III. DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT REQUIREMENTS

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235 S. BERETANIA STREET
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October 13, 2006

TO: All Department Heads

FROM: Marie C. Laderta, Director

RE: Delegation of Authority to Approve Exemptions from Civil Service in Order to Contract for Services

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In February 1982, then-Director of Personnel Services[1] Donald Botelho issued a memo delegating authority to department heads to approve exemptions from civil service under Section 76-16(15), Hawaii Revised Statutes ("HRS"), in order to contract for services. **The purpose of this memo is to supersede this February 1982 memo by delegating additional authority to department heads to approve exemptions from civil service under both Section 76-16(b)(15)[2] and Section 76-16(b)(2), HRS.** Attachment 1 to this memo sets forth procedures for the review and approval of these exemptions. Please also be reminded that departments cannot contract for services, whether with a firm or an individual, without an exemption from civil service.[3]

Exemption from Civil Service

Section 76-16(b), HRS, provides that, "The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State . . . ." Section 76-16(b) then sets forth several exceptions to this general mandate that all services performed for the State be performed by civil service employees. Two of these exemptions specifically allow contracts for services under certain circumstances. These exemptions are as follows:

(1) Section 76-16(b)(2), which sets forth an exemption from civil service to contract for services if the service:

- is special or unique; or
- is essential to the public interest; and
- cannot be obtained through normal civil service recruitment procedures.

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[1] The Department of Personnel Services is now known as the Department of Human Resources Development.
[2] The subsection (b) demarcation was added in Act 253, SLH 2000.
[3] The memo applies only to exemptions from civil service for contracts for services, not for positions.

Contracts for services utilizing this exemption may not exceed one year.

(2) Section 76-16(b)(15), which sets forth an exemption from civil service to contract for services if the services are provided by persons or firms:

- employed on a fee, contract, or piecework basis; and
- the work can lawfully be performed concurrently with a private business or profession or other private employment, and where it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State.

Unless authorized by other law (e.g., statutory provisions allowing privatization or statutory provisions specifically allowing an agency to contract for services, etc.), an exemption from civil service must be approved pursuant to one of these two provisions before departments or administratively attached agencies may enter into contracts for services.

Expanded Delegation of Authority

As stated earlier, in February 1982, department heads were given delegated authority to approve exemptions from civil service under Section 76-16(15), HRS. This delegated authority to the department heads has never been rescinded. In the interest of efficiency, economy, and timeliness, and pursuant to Section 76-5(a), HRS, the purpose of this memo is to expand this delegation by authorizing department heads to also approve exemptions from civil service under Section 76-16(b)(2), in order to enter into contracts for services. I am hopeful that this additional delegated authority will provide departments with added flexibility, and will expedite the process of obtaining needed services. Please refer to Attachment 1 for the procedures that should be followed in order to certify an exemption from civil service under one of these two provisions.

Department heads may request that their delegated authority be further delegated to other individuals in their departments by submitting Attachment 2 to the Department of Human Resources Development for approval.

Please provide copies of this memo to the heads of all agencies that are administratively attached to your department. Existing delegations of authority to the heads of administratively attached agencies to approve exemptions from civil service under Section 76-16(b)(15), HRS, are hereby rescinded, effective 90 days from the date of this memo. Should agency heads wish to submit new requests for delegation of authority to approve exemptions pursuant to Sections 76-16(b)(2) or (b)(15), they may do so using Attachment 3. If a new delegation is requested and received by an agency head, the agency head should inform the attached agency's departmental personnel officer of the delegation. This is because regardless of whether an exemption is approved by a department head or by the head of an administratively attached agency, the checklist

attached hereto as Attachment 4 **must be reviewed and signed by the departmental personnel officer or his/her designee.** The departmental personnel office is in the best position to complete Attachment 4, because that office has the information and expertise necessary to determine whether the needed services cannot, or should not, be provided by civil service employees. If the determination cannot be made by the departmental personnel office, the Department of Human Resources Development should be asked to make the determination.

Please have your staff contact Carleton Taketa (587-1020) or George Yomes (587-1030) should there be any questions regarding this matter.

Attachments

cc: Departmental Personnel Officers

Procedures for Exemption of Contractual Services

Step 1

The program or agency must complete the "Exemption of Contractual Services Check List" (Attachment 4) and provide necessary supporting information to the Departmental Personnel Office for review.

Step 2

The Departmental Personnel Office determines whether the work can be performed through the use of a civil service position by answering the questions below. Provisions of the current "Budget Execution Policies and Instructions" may affect the answers to the questions. There should be a substantive reason for any "no" response.

