Test (Form 4): If Employer/Employee (E/E) Relationship, contact OHR for a Personal Services Contract		Take ABC Test (Form 4): If Employer/Employee (E/E) Relationship, contact OHR for a Personal Services Contract	
<b>CIVIL SERVICE EXEMPTION:</b>	Not Required	To determine, take 4 point Test (Form 4)		To determine, take 4 point Test (Form 4)	Not Applicable
<b>CIVIL SERVICE APPROVAL / CERTIFICATE:</b>	Not Required	Less than \$1,000: Principal approves certificate \$1,000 to \$4,999: OHR approves certificate (submit Form 4)	OHR issues certificate (submit Form 4)	OHR issues certificate (submit Form 4)	Not Required
<b>SCHOOL OR OFFICE IS REQUIRED TO:</b>	1) Follow Price or Vendor List directions 2) Issue PO	Quotes not required, however for Small purchase, price must be fair & reasonable.	For Small Purchase – Solicit quotes (Forms 10A & B): <u>\$5,000-\$14,999</u> : 3 verbal <u>\$15,000-\$24,999</u> : 3 written For Exempt – quotes not required	Develop Scope of service and requirements; Submit Form 18, Request for Procurement Services	
<b>AWARD BASIS:</b>	N/A	Most advantageous quote (usually lowest price)		Varies by Method (may be lowest price and/or evaluation criteria)	N/A
<b>CONTRACT:</b>	Optional	Optional	Small Purchase Contract (Form 10C)	PCB completes contract	
<b>ENCUMBRANCE:</b>	School/Program issues PO cite exact PL# in the Approval field	School/Program Issues PO including scope, period and payment schedule	School/Program issues PO, note PO# on Contract	PCB issues Contract Encumbrance (School/Program issues PO only with PCB approval)	
<b>PAYMENT:</b>	No special requirements	<u>First Payment:</u> Attach to ATP: 1) copy of PO, 2) Civil Service Request and 3) if required, Exemption Certificate. <u>Subsequent Pmts:</u> attach copy of contract	<u>First Payment:</u> write Batch Org#, PO#, and 1 <sup>st</sup> ATP# on original contract. Attach to ATP: 1) original contract, 2) Civil Service Request and 3) if required, Exemption Certificate. <u>Subsequent Pmts:</u> attach copy of contract	<u>Contract Encumbrances:</u> On each invoice note near ATP stamp: "Original contract w/PCB". <u>Tax Clearance:</u> Attach original tax clearance dated within 2 months of payment to final payment ATP. <u>PO (ONLY w/PCB approval) for Open Ended Contracts:</u> Enter the Contract number in the approval field. On each invoice note near ATP stamp: "Original contract w/PCB".	
<b>COMMENTS:</b>	Exceptions to PL: Forms 5 or 6	Caution against parceling			



## PROCUREMENT OF GOODS

### A. Introduction

The procedure for selection of a vendor (source selection) will depend on many factors, including total cost and type of good being purchased. There are several different methods of procuring goods as explained in this section. Each method should be considered in the order explained.

Purchases are commonly made via the following methods:

- Exempt Procurement (when the exemption has already been granted by law, administrative rule, or the CPO)
- Price or Vendor List Purchases
- Small Purchases

Other purchases require assistance from PCB. ASO's must complete and submit [DOE Form 18, Request for Procurement Services](#) for:

- Sole Source Procurement - \$25,000 or more
  - Competitive Sealed Bids for Goods (IFBs) - \$25,000 or more
  - Competitive Sealed Proposals for Goods (RFPs) - \$25,000 or more
  - Multi-Step Competitive Sealed Bids - \$25,000 or more
  - Emergency Procurement - \$25,000 or more
- 

### B. Procurement Exemptions

(Reference: §103D-102, HRS; §3-120-4, HAR)

Certain items are available from multiple sources but procurement by competitive means is either not practicable or not advantageous to the DOE. In these cases, the items are declared exempt from procurement guidelines via one of three methods: HRS exempt, HAR exempt, or CPO exempt.

Regardless of the total cost, procurement of exempt goods:

- is not subject to procurement rules, and
- can be made via PO. However, issuance of a contract is optional and shall be at the discretion of the School or Office. See "Contracting and Encumbrance Procedures for All Types of Purchases (103D and 103F)" on Page 58 for further information.

#### 1. HRS Exemptions

Specific goods are exempt from the procurement **law**. Following are types of contracts for goods that are exempt from procurement laws:

- (A) Contracts for grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution;
- (C) Contracts to satisfy obligations that the State of Hawaii is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;

- (E) Contracts for dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
- (G) Contracts with governmental bodies of the State of Hawaii;
- (3) Contracts to procure goods from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) Contracts to procure the following goods which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
  - (B) Works of art for museum or public display;
  - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;

A complete listing of exemptions under §103D-102(b), HRS can be viewed at:

[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/hrs0103D/HRS\\_0103D-0102.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/hrs0103D/HRS_0103D-0102.htm)

## 2. **HAR Exemptions**

Specific goods are exempt from the procurement **administrative rules**. The following is a list of additional exemptions which the procurement policy board has also determined to be exempt from Chapter 103D, HRS:

- Ex-1 Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases;
- Ex-5 Fresh meats and produce;
- Ex-7 Animals and plants;
- Ex-8 New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
- Ex-9 Food and fodder for animals;
- Ex-10 Facility costs for conferences, meetings, and training sessions;
- Ex-11 Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, professional publications;
- Ex-16 Radio and television airtime when selection of station is to be made by current audience demographics.

A complete listing of exemptions under §3-120-4, HAR can be viewed at:

<http://www.hawaii.gov/spo/SPO/Code/AdminRules/SPO/Code/AdminRules/3-120s.pdf>

## 3. **CPO Exemptions**

ASO's may also request an exemption from the procurement law when the Chief Procurement Officer determines in writing that the good is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the DOE. Schools and Offices must contact the PCB for assistance in this area.

#### 4. **Purchase Orders for Exempt Purchases**

Whenever Schools and Offices purchase goods exempt from §103D, HRS, POs must include the following information:

- In the **Terms** screen of the PO, type the following:  
For HRS exemptions: *“Exempt from Chapter 103D, HRS, pursuant to §103D-102.”*  
For HAR exemptions: *“Exempt from Chapter 103D, HRS, pursuant to section 3-120-4(b), Hawaii Administrative Rules”*  
For CPO exemptions: *“Exempt by CPO approval”*
  - In the **Approval Number** field of the PO, type the exact HRS or HAR exemption number as listed above (example: **Ex A, Ex 4-G, etc.**).
  - For CPO approved exemptions, type in the exact exemption number assigned.
- 

#### C. **Procurement Via Price/Vendor List**

(Reference: §3-121-6(c), HAR)

Certain goods are available from a DOE or SPO price/vendor list.

In the retail market, the price of goods drop when on sale, but revert to the regular retail price after the sale period ends. Price/vendor lists allow the DOE access to Vendor’s best price for the goods listed, for the duration of the price/vendor list. In return, the DOE makes a commitment to purchase all of its requirements of the goods listed from that Vendor.

Changes to the price/vendor list are issued on occasion, and Schools and Offices should check the list for changes prior to issuing a PO.

##### 1. **Mandatory or Optional**

Some of the Lists are MANDATORY, meaning that the Purchaser is required to utilize the price/vendor list. Other Lists are optional, meaning that the Purchaser may choose to purchase from another source if the list does not meet the needs of the School or Office. Each list will specify if DOE participation is mandatory or optional; the purchaser must therefore read the terms of the list prior to issuing the order. A complete listing of SPO price/vendor lists can be viewed at:

<http://www2.hawaii.gov/priceapps/ShowPrice.cfm>

The complete list of Price Lists specific to the DOE is available from the Procurement Icon on Lotus Notes.

##### 2. **Dollar Threshold**

There is no dollar limit for purchases made from a price/vendor list.

##### 3. **Exceptions**

If the product on the list does not meet School or Office needs, a request for approval to purchase from another source can be made by completing a [DOE Form 5, Request Exception from Price List](#).

##### 4. **Purchase Orders for Price or Vendor List Purchases**

When purchasing from a price list or vendor list, Schools and Offices are required to enter the price/vendor list number in the **Approval Number** field of the PO.

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**D. Small Purchase Procurement - less than \$25,000**  
 (Reference: Subchapter 8, Chapter 3-122, HAR)

A small purchase is an expenditure that is less than the current procurement threshold of \$25,000. The small purchase process allows ASO's the flexibility to obtain goods expeditiously without complying with a competitive procurement process which includes public advertisement of the purchase.

**1. Parceling**

Small purchases shall not be parceled by dividing the purchase of same, like, or related items of goods into several purchases of smaller quantities during any twelve month period to evade statutory competitive procurement processes.

**2. Small Purchase Solicitation Requirements**

Small purchase procedures require competitive price quotes and a determination of best value prior to award. ASO's can solicit and document small purchase quotations by completing *DOE Forms 10a & b, Quotations & Record of Small Purchase, respectively*.

The DOE small purchase guidelines are as follows:

Expenditures with an estimated total cost of less than \$5,000	Purchase from the best available source.
Expenditures with an estimated total cost that is at least \$5,000 but less than \$15,000	Insofar as it is practical and based on the specifications, adequate and reasonable competition of no less than <u>three</u> quotations (not necessarily written) shall be solicited.
Expenditures with an estimated total cost that is at least \$15,000 but less than \$25,000	Insofar as it is practical and based on the specifications, adequate and reasonable competition of no less than <u>three written</u> quotations shall be solicited.

**3. Small Purchase Award**

Considering all factors, including but not limited to price, quality, warranty and delivery, small purchase awards shall be made to the vendor with the most advantageous quotation (not necessarily the lowest price).

**4. Purchase Orders**

Small purchases of goods shall be done via PO. However, issuance of *DOE Form 10c, Small Purchase Contract* is optional and shall be at the discretion of the School or Office See "Contracting and Encumbrance Procedures for All Types of Purchases".

**5. Procurement File**

All quotations received shall be recorded and placed in a procurement file. The small purchase procurement file is kept at the School or Office. The file may contain procurement documentation (quotations, record of small purchase), purchase documentation (purchase order worksheet, PO), and payment documentation (ATPs).

When three quotations are required but are not obtained, e.g., insufficient sources, sole sources, emergencies, the reason shall be recorded and placed in the procurement file. The file shall also include a written justification when award is made to other than the vendor submitting the lowest price.

Although small purchase is not subject to public notice or a public bid opening, the procurement file is open to public review.

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**E. Sole Source Procurement - \$25,000 or more**  
(Reference: Subchapter 9, Chapter 3-122, HAR)

A sole source procurement is justified when there is only one source available for the purchase of goods totaling \$25,000 or more.

ASO's can request sole source approval by completing and submitting [DOE Form 1/1A, Notice & Request for Sole Source Procurement](#) (contact PCB for the current form). For sole source expenditures less than \$25,000, ASO's shall document sole source justification on Form 10b, Record of small purchase.

**1. Sole Source Justification**

To justify a sole source purchase, the following must be established:

- a. the good has a unique feature, characteristic, or capability; and
- b. the unique feature, characteristic, or capability is essential in order for the DOE to accomplish its work; and
- c. the particular good is available from only one source.

The following are not justifications for sole source procurements:

- An item is referred to by an exact brand but there are other brands that qualify as "equals."
- An item is unique, but is available from more than one supplier. (This is referred to as a "restrictive" purchase and is subject to a competitive process.)
- The potential loss of funds at the end of a fiscal year.

**2. Sole Source Duration**

The contract period for a sole source procurement shall not exceed one year, unless approval is granted for a multi-term contract pursuant to section 3-122-149, HAR.

**3. Sole Source Terms**

The ASO should conduct negotiations with the sole source vendor to determine the factors as cost, quality, terms, and delivery.

**4. "Preapproved" Sole Source**

The Procurement Policy Board maintains the following list (or its latest revision) of procurements that do not require sole source approval. Schools and Offices shall cite on the PO or contract the sole source authority as "Procurement Policy Board HAR Sole Source No. (cite sole source number from the list)".

Note: For latest revision (if any), refer to the "Pre-approved sole source" listed in the Guidelines by Section.

PROCUREMENTS APPROVED FOR SOLE SOURCE

(1/18/07)

The following procurements are not subject to the Chief Procurement Officer's approval:

Sole

Source No.    Sole Source Description

1.        Rental of booth space for exhibits at conventions and trade shows when organized by a single sponsor.  
Criteria: When rental is available only through a single organizer or sponsor of the convention or trade show.
  
2.        For the repair, replacement, installation (connection, activation or hookup), or relocation of public utility company equipment or facilities.  
Criteria: When the equipment or facilities are owned or controlled by utility companies such as an electric, telephone, gas, or cable television company.
  
3.        Annual license renewal and maintenance for computer software.  
Criteria: When the license renewal and maintenance can be obtained from only a single source, normally the developer of the software.
  
4.        Procurement of computer software conversions, modifications, and maintenance for existing program from the manufacturer of the software.  
Criteria: When the conversion, modification, or maintenance can only be obtained from the manufacturer of the software.
  
5.        Transcripts of court proceedings.  
Criteria: When the transcripts of court proceedings are only available from the respective assigned court reporter provided by the Judiciary.
  
6.        Repair and Maintenance services and supplies from the original equipment manufacturer or its designated representative; when the manufacturer or its designated representative is required to provide the services and supplies to retain the manufacturer's warranty or guarantee.  
Criteria: When the services or supplies can only be obtained from the manufacturer or its designated representative to retain the manufacturer's warranty or guarantee.
  
7.        Procurement of equipment upgrades from the original manufacturer to existing equipment and information technology hardware, when the upgrades can only be obtained from the manufacturer.  
Criteria: When the upgrades are only available from the manufacturer.

## 5. Purchase Orders for Sole Source Purchases of Goods

Schools and Offices must include the following information on POs:

- In the **Terms** screen of the PO, type the following:  
For sole source procurements that do not require Chief Procurement Officer approval, enter: "Procurement Policy Board HAR Sole Source No. \_\_\_ (cite sole source number from the list)".  
  
For sole source procurements that are approved by the CPO, enter "Sole Source by CPO approval"
- In the **Approval Number** field of the PO, type the exact sole source number.

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## F. Cautionary Reminder Regarding Agreements

In the event a purchase of goods under the procurements explained in detail above requires a contract, the ASO is cautioned against signing any agreement (e.g., leasing, licensing, or credit agreements) initiated by an outside entity (e.g., the vendor). These agreements sometimes include terms that conflict with the General Conditions issued by the Attorney General's Office. These conflicting terms may expose the DOE in areas including but not limited to liability or indemnification, funding obligations, and governing law. ASO's who sign agreements including such conflicting language without prior approval may unknowingly expose the DOE to potential damage. In these cases, administrators risk personal liability by exceeding their contracting authority. This caution applies to agreements arising from the following procurements where PCB assistance was not required:

1. exempt
2. price list / vendor list
3. small purchase
4. sole source

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## G. Invitation For Bids (IFBs) and Request For Proposals (RFPs)

Unless otherwise provided by law and administrative rules and if none of the above steps apply to the purchase, either the competitive sealed bids (IFB) process or the competitive sealed proposals (RFP) process must be used. The DOE's CPO has delegated the authority to issue IFBs and RFPs to the PCB.

**All IFBs and RFPs must be processed through PCB as detailed below.**

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## H. Competitive Sealed Bids for Goods - \$25,000 or more (Reference: Subchapter 5, Chapter 3-122, HAR)

The majority of competitive purchases are made through the competitive sealed bids process by issuing an Invitation for Bids (IFB). The IFB is used when the specifications are known and clearly defined. Examples of IFBs for Goods include purchases of band instruments, cafeteria equipment, vehicles, electronic white boards, and computer hardware.

Competitive sealed bidding includes the issuance of a public notice and the publication of an IFB containing 1) the scope of work or product specifications and 2) the contractual terms and conditions applicable to the procurement.

Award is made on the basis of lowest bid price, provided the bidder is responsive and responsible.

## 1. **Responsibilities of the ASO**

ASO's are responsible for:

- identifying the need and developing the specifications for the goods to be purchased,
- identifying the source of funds for the purchase,
- contract administration, which includes monitoring the Contractor's work, receipt of goods, and payment for goods received.

## 2. **Responsibilities of PCB**

PCB is responsible for:

- assuring that specifications are competitive,
- incorporating specifications, terms and conditions into a bid document in accordance with applicable provisions of procurement HRS and HAR,
- the posting of a legal notice in accordance with requirements of SPO's Procurement Notice System,
- fielding all inquires related to the procurement and serving as a liaison between the DOE and interested bidders,
- receiving all sealed bids, conducting a public bid opening, and evaluating bids received,
- representing the CPO in all matters related to challenges and protests, and
- award of contract which includes encumbrance of funds; obtaining necessary certificates, approvals and signatures; and final distribution to all parties of the contract.

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## I. **Competitive Sealed Proposals for Goods - \$25,000 or more**

(Reference: Subchapter 6, Chapter 3-122, HAR)

On occasion, competitive purchases are made through the competitive sealed proposals process by issuing a Request for Proposals (RFP). The RFP process must be justified and approved by the CPO prior to use. The RFP can be used when the program objective is known but the method(s) of accomplishing those objectives are unknown. The RFP process provides opportunity to evaluate several approaches to meet the DOE's needs when factors other than price should prevail.

An example of an RFP purchase of Goods is the following situation:

The school/office has a room (500 square feet) to be used as a technology center, has a general plan for the type of work to be done in this center, but is unsure of what kind of computer equipment, furniture, or other apparatus will accomplish the desired plan. These requirements are stated in the RFP and interested proposers will prepare an offer or proposal in accordance with the DOE's needs.

The RFP process is used when it is not practicable or not advantageous to employ the IFB method. Factors to be considered in making this determination include:

- the primary consideration in determining award of a contract is not price;
- the contract must be based on other than a fixed price;
- the scope of work or specifications cannot be sufficiently described;
- oral or written discussions about the price or technical aspects of the proposals may be required;
- proposers may need the opportunity to revise their proposals;
- award determination may require a comparative evaluation to determine best value rather than best price, taking into consideration qualitative factors such as the proposers' technical expertise, previous experience, and ability to perform under the contract.



Competitive sealed proposals require the issuance of a public notice and the publication of an RFP that includes but is not limited to:

1. the goals or objectives of the project, including a description of the performance or benefit required,
2. the contractual terms and conditions applicable to the procurement,
3. a statement as to when and in what manner prices are to be submitted,
4. the relative importance of price and other evaluation criteria, and
5. specific evaluation criteria to be used.

