

SPO 180 Personal Services Contractors

Presented by the
State of Hawaii
Department of Accounting and General Services
Accounting and Audit Review Committee (AARC)

Discussion Leader Wayne L. Chu
December 6, 2012

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The GoToWebinar Attendee View

The screenshot displays the GoToWebinar Attendee View interface. The main content area shows a slide titled "Driving Up Sales" with a red line graph and a speaker's photo. The speaker is Nathaniel Scheideman, with contact information for NS Sales Solutions. The interface includes an audio control panel on the right with "MUTED" status and a "Questions" section at the bottom with a text input field and a "Send" button. The background of the slide is a close-up of blue and yellow hydrangea flowers.

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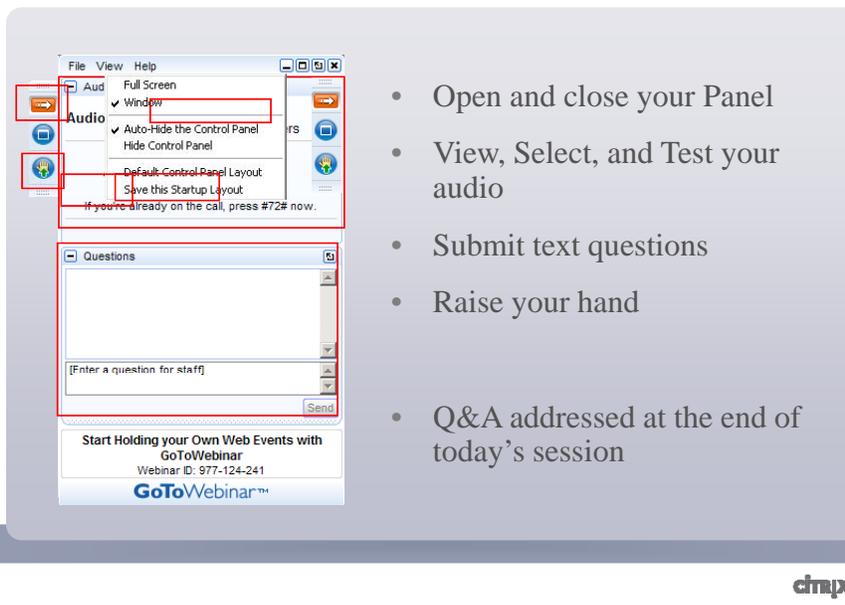
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The screenshot shows a GoToWebinar control panel. The 'Audio' section is highlighted with a red box and contains the following options: 'Full Screen', 'Window', 'Auto-Hide the Control Panel', and 'Hide Control Panel'. The 'Questions' section is also highlighted with a red box and contains a text input field with the placeholder '[Enter a question for staff]' and a 'Send' button. Below the control panel, there is a banner for 'Start Holding your Own Web Events with GoToWebinar' with the Webinar ID: 977-124-241.

- Open and close your Panel
- View, Select, and Test your audio
- Submit text questions
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- Q&A addressed at the end of today's session

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Introduction

- Statewide policies and procedures regarding Personal Services Contractors
- Wayne L. Chu, Administrator
DAGS, Audit Division.
AARC member.
wayne.l.chu@hawaii.gov
Tel No. - 586 0360

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Personal Services Contractor Procedural Manual

- The Manual is located on the Accounting and Audit Review Committee web page.
- <http://www.aarc.hawaii.gov/>

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Kalanimoku Building

Accounting and Audit Review Committee
State of Hawaii, DAGS

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Quick Links

State Procurement Office

- [Circulars](#)
- [Directives](#)

Accounting Division

- [Accounting Manual](#)
- [Data Mart User Manual](#)
- [Personal Services Contractor Procedural Manual](#)
- [State Accounting Forms](#) 7

Audit Division

Aloha and welcome to AARC web site.

