COMPTROLLER'S OFFICE
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TRANSPORTATION

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU, HAWAII

January 2, 1985

MEMORANDUM 1984-57

TO: Heads of Departments and Agencies

FROM: Hideo Murakami, Comptroller

SUBJECT: Use of Purchase Order to Contract for Personal Services

Attached is a copy of a letter from the Attorney General discussing the above subject. The Attorney General's memorandum makes reference to our Memorandum 1982-28 (dated October 5, 1982), a copy of which is also attached.

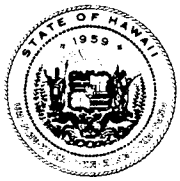
The Attorney General's current letter concludes with a request that we amend Memorandum 1982-28 so as not to encourage the use of purchase orders to secure the services of an individual or consultant. We concur with this request, and the purpose of this memorandum is therefore to modify Memorandum 1982-28 to that effect.

HIDEO MURAKAMI
Comptroller

Attch.

Distrib:
DIR/DEP-S
DEPs/Divisions
BUS-O MIS
VIP DIR-P
STP CSS
PPB PER
PRO-C PMN

GEORGE R. ARIYOSHI
GOVERNOR



MICHAEL A. LILLY
ATTORNEY GENERAL

CORINNE K.A. WATANABE
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
HONOLULU, HAWAII 96813
(808) 548-4740

October 31, 1984

Hideo Murakami, Comptroller
Department of Accounting
and General Services
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Murakami:

RE: Use of Purchase Order to Contract for Personal Services--Comptroller's Memorandum 1982-28

It has come to our attention that heads of departments and agencies received a memorandum from your office dated October 5, 1982, advising them that it was proper to engage the services of individuals by way of a purchase order, in light of advice furnished to you by our office to the effect that a purchase order may be considered a contract.

We believe that the advice furnished by our department by way of a memorandum to the chief of your accounting division dated September 27, 1982 may have been misapplied. While a purchase order may be considered a contract or agreement because it exhibits all of the underlying qualities and characteristics of a contract or agreement, the fact that it is a contract or agreement does not, in our opinion, necessarily counsel its use to engage the personal services of individuals or the services of consultants.

A purchase order includes the barest essentials of a contract or agreement. Accordingly, it limits the protections which would otherwise be available to secure the State's best interest, e.g., clauses to detail the types of services which are expected, the manner in which such services are to be performed, the manner in which compensation is to be disbursed, and the like. Moreover, use of purchase orders precludes the State from including insurance and indemnification clauses, limitations on assignment and subcontracting clauses, and other advantages which full formal contracts afford.

Accordingly, while we are not withdrawing our earlier opinion to the effect that purchase orders are contracts, we ask that you amend Memorandum 1982-28 dated October 5, 1982 so as not to encourage the use of purchase orders to secure the services of an individual or consultant. While nothing in statutes or regulations prohibits the use of the purchase order for that purpose, we believe it is ill-advised and not in the State's best interest to continue that practice.

Very truly yours,

MICHAEL A. BILLY
Attorney General

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU, HAWAII

October 5, 1982

MEMORANDUM 1982-28

TO: Heads of Departments and Agencies

FROM: Hideo Murakami, Comptroller

SUBJECT: Acceptance of Purchase Order as Contract

This memorandum is to inform all expending agencies of our advice from the Attorney General's office to the effect that a purchase order may be considered a contract. We were advised as follows:

> "Since transaction through use of a purchase order involves an offer and acceptance for consideration, the purchase order is a contract or agreement."

This advice had been requested in connection with a policy requirement of the Department of Personnel Services relating to the exemption of contractual services through Section 76-16(15) of the Hawaii Revised Statutes. This policy (as communicated in DPS's memorandum dated February 17, 1982 to all department heads) requires that:

> "When not through employment in a position, all services provided by an individual shall be through a contract or agreement . . . "

In our pre-audit of related expenditure claims, the question had been raised as to whether or not a purchase order could be accepted as a contract or agreement for purposes of the above requirement. Please assure that your staff involved in the processing of such claims are informed that a purchase order can be so accepted.

Please also remind them that the certification described in Section I.C.2 of DPS's exemption policy is not changed by the legal advice addressed in this memorandum; the certification continues to be required on the signature page of the contract (or the purchase order, if used as a contract).

HIDEO MURAKAMI
Comptroller