Award is based on price (if applicable) and the evaluation criteria set forth in the RFP. After award and upon request by proposer(s), debriefing of non-selected proposers shall be scheduled and conducted by the School or Office. The purpose of a debriefing is to inform the non-selected proposer of the basis of the source selection decision and contract award. The debriefing shall be held, to the maximum extent practicable, within seven (7) working days from date of request.

#### **1. Responsibilities of the ASO**

ASO's are responsible for:

- identifying the need and developing the goals or objectives for the goods to be purchased,
- identifying the source of funds for the purchase,
- evaluation of all proposals received in accordance with the Evaluation Criteria as stipulated in the RFP,
- selection of a Contractor,
- conducting a debriefing of non-selected proposers,
- contract administration, which includes monitoring the Contractor's work, receipt of goods, and payment for goods received.

#### **2. Responsibilities of PCB**

The PCB is responsible for:

- assuring that goals or objectives of the project are well defined,
  - incorporating goals or objectives of the project and terms/conditions into an RFP document, all in accordance with applicable provisions of procurement HRS and HAR,
  - the posting of a legal notice in accordance with requirements of SPO's Procurement Notice System,
  - fielding all inquires related to the procurement and serving as a liaison between the DOE and interested bidders,
  - receiving all sealed proposals,
  - representing the CPO in all matters related to challenges and protests, and
  - award of contract which includes encumbrance of funds; obtaining necessary certificates, approvals and signatures; and final distribution to all parties of the contract.
-

**J. Multi-Step Competitive Sealed Bids - \$25,000 or more**  
(Reference: Subchapter 6.5, Chapter 3-122, HAR)

This 2-step method combines the IFB & RFP processes and is used when award to the lowest responsive, responsible bidder is desired but the scope of work or product specifications cannot be initially defined or described. In the 1st step, the RFP method is employed whereby unpriced technical proposals are accepted and evaluated. In the 2nd step, the IFB method is employed whereby the price proposals of the acceptable technical proposals are opened and award is made to the lowest offer.

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**K. Emergency Procurement - \$25,000 or more**  
(Reference: Subchapter 10, Chapter 3-122, HAR)

An emergency condition means a situation which is a threat to public health, welfare, or safety. This applies to all emergency procurement expenditures for goods \$25,000 or more. If the purchase is such that if the DOE does not act immediately and an emergency condition would result, the School or Office may seek an emergency procurement approval. Emergency procedures may be utilized only to purchase that which is necessary to cover the emergency.

ASO's must contact the PCB for assistance in this area.

For emergency expenditures less than \$25,000, ASO's may follow small purchase procedures.

## **INTRODUCTION TO OUTSOURCING SERVICES**

### **A. Background**

Hawaii's civil service law states, in part, that work for government shall be performed by government employees recruited through the merit system and in accordance with Chapter 76, HRS (details of which are provided at the following website):

[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0076/HRS\\_0076-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0076/HRS_0076-.htm)

The DOE sometimes employs methods such as payment of overtime or employment of casual hires such as substitute teachers, part-time temporary teacher (PTT), paraprofessional tutor (PPT), establishing temporary positions as allowed, etc. to accomplish work.

Outsourcing of services should only be considered after DOE staff and other internal employment options have been exhausted or deemed impractical. In cases where services cannot, for various reasons, be provided in accordance with Chapter 76, HRS, ASO's may also consider the outsourcing of services via two separate and distinct processes:

Personal Services Contracts awarded through OHR

**OR**

Procurement Contracts awarded through PCB

These two processes are explained further in the following sections.

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### **B. Distinguishing Between Personal Services Contractor and Independent Contractor**

Whether a contractor is determined a "personal services contractor" or an "independent contractor" has major consequences as follows:

- The DOE is required to withhold payroll taxes (e.g., income taxes, FICA, etc.) from payments to personal services contractors, in accordance with State and Federal laws (e.g., Internal Revenue Service, Department of Labor & Industrial Relations, etc.)
- Independent contractors, however, are responsible for the payment of their own income and self-employment taxes.
- Further, provisions for workers' compensation, unemployment insurance, and other employee related benefits are not provided by the DOE for independent contractors.

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### **C. Simple Steps to determining E/E Relationships**

Personnel or Procurement?

Q: I have a need for services that current DOE personnel cannot provide. I need to purchase these services. Should I contact Office of Human Resources (OHR) or the Procurement & Contracts Branch (PCB)?

A: That depends on whether or not services engage an employer/employee (E/E) relationship. "ABC" test will determine if services engage an E/E relationship.

Engages E/E relationship – If the ABC test indicates an E/E relationship DOES exist:

1. School or Office must obtain exemption from Civil Service law
2. OHR processes a personal services contract in accordance with personnel guidelines
3. Contract is awarded to an individual (not a business entity)
4. Individual is paid via payroll system
5. Payroll taxes are deducted from payment

Does not engage E/E relationship – If the ABC test indicates an E/E relationship DOESN'T exist:

1. School or Office need not obtain exemption from Civil Service law unless work under the contract involves all of terms of the “4-Point Test”
2. PCB processes a procurement contract in accordance with procurement laws and administrative rules
3. Contract is awarded to an independent contractor or another government entity
4. Contractor is paid via vendor payment system

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#### **D. Personal Services Contract**

A personal services contract refers to a contract with an individual, the terms of which engage an “employer/employee (E/E)” relationship. Common types of personal services agreements are those in which the:

- service is special or unique or essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment. Any such contract may be for any period not exceeding one year. §76-16(2), HRS
- position is filled by a person employed on a fee, contract, or piecework basis who may lawfully perform the duties concurrently with the person’s private business, profession, or other private employment and whose duties require only a portion of the person’s time, if it is otherwise impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State. §76-16(15), HRS

Personal services contract means a contract that, by its express terms or as administered, makes the contractor appear, in effect, a State employee. If an E/E relationship will be established by a contract, the services shall be obtained in accordance with policies established by OHR; personal services contractors are therefore paid through the DOE’s payroll system.

Personal services contracts (e.g. contracts for Temporary Contract Employees) **must not** be obtained in accordance with procurement laws and rules. Personal services contracts are instead processed via procedures established by OHR.

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#### **E. Procurement Contract**

Procurement contracts are awarded to independent contractors (e.g., sole proprietors, corporations, joint ventures, partnerships, limited liability companies, etc.). These contracts do not engage an E/E relationship. An independent contractor exercises independent employment and conducts work according to its own methods without being subject to the control of the DOE, except as to the result of the work. These contracts are awarded in accordance with procurement laws and rules using the various methods of source selection described herein.

**F. “ABC Test”, Step 1 – Determining the E/E Relationship**

ASO’s must use the following “ABC” test to determine whether an Employer/Employee relationship exists:

1. A “no” response to ANY of the following questions identifies an Employer/Employee Relationship. Should this be the case, the School or Office must contact the Office of Human Resources for assistance.
2. A “yes” response to **ALL** of the following questions will identify that contractor as an independent contractor. Should this be the case, the School or Office may proceed with a purchase of services under these guidelines. Continue to the “4 Point Test”.

**“ABC” TEST TO ESTABLISH STATUS AS INDEPENDENT CONTRACTORS<sup>1</sup>**

To be considered an "Independent Contractor," all of the following conditions outlined by this "ABC Test" must be met:

- A. Is the Contractor free from control or direction? (i.e., does the Contractor control the workload; does the Contractor furnish resources used in the job; does the Contractor control his/her working hours; does the Contractor supervise his/her own work?)
- B. Is the service performed outside the usual course of business or place of business? (i.e., does the Contractor control where the work is done?)
- C. Is the Contractor customarily engaged in an independent occupation, trade, profession, or business of the same nature as that involved in the contract of service? (i.e., does the Contractor customarily operate as an independent contractor providing similar services?)

The following U.S. Department of Labor, Equal Employment Opportunity Commission (EEOC) Guideline is also provided to assist ASO’s in making the E/E determination:

**FACTORS CONSIDERED IN DETERMINATION OF EMPLOYEE STATUS<sup>2</sup>**

Under the EEOC Guidance a worker determined to be an "employee" covered by federal employment discrimination laws if:

- The firm...has the right to control when, where and how the worker performs the job.
- The firm...rather than worker furnishes the tools, materials and equipment.
- The work is performed on the premises of the firm.
- There is a continuing relationship between the worker and the firm.
- The firm...sets the hours of work and duration of the job.
- The worker is paid by the hour, week, or month rather than for the agreed cost of performing a particular job.
- The worker has no role in hiring and paying assistants.
- The work performed by the worker is part of the regular business of the firm.
- The firm...is itself in business.
- The firm...provides the worker with benefits such as insurance, leave, or worker’s compensation.
- The worker is considered an employee of the firm...for tax purposes (i.e. the entity withholds federal, state and Social Security taxes).
- The firm...can discharge the worker.
- The worker and the firm...believes that they are creating an employer-employee relationship.

1 An Information Pamphlet prepared by the UNEMPLOYMENT INSURANCE DIVISION, Department of Labor and Industrial Relations, State of Hawaii, MARCH 2003

2 EEOC Common Law Test

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**G. “4-Point Test”, Step 2 – Civil Service Exemption**

The civil service law states that all positions and personal services performed for the State shall be in the civil service unless specifically exempted by law. Exemptions are listed at the following website:

[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0076/HRS\\_0076-0016.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0076/HRS_0076-0016.htm)

The Director of Department of Human Resources Development (DHRD) has delegated authority to certify exemptions under §§76-16 (2), §§76-16 (12), and §§76-16 (15).

ASO’s are further advised of the following DHRD position regarding exemption of civil service as established by a February 17, 1982 memo:

“Contracts with firms are usually for services where the work schedule and methodology are determined by the Contractor; the Contractor is responsible for accurate, complete and satisfactory work and services performed by its agents or employees; and the services are for the delivery of completed work or a product by or during a specified time. Contracts with firms for services to be performed in the manner described above **are not** subject to review for the exemption of the services from civil service.”

“There are, however, instances of contracts with firms that may need to be reviewed for civil service exemption. These such contracts with firms must be exempted from civil service prior to commencement of work when contract terms involve **ALL** of the following under the **“4-Point Test”**:

1. The services are to be provided or performed in State facilities.
2. State equipment and materials will be used
3. The work of the firm’s agents or employees will be under the direction and supervision of a State employee.
4. The services are of a continuing nature and need and would normally be performed by a State employee.”<sup>3</sup>

In short, this memo states that contracts with independent contractors **do not** require civil service exemption unless work involves every one of the elements listed under the “4-Point Test”.

The School or Office is **NOT** required to obtain a Civil Service Exemption if a “no” response to ANY of the questions above.

The School or Office **IS** required to obtain a Civil Service Exemption if **ALL** of the responses to the above questions are “yes”.

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<sup>3</sup> Memo to Heads of All Departments from Director of Personnel Services; February 17, 1982

## H. Civil Service Exemption

Civil service exemption is not required for contracts with independent contractors because the work does not engage the E/E relationship.

1. In these cases, the ASO (or authorized designee) shall certify on [DOE Form 4, Request for Exemption from Civil Service \(1/05 or its latest revision\)](#) that exemption from civil service is not applicable.
2. This self-certification shall be done for ALL contracts for services, regardless of the contract amount.
3. This self-certification shall be attached to the first payment document when processing payment.

There are cases, however, when the work does not engage the E/E relationship but civil service exemption is still required as described in the "4-Point Test" under Section G above. In these cases, exemption approval must be obtained prior to procurement & contracting of services. Exemption shall be obtained as follows:

4. Contracts that cost less than \$1,000: The ASO (or authorized designee) is delegated the authority to certify exemption from civil service by approving the form *Certificate of Exemption from Civil Service* (Rev. 12/04 or its latest revision).
5. Contracts costing \$1,000 or more: The Office of Human Resources, Classified Personnel Management (OHR, CPM) is delegated the authority to certify exemption from civil service. Schools/Offices must complete and fax [DOE Form 4, Request for Exemption from Civil Service \(1/05 or its latest revision\)](#) to CPM. The request must provide a complete description of services to be procured. Upon approval, CPM will issue *Certificate of Exemption from Civil Service* (Rev. 12/04 or its latest revision); a hard copy will be sent to the requestor.
6. For contracts awarded under 4 and 5 above, the signed *Certificate of Exemption from Civil Service* must be attached to the first payment document when processing payment.

For all contracts \$25,000 and over, either 1) the self-certified [DOE Form 4, Request for Exemption from Civil Service](#) or 2) the approved *Certificate of Exemption from Civil Service* must be submitted to PCB together with [DOE Form 18, Request for Procurement Services](#); PCB will then run the project through the procurement and/or contracting process.

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## PROCUREMENT OF SERVICES CHAPTER 103D, HRS

### A. Introduction

There are several different methods of procuring services as explained in this section. The procedure for selection of a vendor (source selection) will depend on many factors, including total cost and type of service being purchased. Each method should be considered in the order explained.

Some methods of source selection may be completed by the ASO. These include:

- Exempt Procurement (when the exemption has already been granted by law, administrative rule, or the CPO)
- Price or Vendor List Purchases
- Small Purchases

Other purchases require assistance from PCB. ASO's must complete and submit [DOE Form 18, Request for Procurement Services](#) for:

- Sole Source Procurement - \$25,000 or more
  - Competitive Sealed Bids for Goods (IFBs) - \$25,000 or more
  - Competitive Sealed Proposals for Goods (RFPs) - \$25,000 or more
  - Multi-Step Competitive Sealed Bids - \$25,000 or more
  - Emergency Procurement - \$25,000 or more
- 

### B. Procurement Exemptions

(Reference: §103D-102, HRS; §3-120-4, HAR)

Certain services are available from multiple sources but procurement by competitive means is either not practicable or not advantageous to the DOE. In these cases, the services are declared exempt from procurement guidelines via one of three methods: HRS exempt, HAR exempt, or CPO exempt.

Regardless of the total cost, procurement of exempt services is not subject to procurement rules.

#### 1. HRS Exemptions

Specific services are exempt from the procurement **law**. Procurement laws shall not apply to contracts by governmental bodies:

- (A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution;
  - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
  - (G) To governmental bodies of the State;
- (3) To procure services from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;



- (4) To procure the following services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
- (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
  - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;

A complete listing of exemptions under §103D-102(b), HRS can be viewed at:

[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/hrs0103D/HRS\\_0103D-0102.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/hrs0103D/HRS_0103D-0102.htm)

## **2. HAR Exemptions**

Specific services are exempt from the procurement **administrative rules**. The following is a list of additional exemptions which the procurement policy board has also determined to be exempt from Chapter 103D, HRS:

- Ex-2 Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
- Ex-3 Services of lecturers, speakers, trainers, and scriptwriters;
- Ex-4 Services of legal counsel, guardian ad litem, psychiatrists, and psychologists, when required by court order, or by the Rules of Court in the case of interpreters, in criminal and civil proceedings;
- Ex-12 Professional consultant services as required under Chapter 658, HRS;
- Ex-13 Interpreter services;
- Ex-14 Procurement of repair services when dismantling is required to assess the extent of repairs;

A complete listing of exemptions under §3-120-4, HAR can be viewed at:

<http://www.hawaii.gov/spo/SPO/Code/AdminRules/SPO/Code/AdminRules/3-120s.pdf>

## **3. CPO Exemptions**

ASO's may also request an exemption from the procurement law when the CPO determines in writing that the service is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the DOE. ASO's must contact the PCB for assistance in this area.

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## **C. Procurement Via Price/Vendor List (Reference: §3-121-6(c), HAR)**

Certain services are available from a DOE or SPO price/vendor list.

In the retail market, the price of services may vary widely by vendor. In order to minimize the time needed to solicit quotations and determine competitive pricing and vendor qualifications, price/vendor lists for frequently purchased services have been developed. The price/vendor lists assure the DOE access to competitively priced services provided by qualified vendors. Some lists offer discounted pricing for services for the duration of the price/vendor list. In return, the DOE makes a commitment to purchase the services listed from the vendor.

Changes to the price/vendor list are issued on occasion, and Schools and Offices should check the list for changes prior to issuing a PO.

**1. Mandatory or Optional**

Some of the Lists are MANDATORY, meaning that purchasers are required to utilize the price/vendor list. Other Lists are optional, meaning that purchasers may choose to purchase from another source if the list does not meet the needs of the School or Office. Each list will specify if DOE participation is mandatory or optional; the purchaser must therefore read the terms of the list prior to issuing the order. Also, changes to the price/vendor list are issued on occasion, and purchasers should check the list for changes prior to issuing a PO.

**2. Dollar Threshold**

There is no dollar limit for purchases made from a price/vendor list. A complete listing of SPO price/vendor lists can be viewed at:

<http://www2.hawaii.gov/priceapps/ShowPrice.cfm>

**3. Exceptions**

If the service on the list does not meet School or Office needs, request for approval to purchase from another source can be made by completing a [DOE Form 5, Request for Exception from Price List](#).

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**D. Small Purchase Procurement - less than \$25,000**

(Reference: Subchapter 8, Chapter 3-122, HAR)

A small purchase is an expenditure that is less than the current procurement threshold of \$25,000. The small purchase process allows ASO's the flexibility to obtain services expeditiously without complying with a competitive procurement process.

**1. Parceling**

Small purchases shall not be parceled by dividing the purchase of same, like, or related services into several purchases of smaller quantities during any twelve month period to evade statutory competitive procurement processes. ASO's are cautioned against unforeseen circumstances that may cause costs to increase beyond the \$25,000 threshold.

**2. Contract Term/Period**

Contracts for services often involve months or even a year of work. The term of contract must be determined before deciding to use small purchase procedures. In the following examples, small purchases are allowable:

1. Term of contract is for one year and the contract amount is within the small purchase threshold.
2. Term of contract is one year with two options to extend, and the total contract amount for the three-year contract term is within the small purchase threshold.
3. Term of contract is for a multi-term period, and the total contract amount for the entire multi-term period is within the small purchase threshold.

In the event the total contract amount in the examples above exceed the small purchase threshold, the procurement would no longer qualify as a small purchase and must then comply with a competitive sealed process.

As stated below, small purchase procedures do require competitive price quotes and a determination of best value prior to award. ASO's can solicit and document small purchase quotations by completing [DOE Form 10a & b, Quotations & Record of Small Purchase](#).

**3. Small Purchase Guidelines**

The DOE small purchase guidelines are as follows:

Expenditures with an estimated total cost that is less than \$5,000	Purchase from the best available source.
Expenditures with an estimated total cost that is at least \$5,000 but less than \$15,000	Insofar as it is practical and based on the specifications, adequate and reasonable competition of no less than <u>three</u> quotations (not necessarily written) shall be solicited.
Expenditures with an estimated total cost that is at least \$15,000 but less than \$25,000	Insofar as it is practical and based on the specifications, adequate and reasonable competition of no less than <u>three written</u> quotations shall be solicited.