In order to improve accountability of the expenditure of public funds, the Comptroller establishes the Accounting and Audit Review Committee (AARC) to ensure compliance with the Comptroller's established accounting system and internal controls. [read more](#)

What's New

- 📄 [Comptroller's Memorandum 2008-11](#)
2008-11 Revised 2008 Standard Mileage Rate Announced by Internal Revenue Service (IRS)
- 📄 [Comptroller's Memorandum 2008-10](#)
2008-10 Quarterly Interest Rate for Late Vendor Payments
- 📄 [Comptroller's Memorandum 2008-09](#)
2008-09 Statutory Dues Changes for HGEA
- 📄 [Comptroller's Memorandum 2008-08](#)
2008-08 Encumbrance Submission Deadline
- 📄 [Comptroller's Memorandum 2008-07](#)

Personal Services Contractor's Process is not a Procurement Method.

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It summarizes a pre-existing Pre-Approval Process.

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Why take this training?

- Your work load has increased
 - But your staff size has not increased.
- You have funds to staff by contract
 - But where do I start?

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What can You do?

- Request for additional authorized positions.
- Request assistance from other State agencies.
- Staff by Contract.

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What is a Personal Services Contractor?

- Independent Contractor – A contractor that provides services but is independent from the State. Is paid through State vouchering system.
- Personal Services Contractor – A contractor that provides services but is not independent from the State. Is paid through State payroll.

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Is the Contractor a State Employee?

- The contract agreement (D 45) states that the contractor is not a State employee and is not entitled to claim or receive from the State any vacation, sick leave, retirement, or other benefits provided to State employees. (You need to make sure this information is in the payment section of the solicitation document)

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Topics for Discussion

- The Pre-approval Process
 - State Civil Service Law (DHRD)
 - Governor's Approval (B&F)
 - Employer/Employee Relationship (DAGS)
- Procurement Methods
- Contracting
- Payment Process
 - Vouchering System
 - Payroll

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First thing you need to do

- You need to identify the required services.

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Contractor for Services



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Contractor for Services, Continued

Payment

- State Vouchering system
- State Payroll system

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Contractor for Services

Pre-
Approvals

- State Civil Service Law (DHRD)
- Governor's Approval (B&F)
- Employer/Employee Relationship (DAGS)

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Pre-Approvals

State Civil Service Law
(DHRD)

- Section 76-16, HRS
- Exemptions from Civil Service Law

Governor's Approval
(B&F)

- Annual Budget Execution Policies and Instructions

Employer/Employee
Relationship

- Independent Contractor
- Employee for Payroll Tax Purposes

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State Civil Service Law

State Civil
Service Law

- Section 76-16, HRS
- Exemptions from State Civil Service Law

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Authority

- State Civil Service Law
 - Section 76-16, HRS
- DHRD
 - Memo dated October 13, 2006
 - Memo dated May 3, 2007

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State Civil Service Law

- Section 76-16, HRS
 - a) The state constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment

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State Civil Service Law

- Section 76-16, HRS, continued
procedures based on merit and that the civil service system of the respective jurisdictions **shall comprise all positions**, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions **exempted under this section, or sections 46-33 and 76-77.**

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Exemption from Civil Service Law

- Section 76-16, HRS
 - identifies 26 exemptions from State civil service.
 - **The (DHRD) director shall determine the applicability of this section to specific positions.**

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Exemption Authority Delegated

- The DHRD Director has delegated exemption authority to Department Heads for the following exemptions:
 - Section 76-16(b)(2), HRS
 - Section 76-16(b)(15), HRS

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Section 76-16(b)(2), HRS

- Section 76-16(b)(2), HRS, the service:
 - is special or unique, or
 - is essential to the public interest; and
 - cannot be obtained through normal civil service recruitment procedures.

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

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Section 76-16(b)(15), HRS

- Section 76-16(b)(15), services are provided by persons:
 - 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.

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DHRD Memo dated Oct 13, 2006



What does memo say?

