

 HAWAII HEALTH SYSTEMS C O R P O R A T I O N <i>"Touching Lives Everyday"</i>	Department: Corporate Finance	Policy No.: PUR 0006
		Revision No.: 2
Policies and Procedures	Issued by: Kelley Roberson COO & CFO	Effective Date: October 1, 2007
	Approved by: Thomas M. Driskill, Jr. President & CEO	Supersedes Policy: November 2006
Subject: <i>Authority to Procure Personal Services</i>		Page: 1 of 10

- I. **PURPOSE:** To determine if an individual who is being retained via personal services contract qualifies as an independent contractor or should be treated as a "vendor in an employer-employee relationship," in order to comply with the Internal Revenue Service code and other laws. "Personal services contract" means a contract for services that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, HHSC employees. In contrast, a "nonpersonal services contract" is a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the HHSC and its employees. For purposes of this policy, services retained through a temporary agency and consulting services shall not constitute "personal services."

- II. **POLICY:** HHSC shall comply with all tax and labor laws in retaining contracted services. A process is hereby established to review requests to procure services via contract to ensure that all requirements in the proposed contract comply with applicable regulations, State laws, and take into consideration the impact on collective bargaining and civil service. The requester of the services will complete the Tax Review Checklist (Attachment B) or Tax Review Checklist for Physicians (Attachment D) and submit it to the Regional Human Resources Director (or VP of HR in the case of the corporate office) for review. The requester and HR Director will make a determination as to whether or not the individual performing the services should be treated as an employee. The Legal Department will assist in the determination, upon request.

- III. **PROCEDURE:**
 - A. Prior to consideration of an award of any contract for services, the requesting Department Head or designee will submit to the Human Resources Director all proposed personal services requests on an approved Purchase Request (PR) which shall include the scope of work and a completed Tax Review Checklist, regardless of the dollar amount of the requirement.

 - B. The requesting Department Head or designee shall review the list of factors to consider in determining status (Attachment A) and determine if the proposed contract will qualify as a "personal services contract". The only exception to completion of the Tax Review Checklist is where the services are being procured from a temporary

agency or the contract is for consulting services. The requesting Department Head shall sign the Tax Review Checklist and submit it along with the Purchase Request to the Human Resources Director.

- C. The Human Resources Director or designee(s) will review the proposed Purchase Request and completed Tax Review Checklist for compliance, legal issues, union-related issues, and other related issues as appropriate. The Human Resources Director may consult with the HHSC legal department in determining status. The Human Resources Director shall determine if an individual performing services shall be treated as a “non-employee” or as a “vendor in an employee-employer relationship”.
 - 1. If the Human Resources Director determines that the contract is not for “personal services and the worker will be in a “non-employee” status when performing the services, the Tax Review Checklist will be documented with that determination and the Purchase Request, Scope of Services, and the form shall be routed to Contract Management Department for processing the contract action.
 - 2. If the Human Resources Director determines that the contractor will be performing services as a “vendor in an employee-employer relationship”, the Tax Review Checklist will be documented with that determination. Where the vendor has been identified, the Human Resources Director shall complete and send to payroll a D-41 (Attachment C), a copy of the Tax Review Checklist, individual's federal W-4, and the individual's State HW-4 tax withholding form. This is required for all workers covered by the contract with the “vendor in an employee-employer relationship” status. The Purchase Request, Scope of Services, Tax Review Checklist, and copy of the D-41 shall be routed to Contract Management Department for processing the contract action. If the vendor has not been selected, the D-41, and tax forms will be obtained after the procurement action has been finalized.
 - 3. Human Resources may determine that it is not appropriate to enter into a contract for the services and will let the Department Head know that recruitment or other action should be taken instead. In that case, the documents shall be returned to the Department Head, and the contract manager should be informed that the Purchase Request is being withdrawn (if contracting is already involved).
- D. “Personal Services” contracts shall contain a clause outlining the fact the D-41 process is required and informing the vendor that taxes will be withheld from any fees due under the contract. The Legal Department shall assist in wording the clause.
- E. This procedure also applies to Purchase Requests for physician contracts. Attachment D is a shorter form of Attachment B, and may be utilized instead of Attachment B for physicians when determined appropriate by the Human Resources Department because the physician will clearly provide services as an independent contractor.