**4. Small Purchase Award**

Considering all factors, including but not limited to price, quality, warranty and delivery, small purchase awards shall be made to the vendor with the most advantageous quotation (not necessarily the lowest price).

**5. Procurement File**

All quotations received shall be recorded and placed in a procurement file. In case of small purchases, the procurement file is kept at the School or Office and may contain quote information, record of small purchase documentation, the PO worksheet, the PO, and ATP(s).

When three quotations are required but are not obtained, e.g., insufficient sources, sole sources, emergencies, the reason shall be recorded and placed in the procurement file. The file shall also include a written justification when award is made to other than the vendor submitting the lowest price.

Although small purchase is not subject to public notice or a public bid opening, the procurement file is open to public review.

**Note:** The below-listed methods of source selection require assistance from PCB. ASO's must complete and submit [DOE Form 18, Request for Procurement Services](#).

**E. Sole Source Procurement - \$25,000 or more**  
(Reference: Subchapter 9, Chapter 3-122, HAR)

A sole source procurement is justified when there is only one source available for the purchase of services totaling \$25,000 or more.

ASO's can request sole source approval by completing and submitting [DOE Form 1/1A, Notice & Request for Sole Source Procurement](#) (contact PCB for the current form). For sole source expenditures less than \$25,000, ASO's may follow small purchase procedures.

## 1. **Sole Source Justification**

To justify a sole source purchase, the following must be established:

- a. the service has a unique feature, characteristic, or capability; and
- b. the unique feature, characteristic, or capability is essential in order for the DOE to accomplish its work; and
- c. the particular service is available from only one source.

The following are not justifications for sole source procurements:

- A service is referred to by an exact type but there are other types that qualify as "equals."
- A service is unique, but is available from more than one provider. (This is referred to as a "restrictive" purchase and is subject to a competitive process.)
- The potential loss of funds at the end of a fiscal year.

## 2. **Sole Source Duration**

The contract period for a sole source procurement shall not exceed one year, unless approval is granted for a multi-term contract pursuant to section 3-122-149, HAR.

## 3. **Responsibilities of the ASO**

The ASO is responsible for:

- obtaining Civil Service Exemption, if applicable;
- conducting negotiations with the Contractor to determine the factors as cost, quality, terms, and delivery;
- identifying the need and developing the scope of the services to be purchased;
- identifying the source of funds for the purchase;
- contract administration, which includes monitoring the Contractor's work and payment for service rendered.

## 4. **Responsibilities of PCB**

PCB is responsible for:

- posting a public notice in accordance with Subchapter 9, Chapter 3-122, HAR;
- obtaining CPO approval of the Sole Source procurement;
- award of contract which includes encumbrance of funds; obtaining necessary certificates, approvals and signatures; scheduling the contract for BOE review; and final distribution to all parties of the contract.

## 5. **Procurements Approved for Sole Source**

The Procurement Policy Board maintains the following list (or its latest revision) of procurements that do not require sole source approval. Schools and Offices shall cite on the PO or contract the sole source authority as "Procurement Policy Board HAR Sole Source No. (cite sole source number from the list)".

Note: For latest revision (if any), refer to the "Pre-approved sole source" listed in the Guidelines by Section.

PROCUREMENTS APPROVED FOR SOLE SOURCE  
(1/18/07)

The following procurements are not subject to the CPO's approval:

Sole

Source No.   Sole Source Description

1.      Rental of booth space for exhibits at conventions and trade shows when organized by a single sponsor.  
Criteria: When rental is available only through a single organizer or sponsor of the convention or trade show.
  
  2.      For the repair, replacement, installation (connection, activation or hookup), or relocation of public utility company equipment or facilities.  
Criteria: When the equipment or facilities are owned or controlled by utility companies such as an electric, telephone, gas, or cable television company.
  
  3.      Annual license renewal and maintenance for computer software.  
Criteria: When the license renewal and maintenance can be obtained from only a single source, normally the developer of the software.
  
  4.      Procurement of computer software conversions, modifications, and maintenance for existing program from the manufacturer of the software.  
Criteria: When the conversion, modification, or maintenance can only be obtained from the manufacturer of the software.
  
  5.      Transcripts of court proceedings.  
Criteria: When the transcripts of court proceedings are only available from the respective assigned court reporter provided by the Judiciary.
  
  6.      Repair and Maintenance services and supplies from the original equipment manufacturer or its designated representative; when the manufacturer or its designated representative is required to provide the services and supplies to retain the manufacturer's warranty or guarantee.  
Criteria: When the services or supplies can only be obtained from the manufacturer or its designated representative to retain the manufacturer's warranty or guarantee.
  
  7.      Procurement of equipment upgrades from the original manufacturer to existing equipment and information technology hardware, when the upgrades can only be obtained from the manufacturer.  
Criteria: When the upgrades are only available from the manufacturer.
-

**F. Invitation For Bids (IFBs) and Request For Proposals (RFPs)**

Unless otherwise provided by law and administrative rules and if none of the above steps apply to the procurement, either the competitive sealed *bids* (IFB) process or the competitive sealed *proposals* (RFP) process must be used. The DOE's CPO has delegated the authority to issue IFBs and RFPs to PCB.

**All IFBs and RFPs must be processed through PCB in the following sections.**

---

**G. Competitive Sealed Bids for Services - \$25,000 or more**

(Reference: Subchapter 5, Chapter 3-122, HAR)

The majority of competitive purchases are made through the competitive sealed bids process by issuing an Invitation for Bids (IFB). The IFB is used when the specifications are known and clearly defined. Examples of IFBs include purchases of the following services: security, courier, tree trimming, air conditioning maintenance, and computer repair.

Competitive sealed bidding includes the issuance of a public notice and the publication of an IFB containing 1) the scope of work and 2) the contractual terms and conditions applicable to the procurement. Award is made on the basis of lowest bid price, provided the bidder is responsive and responsible.

**1. Responsibilities of the ASO**

The ASO is responsible for:

- obtaining Civil Service Exemption, if applicable;
- identifying the need and developing the specifications for the services to be purchased,
- identifying the source of funds for the purchase,
- contract administration, which includes monitoring the Contractor's work, receipt of services, and payment for services received.

**2. Responsibilities of PCB**

PCB is responsible for:

- assuring that specifications are competitive,
  - incorporating specifications, terms and conditions into a bid document in accordance with applicable provisions of procurement HRS and HAR,
  - the posting of a legal notice in accordance with requirements of SPO's Procurement Notice System,
  - fielding all inquires related to the procurement and serving as a liaison between the DOE and interested bidders,
  - receiving all sealed bids, conducting a public bid opening, and evaluating bids received,
  - representing the CPO in all matters related to challenges and protests, and
  - award of contract which includes encumbrance of funds; obtaining necessary certificates, approvals and signatures; and final distribution to all parties of the contract.
-

**H. Competitive Sealed Proposals for Services - \$25,000 or more**  
(Reference: Subchapter 6, Chapter 3-122, HAR)

On occasion, competitive purchases are made through the competitive sealed proposals process by issuing a Request for Proposals (RFP). The RFP process must be justified and approved by the CPO prior to use. The RFP can be used when the program objective is known but the method(s) of accomplishing those objectives are unknown. The RFP process provides opportunity to evaluate several approaches to meet the DOE's needs when factors other than price should prevail.

An example of an RFP for purchase of Services is the following situation:

The DOE must redesign the Student Information System to better manage the thousands of records of its student population. The DOE must adhere to various State and Federal mandates and has a general plan as to how individual records must be managed but is unsure of which specific information system will accomplish the desired plan. These requirements are stated in the RFP and interested proposers will prepare an offer or proposal in accordance with the DOE's needs.

The RFP process is used when it is not practicable or not advantageous to employ the IFB method. Factors to be considered in making this determination include:

- the primary consideration in determining award of a contract is not price;
- the contract must be based on other than a fixed price;
- the scope of work or specifications cannot be sufficiently described;
- oral or written discussions about the price or technical aspects of the proposals may be required;
- proposers may need the opportunity to revise their proposals;
- award determination may require a comparative evaluation to determine best value rather than best price, taking into consideration qualitative factors such as the proposers' technical expertise, previous experience, and ability to perform under the contract

Competitive sealed proposals require the issuance of a public notice and the publication of an RFP that includes but is not limited to:

1. the goals or objectives of the project, including a description of the performance or benefit required,
2. the contractual terms and conditions applicable to the procurement,
3. a statement as to when and in what manner prices are to be submitted,
4. the relative importance of price and other evaluation criteria, and
5. specific evaluation criteria to be used.

Award is based on price (if applicable) and the evaluation criteria set forth in the RFP.

After award and upon request by proposers, debriefing of non-selected proposers shall be scheduled and conducted by the ASO. The purpose of a debriefing is to inform the non-selected proposers of the basis of the source selection decision and contract award. The debriefing shall be held, to the maximum extent practicable, within seven (7) working days from date of request.

**1. Responsibilities of the ASO**

The School or Office is responsible for:

- obtaining Civil Service Exemption, if applicable;
- identifying the need and developing the goals or objectives for the services to be purchased,

- identifying the source of funds for the purchase,
- developing the Evaluation Criteria upon which all proposals will be judged,
- evaluation of all proposals received in accordance with the Evaluation Criteria,
- selection of a Contractor,
- conducting a debriefing of non-selected proposers,
- contract administration, which includes monitoring the Contractor's work, receipt of services, and payment for services received.

## **2. Responsibilities of PCB**

PCB is responsible for:

- assuring that goals or objectives of the project are well defined,
- incorporating goals or objectives of the project and terms/conditions into an RFP document, all in accordance with applicable provisions of procurement HRS and HAR,
- the posting of a legal notice in accordance with requirements of SPO's Procurement Notice System,
- fielding all inquires related to the procurement and serving as a liaison between the DOE and interested bidders,
- receiving all sealed proposals,
- representing the CPO in all matters related to challenges and protests, and
- award of contract which includes encumbrance of funds; obtaining necessary certificates, approvals and signatures; and final distribution to all parties of the contract.

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### **I. Multi-Step Competitive Sealed Bids - \$25,000 or more**

(Reference: Subchapter 6.5, Chapter 3-122, HAR)

This 2-step method combines the IFB & RFP processes and is used when award to the lowest responsive, responsible bidder is desired but the scope of work cannot be initially defined or described. In the 1<sup>st</sup> step, the RFP method is employed whereby unpriced technical proposals are accepted and evaluated. In the 2<sup>nd</sup> step, the IFB method is employed whereby the price proposals of the acceptable technical proposals are opened and award is made to the lowest offer.

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### **J. Emergency Procurement - \$25,000 or more**

(Reference: Subchapter 10, Chapter 3-122, HAR)

An emergency condition means a situation which is a threat to public health, welfare, or safety. This applies to all emergency procurement expenditures for services \$25,000 or more. If the purchase is such that if the DOE does not act immediately and an emergency condition would result, the School or Office may seek an emergency procurement approval. Emergency procedures may be utilized only to purchase that which is necessary to cover the emergency.

ASO's must contact the PCB for assistance in this area.

For emergency expenditures less than \$25,000, ASO's may follow small purchase procedures.

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# PROCUREMENT OF PROFESSIONAL SERVICES

## A. Introduction

"Professional Services" means those services within the scope of the practice of architecture, professional engineering, law, medicine, accounting, education, or any other practice defined as professional by the laws of the State of Hawaii or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook.

Professional services shall be retained when in-house staff expertise is not available for the required services or when staff is unable to perform the required services due to workload and/or time constraints. Contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

Included in this section are two attachments from the U.S. Office of Personnel Management (OPM):

1. The first attachment has the General Schedule (GS) series and position titles of recognized Professionals; and
2. The second attachment provides the position descriptions for each series.

Professional Services is a type of contract as well as a method of source selection. Professional Services can be procured in accordance with the following methods of source selection:

- Competitive sealed bidding
- Competitive sealed proposals
- Small purchase
- Sole source procurement
- Emergency procurement

PCB is responsible for certain portions of soliciting, procuring, and contracting for professional services. ASO's are responsible for other portions of the process, explained in detail within this section. In any case, Schools or Offices must contact PCB for assistance with Professional Services procurements.

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## B. Mandatory Requirements for "Design Professional" Series

"Design Professional" services furnished by licensees under chapter 464 can only be procured pursuant to this section or section 103D-307.

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## C. Legal Notice

At a minimum, before the beginning of each fiscal year, the DOE shall publish a legal notice inviting persons engaged in providing professional services (which the DOE anticipates a need for during the next fiscal year) to submit current statements of qualifications and expressions of interest to the DOE.

The PCB has established a uniform format for the legal notice. The format may be amended based on the individual School or Office needs.

Additional notices shall be given if:

1. The response to the initial notice is inadequate;
2. The response to the initial notice does not result in adequate representation of available sources;
3. New needs for professional services arise; or
4. Rules adopted by the Procurement Policy Board so specify.

The legal notice shall be posted on the "Procurement Notices System (PNS)" located on the State Procurement Office's website. The PNS provides public access to procurement notices for all State and County government projects. PCB is the only DOE office granted access to the PNS and is therefore responsible for posting of all DOE Professional Services legal notices. ASO's shall contact PCB for assistance in this area.

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#### **D. Review and Selection Committees Members**

##### Review Committee Members:

The ASO shall designate a Review Committee consisting of a minimum of three persons with sufficient education, training, and licenses or credentials for each type of professional service which may be required. In designating the members of the Review Committee, the ASO shall ensure the impartiality and independence of committee members. The names of the members of the Review Committee established under this section shall be placed in the contract file.

##### Selection Committee Members:

The Selection Committee shall be comprised of a minimum of three persons with sufficient education, training, and licenses or credentials in the area of the services required. In designating the members of the Selection Committee, the ASO shall ensure the impartiality and independence of committee members. The names of the members of a Selection Committee established under this section shall be placed in the contract file.

##### Affidavit:

Upon serving on a Committee, each Committee Member shall sign an affidavit ([DOE Form 24, 10/05 or its latest revision, "Affidavit of An Individual Serving on an Evaluation, Review, or Selection Committee"](#)) attached to these guidelines):

- Attesting to having no personal, business, or any other relationship that will influence their decision in the review or selection process;
- Agreeing not to disclose any information on the review or selection process; and
- Agreeing that their names will become public information upon award of the contract.

##### Exclusions:

Assistant/District/Complex Area Superintendents shall not serve on Review or Selection Committees.

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**E. Review and Selection Committees Members (Non-Employees)**

Persons who serve on the review or selection committee who are not employees of a governmental body shall:

1. Have sufficient knowledge to serve on the review or selection committee;
2. Serve without compensation, unless justified and determined in writing by the ASO that compensation is justified; and
3. Sign an affidavit (*DOE Form 24, 10/05 or its latest revision, "Affidavit of An Individual Serving on an Evaluation, Review, or Selection Committee"*) attached to these guidelines):
  - Attesting to having no personal, business, or any other relationship that will influence their decision in the review or selection process;
  - Agreeing not to disclose any information on the review or selection process; and
  - Agreeing that their names will become public information upon award of the contract.

**F. Review Committee & Long List**

In accordance with instructions provided in the legal notice, providers of professional services shall submit statements of interest for each type of professional services for which they are interested and qualified. After the specified deadline for submittals, the Review Committee shall review and evaluate all submissions and other pertinent information, including references and reports, and prepare a "Long List" of qualified applicants of these services.

The Committee's determinations resulting in the Long List shall be documented on "*Attachment B – Long List of Qualified Applicants*".

Applicants included on the Long List may amend their statements of qualifications as necessary or appropriate. Applicants shall immediately inform the PCB of any change in information furnished which would disqualify the applicant from being considered for award of contract.

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**G. Selection Committee & Short List**

Whenever during the course of the fiscal year a School or Office requires a particular professional service, the ASO shall designate a Selection Committee to evaluate the statements of qualification and performance data of those applicants on the current/applicable Long List, along with any other pertinent information including references and reports.

The Selection Committee shall employ the selection criteria as stipulated on "*Attachment A – Standard Screening Criteria*". The descending order of importance shall be:

1. Experience and professional qualifications relevant to the project type;
2. Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies;
3. Capacity to accomplish the work in the required time; and
4. Any additional criteria determined in writing by the selection committee to be relevant to the School or Office needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

The Selection Committee shall evaluate the submissions of applicants on the Long List (and any other pertinent information which may be available) against the selection criteria. The Committee may conduct confidential discussions with any applicant who is included on the Long List regarding the services which are required and the services that applicant is able to perform. In conducting discussions, there shall be no disclosure of any information derived from the competing professional service providers. The applicants considered for a particular professional service shall constitute the Short List; the Committee's determinations shall be documented on "*Attachment C – Summary of Qualifications of Short List Applicants*".

The Selection Committee shall rank **by consensus** and based on the selection criteria a minimum of three most specifically qualified applicants for the service required. The **consensus** process shall adequately consider available information, group discussions and any information received by the Selection Committee pursuant to confidential discussions with any applicant on the Long List regarding the services which are required and the services they are able to provide. If more than one applicant possesses the same qualifications under this section, the Selection Committee shall rank the persons in a manner that ensures equal distribution of contracts among the providers holding the same qualifications. The recommendations of the Selection Committee shall not be overturned without due cause.

This ranking shall be documented on "*Attachment E – Short List Ranking of Qualified Applicants*". The committee shall also prepare an "*Attachment D – Evaluation Record of Short List Qualified Applicant*". All attachments shall be made a part of the contract file.

The Ranking shall be forwarded to the ASO for contract negotiations.

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#### **H. Contract Negotiation**

The ASO shall negotiate a contract with the top-ranked applicant, and documentation of the negotiation shall be placed in the contract file. The contract negotiation must be completed within a reasonable time. The contract shall be:

- established in writing,
- shall include a rate of compensation which is fair and reasonable, and
- shall be based upon the estimated value, scope, complexity, and nature of the services to be rendered.

If a satisfactory contract cannot be negotiated with the top-ranked applicant, negotiations with that provider shall be formally terminated and negotiations with the second-ranked applicant on the Short List shall commence. The contract file shall include documentation from the ASO or designee to support selection of other than the top-ranked or second-ranked applicant. Failing accord with the second-ranked applicant, negotiations with the next-ranked applicant on the Short List shall commence.

If a contract at a fair and reasonable price cannot be negotiated with any of the applicants from the Short List, the Selection Committee may be asked to submit a minimum of three additional names to the ASO to resume negotiations in the same manner provided in this section.

Negotiations shall be conducted confidentially.