- Past DHRD memos on State Civil Service
- Exemptions from Civil Service
- Expanded Delegation of Authority

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Attachment 4
EXEMPTION OF CONTRACTUAL SERVICES CHECK LIST

CHECK ALL THAT APPLY:

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

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: _____

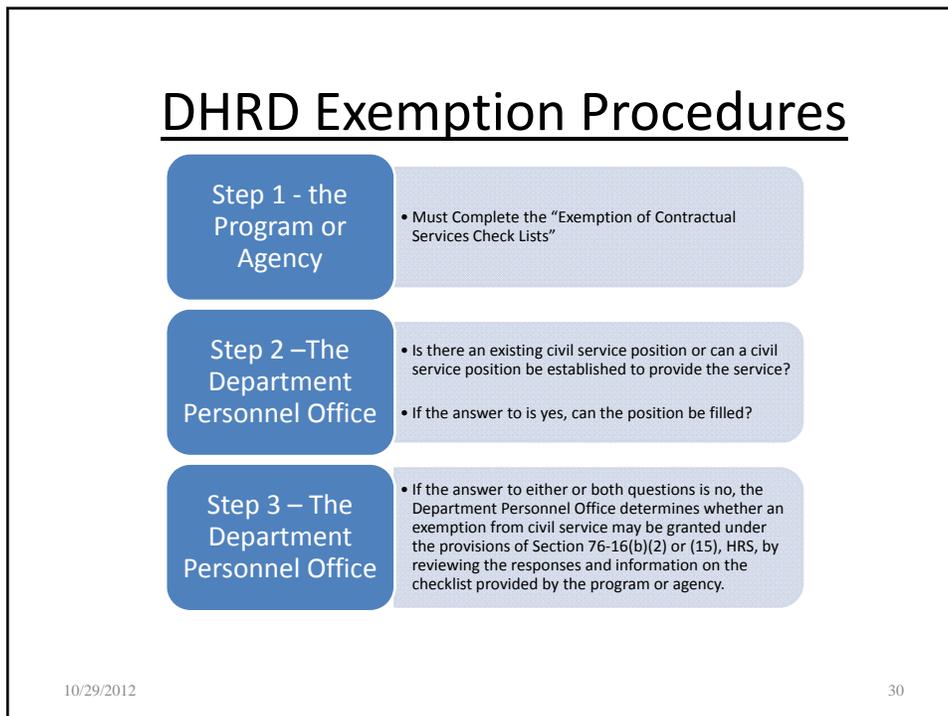
REMARKS:

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.

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November 30, 2006 III-9

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Exemption Procedures Process

**Step 4 –
Dept Head
Approves**

- Form AG-014, Certification of Exemption from Civil Service, is signed by Department Head.

**Step 5 –
Approval by
DHRD ECCD**

- Upon approval of the contract, a copy of the check list is submitted to DHRD ECCD within five working days.

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Attachment 4

EXEMPTION OF CONTRACTUAL SERVICES CHECK LIST

CHECK ALL THAT APPLY:

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

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DHRD Check List Examples

- Section 76-16(b)(2):
 - 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)

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DHRD Check List Examples, continued

- Section 76-16(b)(2) continued:
 - 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.

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DHRD Check List Examples, continued

- Section 76-16(b)(15):
 - Employed on a fee basis (e.g., person to produce a master plan to develop Hawaii as a sports center)
 - Performs duties concurrently with private business (e.g., architectural consultant working on a project)

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DHRD Check List Examples, continued

- Section 76-16(b)(15), continued:
 - 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)

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DHRD Check List Examples, continued

- Section 76-16(b)(15) continued:
 - 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?)

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DHRD Memo dated May 3, 2007



Check lists are not required for certain types of services

- See Attached list.

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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.

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Pre-Approvals

Governor's
Approval
(B&F)

- Annual Budget Execution Policies and Instructions

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Authority

- B&F
 - Annual Budget Execution Policies and Instructions

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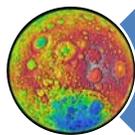
Governor's Approval Required



Staffing by Contracts



Exception by Type of Service



Exception by Estimated Contract Cost

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Budget Execution Policies and Instructions

Staffing by Contracts (All MOF)

- These contracts provide:
 - Services of an advisory nature relating to the functions of agency administration and management or program management; or
 - Persons and/or organizations that are considered to have knowledge and special abilities not generally available within the agency; or

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Budget Execution Policies and Instructions

Staffing by Contracts (All MOF), *continued*

- These contracts provide, continued:
 - Delivery of completed work, product, or services by or during a specified time.
- Requests for these types of contracts require the Governor's approval.....