1. Is there an existing civil service position or can a civil service position be established to provide the service?

2. If the answer to "1" is yes, can the position be filled?

If the answer to both questions is yes, the service should be provided through the filling of a civil service position.

Step 3

If the answer to either or both questions is no, the Departmental Personnel Office determines whether an exemption from civil service may be granted under the provisions of Section 76-16(b)(2) or (15), HRS, by reviewing the responses and information on the checklist provided by the program or agency. The Departmental Personnel Officer indicates which statutory provision is applicable by checking the applicable block, or checks none. If the criterion for exemption under one of the provisions is met, the applicable box should be checked to indicate whether the services will be obtained through contract or provided through the use of an exempt position. If by contract, the Departmental Personnel Officer must insure that all of the information below regarding the contract has been completed. Then the check list should be signed by the Departmental Personnel Officer. If the service is to be provided through the use of one or more exempt positions, normal procedures for the establishment of exempt positions should be followed. Comments pertinent to the evaluation may be entered by the Departmental Personnel Officer in the "REMARKS" section of the checklist.

Step 4

If exemption from civil service under Section 76-16(b)(2) or (15), HRS, is recommended by the Departmental Personnel Officer, and if the services will be provided by contract, the completed check list is forwarded to the Department Head, designee, or

authorized agency head for review and approval of the exemption using Form AG-014, "Certification of Exemption from Civil Service" (Attachment 5*). If the Departmental Personnel Officer is unable to make a determination as to whether the exemption criteria have been met, the check list, accompanying information and documents should be submitted to the Employee Classification and Compensation Division (ECCD) of the Department of Human Resources Development (DHRD) for review and action. If exemption from civil service under Section 76-16(b)(2) or (15), HRS, is not recommended by the Departmental Personnel Officer, the checklist, accompanying information and documents are returned to the program, or the program may request that they be submitted to the DHRD ECCD for review and action.

*The form will be amended by the Department of the Attorney General in light of the new delegation of authority under Section 76-16(b)(2), HRS.

Step 5

Upon approval of the contract, a copy of the approved "Exemption of Contractual Services Check List" must be submitted to the DHRD ECCD within five working days. If the contract exceeds $25,000, a copy of the approved contract should be submitted along with the check list.

Information to Use in Completing and Reviewing the Check List

Service is special or unique (e.g., special investigator for the prosecution of computer-related crimes)

Essential to the public interest (Explain the detrimental impact to the public if the work is not done and how soon the impact would occur. Under most circumstances, the detrimental impact to the public should be direct and imminent.)

Personnel cannot be obtained through normal civil service recruitment procedures (e.g., no class available, no eligible list, eligibles lack specific skills) If, at some point, it should be possible for the services to be provided through the use of a civil service position, the department should proceed to pursue that option, and the duration of the exemption should not exceed the period required.

Employed on a fee basis (e.g., one time lecturer)

Employed on a contract basis (e.g., person to produce a master plan to develop Hawaii as a sports center)

Employed on a piecework basis (e.g., pay for products produced)

Performs duties concurrently with private business (e.g., architectural consultant working on a project)

Provides intermittent services (e.g., property management services for a monthly retainer, dietitian providing services in a hospital about two hours per day, with no work schedule and paid hourly)

Delivery of completed work/product by or during a specified time (e.g., architectural or engineering plans, transcript of a hearing, medical evaluation and care of welfare recipients, and implementation of a new recordkeeping system by a specified date)

Contract period exceeds one year (Specify the duration of the contract. Is there an option to extend? If yes, for how long?)

Date: _____ **Attachment 2**

Request for Delegation of Authority to Designees to Certify Exemptions from Civil Service in Order to Contract for Services

TO: (Name of DHRD Director), Director
Department of Human Resources Development

FROM: (Name of Department Head), (Title) (Signature of Department Head)
(Name of Department)

SUBJECT: Exemption from Civil Service Coverage in Order to Contract for Services

I request delegation of authority to the individual(s) listed below, to whom I have delegated the power to execute documents and correspondence on my behalf or to represent me to certify that contractual services are exempt from civil service coverage, pursuant to Subsection 76-16(b)(2) and Subsection 76-16(b)(15), Hawaii Revised Statutes (HRS). My designee(s) understand that this authority can be used only for contracts which fulfill these conditions:

Subsection 76-16(b)(2), HRS: Service is special or unique, or
Essential to the public interest; and
Personnel cannot be obtained thru normal CS recruitment procedures.
Contract period cannot exceed one year.