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## **I. Award of Contract**

For all contracts totaling \$25,000 or more, the ASO shall forward to PCB the following documents for contract preparation:

- Attachment B, Long List of Qualified Applicants
- Attachment C, Summary of Qualifications of Short List Applicants
- Attachment D, Evaluation Record of Short List Qualified Applicant
- Attachment E, Ranking of Short List of Qualified Applicants
- DOE Form 24, Affidavits
- Professional Services Awards, New Record Input Form
- Scope of Work
- Compensation and Payment Schedule
- Special Terms and Conditions, if any
- Civil Service Exemption Certificate, if applicable

Based on documentation provided, PCB shall prepare a contract and obtain approvals of the Attorney General's Office, the Contractor, and the Superintendent.

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## **J. Posting of Awards**

In accordance with §103D-304, HRS, contracts for \$5,000 or more awarded under this section shall be posted electronically on the State Procurement Office's PNS within seven days of the contract award. Contracts shall remain posted for at least one year.

The PCB is responsible for posting of DOE's Professional Services contracts. For all Professional Services contracts \$5,000 and up to \$25,000, Schools and Offices shall complete and submit to PCB the "*Professional Services Awards New Record Input Form*" located at the end of this section. This form must be faxed to PCB (fax number 675-0133) immediately after the Small Purchase contract is signed by the ASO.

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## **K. Small Purchase Contract (less than \$25,000)**

Small purchase contracts for professional services may be negotiated by the ASO, or designee, with at least any two persons on the Short List of qualified applicants. The selection and negotiation procedures shall be conducted in the same manner set forth herein; the contract process shall be in accordance with the Small Purchase procedures set forth under "Procurement of Services", Section D: Small Purchase Procurement – less than \$25,000.

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## **L. Debriefing**

In cases of awards made pursuant to Professional Services procurement, non-selected professional service applicants may submit to the ASO a written request for debriefing. The written request shall be submitted within three working days after the posting of the award of the contract. The purpose of a debriefing is to inform providers of professional services of the basis for non-selection. Upon receipt of the written request, the ASO shall promptly provide the requester a debriefing, to the

maximum extent practicable within seven working days, provided the ASO may determine whether to conduct individual or combined debriefings.

Any protest by the requester pursuant to §103D-701, HRS following a debriefing shall be filed in writing with the Chief Procurement Officer within five working days after the date that the debriefing is completed.

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**M. Public Inspection**

After the contract is awarded, the following information shall be open to public inspection, including but not limited to:

1. the contract;
2. the list of qualified persons;
3. the screening committee's criteria for selection established under subsection 103D-304(d), HRS; and
4. the statements of qualifications and related information submitted by the qualified persons, except those portions for which a written request for confidentiality has been made subject to §3-122-58, HAR.

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**N. Contract Amendment**

Any amendment to a professional services contract requires prior approval of the CPO when the contract amount is at least \$25,000 and/or the increase is at least ten per cent or more of the initial contract price.

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**O. Waiver for Procurement of Professional Services**

If the names of less than three qualified persons are submitted pursuant to subsection 103D-304(d), HRS, the ASO may determine that:

1. Negotiations under subsection 103D-304(e) may be conducted provided that:
  - a) The prices submitted are fair and reasonable; and
  - b) Other prospective providers had reasonable opportunity to respond or there is not adequate time to re-solicit another call for Professional Services;

OR
2. The offers may be rejected pursuant to subchapter 11 and new statements of qualifications and expressions of interest may be solicited if the conditions under subparagraphs a. and b. above are not met;
3. The proposed procurement may be cancelled; or
4. An alternative procurement method may be conducted to include but not be limited to direct negotiations with other potential providers, provided that the ASO determines in writing that the need for the service continues but that either:
  - c) the price of the offers received are not fair and reasonable, or
  - d) that the qualifications of the applicants are not adequate to meet the procurement needs and there is no time for re-solicitation or re-solicitation would likely be futile.

If no names are submitted pursuant to subsection 103D-304(d), HRS, the ASO may determine that for a given request it is neither practicable nor advantageous for the DOE to procure a service by re-soliciting another public notice for Professional Services. When making this determination, consideration shall be given to the competition in the marketplace and whether the additional potential cost of preparing, soliciting and evaluating responses is expected to exceed the benefits normally associated with the solicitations; and in the event of this determination, a more cost effective procurement method may be selected, to include but not be limited to direct negotiations.

Documentation of the alternative procurement method selected shall:

1. state the reasons for selection and length of contract period;
2. receive written approval of the Chief Procurement Officer or a designee; and
3. be made a part of the contract file upon award by the procurement officer.

**ATTACHMENT A**  
**STANDARD SCREENING CRITERIA**

The Selection Committee shall employ the following selection criteria, including but not limited to the below-listed items, to create a Short List of qualified applicants for the Professional Services required. The descending order of importance shall be as follows:

**1. EXPERIENCE AND PROFESSIONAL QUALIFICATIONS relevant to the project type such as:**

- Key staff possesses specialized expertise relative to the services being sought
- Firm has experience and expertise relative to the specific type of services being sought
- Key staff possess experience on similar or related projects
- Firm has experience with government contracts
- Applicant possesses familiarity with permitting requirements/processes, ordinances, etc.

**2. PAST PERFORMANCE on projects of similar scope for public agencies or private industry including corrective actions and other responses to notices of deficiencies such as:**

- Applicant's documented satisfactory performance on previous similar contracts with the DOE and/or other clients (Note: Companies with no previous State experience should not be penalized)
- Applicant's demonstrated responsiveness to client

**3. CAPACITY TO ACCOMPLISH THE WORK IN THE REQUIRED TIME such as:**

- Applicant has available staff resources in relation to project requirements
- Applicant's resources are available for the project requirements
- Applicant has In-house resources

**4. ANY ADDITIONAL CRITERIA determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open and fair competition such as:**

- Stability of firm
- Locations/offices
- Other considerations



**ATTACHMENT B\***  
**LONG LIST OF QUALIFIED APPLICANTS**

Date: _____	
Project Number: PS D	
Project Title or Brief Description: _____	
<b>APPLICANTS REVIEWED</b> (alphabetically listed or <input type="checkbox"/> see attach printed list):	<b>Qualification pending more information:</b>
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____
5) _____	_____
6) _____	_____
7) _____	_____
8) _____	_____
9) _____	_____
10) _____	_____
<b>REVIEW COMMITTEE MEMBERS</b>	
Signatures	Print Name & Title
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

\*Note: This original form must be submitted to PCB; a copy shall be retained for the School/Office file.

**ATTACHMENT C\***  
**SUMMARY OF QUALIFICATIONS**  
**OF**  
**SHORT LIST APPLICANTS**

Date:				
Project Number: PS D				
Project Title or Brief Description:				
Discipline/Category (GS Series# /Name):				
Anticipated Contract Period:				
Estimated Contract Amount:				
The Selection Committee has reviewed the long list of qualified applicants for this General Schedule (GS) series, and has identified the following firms for initial consideration (or list attached <input 33%;"="" type="checkbox&gt;):&lt;/td&gt; &lt;/tr&gt; &lt;tr&gt; &lt;td style=" width:=""/> QUALIFIED APPLICANT			PRO's	CON's
1)				
2)				
3)				
4)				
5)				
<b>SELECTION COMMITTEE MEMBERS</b>				
Signatures		Print Name & Title		
1. _____		_____		
2. _____		_____		
3. _____		_____		
4. _____		_____		
5. _____		_____		

\*Note: This original form must be submitted to PCB; a copy shall be retained for the School/Office file.

**ATTACHMENT D\***  
**EVALUATION RECORD OF SHORT LIST QUALIFIED APPLICANT**

<b>APPLICANT:</b>	
<b>Date:</b>	
<b>Project: PS D</b>	
<b>Project Title or Brief Description:</b>	
<b>CRITERIA AND EVALUATION</b> ( <input type="checkbox"/> attach additional pages if more space is required):	
<b>1. EXPERIENCE AND PROFESSIONAL QUALIFICATIONS</b> relevant to the project	
<b>2. PAST PERFORMANCE</b> on projects of similar scope for public agencies or private industry including corrective actions and other responses to notices of deficiencies	
<b>3. CAPACITY TO ACCOMPLISH THE WORK IN THE REQUIRED TIME</b>	
<b>4. ANY ADDITIONAL CRITERIA</b> determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open and fair competition	
<b>SELECTION COMMITTEE MEMBERS</b>	
Signatures	Print Name & Title
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

\*Note: Complete 1 form for every applicant. This original form must be submitted to PCB; a copy shall be retained for the School/Office file.

**ATTACHMENT E\***  
**RANKING**  
**OF SHORT LIST QUALIFIED APPLICANTS**

<b>To:</b> Head of Purchasing Agency	
<b>From:</b> Selection Committee	
<b>Subject:</b> Short List Ranking of Qualified Applicants	
<b>Date:</b>	
<b>Project: PS D</b>	
Project Title or Brief Description:	
<b>Anticipated Contract Period:</b>	
<b>Estimated Contract Amount:</b>	
<b>QUALIFIED APPLICANT (Must list minimum of 3)</b>	<b>Ranking</b>
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____
5) _____	_____
<b>SELECTION COMMITTEE MEMBERS</b>	
Signatures	Print Name & Title
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
COMMENTS:	

\*Note: This original form must be submitted to PCB; a copy shall be retained for the School/Office file.

**AFFIDAVIT OF INDIVIDUALS**  
**SERVING ON AN**  
**EVALUATION, REVIEW, OR SELECTION COMMITTEE**

Purpose of committee: (check one)

- Evaluation committee to evaluate Request for Proposals No. \_\_\_\_\_  
(Reference HAR §3-122-45.01 or HAR §3-143-205(c) )
  
- Review committee to review statements of qualifications and expressions of interest from professional services providers to establish a list of qualified persons.  
(Reference HAR §3-122-69)
  
- Selection committee to evaluate the submissions of the persons on the list of qualified persons against the selection criteria.  
(Reference HAR §3-122-69)

\* \* \* \* \*

I, \_\_\_\_\_, attest to the following:  
(Print Name)

1.  am  am not (check one) an employee of the government.
2. I have no personal, business, or any other relationship that will influence my decision in the applicable evaluation, review, or selection process.
3. I agree not to disclose any information on the applicable evaluation, review, or selection process; and
4. I agree that my name will become public information upon award of the contract.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

DOE Form-24 (10/05)

**PROFESSIONAL SERVICES AWARDS  
NEW RECORD INPUT FORM\***

<b>Select a Category (circle one):</b>		<input type="checkbox"/> Information & Arts
<input type="checkbox"/> Accounting & Budget		<input type="checkbox"/> Legal
<input type="checkbox"/> Architecture & Engineering		<input type="checkbox"/> Library & Archives
<input type="checkbox"/> Business & Industry		<input type="checkbox"/> Medical, Hospital, Dental, & Public Health
<input type="checkbox"/> Computer, Mathematics & Statistics		<input type="checkbox"/> Miscellaneous Services
<input type="checkbox"/> Education		<input type="checkbox"/> Social Science, Psychology, & Welfare
Services to be Provided/Project Description:		
Awardee (Name of Contractor):		
Date Awarded:		
Contract Amount: \$	<input type="checkbox"/> Amt is estimated	<input type="checkbox"/> Amt is an NTE <input type="checkbox"/> Or other comments:
Selecting Official: Patricia Hamamoto, Superintendent	Relationship: NONE	
School/Program Contact Name:		
Contact Telephone Number:	Contact E-mail Address:	
Names of Companies Submitted for Selection:		
1) _____		
2) _____		
3) _____		
4) _____		
5) _____		
Names of Review Committee Members:		
1) _____		
2) _____		
3) _____		
4) _____		
5) _____		
Names of Selection Committee Members:		
1) _____		
2) _____		
3) _____		
4) _____		
5) _____		

**Note: This original form must be submitted to PCB; a copy shall be retained for the School/Office file. For all Small Purchase contracts, this form must be faxed to PCB (fax number 675-0133) immediately after the Small Purchase contract is signed by the ASO.**

<b>PCB USE ONLY:</b>	<input type="checkbox"/> Award has been posted.	Date: _____ Initial: _____
	<input type="checkbox"/> Copy of award posting has been printed and filed.	
	<input type="checkbox"/> Posting completed within 7 days of award.	

**U.S. OFFICE OF PERSONNEL MANAGEMENT (OPM) LIST**

**PROFESSIONAL SERVICES POSITIONS  
FOR  
CHAPTER 103D, HAWAII REVISED STATUTES**

**GENERAL SCHEDULE SERIES AND POSITION TITLES**

**Miscellaneous Occupations**

GS-0020 Community Planning

**Social Science, Psychology, and Welfare**

GS-0101 Social Science

GS-0110 Economist

GS-0130 Foreign Affairs

GS-0131 International Relations

GS-0140 Manpower Research & Analysis

GS-0150 Geography

GS-0170 History

GS-0180 Psychology

GS-0184 Sociology

GS-0185 Social Work

GS-0190 General Anthropology

GS-0193 Archaeology

**Biological Sciences**

GS-0401 General Biological Science

GS-0403 Microbiology

GS-0405 Pharmacology

GS-0406 Agricultural Extension

GS-0408 Ecology

GS-0410 Zoology

GS-0413 Physiology

GS-0414 Entomology

GS-0415 Toxicology

GS-0430 Botany

GS-0434 Plant Pathology

GS-0435 Plant Physiology

GS-0436 Plant Protection & Quarantine

GS-0437 Horticulture

GS-0440 Genetics

**Biological Sciences (continued)**

GS-0454 Range Conservation

GS-0457 Soil Conservation

GS-0460 Forestry

GS-0470 Soil Science

GS-0471 Agronomy

GS-0475 Agricultural Management

GS-0480 General Fish and Wildlife  
Administration

GS-0482 Fish Biology

GS-0485 Wildlife Refuge Management

GS-0486 Wildlife Biology

GS-0487 Animal Science

GS-0493 Home Economics

**Accounting and Budget**

GS-0510 Accounting

GS-0511 Auditing

GS-0512 Internal Revenue Agent

**Medical, Hospital, Dental, and Public Health**

GS-0601 General Health Science

GS-0630 Dietician & Nutritionist

GS-0631 Occupational Therapist

GS-0633 Physical Therapist

GS-0635 Corrective Therapist

GS-0637 Manual Arts Therapist

GS-0638 Recreational/Creative Arts  
Therapist

GS-0639 Educational Therapist

GS-0644 Medical Technologist

GS-0665 Speech Pathology & Audiology

GS-0690 Industrial Hygiene

GS-0696 Consumer Safety

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**GENERAL SCHEDULE SERIES AND POSITIONS TITLES**  
(continued)

**Engineering and Architecture**

GS-0801 General Engineering  
GS-0803 Safety Engineering  
GS-0804 Fire Prevention Engineering  
GS-0806 Materials Engineering  
GS-0807 Landscape Architecture  
GS-0808 Architecture  
GS-0810 Civil Engineering  
GS-0819 Environmental Engineering  
GS-0830 Mechanical Engineering  
GS-0840 Nuclear Engineering  
GS-0850 Electrical Engineering  
GS-0854 Computer Engineering  
GS-0855 Electronic Engineering  
GS-0858 Biomedical Engineering  
GS-0861 Aerospace Engineering  
GS-0871 Naval Architecture  
GS-0880 Mining Engineering  
GS-0881 Petroleum Engineering  
GS-0890 Agricultural Engineering  
GS-0892 Ceramic Engineering  
GS-0893 Chemical Engineering  
GS-0894 Welding Engineering  
GS-0896 Industrial Engineering

**Information and Arts**

GS-1015 Museum Curator

**Copyright, Patent, and Trade Mark**

GS-1221 Patent Advisor  
GS-1223 Patent Classifying  
GS-1224 Patent Examining  
GS-1226 Design Patent Examining

**Physical Science**

GS-1301 General Physical Science  
GS-1306 Health Physics  
GS-1310 Physics  
GS-1313 Geophysics  
GS-1315 Hydrology  
GS-1320 Chemistry  
GS-1321 Metallurgy  
GS-1330 Astronomy & Space Science  
GS-1340 Meteorology  
GS-1350 Geology  
GS-1360 Oceanography  
GS-1370 Cartography  
GS-1372 Geodesy  
GS-1373 Land Surveying  
GS-1380 Forests Products Technology  
GS-1382 Food Technology  
GS-1384 Textile Technology  
GS-1386 Photographic Technology

**Archives**

GS-1420 Archivist

**Mathematics, Statistics, and Computer**

GS-1510 Actuary  
GS-1515 Operations Research  
GS-1520 Mathematics  
GS-1529 Mathematical Statistician  
GS-1530 Statistician  
GS-1550 Computer Science

**Education**

GS-1701 General Education & Training  
GS-1710 Education & Vocational Training  
GS-1720 Education Program  
GS-1725 Public Health Educator  
GS-1730 Education Research  
GS-1740 Education Services  
GS-1750 Instructional Systems

Qualification Standards  
Operating Manual  
August 2002



## U.S. OFFICE OF PERSONNEL MANAGEMENT (OPM)

### DESCRIPTIONS FOR PROFESSIONAL SERVICES POSITIONS

Note: This is an abbreviated version of the document. The full text can be located at this SPO website:

<http://www4.hawaii.gov/spo/procfiles/2002-07.pdf>

#### **SOCIAL SCIENCE, PSYCHOLOGY, AND WELFARE**

##### **GS-0101 -- Social Science**

This series includes positions the duties of which are to advise on, administer, supervise or perform research or other professional and scientific work in one or any combination of the social sciences when such work is not classifiable in other series of this occupational group.

##### **GS-0110 -- Economist**

This series includes positions which require application of a professional knowledge of economics in the performance of duties that include: research into economic phenomena, analysis of economic data, and the preparation of interpretive reports; advice and consultation on economic matters to governmental officials and private organizations or citizens; and the performance of other professional work in economics including supervision and the direction of economists engaged in the various economics programs of the Federal Government.

##### **GS-0180 -- Psychology**

This series includes positions involving professional work relating to the behavior, capacities, traits, interests and activities of human and animal organisms. This work may involve any one or a combination of the following functions: (1) experimenting with or systematically observing organisms to develop scientific principles or laws concerning the relationship of behavior to factors of environment, experience, or physiology, or to develop practical applications of findings; (2) applying professional knowledge of psychological principles, theories, methods, or data to practical situations and problems; and (3) providing consultative services or training in psychological principles, theories, methods, and techniques to advance knowledge of them and their appropriate use.