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Budget Execution Policies and Instructions

Exceptions Delegated to Department Heads

- Approval authority is delegated to department heads to make the expenditures listed under “Exceptions”. However, compliance with DHRD and DAGS requirements for contractual services must still be fulfilled.

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Budget Execution Policies and Instructions

Exception – By Type of Service

- Contracts which are 100% federally funded.
- Amendment to an existing contract where the original cost of which is less than \$100,000.
- Medical services contracts.
- Legal services contracts approved by the AG.
- Services contracts for expert witnesses for the AG.

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Budget Execution Policies and Instructions

Exception – By Type of Service, continued

- Engineering and architectural services for Repair and Maintenance projects funded as operating costs.
- Routine facility-related maintenance services necessary for ongoing operations. Examples include: maintenance of elevators/escalators, landscaping services, and janitorial services.

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Budget Execution Policies and Instructions

Exception – By Type of Service, continued

- Special repair and maintenance services to extend the life of facilities and other assets. Examples include: repainting, repaving, major repairs and rehabilitation of facilities.

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Budget Execution Policies and Instructions

Exception - by Estimated Contract Cost

- Initial requests where total estimated costs will be less than \$100,000.

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Pre-Approvals

Employer/Employee
Relationship
(DAGS)

- Independent Contractor
- Employee for Payroll Tax Purposes

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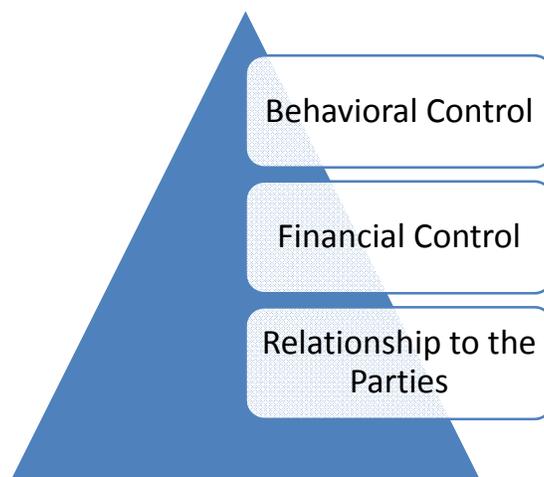
Authority

- Internal Revenue Service
 - Employer/Employee Relationship
 - Employer’s Supplemental Tax Guide (Publication 15A)
- DAGS
 - Comptroller’s Memorandum No. 2006-10 (Form D 40)
 - Personal Services Contractor Manual

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Employer/Employee Relationship Factors



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Contractor for Services

Procurement

- Procurement Method (DAGS)

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STATE PROCUREMENT

- State Procurement Office
 - Select a Procurement Method allowed under Sec 103D or Sec 103F

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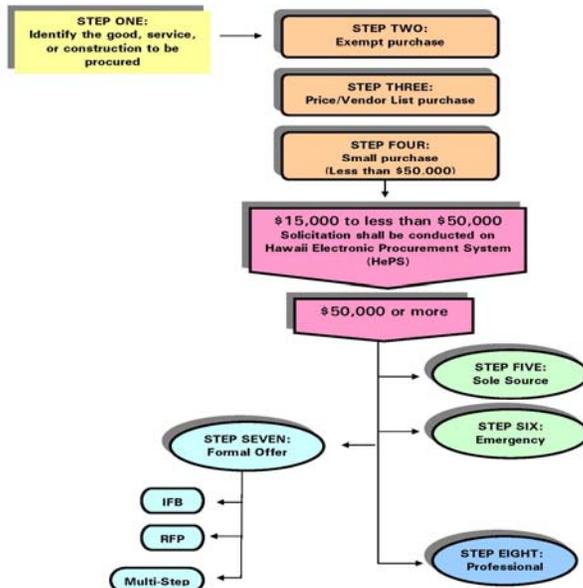
Methods of Procurement

- Competitive Sealed Bidding (HRS 103D-302)
- Competitive Sealed Proposals (HRS 103D-303)
- Professional Services (HRS 103D-304)
- Small Purchases (HRS 103D-305)
- Sole Source (HRS 103D-306)
- Emergency (HRS 103D-307)