Subsection 76-16(b)(15), HRS: Employed on a fee, contract or piecework basis;
Performs duties concurrently with private business;
Provides intermittent services; and
Involves delivery of completed work/product by or during a specified time.

The Departmental Personnel Officer (DPO) must review the exemption from civil service coverage for contracting services prior to certification by the Department Head or Designee.

The name, title and a specimen of my designee's signature(s) follow:

1. (Name of Designee), (Title),
   Designee Specimen Signature: _____

2. (Name of Designee), (Title),
   Designee Specimen Signature: _____

3. (Name of Designee), (Title),
   Designee Specimen Signature: _____

4. (Name of Designee), (Title),
   Designee Specimen Signature: _____

APPROVED/DISAPPROVED

_____

Director, Department of Human Resources Development Date

Date: _____ **Attachment 3**

Request by Heads of Administratively Attached Agencies for Delegation of Authority to Certify Exemptions from Civil Service in Order to Contract for Services

The Civil Service Law states that all positions and services performed for the State shall be provided by civil service employees unless Section 76-16 (b), Hawaii Revised Statutes (HRS), specifically authorizes exemption from civil service coverage. Subsections 76-16 (b) (2) and 76-16 (b) (15), HRS, are authorized exemptions that allow contracting for services. The Director of the Department of Human Resources Development (DHRD) shall determine the applicability of this section of the statute to enter into such contracts. This authority has been delegated to Department Heads by the DHRD Director. This form must be submitted to DHRD to request delegated authority to certify exemptions for contractual services by the Heads of Administratively Attached Agencies. Approval of such delegated authority involves only exemption from coverage by the civil service law.

TO: (Name of DHRD Director), Director
Department of Human Resources Development

THROUGH: (Name of Department Head), (Title) (Signature of Department Head)
(Name of Department)

FROM: (Name of Agency Head), (Title) (Signature of Agency Head)
(Name of Agency)

SUBJECT: Exemption from Civil Service Coverage in Order to Contract for Services

I request delegation of authority to certify that contractual services are exempt from civil service coverage, pursuant to Subsection 76-16(b)(2) and Subsection 76-16(b)(15), HRS. I understand that this authority can be used only for contracts which fulfill these conditions:

Subsection 76-16(b)(2), HRS: Service is special or unique, or
Essential to the public interest; and
Personnel cannot be obtained thru normal CS recruitment procedures.
Contract period cannot exceed one year.

Subsection 76-16(b)(15), HRS: Employed on a fee, contract or piecework basis;
Performs duties concurrently with private business;
Provides intermittent services; and
Involves delivery of completed work/product by or during a specified time.

The Departmental Personnel Officer (DPO) must review the exemption from civil service coverage for contracting services prior to certification of the contract by the Department Head or Head of the Administratively Attached Agency.

A specimen of my signature follows:

Agency Head's Specimen Signature: _____

APPROVED/DISAPPROVED

_____

Director, Department of Human Resources Development Date

EXEMPTION OF CONTRACTUAL SERVICES CHECK LIST

CHECK ALL THAT APPLY:

Legal Authority: Chapter 76-16(b)(2)	Legal Authority: Chapter 76-16(b)(15)
Service is special or unique (Explain) ☐	Employment basis: (Explain) fee ☐ contract ☐ piecework ☐
Essential to the public interest (Explain) ☐	Performs duties concurrently with private business (Explain) ☐
	Provides intermittent services (Explain) ☐
Personnel cannot be obtained thru normal CS recruitment procedures (Explain) ☐	Delivery of completed work/product by or during a specified time (Explain) ☐
	Contract period exceeds one year (Explain) ☐

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TO BE COMPLETED BY PERSONNEL OFFICE

RECOMMENDATION:

EXEMPTIONS PURSUANT TO §76-16(b)(2), HRS ☐ §76-16(b)(15), HRS ☐ NONE ☐

CONTRACT *(complete below)* ☐ **EXEMPT POSITION** *(sign & date)* ☐

Contractor(s) Name:

Compensation:

Contract Dates: From: **To:**

Services Performed:

REMARKS:

DPO SIGNATURE: _____ **DATE:** _____

Note: Personal Services contracts pursuant to §76-16(b)(2) and (15), HRS, are delegated to Department Heads if the conditions set forth in our October 2006, memo are met. If there is any uncertainty that the contracts meet all conditions, departments must send the contracts to DHRD for review and approval.

STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature) (Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

(1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature) (Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

LINDA LINGLE
GOVERNOR

MARIE C. LADERTA
DIRECTOR

CINDY S. INOUYE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

May 3, 2007

TO: All Department Heads

FROM: Marie C. Laderta, Director

SUBJECT: Exemptions from Civil Service in Order to Contract for Services—Exemption of Contractual Services Checklist

By memorandum dated October 13, 2006, I updated and expanded the delegation of authority to department heads to approve exemptions from civil service in order to contract for services. The above-mentioned checklist was issued as an attachment to the memorandum in order to facilitate correct determinations as to when exemptions are appropriate. Since then, concern has been expressed regarding the amount of work required if a checklist must be completed every time services are contracted for. In order to reduce the workload, it has been determined that checklists need not be completed for the types of situations and services listed on the attachment to this memo.

Please keep in mind that while the requirement to complete a checklist is being eliminated for the above-mentioned situations and services, it is still necessary to complete a "Certificate of Exemption from Civil Service." This has been an ongoing requirement since the 1982 delegation of authority and is also required by the Department of the Attorney General when contracting for services.

Revisions to the checklist are being worked on in response to comments and suggestions from departments and the revised version will be distributed when completed. We would also like to provide clarification regarding when information regarding the contractor and compensation must be filled out on the checklist. That information is not needed to determine whether the services qualify for exemption from civil service and need not be completed when the checklist is submitted to the departmental personnel officer for approval. It should be inserted when finalizing the contract and before a copy of the checklist is submitted to the Department of Human Resources Development. In those instances where a copy of the contract must be attached to the checklist, departments have the option of only attaching the scope of services portion if the contract is voluminous.

Please have your staff contact George Yomes at 587-1030 or Carleton Taketa at 587-1020 if there are any questions regarding the above-mentioned matters.

Attachment

c: All Departmental Personnel Officers
DAGS Accounting Division

EXEMPTION OF CONTRACTUAL SERVICES CHECKLIST NOT REQUIRED

Checklists are not required for the following:

- Maintenance contracts
- Emergency repairs where it is not practical/feasible to have the repairs done by State employees (i.e., vehicle break down while on the road)
- Printing services including plans and blueprints
- Services that are bundled with the purchase of equipment
- Utility payments (not considered services for purposes of Section 76-16, HRS)
- Rental payments (not considered services for purposes of Section 76-16, HRS)
- Out-service training covered by an approved out-service training request
- Services provided by State inmates
- Projects that clearly exceed staffing and equipment resources (i.e., development of housing project, construction of an office building, etc.)
- Services outside the capabilities of State programs (i.e., asbestos testing)
- Grants to non-State entities
- Contracts for services being paid from funds appropriated by the Legislature for the purchase of those services. This does not include situations where personal services funds are moved to other fund categories.

EXEMPTION OF CONTRACTUAL SERVICES CHECK LIST

CHECK ALL THAT APPLY:

Legal Authority: Chapter 76-16(b)(2)	Legal Authority: Chapter 76-16(b)(15)
Service is special or unique (Explain) ☐	Employment basis: (Explain) fee ☐ contract ☐ piecework ☐
Essential to the public interest (Explain) ☐	Performs duties concurrently with private business (Explain) ☐
	Provides intermittent services (Explain) ☐
Personnel cannot be obtained thru normal CS recruitment procedures (Explain) ☐	Delivery of completed work/product by or during a specified time (Explain) ☐
	Contract period exceeds one year (Explain) ☐

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TO BE COMPLETED BY PERSONNEL OFFICE

RECOMMENDATION:

EXEMPTIONS PURSUANT TO §76-16(b)(2), HRS ☐ **§76-16(b)(15), HRS** ☐ **NONE** ☐

CONTRACT *(complete below)* ☐ **EXEMPT POSITION** *(sign & date)* ☐

Contractor(s) Name:

Compensation:

Contract Dates: From: **To:**

Services Performed:

REMARKS:

DPO SIGNATURE: _____ **DATE:** _____

Note: Personal Services contracts pursuant to §76-16(b)(2) and (15), HRS, are delegated to Department Heads if the conditions set forth in our October 2006, memo are met. If there is any uncertainty that the contracts meet all conditions, departments must send the contracts to DHRD for review and approval.

FAQ – PERSONAL SERVICE CONTRACTS
EXEMPTIONS FROM CIVIL SERVICE

Note: Questions and answers in the development phase.