##### **GS-0184 -- Sociology**

This series includes positions, which involve professional work requiring knowledge of sociology, and sociological methods specifically related to the establishment, validation, interpretation, and application of knowledge about social processes. Sociologists study specialized areas such as: changes in the character, size, distribution, and composition of the population; social mechanisms for enforcing compliance with widely accepted norms and for controlling deviance; social phenomena having to do with human health and disease; the structure and operation of organizations; and the complex interrelationship of the individual and society. Sociologists are concerned primarily with the study of patterns of group and organizational behavior, social interaction, and social situations in which interaction occur. The emphasis is on the patterns of behavior that are characteristic of social groups, organizations, institutions, and nations. Some sociologists perform sociological research, others apply sociological principles and findings, and some perform a combination of both kinds of work.

##### **GS-0185 -- Social Work**

This series includes positions, which require application of a professional knowledge of the principles and practices of social work in the performance of such assignments as providing direct services to individuals and families, including work with individuals in groups. Also included are positions concerned with teaching social work, doing research on social work problems, training of social work students, and providing consultation and advice to members of related professions and community organizations on social work questions.

## **BIOLOGICAL SCIENCES**

### **GS-0493 -- Home Economics**

This series includes all positions that require application of professional knowledge of home economics pertaining to foods and nutrition, selection and use of household equipment, textiles, clothing and other products used in family care and household management practices.

## **ACCOUNTING AND BUDGET**

### **GS-0510 -- Accounting**

This series includes all positions the duties of which are to advise on or administer, supervise, or perform professional accounting work relating to the financial activities of governmental, quasi-governmental, or private sector organizations. The work includes the design, development, operation, or inspection of accounting systems; the prescription of accounting standards, policies, and requirements; the examination, analysis, and interpretation of accounting data, records, or reports; or the provision of accounting or financial management advice and assistance to management.

### **GS-0511 --Auditing**

This series includes all positions the duties of which are to advise on, supervise, or perform work consisting of a systematic examination and appraisal of financial records, financial and management reports, management controls, policies and practices affecting or reflecting the financial condition and operating results of an activity; or analytical work related to the development and execution of audit policies and programs when such work requires the application of professional accounting knowledge, standards, and principles.

## **MEDICAL, HOSPITAL, DENTAL, AND PUBLIC HEALTH**

### **GS-0601 -- General Health Science**

This series includes positions which involve research or other professional and scientific work which is specifically health-oriented in character, when the work is of such generalized or miscellaneous specialized nature that the positions are not more appropriately classifiable in any of the existing series in this or any other Group. The work requires a background of knowledge, skills and techniques gained from professional training in a health science or allied scientific field, but has no paramount, rigid or continuing requirement for the knowledge, skills and techniques characterizing any of the established series which reflect one or more of the academic disciplines or recognized professions. Such work may cut across and require understanding of scientific methods and techniques common to several recognized professional fields in the health, medical or allied sciences (e.g., work in the field of health research administration requiring knowledge of research methodology common to a number of different scientific fields); and/or the work may represent a new, emerging or miscellaneous professional occupational area of a health science not readily identifiable with established series. This series is not intended for use for interdisciplinary professional positions (and the paramount qualification needed to perform in the work) which are readily identifiable with existing series.

### **GS-0630 -- Dietitian and Nutritionist**

This series includes positions that advise on, administer, supervise, or perform work in human nutrition requiring the application of professional knowledge of dietetics or nutrition directed toward the maintenance and improvement of human health. Dietetics is an essential component of the health sciences, usually with emphasis on providing patient care services in hospitals or other treatment facilities. The work of the dietitian includes food service management, assessing nutritional needs of individuals or community groups, developing therapeutic diet plans, teaching the effects of nutrition on health, conducting research regarding the use of diet in the treatment of disease, or consulting on or administering a dietetic program. Nutrition is the science of food and nutrients, their uses, processes, and balance in relation to health and disease. The work of nutritionists emphasizes the social economic, cultural, and psychological implications of food usually associated with public health care services or with food assistance and research activities. The work includes directing, promoting, and evaluating

nutritional components of programs and projects; developing standards, guides, educational and informational material for use in Federally or operated nutrition programs; participating in research activities involving applied or basic research; or providing training and consultation on nutrition.

#### **GS-0631 -- Occupational Therapist**

This series includes positions requiring professional knowledge of the concepts, principles and practices of occupational therapy to provide clinical services, supervise or train students and therapist, or perform research with people who have impaired capacities for performing activities appropriate to their age group. The work requires knowledge of the structure and function of the human body, environmental influences, human development, physical and psychosocial dysfunctions, and skill in developing treatment plans to teach new skills, restore performance, or learn compensating skills.

#### **GS-0633 -- Physical Therapist**

This series includes positions, which involve professional work requiring the application of knowledge of the concepts, principles, and practices of physical therapy for the treatment or prevention of physical disability or disease. Physical therapists plan and carry out treatment utilizing therapeutic exercise, massage, and physical agents such as air, water, electricity, sound, and radiant energy. Therapists perform tests and measurements involving manual or electrical means; and interpret results. Therapists also devise adaptations of equipment to meet the specific needs of patients.

#### **GS-0635 -- Corrective Therapist**

This series includes positions, which involve professional work requiring the application of knowledge of the concepts, principles, and practices of physical education and rehabilitation therapy, using physical exercise to maintain the health or to achieve physical or mental rehabilitation of patients. Corrective therapists plan and carry out treatment in which they use or adapt various types of physical exercise, physical activities, and equipment. They evaluate patients for muscle strength, endurance, coordination, and balance; provide individual or group instruction for physical reconditioning or for re-socialization of patients; and devise adaptations of equipment to meet the specific needs of patients.

#### **GS-0637 -- Manual Arts Therapist**

This series includes positions that involve professional work requiring the application of knowledge of the concepts, principles, and practices of industrial arts education and rehabilitation therapy to plan and carry out treatment for the physical or mental rehabilitation of patients. Manual arts therapists evaluate vocational potential of patients; devise projects and equipment to maintain or improve skills of patients and promote recovery; and evaluate patient's ability to work in an actual or simulated work environment. Some manual arts therapists participate in the rehabilitation of blind patients.

#### **GS-0638 -- Recreation/Creative Arts Therapist**

This series includes positions which involve professional work requiring application of either (1) a knowledge of the concepts, principles, and practices of recreation therapy, and the use of recreational modalities; or (2) a knowledge of the concepts, principles, and practices of a specialized creative arts therapy field (i.e., art, dance, music, and psychodrama) and the use of appropriate specialized activity modalities to maintain the physical and/or mental health or to achieve the physical and or mental rehabilitation of patients. These therapists evaluate the history, interests, aptitudes, and skills of patients by interviews, inventories, tests, and measurements, and use such findings, along with medical records and the therapy orders of physicians or nurses, to develop and implement therapy activities for individual patients. These several therapy approaches are directed toward achieving such therapeutic objectives as diminishing emotional stress of patients, providing a sense of achievement, channeling energies and interests into acceptable forms of behavior, aiding physical and mental rehabilitation, and promoting successful community reentry.

#### **GS-0639 -- Educational Therapist**

This series includes positions that involve professional work requiring the application of knowledge of the concepts, principles, and practices of education and rehabilitation therapy. Educational therapists plan and carry out treatment, which involves the use of educational situations, equipment, and methods to rehabilitate patients. They evaluate the learning ability or educational level of patients by use of

educational tests and measurements. Some educational therapists participate in the rehabilitation of blind patients. The activities of educational therapists are directed to achieving therapeutic objectives such as diminishing emotional stress of a patient, providing a sense of achievement, and channeling energies into acceptable forms of behavior.

#### **GS-0644 -- Medical Technologist**

This series includes positions that require professional knowledge and competence in the field of medical technology. Medical technology involves performing, advising on, or supervising clinical laboratory testing of human blood, urine, and other body fluids or tissues, using manual or automated techniques; confirming test results and developing data which may be used by physicians in determining the presence and extent of disease or in support of medical research; modifying or designing laboratory procedures; establishing and monitoring quality control systems and measures; and providing instruction in the basic theory, technical skills, and application of laboratory test procedures. Medical technology includes work in such areas as hematology, bacteriology, mycology, virology, parasitology, immunology, serology, immuno-hematology (blood banking), clinical chemistry (including endocrinology and toxicology), and urinalysis as they relate to clinical laboratory practice.

#### **GS-0665 -- Speech Pathology and Audiology**

This series covers positions involving professional work in the study and/or treatment of human communications disorders, as reflected in impaired hearing, voice, language, or speech. The work requires professional knowledge of the nature of these disorders, their causes, and methods of therapeutic treatment. The work involves any one or a combination of the following functions: (1) providing direct clinical services in the evaluation and resolution of communications disorders; (2) providing graduate level training in communications disorders; (3) planning and administering a comprehensive program for evaluating and treating communications disorders; and (4) planning, administering, and performing laboratory and clinical research in communications disorders.

#### **GS-0690 -- Industrial Hygiene**

This series includes all classes of positions the duties of which are to advise on, administer, supervise, manage, or perform professional and scientific work in industrial hygiene, including the identification and evaluation of conditions affecting the health and efficiency of employees, or the citizens of the adjacent community, the formulation and recommendation of measures to eliminate or control occupational health hazards, and the promotion of occupational health programs for instructing and motivating managers and employees in the prevention as well as correction of potential health hazards.

#### **GS-0696 -- Consumer Safety**

This series includes professional positions concerned with enforcing the laws and regulations protecting consumers from foods, drugs, cosmetics, fabrics, toys, and household products and equipment that are impure, unwholesome, ineffective, improperly or deceptively labeled or packaged, or in some other way dangerous or defective. These positions require knowledge of various scientific fields such as chemistry, biology, pharmacology, and food technology. Consumer safety officers identify substances and sources of adulteration and contamination, and evaluate manufacturing practices, production processes, quality control systems, laboratory analyses, and clinical investigation programs.

### **GS-0800 -- ENGINEERING AND ARCHITECTURE**

#### **GS-0801 -- General Engineering Series**

This series includes all classes of positions the duties of which are to advise on, administer, supervise, or perform research or other professional and scientific work of a special or miscellaneous character which is not specifically classifiable in any other engineering series, but which involves the application of a knowledge of such engineering fundamentals as the strength and strain analysis of engineering materials and structures, the physical and chemical characteristics of engineering materials such as elastic limits, maximum unit stresses, coefficients of expansion, workability, hardness, tendency to fatigue, resistance to corrosion, engineering adaptability, engineering methods of construction and processing, etc.; or positions involving professional work in several branches of engineering.

**GS-0803 -- Safety Engineering**

This series includes positions that require the performance of professional engineering work to eliminate or control hazardous conditions resulting from human error, equipment and machine operations, which may lead to injury to persons and damage to property. The work requires the application of: (1) advanced mathematical techniques; (2) professional engineering principles, methods, and techniques; (3) safety related elements of the physical sciences, ergonomics, psychology and physiology; and (4) safety principles, standards, practices, and analytical techniques.

**GS-0804 -- Fire Protection Engineering**

This series includes all classes of positions the duties of which are to advise on, administer, supervise, or perform research or other professional and scientific work in the investigation or development of fire prevention projects, the design, construction, inspection, testing, operation, or maintenance of fire fighting or fire prevention apparatus, appliances, devices and systems, or the testing of fire resistant materials.

**GS-0806 -- Materials Engineering**

This series includes professional positions in engineering, or in engineering and physical science, which are concerned primarily with the properties, processing, uses, and in-service behavior of engineering materials, where the work performed and the qualifications required are such that the position is not more characteristic of a series appropriate to some other academic discipline. The work is characterized by the following three qualification requirements: (1) a highly developed knowledge of materials and their properties, processing, uses, and behavior under environmental influences; (2) an understanding of and the ability to utilize advances of the fundamental materials sciences, e.g., as they pertain to the interrelationships of composition, structure, and properties; and (3) knowledge of and ability to apply pertinent engineering principles and practices including considerations such as cost, availability, fabrication, performance, and use.

**GS-0807 -- Landscape Architecture**

This series includes positions the duties of which are to perform or supervise professional work in the planning and design of land areas and concurrent landscape construction and maintenance for integrated developments to meet specific human needs. It involves the analysis of land characteristics, operational requirements, land use intensities, and commensurate land values and includes the efficient correlation of ground and water forms, plant forms, structures, roads, and walks to serve esthetic, functional, economic, and other interrelated purposes. Positions in this series require professional landscape architectural planning and design ability and require knowledge of the allied physical planning fields of architectural and civil engineering, and the biological sciences of agronomy, plant ecology, horticulture, and botany as they affect land development.

**GS-0808 -- Architecture**

This series includes positions the duties of which involve professional architectural work which typically requires: (1) knowledge of architectural principles, theories, concepts, methods, and techniques; (2) a creative and artistic sense; and (3) an understanding and skill to use pertinent aspects of the construction industry, engineering and the physical sciences related to the design and construction of new or the improvement of existing buildings.

**GS-0810 -- Civil Engineering**

This series included professional positions in the field of civil engineering, typically requiring application of general knowledge of the physical sciences and mathematics underlying engineering, and specialized knowledge of (1) mechanics of solids, particularly of soils, (2) hydraulics, (3) theory of structure, (4) strength of materials, (5) engineering geology, and (6) surveying. Positions in this series have responsibility for management, supervision or performance of (1) planning, designing, constructing, and/or maintaining structures and facilities that provide shelter, support transportation systems, and control natural resources; (2) investigating, measuring, surveying and mapping the earth's physical features and phenomena; and (3) research and development activities pertaining to (1) or (2).

**GS-0819 -- Environmental Engineering**

This series includes positions that involve professional engineering work to protect or improve air, land, and water resources in order to provide a clean and healthful environment. Such work requires the application of (1) professional knowledge of the principles, methods, and techniques of engineering concerned with facilities and systems for controlling pollution and protecting quality of resources and the environment, and (2) an understanding of and the ability to utilize pertinent aspects of chemistry, biological sciences, and public health that pertain to the control or elimination of pollutants.

**GS-0830 -- Mechanical Engineering**

This series includes professional positions in the field of mechanical engineering typically requiring the application of thermodynamics, mechanics, and other physical, mathematical and engineering sciences to problems concerned with the production, transmission, measurement, and use of energy, especially heat and mechanical power.

**GS-0840 -- Nuclear Engineering**

This series includes positions that involve professional engineering work which is concerned primarily with the engineering principles and considerations relating to the atomic nucleus and the systems, processes, and materials required for the generation, controlled release, and utilization of nuclear energy. Nuclear engineering work requires the application of professional engineering knowledge in the research, development, design, construction, testing, installation, monitoring, operation and maintenance of nuclear reactors (fission or fusion) and other nuclear systems and immediate auxiliary or ancillary systems and equipment.

**GS-0850 -- Electrical Engineering**

This series includes professional engineering positions which require primarily application of knowledge of (1) the physical and engineering sciences and mathematics, (2) electrical phenomena, and (3) the principles, techniques, and practices of electrical engineering. The work pertains primarily to electrical circuits, circuit elements, equipment, systems, and associated phenomena concerned with electrical energy for purposes such as motive power, heating, illumination, chemical processes, or the production of localized electric or magnetic fields.

**GS-0854 -- Computer Engineering**

This series includes professional engineering positions which require primarily the application of knowledge of (1) fundamentals and principles of professional engineering, (2) computer hardware, systems software, and computer system architecture and integration, and (3) mathematics, including calculus, probability, statistics, discrete structures, and modern algebra. The work pertains primarily to the research, design, development, testing, evaluation, and maintenance of computer hardware and software systems in an integrated manner.

**GS-0855 -- Electronics Engineering**

This series includes professional engineering positions which require primarily application of knowledge of (1) the physical and engineering sciences and mathematics, (2) electronic phenomena, and (3) the principles, techniques, and practices of electronics engineering. The work pertains primarily to electronic circuits, circuit elements, equipment, systems, and associated phenomena concerned with electromagnetic or acoustical wave energy or electrical information for purposes such as communication, computation, sensing, control, measurement, and navigation.

**GS-0858 -- Biomedical Engineering**

This series includes positions that involve professional work in biomedical engineering. The work requires the application of engineering concepts and methodology to investigate problems and phenomena of living systems to advance the understanding of these systems and improve medical practices; to develop materials, instruments, diagnostic and therapeutic devices, and other equipment applicable in the study of life systems and the practice of medicine; and to improve health service delivery systems for communities and within individual institutional components (hospitals, clinics, or other activities). Biomedical engineering work requires in addition to knowledge and skill in engineering

disciplines a background in physiology and anatomy, and a practical facility in specialized subject matter areas such as computer applications, electronics, or mathematics.

## **GS-1500 -- MATHEMATICS, STATISTICS. AND COMPUTER**

### **GS-1510--Actuary**

This series includes positions which involve the application of professional knowledge and experience in actuarial science (including mathematics, statistics, and business, financial, and economic principles) to programs or problems related to annuities, and to life, health, or property risks and contingencies.

### **GS-1515 -- Operations Research**

This series includes positions which involve professional and scientific work requiring the design, development and adaptation of mathematical, statistical, econometric, and other scientific methods and techniques to analyze problems of management and to provide advice and insight about the probable effects of alternative solutions to these problems. The primary requirement of the work is competence in the rigorous methods of scientific inquiry and analysis rather than in the subject matter of the problem.

### **GS-1520 --Mathematics**

This series includes all positions the duties of which are to advise on, administer, supervise, or perform work that requires professional education and training in the field of mathematics. This work includes research on basic mathematical principles, methods, procedures, techniques or relationships; the development of mathematical methods in the solution of a variety of scientific, engineering, economic and military problems, where the exactitude, of the relationships, the rigor and economy of mathematical operations, and the logical necessity of the results are the controlling considerations.

### **GS-1529 -- Mathematical Statistician**

This series includes all classes of positions the primary duties of which are to advise on, administer, or perform professional, work requiring the design, development and adaptation of mathematical methods and techniques to statistical processes, or research in the basic theories and science of statistics.

### **GS-1530 -- Statistician**

This series includes all classes of positions the duties of which are to administer or perform professional work, or to provide professional consultation in the application of statistical theories, techniques and methods to the gathering and/or interpretation of quantified information.

### **GS-1550 --Computer Science**

This series includes professional positions, which primarily involve the application of, or research into, computer science methods and techniques to store, manipulate, transform or present information by means of computer systems. The primary requirements of the work are (1) professional competence in applying the theoretical foundations of computer science, including computer system architecture and system software organization, the representation and transformation of information structure, and the theoretical models for such representations and transformation; (2) specialized knowledge of the design characteristics, limitations, and potential applications of systems having the ability to transform information, and of broad areas of applications of computing which have common structures, processes, and techniques; and (3) knowledge of relevant mathematical and statistical sciences.