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PROCUREMENT OF GOODS, SERVICES, AND CONSTRUCTION



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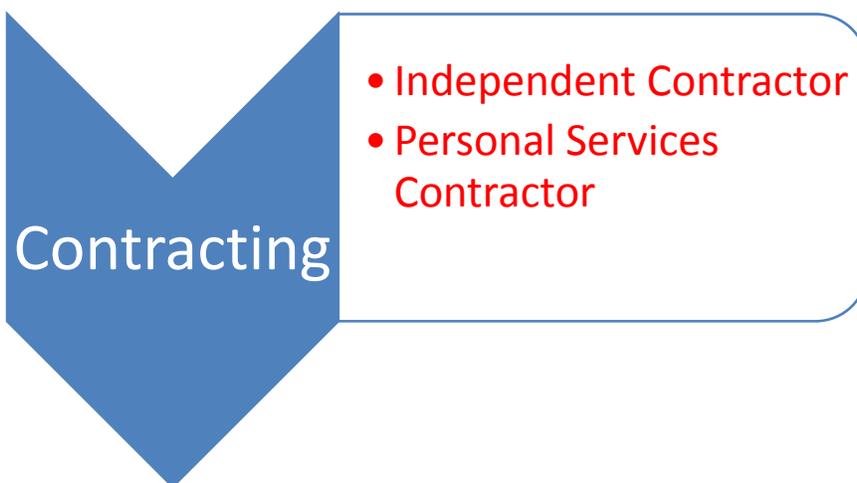
PROCUREMENT PROCESS

- Scope of Services
 - Independent Contractor or Personal Services Contractor determines **solicitation information regarding compensation and payment.**

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Contractor for Services



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CONTRACTING-Attorney General

- Independent Contractor
 - AG recommended contract forms (AG-02)
 - Reviewed as to form by deputy AG
- Personal Services Contractor
 - Personal Services Contractor contract forms (D 45)
 - Reviewed as to form by deputy AG

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Contract Components

- Contract Agreement (D-45 or AG-02)
- General Conditions
- Contractor's Acknowledgment
- Scope of Services
- Compensation and Payment Schedule
- Time of Performance
- Certificate of Exemption From Civil Service
- Special Conditions

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Contractor for Services



Payment

- Vouchering system
- Payroll

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Payment Process - Vouchering

- Independent Contractor
 - Based on submitted invoice, pay through State vouchering system
 - Maintain a schedule of payments made to ensure not to exceed the contract amount

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DAGS Accounting Procedures

- Payments through the State vouchering system:
 - Executed contract
 - Contractor submits monthly invoice
 - Contractor's invoice approved for payment
 - Sends invoice to DAGS for payment
 - DAGS prepares check and mails to contractor
 - Department prepares annual form 1099

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Payment Process – Payroll System

- Personal Services Contractor
 - Complete Form D-41 to place contractor on State payroll system
 - Based on submitted invoice, pay through payroll system
 - Maintain a schedule of payments made to ensure not to exceed the contract amount

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SUMMARY

- Step 1 – Define required services
- Step 2 - Exemption from Civil Service
- Step 3 - Governor’s approval
- Step 4 – Employer/Employee Relationship
- Step 5 – Select procurement method
- Step 6 – Procure contractor
- Step 7 – Execute a contract
- Step 8 – Pay contractor

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SUMMARY OF AUTHORITY

- Pre-approval
 - DHRD
 - Section 76-16(b) HRS
 - Memo dated October 13, 2006
 - Memo dated May 3, 2007
 - B&F
 - Budget Execution Policies and Instructions for the fiscal year (Staffing by Contracts).
 - DAGS
 - Employer/Employee Relationship – Comptroller’s Memorandum No. 2006-10

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SUMMARY OF AUTHORITY, continued

- State Procurement
 - DAGS
 - SPO procurement requirements
- Contracting Requirements
 - Attorney General
 - Independent Contractor
 - Recommended contract forms (AG-02)
 - Personal Services Contractor
 - Personal Services contract forms (D-45)

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SUMMARY OF AUTHORITY, continued

- Payment
 - DAGS
 - State Vouchering system
 - State Payroll system

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The End



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