IV. APPLICABILITY: All HHSC facilities, regions, and HHSC Corporate staff.

V. REFERENCES: Comptroller Memo No. 1989-7, 1989-22, 1009-4, COO/CFO –06-081.

ATTACHMENT A

Factor	Suggests Employment	Suggests Independent Contractor
1. Instructions	Firm instructs on location, hours, methods, etc. of service, or firm has right to do so.	Absence of firm's right to instruct on location, hours, methods, etc.
2. Training	Firm provides training.	No training by firm.
3. Integration	Worker's services are integral part of firm's operation and critical to firm's success.	Worker's services are incidental to firm's operations.
4. Services rendered personally	Worker must render services personally.	Worker can delegate or subcontract.
5. Hiring, supervising, paying assistants	Worker may hire, supervise, and pay assistants only with firm's approval.	Worker has discretion to hire, supervise, and pay assistants.
6. Duration of relationship	Lengthy, indefinite, or otherwise open-ended.	Limited in time or as to specific result.
7. Hours of work	Set by firm or inflexible.	Set by worker.
8. Amount of time required	Substantially full-time.	Less than full-time.
9. Work place	Firm's premises.	Off premises of firm.
10. Order or sequence of work	Set by firm.	Set by worker.
11. Reports	Worker provides oral or written progress reports.	No reports provided by worker.
12. Methods of payment	Hour, day, week, or other measure of time.	Not time based; lump sum, piece work, etc.
13. Business/travel expense	Reimbursed by firm.	Paid by worker without reimbursement.
14. Tools/materials	Provided by firm.	Provided by worker.
15. Significant investment	Firm provides facilities, equipment, etc.	Worker provides facilities, equipment, etc.
16. Realization of profit or loss	Worker cannot realize profit or loss (risk of nonpayment not viewed as loss by IRS).	Worker has risk of loss (investment/expenses, fixed price dependent on outcome, etc.)
17. Work for multiple firms	Worker has exclusive relationship with firm.	Worker has multiple clients.
18. Making services available to public	Worker doesn't hold self out to public.	Worker advertises or has own office, has business cards, etc.
19. Firm's right to fire	Firm can fire worker at-will	Worker cannot be fired at-will during contract term/project w/o firm liable for breach.
20. Worker's right to quit	Worker may quit at-will.	Worker must complete term/project or be liable for breach of contract.

These factors are only some of the factors that the IRS uses to determine worker status. The more details and means that a firm has over a worker's activities, the more the relationship becomes an employee rather than an independent contractor.

**Tax Review Checklist
EMPLOYEE VS. INDEPENDENT CONTRACTOR**

Attachment B

20 Common Law Factors (Rev. RUL 87-41):

		Yes	No	N/A	I/C
1	HHSC EMPLOYEE	Are you currently an employee of HHSC or any of its affiliates?	_____	_____	_____
2	HHSC EMPLOYEE	Have you ever been employed by HHSC or any of its affiliates? If so, when?	_____	_____	_____
3	INSTRUCTIONS	Is worker required to comply with other persons' instructions about when, where, and how to perform work? (Control is present if the right to instruct exists, whether or not exercised.)	_____	_____	N
4	TRAINING	Is worker required to: 1) train with an experienced worker, 2) attend training meetings, or by some other means receive training as to the method or manner in which work is to be done? (Required training would indicate control. Independent contractors ordinarily rely upon their own resources for training.)	_____	_____	N
5	INTEGRATION	Are the worker's services integral to the operation of the business? (The more integrated the services, the more likely the person is subject to direction and control.)	_____	_____	N
6	PERSONAL REDITION OF SERVICES	Is worker required to perform the services personally? (If the worker has the right to hire a substitute, the employer is probably more interested in the results, rather than the methods.)	_____	_____	N
7	HIRING, SUPERVISING, & PAYMENT OF ASSISTANTS	Does the employer generally control hiring, supervising, and payment of assistants? (Where a worker controls these activities under contract to obtain result only indicates I/D status.)	_____	_____	N
8	CONTINUING RELATIONSHIP	Does worker perform services under a continuing relationship? (Continuing relationship can include services performed at frequently	_____	_____	_____

		recurring, though somewhat irregular intervals and would indicate employee status.)	_____	_____	_____	N
9	SET HOURS OF WORK	Does the person work set hours established by employer? (Set hours would indicate control, whereas flexibility within certain necessary time constraints would not.)	_____	_____	_____	N
10	FULL TIME REQUIRED	Is worker required to devote substantially full time to the business? (Full-time employment impliedly restricts other gainful employment and so would be control over worker's time.)	_____	_____	_____	N
11	EMPLOYER'S PREMISES	Does worker perform services on the employer's premises or other specific place as required by employer? (Working on employer premises implies control.)	_____	_____	_____	N
			Yes	No	N/A	I/C
12	ORDER OR SEQUENCE SET	Is worker required to perform services in the order or sequence set by the employer? (The right to do so may indicate control, even if not exercised.)	_____	_____	_____	N
13	REPORTS REQUIRED	Is worker required to submit regular oral or written reports? (Reports requiring accountability for actions indicates a degree of control.)	_____	_____	_____	N
14	PAYMENT BY HOUR, WEEK OR MONTH	Is worker paid by the hour, week or month? (This usually indicates employee status, whereas payment on a commission or by the job indicates I/C.)	_____	_____	_____	N
15	EXPENSE ACCOUNT	Does the employer pay the worker's business and/or travel expenses? (This would indicate some degree of control over expenses.)	_____	_____	_____	N
16	TOOLS/MATERIALS SUPPLIED	Does worker use tools, materials or equipment furnished by the employer? (This would indicate control over the worker.)	_____	_____	_____	N
17	FACILITIES FURNISHED	Are all necessary facilities for the worker furnished by the employer?	_____	_____	_____	