## **GS-1700 -- EDUCATION**

### **GS-1701 -- General Education and Training**

This series includes positions that primarily involve professional work in the field of education and training when the work is not more appropriately covered by another professional series in this or any other group. Included are positions where (1) the work has characteristics that may be identified with more than one professional education series with none predominant, (2) the combination of professional knowledge required by the work is not specifically covered by another series, or (3) the work is in a specialized professional field not readily identifiable with other existing series in this or any other group.

**GS-1710 -- Education and Vocational Training**

This series includes positions that require applying full professional knowledge of the theories, principles, and techniques of education and training to instructional and educational administration work in education programs operated by Federal agencies. Some positions also require specialized knowledge of one or more subjects in which the instruction is given.

**GS-1720 -- Education Program**

This series covers professional education positions that involve promoting, coordinating, and improving education policies, programs, standards, activities, and opportunities in accordance with national policies and objectives. Positions in this series primarily involve the performance, supervision, or formulation and implementation of policy concerning education problems and issues. These positions require a professional knowledge of education theories, principles, processes, and practices at early childhood, elementary, secondary, or post secondary levels, or in adult or continuing education. They also require knowledge of the Federal Government's interrelationships with State and local educational agencies or with public and private post secondary institutions.

**GS-1725 -- Public Health Educator**

This series includes positions involved in administering, supervising, or performing research or other professional work in public health education. Positions are concerned with providing leadership, advice, staff assistance, and consultation on health education programs. This includes analysis of behavioral and other situational factors affecting good health practices of individuals, groups, and communities; the planning of health education programs designed to meet the needs of particular individuals, groups, or communities; the selection of specialized educational methods, the preparation of educational materials, and the carrying out of such education activities which will best serve to stimulate the interest of individuals and groups in scientific discoveries affecting health in the application of health principles to daily living. Public health educators consult with State and local health departments, and with national and local voluntary agencies; organize community groups to study health problems and methods of disease prevention; and assist in coordinating mass health programs and in evaluating and improving health education programs.

**GS-1730 -- Education Research**

This series includes positions that primarily involve professional education research work. This includes the performance, leadership, management, or supervision of scientific research to solve educational problems or to develop new knowledge bearing on educational processes. The paramount requirements for this work are knowledge of and skill in applying research principles and methods and a broad and thorough knowledge of one or more scientific fields or interdisciplinary areas related to the education research work being performed.

**GS-1 740 -- Education Services**

This series includes professional positions the duties of which are to administer, supervise, promote, conduct, or evaluate programs and activities designed to provide individualized career-related or self-development education plans. The work requires knowledge of education theories, principles, procedures, and practices of secondary, adult, or continuing education. Some positions require skill in counseling students or enrollees to establish educational and occupational objectives.

**GS-1750 -- Instructional Systems**

This series includes professional positions the duties of which are to administer, supervise, advise on, design, develop, or provide educational or training services in formal education or training programs. The work requires knowledge of learning theory and the principles, methods, practices and techniques of one or more specialties of the instructional systems field. The work may require knowledge of one or more subjects or occupations in which educational or training instruction is provided.



## PROCUREMENT OF HEALTH AND HUMAN SERVICES CHAPTER 103F, HRS

### A. Introduction

The procurement of Health and Human Services (HHS) is sometimes referred to as 103F procurement. 103F refers to the section of the law that establishes how HHS purchases are made. HHS purchased by the DOE are intended to help communities, families, or individuals maintain or improve their health or social well-being. HHS may include services for assessment, treatment, diagnosis, prevention or education.

On the whole, HHS are services provided directly to an individual. Some specific examples of HHS are: psychiatric services, specialized nursing services, and most IEP related services.

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### B. Assistance

Given the specialized and unique nature of HHS, ASO's are advised to seek assistance from School Based Behavioral Health (SBBH) personnel, District Personnel, State Offices, or the PCB, to plan and coordinate HHS purchases.

For all Procurement and Contracting of HHS (except for small purchases), ASO's must contact the PCB for assistance by submitting Form 18, Request for Procurement Services.

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### C. CPO Exemptions

(Reference: §103F-101, HRS, §3-141-503, HAR)

Specific Health & Human services are available from multiple sources, but purchase by competitive means is either not practicable or not advantageous to the DOE. In those events, the ASO may request CPO exemption from the procurement law. ASO's must submit a request for exemption by providing a detailed explanation and justification for the request. Upon approval of the request, the HHS purchase can be made without subjecting the purchase to a competitive selection method; however a formal contract may still be required.

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### D. Small Purchase of Services – POS

(Reference: §103F-405, HRS, §3-146, HAR)

This method may be used if the purchase of HHS is not anticipated to exceed \$25,000 during the fiscal year. Refer to the "PROCUREMENT OF SERVICES, Chapter 103D, HRS" section of these guidelines for procedures and detailed information.

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## **E. Purchase of Services (POS) of \$25,000 or more**

If the purchase of HHS is anticipated to be \$25,000 or more during the fiscal year, one of the methods of purchasing HHS listed below shall be used:

1. **Competitive POS:** (Reference: §103F-402, HRS, §3-143, HAR)  
This is the primary method of procurement of HHS, and involves issuing a Request for Proposals (RFP). Interested organizations submit Proposals based on the requirements of the RFP. The Proposals are evaluated against the established RFP criteria.  
  
RFPs are solicited annually, approximately 8 months in advance of start of services. This is in accordance with the timeline established by the State Procurement Office.
2. **Restrictive POS:** (Reference: §103F-403, HRS, §3-144, HAR)  
This method of procurement is used when there is a need for a service in a geographic area available from only one provider, the need for a service requires a unique cultural approach designed for a limited target group and is available from only one provider or only one provider satisfies limitations imposed by funding source.
3. **Treatment POS:** (Reference: §103F-404, HRS, §3-145, HAR)  
This method is used when health and social work professional services are needed from time to time, and cannot be anticipated accurately on an annual or biennial basis or delaying treatment until the procurement process and contract formation can be completed would render the problem needing treatment worse than at the time of diagnosis or assessment. An example of these services are for medical treatment, counseling, physical, occupational and other therapeutic services, and referral and case management for those services.
4. **Crisis POS:** (Reference: §103F-406, HRS, §3-147, HAR)  
This method of purchasing HHS are needed immediately in situations seriously threatening life, health or safety; are not already available, and needed immediately. To qualify as a crisis POS, both of the following must be met:
  - a. The crisis results from domestic violence, physical or mental illness or injury, homelessness, etc. and poses a serious threat to life, health and safety, and
  - b. The crisis generates an immediate and serious need for health or human services that cannot be met by any other purchasing agency that provides health and human services, or under other provisions of Chapter 103F.

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## **F. Steps and Responsibilities**

There are a number of steps to complete a HHS procurement and to complete a contract. Please note that the steps are not specific to any one method of procurement, but an overview to the general process of initiating a HHS procurement, soliciting and evaluating proposals and completing a contract.

**Procurement and Contracts Branch  
Summary of the Tasks and Responsibilities  
Of Health and Human Services (103F) Procurement and Contracting**

<b><u>Steps(if applicable/as required)</u></b>	<b><u>Responsibility Of:</u></b>
1. Identify the need and develop the goals or objectives for services	School/Program
2. Determine whether the need can be met utilizing internal DOE resources, or if services must be purchased externally	School/Program
3. If services are to be purchased externally, determine the scope of services, estimated cost and period of time services are required, and identify source of funds for the purchase	School/Program
4. If the purchase is not anticipated to exceed \$25,000 during the fiscal year, refer to the small purchase of services section of these guidelines for further instructions	School/Program
5. If the purchase of HHS is anticipated to be \$25,000 or more during the fiscal year, complete the request for services (Form 18) and submit the completed form to PCB	PCB
6. Review the request and recommend the best method of procurement	PCB
7. Assure that goals or objectives of the project are well defined	PCB
8. Develop the Evaluation Criteria upon which all proposals will be judged	School/Program
9. Incorporate goals or objectives of the project and terms/conditions into an RFP document, all in accordance with applicable provisions of procurement HRS and HAR	PCB
10. Post a legal notice in accordance with requirements of SPO's PNS website	PCB
11. Issue PO if legal notice is required to be published in the newspaper	School/Program
12. Receive inquires related to the procurement and serving as a liaison between the DOE and interested Applicants	PCB
13. Receive all RFP documents, and once administrative requirements are verified, transfer Proposals to School/Program	PCB
14. Convene an Evaluation Committee to evaluate all proposals received in accordance with the Evaluation Criteria	School/Program
15. Select Contractor	School/Program
16. Contract Award and Approval which may include: award of contract, encumber funds, obtain necessary Vendor certificates, obtain Attorney General approval, obtain Superintendent's signature, distribute copies of the contract to all parties	PCB
17. Provide representation and justification of the purchase for Board of Education contract review	School/Program
18. Conduct a debriefing of non-selected Applicants	School/Program
19. Address protests	School/Program
20. Negotiate contract terms	School/Program
21. Contract administration, which includes monitoring the Contractor's work, receipt of services, and payment for services received	School/Program
22. Negotiate contract changes and provide information to PCB	School/Program
23. Issue official notices such as contract modifications and terminations	PCB

## **CONTRACTING AND ENCUMBRANCE PROCEDURES FOR ALL TYPES OF PROCUREMENTS (103D and 103F)**

### **A. Retroactive Agreements**

Contracts must be fully executed (signed by all parties) prior to the commencement of services. Retroactive agreements (contracts executed after services begin) are not allowed.

Purchase orders (POs) for payment where a contract has been fully executed may be issued after the contract is executed.

In certain instances (e.g., services cost less than \$5,000), a PO is issued in lieu of the contract. In these cases, the P.O. must be issued prior to the commencement of services.

Schools or Offices entering into retroactive contracts risk payment rejection. Likewise, Contractors risk non-payment if services are rendered prior to execution of a contract or issuance of a PO.

### **B. Total Contract Cost (Compensation)**

Compensation for services rendered must include the total cost of the project, including but not limited to: all labor and services; travel and associated costs such as car rental, parking fees, meals, etc.; materials and equipment (as applicable), overhead, profit, all applicable taxes, and any other incidental and operational expenses.

### **C. Reimbursement and Travel Costs**

Independent Contractors **may not** claim “employee reimbursements” or “direct payments” through DOE’s Vendor Payment system. Employee reimbursements include claims for mileage, per diem, airfare and air coupons, or any other out-of-pocket or incidental expenses.

Independent Contractors are expected to incorporate these costs into the total compensation package of the contract; these costs represent business expenses and are included in the “cost of doing business” with the DOE. The DOE will pay for these types of expenses provided these costs are included in the total compensation package of the contract.

In accordance with [Form AG-008, General Conditions](#), Paragraph 16. Costs and Expenses, issued by the Attorney General’s Office, travel related costs to be included in the Contract shall be based on the following:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable employee daily authorized rates for inter-island or out-of-state travel unless authorized in writing prior to start of services by the purchasing authority.

**D. Contracting Authority and Contract Encumbrances**

The following table provides a simplified explanation of how services are contracted and funds encumbered. This table applies to all types of contracts for services awarded via §103D, HRS and §103F, HRS (small purchase, exempt, sole source/restrictive, professional services/treatment, competitive via IFB or RFP).

- Note:
1. Specific types of services require civil service exemption; refer to “Civil Service Exemption” in the “Outsourcing of Services” section of these Guidelines for further information regarding the applicability of this exemption.
  2. Emergency/Crisis type procurements are rare, shall be handled on a case-by-case basis, and may not be subject to the requirements stated herein.

**QUICK REFERENCE MATRIX – CONTRACTING**

<b>Contract Amount</b>	<b>Type of Agreement</b>	<b>Approving Authority as Delegated</b>	<b>Method of Encumbrance</b>
Less than \$5,000	Contract not required; however, Scope of Work, Payment Schedule, & Contract Period must be <u>clearly</u> stated on PO (see No. 1 below)	Refer to Delegation of Authority	S/O issues PO (see No. 4 below)
\$5,000 - \$24,999	S/O issues “short form” (informal) contract (see No. 2 below)	Refer to Delegation of Authority	S/O issues PO (see No. 4 below)
\$25,000 and over	PCB issues formal contract (see No. 3 below)	Superintendent	PCB issues Contract Encumbrance (see No. 5 below)
Any Amount	Memorandum of Agreement Memorandum of Understanding (see No. 3 below)	Superintendent	PCB issues Contract Encumbrance (see No. 5 below)

**1. Less than \$5,000**

Agreements less than \$5,000 may be done via PO. The PO must be issued prior to commencement of services. The PO must include (attach additional pages if necessary):

- a) a complete description of the Scope of Work,
- b) the period during which the services will be performed, and
- c) a Payment Schedule.

Civil Service Exemption Certificate, if applicable, must be obtained and attached to the PO at time of payment. For POs less than \$1,000, the ASO is authorized to certify the Civil Service Exemption Certificate.

## 2. **\$5,000 to \$24,999**

Agreements \$5,000 and up to \$25,000 shall be done via a [DOE Form 10C, Small Purchase Contract](#).

### Reminders:

- The small purchase contract must be executed prior to commencement of services.
- ASO's have been delegated authority to enter into contracts for services less than \$25,000; refer to "Delegation of Authority" for further information regarding who can sign the contract on behalf of the School or Office. An authorized representative of the Contractor must sign the contract on behalf of the Contractor.
- Small purchase contracts for services do not require AG or BOE review and approval.
- Civil Service Exemption Certificate, if applicable, must be obtained and attached to contract.
- 1) Department of Taxation "Tax Clearance Certificate", 2) Department of Labor and Industrial Relations "Certificate of Compliance" and 3) Department of Commerce and Consumer Affairs "Certificate of Good Standing" are not required for Small Purchase contracts.

### Contract Amendment

Should contract changes be required, the School or Office must complete a form 10-E, Contract Modification. Any amendment to a small purchase contract:

- Requires prior approval of the ASO,
- Must be done in writing and upon mutual agreement of the parties, prior to commencement of services; retroactive amendments and modifications are not allowed,
- Are limited to changes within the general scope of the original contract, and
- May not be made if the amendments result in the total contract price (original contract and any amendments) will exceed \$25,000.

## 3. **\$25,000 or more**

Agreements totaling \$25,000 or more shall be prepared and processed for approval by PCB. The School or Office shall forward to PCB the following documents for contract preparation. Based on documentation provided, PCB shall prepare a contract and obtain approvals of the Attorney General's Office, the Contractor, the Board of Education (if required) and the Superintendent:

- [DOE Form 18, Request for Procurement Services](#)
- Scope of Work
- Compensation and Payment Schedule
- Special Terms and Conditions, if any
- Civil Service Exemption Certificate, if applicable

### Contract Amendment

Should contract changes be required, the School or Office shall contact PCB for assistance. Any amendment to a contract:

- Must be done in writing and upon mutual agreement of the parties, prior to commencement of services; retroactive amendments and modifications are not allowed, and
- Are limited to changes within the general scope of the original contract.

#### 4. **Encumbrances less than \$25,000:**

- School or Office issues PO
- **Exempt Procurements:** Whenever ASO's purchase services that are exempt from §103D, HRS, POs must include the following information:
  - a. In the Terms Information screen of the PO, type the following:
    - HRS exemptions: *"Exempt from Chapter 103D, HRS, pursuant to §103D-102."*
    - HAR exemptions: *"Exempt from Chapter 103D, HRS, pursuant to section 3-120-4(b), Hawaii Administrative Rules"*
  - b. In the Approval Number field of the PO, type the exact exemption number as listed above.

#### 5. **Encumbrances \$25,000 or more:**

- All contract encumbrances and revisions are processed by PCB.
- School or Office shall complete [DOE Form C-41, Contract Input Form](#); form must be submitted to PCB for contract encumbrance.
- Any subsequent changes (increases/decreases/cancellations) to the contract amount must also be reflected on the contract encumbrance via completion and submission of [DOE Form C-41, Contract Input Form](#).
- Note: in the majority of cases and unlike POs, contract encumbrances do not lapse.

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#### E. **Cautionary Reminder**

##### **IMPORTANT**

In the event a purchase of goods or services under the procurements explained in detail above requires a contract, the ASO is cautioned against signing any agreement (e.g., leasing, licensing, or credit agreements) initiated by an outside entity (e.g., the vendor). These agreements sometimes include terms that conflict with the General Conditions issued by the Attorney General's Office. These conflicting terms may expose the DOE in areas including but not limited to liability or indemnification, funding obligations, and governing law. ASO's who sign agreements including such conflicting language without prior approval may unknowingly expose the DOE to potential damage. In these cases, administrators risk personal liability by exceeding their contracting authority. This caution applies to agreements arising from the following procurements where PCB assistance was not required:

1. exempt
2. price list / vendor list
3. small purchase
4. sole source

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#### F. **Board of Education Policy**

All procurement and contracting activities must comply with applicable BOE policies.

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**G. Required Background Check**

Section 846-43, HRS requires the DOE to obtain information on the backgrounds of persons who are employed or seeking employment in positions that place them in close proximity to children. This requirement also applies to Contractors who enter into contracts with the DOE. State, District, Complex, and school level administrators who initiate contracts are responsible for following the procedures established by the OHR when performance of contracted services place the Contractor in close proximity to children.



## NON-STANDARD AGREEMENTS

### A. Overview

In addition to contracts for goods and services required by the DOE as stated herein, there are other activities that require agreements to be completed. These activities and agreements whether initiated by the DOE or an external organization, are still regulated by laws and rules. These instances may include:

- transactions between the DOE and other government entities,
- receipt of funds by the DOE, including payment for services rendered, educational contributions, compensation for the use of equipment or facilities, and concessions,
- use agreements including leases, rentals, licensing and credit agreements
- legal issues such as intellectual property rights, liability, applicability of Hawaii laws in event of litigation

Occasionally, Vendors may also require an Agreement to be completed in conjunction with a purchase. For example, these agreements may be a lease agreement, licensing agreement, use agreement, or a credit agreement. School and Program Administrators should exercise caution if such an agreement is presented for signature.

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### B. Assistance

ASO's should first carefully review the agreement utilizing the Superintendents "*Authority to Contract*" memo which contains a list and directions for resolving "showstopper" contracting language. For further assistance, ASO's may contact PCB via telephone or email for assistance with non-standard agreements.

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### C. Approval and Authority

Non-standard agreements are sometimes subject to review and approval by the Attorney General's Office. These agreements sometimes include terms that conflict with the General Conditions issued by the Attorney General's Office. These conflicting terms may expose the DOE in areas including but not limited to liability or indemnification, funding obligations, and governing law. Administrators who sign agreements containing such conflicting language without prior approval may unknowingly expose the DOE to potential damage, and risk personal liability by exceeding their contracting authority.

In addition, if the authority to enter into these agreements has not been delegated by the CPO, the Superintendent is the **only** authority who may approve and sign these agreements.

