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PROCUREMENT CIRCULAR NO. 2014-14

TO: Office of the Governor, Chief of Staff  
Office of the Lieutenant Governor, Chief of Staff  
Executive Department Heads  
Hawaii State Public Library System, State Librarian

Chief Procurement Officers (CPOs):  
Department of Education, Superintendent  
University of Hawaii, President  
Office of Hawaiian Affairs, Chairperson of the Board  
Hawaii Health Systems Corporation, President and Chief Executive Officer  
Judiciary, Administrative Director of the Courts  
Senate, President  
House of Representatives, Speaker

Counties of Hawaii, Kauai, Maui, and City & County of Honolulu  
Executive Branch, Finance Director  
Legislative Branch, Chairperson of the County Council  
Board/Departments of Water Supply, Manager/Chief Engineer  
Honolulu Authority for Rapid Transportation, Executive Director

FROM: Sarah Allen, Administrator 

SUBJECT: Personal Services and Inherently Governmental Functions

There are many times where a public organization finds itself with the responsibility of managing a complex multi-million dollar program without adequate resources. An answer to inadequate resources is outsourcing, i.e., bringing on a contractor with the subject matter expertise to assist in managing the program for success. There are obvious benefits and challenges to this practice; the benefits being additional expertise where there is none; the challenge is that you now have one contractor managing another.

What does the public organization have to recognize as vital here?

It is important to recognize that the government/state/city organization has fundamental inherent government functions that cannot be delegated to a contractor. If these inherent functions are delegated, it implies the contractor is now acting as an employee of the government (a personal service).

When it relates to procurement, the only people who should be making final decisions on how to spend taxpayer's money are those authorized, delegated public procurement officials.

Federal Procurement Law defines inherent functions and personal services to be performed only by government employees. The SPO recommends this guidance as a good procurement policy and a preventative measure for procurement violations.

The SPO considers the following responsibilities inherently governmental:

- (i) Determining what supplies or services are to be acquired by the Government;
- (ii) Approving any solicitation documents, to include documents defining requirements, specifications, incentives, and evaluation criteria;
- (iii) Negotiating cost and pricing;
- (iv) Awarding contracts;
- (v) Approving post-award contract changes to include, but not limited to, ordering changes in contract scope, schedule, budget, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services; and
- (vi) Terminating contracts.

Ultimately, it is the government's responsibility to manage the contracts it procures, to make all final decisions on what they want and how much they will pay for it, with the ever-present goal in mind of achieving a successful outcome whilst safeguarding taxpayer's money.

Your staff may call Donn Tsuruda-Kashiwabara at 586-0565 or email [donna.tsuruda-kashiwabara@hawaii.gov](mailto:donna.tsuruda-kashiwabara@hawaii.gov) if they have any questions to the above.