		(A significant investment in facilities by the worker tends to show I/C status.)	_____	_____	_____	_____	N
18	RISK OF LOSS	Is the worker in a position to realize a profit or suffer a loss as a result of services performed? (If so, they are generally I/Cs.)	_____	_____	_____	_____	Y
19	NUMBERS OF EMPLOYERS	Does person work for a number of persons or firms at the same time? (If so, it usually indicates I/C status.)	_____	_____	_____	_____	Y
20	AVAILABILITY TO GENERAL PUBLIC	Are the worker's services available to the general public? (Where worker's services are available to general public on a regular and consistent basis indicates I/C status.)	_____	_____	_____	_____	Y
21	RIGHT TO DISCHARGE	Does the employer have the right to discharge the worker? (An employer can exercise control through the threat of dismissal, whereas I/Cs cannot be fired so long as the contract specifications are met.)	_____	_____	_____	_____	N
22	RIGHT TO TERMINATE	Does worker have the right to end the employment relationship at any time without incurring liability? (Employees do, whereas I/Cs usually contract to complete a specific job.)	_____	_____	_____	_____	N

Conclusion:

When determining whether an individual is an employee or independent contractor for IRS purposes, examine the entire relationship between the individual and the procuring agency. Generally, an individual is considered to be an employee for IRS purposes if the procuring agency has the right to control and direct the individual, not only as to the result to be accomplished, but also as to the details and means by which that result is accomplished. Control is a matter of degree and it is important to examine these relationships on a case-by-case basis because a factor that may be critical in one instance may not be in another instance.

I have determined that the individual should be treated as an employee. (circle one) YES
NO

My determination was based upon the following:

_____ Supervisor Signature	_____ Title	_____ Date
HUMAN RESOURCES DIRECTOR:	_____ Signature	_____ Date

ATTACHMENT C

STATE OF HAWAII
AUTHORIZATION TO PAY INDIVIDUAL (NON-EMPLOYEE)

DEPARTMENT	SUB-DIVISION OR SCHOOL	PAYROLL	
		NO.	DIST. COD

SOCIAL SECURITY NUMBER	NAME (CAPS) LAST, FIRST, MI (not more than 22 characters)
ADDRESS	NUMBER AND STREET
	CITY, STATE, ZIP CODE

MARITAL STATUS		TAX EXEMPTIONS		RETIREMENT CODE		FICA code: E for State Retirees S for Non-Retirees
☐ SINGLE	☐ MARRIED	FEDERAL	STATE	GROUP	FICA	
				N		

EFFECTIVE DATE: _____ NOT TO EXCEED DATE: _____

PAY RATE: HOURLY _____ OR DAILY _____ OR MONTHLY _____

UNIFORM ACCOUNTING CODE								
F	YR	APP	D	S/D	OBJECT	FUNCTION	LOC	PROJECT

COMMENTS:

AUTHORIZED BY:

DATE

SIGNATURE

PRINT NAME AND TITLE

**Tax Review Checklist
EMPLOYEE VS. INDEPENDENT CONTRACTOR**

ATTACHMENT D

Physician – Specific Factors (from IRS Audit Guidelines):

	Yes	No	N/A	I/C
Does the physician have a private practice?	_____	_____	_____	_____ Y
Does the hospital pay straight wages to physician?	_____	_____	_____	_____ N
Does the hospital provide supplies and professional support staff?	_____	_____	_____	_____ N
Does the hospital bill for physician services?	_____	_____	_____	_____ N
Do the hospital and physician divide the physician fees on a % basis?	_____	_____	_____	_____ N
Does the hospital regulate or have the right to control the physician?	_____	_____	_____	_____ N
Is the physician required to be on duty during specified hours?	_____	_____	_____	_____ N
Does the physician's uniform bear the hospitals name or insignia?	_____	_____	_____	_____ N
Does the hospital pay for the physician's malpractice insurance? (If yes, there may be a private inurement.)	_____	_____	_____	_____ N
Is treatment of worker as employee or I/C inconsistent as far as payment of compensation and benefits (e.g., physician may be treated as an employee for some benefits, such as the 403[b] tax sheltered annuity, but as an I/C for compensation)?	_____	_____	_____	_____ N

I have determined that the individual should be treated as an employee. (circle one)

YES

NO

My determination was based upon the following:

_____ Supervisor Signature	_____ Title	_____ Date
HUMAN RESOURCES DIRECTOR: _____	_____ Signature	_____ Date