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## D. RESPONSIBILITIES

### The ASO is responsible for:

- identifying the need and developing the goals or objectives for the services to be purchased,
- identifying the source of funds for the purchase,
- selection of a Contractor,
- reviewing and understanding the agreement,
- negotiating the terms of the Contract with the Contractor, including the services to be rendered, cost, quality, and time of performance (including removal of any undesirable or “showstopper” language),
- contract administration, which includes monitoring the Contractor’s work, receipt of services, and payment for services received.

### PCB is responsible for (as applicable):

- assuring that goals or objectives of the project are well defined,
- incorporating goals or objectives of the project and terms/conditions into the MOA
- fielding all inquiries related to the procurement and serving as a liaison between the DOE and the Contractor,
- award of contract which includes encumbrance of funds; obtaining necessary certificates, approvals and signatures; and final distribution to all parties of the contract.

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## E. PURCHASES FROM A GOVERNMENT AGENCY

(Reference: §103D-102(b)(1), HRS, §3-128-7, HAR)

A government agency includes other departments of the state of Hawaii (University of Hawaii, Department of Health, etc.), a County, another State, or the federal government.

Purchases made by the DOE from any government entity are exempt by law (Chapter 103D and 103F), and are not subject to open competition. Government entities need not produce tax clearance or civil service exemption certificates.

A **Memorandum of Agreement (MOA)** is the contract form used for these purchases. Purchases from government entities are exempt purchases under the law, and are not subject to open competition, tax clearance, and civil service exemption certification requirements.

When contracting with another government agency via a Memorandum of Agreement (MOA), ASO’s should request PCB assistance by submitting a [DOE Form 18, Request for Procurement Services](#).

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## F. NO COST AGREEMENTS

A **Memorandum of Understanding (MOU)** is an agreement between the DOE and another party that does not involve any form of compensation, whether financial or intellectual.

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## **G. AGREEMENTS FOR WORK PERFORMED BY THE DOE**

Occasionally, the DOE may be paid for services performed for another organization. Usually, the contract is not provided by the DOE.

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## **H. CONCESSIONS**

(Reference: §102, HRS)

The complete Hawaii Revised Statutes governing concessions can be found at the following link:

[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0102/HRS\\_0102-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0102/HRS_0102-.htm)

A "concession" is defined as "the grant to a person of the privilege to conduct operations involving the sale of goods, wares, merchandise, or services to the general ...in or on buildings or land under the jurisdiction of any government agency...and use, for compensation, space on public property to display advertising, or to conduct operations for communications or telecommunications purposes."

Examples of concessions are 1) vending machines that sell soft drinks and 2) communication towers for cellular telephone companies.

Chapter 102, HRS states "except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of ... except under contract awarded after public notice for sealed bids in the manner provided by law..."

ASO's must contact PCB for assistance in this area.

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## FEDERAL GRANT FUNDS

### A. INTRODUCTION

(Reference: §103D-202, HRS, §3-122-16.30, HAR)

Federal funds received by ASO's through grants ARE subject to the State procurement law as well as DOE contracting requirements.

Procurement law allows for an exception to the above, 1) where time or economic situations preclude the use of other source selection methods, 2) with the approval of the ASO, and 3) in accordance with the RFI requirements described in the following section.

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### B. REQUEST FOR INTEREST (RFI)

A Request for Interest (RFI) may be issued to select provider(s) of services funded through federal grant(s) in those instances where the grant requirement or application does not already identify the provider(s). The RFI is issued in the form of a public notice. The notice must be posted by PCB.

The notice must contain information including but not limited to the following:

- 1) Identification (grant application title or funding source) and the purpose of the federal funding
- 2) A statement that the purpose of the request is to select a provider or providers for federal grants;
- 3) The target population or clients to be served;
- 4) A description of the good, service, or construction;
- 5) The evaluation criteria and their relative weights for selecting a provider or providers;
- 6) The format, if any, and procedure for submitting responses to the request;
- 7) The deadline for submittal of written responses to the request which shall be a minimum of five (5) working days from the date of public notice;
- 8) Where and when the solicitation will be available and a phone number or e-mail address where interested parties may request a copy;
- 9) A statement that the purchasing agency reserves the right to incorporate or not incorporate in the state's application for federal grants any recommendations presented in response to the request;
- 10) A statement that neither the purchasing agency nor the interested provider has any obligation under the request; and
- 11) Other appropriate information, e.g., a notice of intention to offer pursuant to section 3-122-111 or the time, date, and location of the pre-bid or pre-proposal conference.

The selection of provider(s) shall be based on the criteria established in the Request for Interest. A notice of the selected provider(s) shall be posted by PCB, or all respondents shall be notified in writing by PCB. A copy of the solicitation shall be made available for public inspection and pickup at the School or Office issuing the solicitation.

# VIOLATIONS

## A. OVERVIEW

The Superintendent of Education has delegated procurement and contracting authority to specific ASOs to enter into agreements on the DOE's behalf. When ASOs exceed their authority and/or fail to adhere to established DOE policies and procedures, a violation is committed. The HAR provides that violations are normally inadvertent and the result of administrative error, lack of knowledge, or simple carelessness and may be avoided through the implementation of better procedures, employee training, and progressive discipline. DOE procedures and the HAR provide for after-the-fact approval to render payment unless the nature of the situation indicates or requires otherwise, in which case ASOs may risk personal liability.

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## B. CATEGORIES OF VIOLATIONS

Violations fall into the following categories:

1. **Procurement Violations**, penalties and corrective actions are described in §3-131-1 through 3-131-6, HAR. A procurement violation specifically describes purchases inconsistent with or contrary to these existing law, rules, or procedures.
  2. **Contracting Violations** describe agreements in which ASOs have exceeded their authority as delegated by the Superintendent, or which are contrary to HRS, HAR or established DOE contracting policies and procedures.
  3. **Policy/Procedure Violations** are those occurrences that are contrary to DOE policies and procedures, and require explanation and/or corrective action.
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## C. VIOLATION PROCEDURE

When a violation is committed, the ASO must complete *DOE Form 16, Violation Analysis* and the Superintendent's approval shall be required prior to further payment processing.

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# PROCUREMENT AND CONTRACTING FORMS

**The following forms are attached to this section:**

<u>DOE Form No.</u>	<u>Form Title</u>
4	Request for Civil Service Exemption
18	Request for Procurement and Contract Branch Services
10A	Small Purchase Quotations
10B	Record of Small Purchase
10C	Contract for Small Purchase of Goods or Services
10D	Supplemental Agreement for Small Purchase
10E	Contract Modification for Small Purchase
5	Request for Exception from Price List
6	Exception from SPO Travel Price List
12	Vendor Evaluation Form
C41	Funds Certification and Contract Encumbrance
16	Approval to Render Payment / Violation Form

**The following Attachments issued by the State's Attorney General's Office are also included in this section:**

- Pointers for Drafting Terms and Conditions
  - Scope of Services
  - Time of Performance
  - Compensation and Payment Schedule
  - Special Conditions
- General Conditions

*Note: Fill-able forms are also available from the Procurement Icon on Lotus Notes.*



**STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P. O. BOX 2360  
HONOLULU, HAWAII 96804**

**REQUEST FOR EXEMPTION  
FROM CIVIL SERVICE**

**PART I ABC Test: Determine if a Personal Services Contract (OHR), or a Procurement Contract (PCB) is appropriate:**

[For the complete test and instructions, refer to the "Introduction to Services" section of these guidelines]

- A.** Is the Contractor free from control or direction? (i.e., does the Contractor control the workload, furnish resources used in the job, control his/her working hours, supervise his/her own work?)
- B.** Is the service performed outside [your] usual course of business or place of business? (i.e., does the Contractor control where the work is done?)
- C.** Is the Contractor customarily engaged in an independent occupation, trade, profession, or business of the same nature as that involved in the contract of service? (i.e., does the Contractor customarily operate as an independent contractor providing similar services?)

Yes No

ALL Yes Any No

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See Part II OHR

If **ALL** yield a "Yes", the Contractor is an independent contractor, and a Procurement Contract must be completed. Continue to Part II. If "No" to **ANY** question, complete a Personal Services Contract (with an individual) through OHR, consult the Temporary Contract Employee (TCE) handbook issued by OHR for details and instructions.

**PART II 4 Point Test: Determine if a Certificate of Exemption from Civil Service is required for a Procurement Contract:**

[For the complete test & instructions, refer to the "Introduction to Services" section of these guidelines]

1. Services will be provided or performed in State facilities
2. State equipment and materials will be used
3. Work of the firm's agents or employees will be under the direction and supervision of a State employee
4. Services are of a continuing nature and need, and would normally be performed by a State employee.

Yes No

ALL Yes Any No

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See Part III Part IV

In general, Procurement contracts (with independent contractors) do not engage an employer/employee relationship and are not subject to review for exemption from civil service. The 4 Point Test above will determine those instances when review and approval for exemption IS required.

Name of School or Office	Contractor's Name & Address:
Services required (From date To date):	Estimated total cost of services:

Provide **complete** description of services (attach additional sheets if necessary):

**PART III CIVIL SERVICE EXEMPTION REQUIRED**

(check here) By my signature, I certify that **ALL** answers in Part I AND Part II were "Yes". Exemption from civil service **IS** required.

**Directions:** If services total less than \$1,000, Administrator signs the Certification of Exemption from Civil Service. If services total \$1,000 or more, fax (586-3439) this form to Classified Personnel (CPM) for review & approval. Upon approval, CPM will forward the signed Certificate of Exemption to the Requestor. If less than \$25,000 attach the Certificate of Exemption to the first payment ATP. For \$25,000 & over, attach the Certificate of Exemption to Form 18, Request for Procurement Services, and submit to PCB.

**PART IV CIVIL SERVICE EXEMPTION NOT REQUIRED**

(check here) By my signature, I certify **all** answers in Part I were "Yes", and **At least one** answer in Part II was "No". Exemption **IS NOT** required.

**Directions:** If services total less than \$25,000, attach this completed form to first payment ATP. If services total \$25,000 or more, attach this completed form to Form 18, Request for Procurement Services, and submit to PCB.

Name/Title of Administrator	Signature	Date
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**STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
REQUEST FOR PROCUREMENT AND/OR CONTRACTING SERVICES**

*Requests for assistance in completing this form may be directed to the DOE Procurement and Contracts Branch (PCB) at (808) 675-0130.*

To: DOE Procurement and Contracts Branch (PCB), Office of Business Services					
By signing this form, I hereby acknowledge that I am responsible for:					
<ul style="list-style-type: none"> <li>• The terms, conditions quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract.</li> <li>• Acting as the Contract Administrator (CA) for the requested procurement. <b>My responsibilities as the Contract Administrator include:</b> monitoring the Contractor's work, documenting that Contractor maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the Contractor, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered.</li> <li>• Contacting PCB as soon as possible in the event the following are required: change in scope, change in the performance period, increase or decrease in total compensation, changes in any other contract terms.</li> <li>• Contacting the Attorney General's office in the event I am unable to resolve disputes and require legal enforcement of contract terms or early termination of the contract for breach or notwithstanding mutual agreement.</li> </ul>					
1	Assistance required in procuring: <input type="checkbox"/> Goods <input type="checkbox"/> Services <input type="checkbox"/> Construction <input type="checkbox"/> Health & Human Services				
2	If this is an exempt procurement, a sole source procurement, or restrictive procurement, complete Section 2 below:				
<input type="checkbox"/> HRS or HAR Exemption no. _____; <input type="checkbox"/> Exemption request form attached; OR <input type="checkbox"/> Other exemption		<input type="checkbox"/> Purchase from another Government entity (UH, any County, DOH, another State, etc)		<input type="checkbox"/> Sole source or restrictive purchase request form attached	
If any item checked in this section 2, identify the Vendor or Provider: _____					
3	Title or Brief Description of purchase (1 or 2 sentences):				
4	When are services required OR goods/construction due? (specify dates as applicable)	Services to begin:		Services end; goods delivered; construction completed:	
5	Address Information School/Program: Attention to: Complete Address: Phone/Fax Numbers:	Goods delivered to or Services performed at:		Billing address (only if different):	
6	Point of Contact at School/Office: (if different from Contract Administrator)	Name:		Office/cellular telephone numbers:	
7	Total Estimated Project Cost \$ _____	Funding Source	\$ Amount or %	Org ID	Prog ID
<input type="checkbox"/> Total funds available now OR <input type="checkbox"/> Funds will be available on the following schedule:		<input type="checkbox"/> General			
		<input type="checkbox"/> Federal			
		<input type="checkbox"/> Grant/Grant in Aid*			
		<input type="checkbox"/> Special/Other*			
*Identify:					
8	Specific issues or concerns related to this project:				
9	Attachments:	<input type="checkbox"/> Complete description/specification of the goods or services to be procured and a list of potential bidders or proposers. (Manufacturer's published brochures or specification literature may be submitted). <input type="checkbox"/> If applicable, Civil Service Exemption Certificate, grant information, or any other approval forms.			
From CA:	Name of School/Office	Administrator's Name		Administrator's Title	
	Office/cellular telephone numbers:	Administrator's Signature		Date	



Submit in Duplicate

**DEPARTMENT OF EDUCATION  
WRITTEN QUOTATIONS  
FOR SMALL PURCHASE**

Quotation No. \_\_\_\_\_ Date \_\_\_\_\_

Company Name \_\_\_\_\_ Phone/Fax No. \_\_\_\_\_ / \_\_\_\_\_

Address \_\_\_\_\_ City/State/Zip Code \_\_\_\_\_

Vendor's Representative \_\_\_\_\_

The following quotation is submitted for the good/service/construction  
[ ] as described below OR [ ] see attached specifications:

Deadline for submission of quotations is established at **Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_

Quotations shall be submitted to:

School/Program \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

☼ ☼ ☼ **VENDOR TO COMPLETE THE SECTION BELOW** ☼ ☼ ☼

Item No.	Description of item(s)	Quantity	Unit Price	TOTAL PRICE

Additional information or terms (i.e. delivery time, warranty period, etc.):

Shipping/ Handling	
State Tax	
TOTAL SUM PRICE	

Price(s) shall remain firm for \_\_\_\_\_ days.

Vendor Representative \_\_\_\_\_

Signature

\_\_\_\_\_

Date

Title \_\_\_\_\_

**DEPARTMENT OF EDUCATION  
RECORD OF SMALL PURCHASE**

School/Program \_\_\_\_\_ P.O. No. \_\_\_\_\_

Date \_\_\_\_\_ Project/Requisition/Work Order No. \_\_\_\_\_

**QUOTATIONS RECEIVED:**

Part A. Description of good/service/construction:

Part B. Quotations Solicited:

	<u>Vendor Name</u>	<u>Representative</u>	<u>Phone No.</u>	<u>Date of Quote</u>	<u>Amount Quoted</u>
1.					
2.					
3.					
4.					
5.					

Part C. Justification for inability to obtain minimum three quotations, if applicable:

Part D. Justification for award made to other than lowest quotation (not applicable for construction above \$5,000 as award shall be to lowest quotation):

Part E. Affidavit

I have no personal, business or any other relationship that will influence my decision in the evaluation, review or selection of the awarded vendor.

I have no personal, business or any other relationship that will influence my decision in the evaluation, review or selection of the awarded vendor.

\_\_\_\_\_  
Print name of employee soliciting quotations

\_\_\_\_\_  
Print name of Administrator

\_\_\_\_\_  
Signature of employee soliciting quotations

\_\_\_\_\_  
Administrator's Signature

Date \_\_\_\_\_

Date \_\_\_\_\_

**A copy of this record, which serves as supporting documentation, must be attached to the Purchase Order.**

**DEPARTMENT OF EDUCATION  
 CONTRACT FOR GOODS OR SERVICES  
 BASED ON  
 SMALL PURCHASE PROCUREMENT**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, 20\_\_\_\_\_, between the DEPARTMENT OF EDUCATION, State of Hawaii (hereinafter "DOE"), by its \_\_\_\_\_ (insert title of person signing for DOE) "PROCUREMENT OFFICER"), whose address is \_\_\_\_\_ (insert name & address of School or Office)  
 \_\_\_\_\_  
 and \_\_\_\_\_ hereinafter (insert name of company/person)  
 "CONTRACTOR"), a \_\_\_\_\_ (insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)  
 under the laws of the State of \_\_\_\_\_, whose business address and taxpayer identification number are as follows: \_\_\_\_\_ (insert physical business address(not PO box) & taxpayer identification number)

**RECITALS**

- A. The DOE is in need of the goods or services as described in this Contract and its attachments. The CONTRACTOR is agreeable to providing the goods or services.
- B. This Contract is for a small purchase procurement of goods or services as set forth in section 103D-305, Hawaii Revised Statutes (HRS), and subchapter 8, chapter 3-122, Hawaii Administrative Rules (HAR).
- C. Funding for this Contract is available pursuant to: \_\_\_\_\_ (Insert Program ID/Organization ID Numbers)  
 in the following amounts                                      State \$ \_\_\_\_\_  
    Federal \$ \_\_\_\_\_
- D. The following attachments are made part of this contract, as applicable:  
 Special Conditions     Certificate of Insurance     Certificate of Exemption from Civil Service
- E. General Conditions, Form AG-008 Rev. 4/15/2009 (or its latest revision) is included by reference and available if requested.

**NOW, THEREFORE**, in consideration of the promises contained in this Contract, the DOE and the CONTRACTOR agree as follows:

1. Scope of Work. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the DOE, provide the following goods or services (attach additional pages if necessary):

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2. Compensation. The CONTRACTOR shall be compensated in a total amount not to exceed:

\_\_\_\_\_ (example: One Thousand and no/100)  
DOLLARS (\$\_\_\_\_\_). Contract price shall include all services, materials (as applicable), travel expenses, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred by the Contractor in the performance of its obligations hereunder. The contract price shall be the all-inclusive cost to the DOE and no other charges will be honored.

3. Payment Schedule. The CONTRACTOR shall be compensated in accordance with the following schedule:

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Pursuant to §103-10, HRS, any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services.

4. Time of Performance. The contract shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_. No extension(s) of time shall be allowed under any contract for services based on Small Purchase procurement if said extension will result in a total contract amount of \$25,000.00 or more.
5. Notices. Any written notice required to be given by any party to this Contract shall be (a) delivered personally, or (b) sent by delivery service, postage prepaid. Notice required to be given to the Procurement Officer listed above or the CONTRACTOR shall be sent to the respective address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the DOE in writing of any change of address.

6. Standards of Conduct Declaration. The CONTRACTOR does hereby certify that this contract complies with all requirements of chapter 84, HRS – “Standards of Conduct” commonly referred to as the Code of Ethics. Contractor does further agree that this contract is voidable if the contract was entered into in violation of any provision of chapter 84, HRS. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.
  
7. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Contract. The CONTRACTOR shall not engage in any activity or employment that would be adverse to or in conflict with the interest of the STATE.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be the effective as of the date first above written:

**STATE – DEPARTMENT OF EDUCATION**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Date \_\_\_\_\_

**CONTRACTOR –**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**DEPARTMENT OF EDUCATION  
OFFICE OF FISCAL SERVICES**

TO: Chief Procurement Officer (Fax: 675-0133) Date \_\_\_\_\_

FROM: \_\_\_\_\_  
Name of School or Office Telephone No. Fax No.  
Print Name \_\_\_\_\_ Signature \_\_\_\_\_

SUBJECT: **REQUEST EXCEPTION FROM PURCHASING FROM PRICE LIST (PL)**

Pursuant to §3-121-6, HAR, exception is requested from the following price list:

SPO PL# \_\_\_\_\_  DOE PL# \_\_\_\_\_  
(Items must be from the same Price List, otherwise use another form)

1. PL Item#/Stock#: \_\_\_\_\_ Description: \_\_\_\_\_  
Unit Price: \_\_\_\_\_

**Proposed Purchase:**

Vendor Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Product Brand: \_\_\_\_\_

Product No/Model: \_\_\_\_\_ Unit Price: \_\_\_\_\_ Total Amount this Purchase: \_\_\_\_\_

Justification (why PL item cannot meet requester's needs): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. PL Item#/Stock#: \_\_\_\_\_ Description: \_\_\_\_\_  
Unit Price: \_\_\_\_\_

**Proposed Purchase:**

Vendor Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Product Brand: \_\_\_\_\_

Product No/Model: \_\_\_\_\_ Unit Price: \_\_\_\_\_ Total Amount this Purchase: \_\_\_\_\_

Justification (why PL item cannot meet requester's needs): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FOR PROCUREMENT STAFF USE ONLY:**

Recommendation: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Procurement Staff

Approved  Disapproved

\_\_\_\_\_  
Procurement Administrator Date

DOE Ref. No. \_\_\_\_\_

**DEPARTMENT OF EDUCATION  
OFFICE OF FISCAL SERVICES**

TO: Chief Procurement Officer Date \_\_\_\_\_

FROM: \_\_\_\_\_  
Name of School or Office Telephone No. Fax No.  
\_\_\_\_\_  
Name and Title

SUBJECT: Evaluation of \_\_\_\_\_ Product \_\_\_\_\_ Vendor

1. Name of Vendor \_\_\_\_\_

2. Price List No. & Title \_\_\_\_\_

3. Item No. & Description \_\_\_\_\_

4. Purchase Order No. \_\_\_\_\_

5. Provide detailed explanation below. Be sure to include dates. Comments may relate to product quality, price, delivery, personnel, and other service issues. Comments may also include recommendations or suggested remedies. If applicable, attach documentation such as copies of purchase order, delivery receipt, invoice, etc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Explain how seriously this incident affected your agency and/or operation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Corrective action and/or recommendation: (to be completed by DOE Procurement Section)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mail or fax this form to DOE, Procurement Section, fax number 675-0133.

**Department of Education – Office of Business Services  
Procurement and Contracts Branch (PCB)**

**CERTIFICATION OF FUNDS – Form C-41**

**Part 1. Directions for Contract Encumbrance**

- School/Office shall complete this form and, after obtaining Administrator's signature, submit the form with original signature to PCB for fund certification.
- School/Office shall create an expenditure plan in the Budget System for the encumbrance amount; DO NOT leave funds in difference and DO NOT issue a purchase order. PCB will forward the final contract and encumbrance document (purchase order) to the requesting School/ Office and, after goods are delivered and/or services are rendered, payments can be processed.

**Part 2. Directions for Purchase Order Encumbrance (only if directed by PCB):**

For those contracts where the exact compensation is unknown (e.g., contract is based on a unit price or hourly fee, services are estimated or provided on an "as needed" basis, etc), the School/Office shall complete Parts A and C of this form and, after obtaining Administrator's signature, submit the form with original signature to PCB for the contract file.

Contract Number: (to be assigned by PCB)	Date Encumbered: (to be assigned by PCB)
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**A. Project/Contract Information**

Project Number (to be assigned by PCB):		
Vendor Number:	Vendor Name:	
Project Title or Description:		

**B. Action (check one):**

Encumber Funds     Increase Encumbrance     Cancel Encumbrance     Decrease Encumbrance

District Office (2 digits)	Organization ID (6 digits)	Program ID (5 digits)	BFY (4 digits)	Object Code (4 to 6 digits)	Encumbrance Amount (dollars.cents)
<b>TOTAL ENCUMBRANCE AMOUNT</b>					

**C. Requested by:**

Name of School/Office		Name of person completing this form	
Telephone Number	Fax Number	Date	
Name of Administrator (typed)		Administrator's Signature*	

**\*FUNDS CERTIFICATION:** By signing this form, I certify that the funds identified above are available for payment of the goods to be provided or services to be rendered as specified in the Agreement. I further (a) authorize the encumbrance of funds by PCB OR (b) certify that funds will not be encumbered and payment(s) against this Agreement shall be made upon receipt of invoice.



**DEPARTMENT OF EDUCATION (DOE)  
VIOLATION ANALYSIS**

**PART I – OVERVIEW**

Pursuant to a *“Delegation of Authority” dated 8/27/08*, the Superintendent of Education has delegated procurement and contracting authority to specific Administrators of Schools/Offices (ASOs) to make certain decisions and enter into certain Agreements on the DOE’s behalf. When ASOs exceed their authority and/or fail to adhere to established DOE policies and procedures, a violation is committed. The following is therefore provided:

4. The charitable nature of DOE rules and Hawaii Administrative Rules (HAR) provides that violations are normally inadvertent and the result of administrative error, lack of knowledge, or simple carelessness and may be avoided through the implementation of better procedures, employee training, and progressive discipline.
5. DOE policies and HAR provide for after-the-fact approval to render payment unless the nature of the situation indicates or requires otherwise, in which case ASOs may risk personal liability, corrective actions, fines, and/or penalties as described in §3-131-1 through §3-131-8, HAR.

Violations may be a **Procurement Violation**, where purchases are inconsistent with or contrary to existing law, rules, established DOE policies and/or procedures or **Contracting Violations** which are Agreements in which ASOs have exceeded their authority as delegated by the Superintendent, or which are contrary to HRS, HAR or established DOE contracting policies and procedures.

**PART II – DIRECTIONS [This process typically takes about 2 weeks]**

- When a violation is committed, the School/Office must complete this form (attach additional sheets if necessary).
- Person responsible for the instant purchase (Requestor) shall complete and sign the form.
- Requestor’s Supervisor, Assistant Superintendent or Complex Area Superintendent shall review and sign the form.
- This completed form must be **faxed** to the Office of Fiscal Services (OFS) Procurement & Contracts Branch (PCB) at **fax 675-0133**, along with all procurement and/or contracting documentation including but not limited to a copy of: the invoice, purchase order, written quotations, record of small purchase, contract, and BV-1.
- The violation is investigated and reviewed, and a final determination is made.
- After final determination is made, the form will be **emailed** back to requestor.
- If approval to render payment is issued, the approved violation form must be attached to the Approval to Pay (ATP) and submitted to the Vendor Payment Section.

**PART III – REQUESTOR’S INFORMATION [To be completed by Requestor]**

1. Name/Title of Person Responsible for this Purchase (Requestor):			
2. Name of Requestor’s School or Office, Branch and Section:			
3. Best Contact No.		4. Alternate Contact No.	
5. Requestor has attended procurement and contracting training	<input type="checkbox"/> No	<input type="checkbox"/> Yes → when: _____	Training was presented by <input type="checkbox"/> PCB or <input type="checkbox"/> SPO
6. Requestor has reviewed the procurement and contracting Guidelines issued by PCB	<input type="checkbox"/> No	<input type="checkbox"/> Yes	
7. Requestor has previous violations	<input type="checkbox"/> No	<input type="checkbox"/> Yes → Number of previous violations: _____	Short Description of previous violations (type): _____

**PART IV – DETAILS OF PURCHASE [To be completed by Requestor]**

1. Purchase Order No(s). (if issued)	
2. Total Amount of Purchase	
3. Name of Vendor or Contractor	
4. Violation discovered by (check one): <input type="checkbox"/> School/Office <input type="checkbox"/> Vendor Payment Section <input type="checkbox"/> PCB <input type="checkbox"/> Other _____	
5. State the circumstances that led to this violation and describe why established procedures were not followed?	_____
6. What steps has you school/office taken to prevent reoccurrence?	_____
7. Do you wish to describe any other mitigating factors for consideration in this situation?	_____
8. Do you wish to request after the fact payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes → Provide justification for payment: _____

**PART V – CERTIFICATION AND SIGNATURES [To be completed by Requestor, Supervisor, and AS/CAS]**

**REQUESTOR'S CERTIFICATION:** *I certify that the information provided above is true and correct to the best of my knowledge.*

\_\_\_\_\_  
Requestor's Signature

\_\_\_\_\_  
Date

**SUPERVISOR**  Principal  Director or  Other → Title: \_\_\_\_\_

**CERTIFICATION:** *I have reviewed and acknowledged this request.*

Comments and/or Corrective Action if warranted: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

AS,  CAS, or  Deputy Superintendent

**CERTIFICATION:** *I have reviewed and acknowledged this request.*

Comments and/or Corrective Action if warranted: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**PART VI – VIOLATION REPORT OF FINDINGS, RECOMMENDATION AND AUTHORIZATION [Reserved for OFS/PCB & CPO use]**

Based on the information and documentation provided by the Requestor, PCB finds:

- No violation occurred.
- Procurement Violation: \_\_\_\_\_
- Contracting Violation: \_\_\_\_\_
- Other (describe/cite): \_\_\_\_\_

PCB also finds that the violation was a result of:

- Administrative error (inadvertent, lack of knowledge, carelessness) resulted in a violation.
- Conscious Violation (person was aware that purchasing activity is contrary and/or inconsistent with law, rule, policy or procedure at the time the violation occurred).
- Intentional Violation (violation was not inadvertent, due to lack of knowledge, or simple carelessness, but a deliberate scheme or act to avoid the requirements of the law, rules, policy or procedure).
- Or that Vendor/Contractor has culpability.

Comments: \_\_\_\_\_

In accordance with these findings, PCB recommends the following action:

- No further action required.
- Corrective action required by school/office: \_\_\_\_\_
- Administrative Review/Personnel Action required: \_\_\_\_\_
- Assessment of Administrative Fine(s): \_\_\_\_\_
- Assessment of Civil Penalties: \_\_\_\_\_
- Referral to Attorney General for criminal investigation: \_\_\_\_\_

Comments: \_\_\_\_\_

The Superintendent acknowledges receipt of violation analysis and accepts the recommendation of PCB.

- Agree. Comments: \_\_\_\_\_
- Disagree. Comments: \_\_\_\_\_
- Returned to PCB for further investigation. Comments: \_\_\_\_\_

\_\_\_\_\_  
Superintendent and Chief Procurement Officer

\_\_\_\_\_  
Date

**PART VII – APPROVAL TO RENDER PAYMENT REPORT OF FINDINGS, RECOMMENDATIONS and AUTHORIZATION [Reserved for OFS/PCB & CPO use]**

The Procurement and Contracts Branch (PCB) recommends the following action (Note: This recommendation does not take into consideration any other factors the Superintendent and Chief Procurement Officer might also consider when accepting or rejecting this recommendation):

- Approve to pay invoice no(s): \_\_\_\_\_
- Comments: \_\_\_\_\_

Do not approve to pay. Please see comments below.

Comments: \_\_\_\_\_

\_\_\_\_\_  
Procurement and Contracts Branch

\_\_\_\_\_  
Date

Request to Render Payment is:

- Approved
- Disapproved

Comments: \_\_\_\_\_

\_\_\_\_\_  
Superintendent and Chief Procurement Officer

\_\_\_\_\_  
Date

## **Pointers for Drafting “Scope of Services”**

When you write the Scope of Services, you describe the work you want the CONTRACTOR to perform. It is important to write provisions that are clear and definite so that progress under the contract can be measured and the contract is carried out in the manner intended. Clear standards and other terms also are essential to enforcement. Listed below are suggestions of ways to assure that your Scope of Service provisions are clear and complete.

1. State the objective clearly. Be concise and provide adequate details to explain what the CONTRACTOR is expected to do.
2. If it's important, address it. State, for example, whether you expect the CONTRACTOR to do preliminary research, meet with certain people before or while performing the work, train DOE staff, or testify before the Legislature.
3. Clearly identify all items to be delivered under the contract. For example, state whether you expect a preliminary draft, final report, training manual or technical instruction manual. If the CONTRACTOR must use or provide technical data or information, say so.
4. There should be a clear description of the end product expected and desired, in as much detail as necessary to ensure that the product will conform to expectations, but with sufficient open-endedness to not lead automatically to a certain, pre-ordained result. For example, do you want a manuscript of publishable quality? An inventory and description of available services? A software program?
5. Specify requirements such as progress reports or drafts, including content, dates, and decision structure. It is often desirable to require a draft for review before a final product is submitted to be sure the CONTRACTOR is on the right track in terms of understanding and completing the final product.
6. Express standards clearly.
7. Are there key people in the CONTRACTOR's employ who you prefer to perform the work? If so, name them and describe their responsibilities.
8. Clearly articulate mandatory requirements, including any government-required methodology.
9. Set forth all phases or stages of required work in a clear, logical progression. Include, if possible, a work plan.
10. Include statement of evaluation criteria.
11. Clearly describe role of the DOE, if any, in furnishing assistance such as typing, research, or providing basic starting point documents.
12. Conditions that must be fulfilled before another phase is begun should be described as clearly as possible. Describe fully the consequences of failing to meet conditions.
13. Describe any performance warranties expected of the CONTRACTOR.

**Pointers for Drafting  
“Time of Performance”**

The following are items that you may wish to consider including in the “Time Schedule” for the CONTRACTOR’s performance.

1. Clear statement of commencement date or a clear basis upon which to determine commencement date.
2. A clear indication of when performance is required so that if the CONTRACTOR does not perform, a clear breach of contract claim is presented.
3. Clear statement of end date or the number of days by which performance must be completed.
4. If time is of the essence, a statement to that effect.
5. Clear statement of order and time of work, i.e., which task is first, second, etc., and how long each should take or when each should be completed.
6. If completion of one of a series of tasks is a precondition for commencement of the next task, it should be so stated. If failure to fulfill or complete one of a series of tasks is grounds for termination of the contract, it should be clearly stated.
7. Method of determining when extensions due to delays are allowable and method of determining amount of extension. Any basis upon which additional compensation may be payable for delay.
8. Liquidated damages for delay in commencement, completion or both, within the stated period, should be provided for if completion by a certain day is crucial.
9. Restrictions, if any, on hours of work should be spelled out.

**Pointers for Drafting  
“Compensation and Payment Schedule”**

The following are items that you may wish to consider including in the “Compensation and Payment Schedule” for the CONTRACTOR’s Performance.

1. Clear statement of total price, describing all the items covered by the price. If payment is a sum plus allowable expenses, the allowed expenses should be clearly described.
2. A statement that the contract price constitutes the total compensation payable to the CONTRACTOR performing the work.
3. A clear description of the source of payment of the contract price.
4. If advance payment will be made, the amount and timing of the advance payment should be clearly stated, and the payment should be identified as an advance payment.
5. If progress payments will be made, there should be a clear statement of the period covered by the progress payment (i.e., monthly payments, quarterly payments) OR the event that triggers when a progress payment may be requested (i.e., completion and acceptance of Task 1, etc.).
6. A statement that payment of a progress payment shall not be construed as an absolute acceptance of the work done up to the time of the payments, but the entire work is subject to acceptance at the time the CONTRACTOR advises the DOE that the work is completed.
7. A clear statement of the amount of any retainage to be withheld from progress payments.
8. A clear description of any certification from third parties, if any are required, as a precondition to making any payment.
9. A statement that any reasonable modification of the scope of work which does not materially add to the cost of the work shall be performed without extra payment on account of those changes.
10. A clear statement of how the method and schedule of payments, together with total contract price, will be affected if the scope of work is diminished.
11. A statement of whether, and to what extent, the CONTRACTOR may be allowed additional compensation in the event of delays in performance.

**POSSIBLE SUBJECTS  
OF  
SPECIAL CONDITIONS**

Special conditions are the terms that are unique to the particular agreement or that, for good business reasons, vary the terms of the agreement and/or general conditions. EXAMPLES of topics that may be included as special conditions are:

1. Delivery of the work product to a particular place other than to the address of the procurement officer stated in the agreement.
2. Acceptance criteria (unless included in the scope of services).
3. Provision that commencing work before the agreement is executed by the DOE or before Notice to Proceed is issued is at CONTRACTOR's own risk.
4. Specific remedies.
5. Retainage.
6. Counterpart signatures.
7. Prohibited activities.
8. Patents and copyrights.
9. Special warranties.
10. Provisions required for federally funded contracts.
11. Listing of specific actions or inactions by the CONTRACTOR which entitle the State to terminate the agreement.
12. Type(s) of insurance required by the State.
13. Identification of the CONTRACTOR's key personnel and any requirements related to the use of such personnel. (Can also be included in the scope of services.)
14. Special reporting provisions.
15. Special recordkeeping and audit requirements.
16. Reimbursement of expenses.

# STATE'S GENERAL CONDITIONS

## IMPORTANT

The "*Contract for Small Purchase of Goods or Services DOE Form 10-C*" states that General Conditions, Form AG-008 (4/15/09) is included by reference and available for inspection at the School or Office issuing the contract.

This means that the General Conditions need not be attached to the Small Purchase contract; however, all terms and conditions addressed by the General Conditions are applicable and included in the contract by reference.

For this reason, a set of General Conditions is hereby attached.

A set should be kept in file at each School or Office for future reference.

These General Conditions are revised from time to time. The most recent version may be obtained at:

[http://www4.hawaii.gov/bidapps/general\\_terms.cfm](http://www4.hawaii.gov/bidapps/general_terms.cfm)



## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The

CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to

compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
    - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
    - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
    - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
  - c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or

(ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
  - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
    - (1) Cancel the stop performance order; or
    - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
  - b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the

delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;



- (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action,

remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.

- (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
    - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
  - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.
18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
  - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
  - c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
  - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment.

The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);

- (3) Place of performance of services;
  - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon

expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
  - a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
  - (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health



issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- (1) Social security number;
- (2) Driver's license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.