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# **Follow-Up Audit of the Administration of Personal Services Contracts of the Department of Education**

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawaii

Report No. 96-15  
October 1996



**THE AUDITOR**  
STATE OF HAWAII

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## The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



## THE AUDITOR STATE OF HAWAII

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# OVERVIEW

THE AUDITOR  
STATE OF HAWAII

## Follow-Up Audit of the Administration of Personal Services Contracts of the Department of Education

### Summary

The Office of the Auditor conducted a follow-up audit of the Department of Education's administration of personal services contracts for the period July 1994 through December 1995. The audit examined the extent to which the department has implemented our prior recommendations in the *Audit of the Administration of Personal Services Contracts in the Department of Education*, Report No. 94-27.

In our follow up, we found that questionable contracting practices continue. The Department of Education still lacks a policy and guidelines that would justify the need for and the appropriateness of contracted personal services and demonstrate how effectively those services contribute to the department's educational mission. The department continues to ignore the issue of establishing criteria for acquiring additional services. As a result, the services acquired may duplicate the work already being done or should be done by other employees. For example, contracting with teachers to develop curriculum may duplicate the work already being done or should be done by the Office of Instructional Services.

We also found that the department's practice of contracting with a limited pool of present and former employees continues to violate the open competition principle that guides state acquisition of goods and services. The department also paid an employee \$13,800 for contract work while the employee was on full pay sabbatical.

The department has failed to comply with the requirements of the procurement code. It asserts that its 400+ contracts for services for amounts under \$10,000 were "small purchases" as provided in Section 103D-305, HRS. However, we found no evidence that the required three quotations were ever solicited. It is also questionable whether these contracts were true "small purchases" exempt from public notice and competition.

The department has also developed the "temporary contract employee" classification because of IRS requirements that payments to these contractors should be through normal payroll channels. The department asserts that the procurement code requirements of open competition for the selection of these contractors do not apply since it pays these contractors through the payroll system. However, the department does not follow the requirements of the ordinary personnel administration process, such as posting notices and other hiring practices to ensure that qualified persons apply and are hired.

Also, it appears that the qualified bidders list was used for the purpose of channeling a contract to a pre-selected individual.

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## Recommendations and Response

We again recommend that the superintendent of education establish policies and guidelines that ensure public funds are spent only for personal services that are essential to carrying out the educational mission of the department. The department should link these expenditures with educational results. Also, the department should cease its practice of contracting with a limited pool of present and former employees and should instead enter contracts openly and competitively. The department should adopt procurement practices that conform to the Hawaii Public Procurement Code.

The department generally agrees with our recommendations, however it disagrees with the content of our findings. The department states that its procedures provide guidance, but that "more specific information as to the relationship of the requested personal services to the Department's mission, objectives or standards" is needed. That is our point.

The department agrees with our recommendation that it cease its practice of contracting with a limited pool of present and former employees and enter contracts openly and competitively.

The department disagrees with our finding that it is not in compliance with the procurement law. It asserts that the results of our sample of contracts examined should not be inferred to all contracts and that our interpretation of the law relating to parceling is incorrect. We believe that our sample of contracts and interpretation of the law support our finding. Moreover, since the procurement code applies to all contracts, finding non-compliance with even one contract can merit mention. We found non-compliance with the entire sample.

Despite its disagreement with our findings, the department states that it will correct areas of noncompliance and will continue its efforts to improve its contracting for personal services. We are pleased that it "is committed to ensuring that public funds are properly spent."

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Submitted by

**THE AUDITOR**  
STATE OF HAWAII

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## Foreword

This is a report of our follow-up audit of the Department of Education's administration of personal services contracts. The audit focused on the findings and recommendations contained in our 1994 Report No. 94-27, *Audit of the Administration of Personal Services Contracts in the Department of Education*. Both audits were conducted pursuant to Section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State.

We wish to express our appreciation for the cooperation and assistance extended by the officials and staff of the Department of Education.

Marion M. Higa  
State Auditor



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# Chapter 1

## Introduction

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This is a report on our follow-up audit of the *Audit of the Administration of Personal Services Contracts in the Department of Education*, Report No. 94-27. Both the current and prior audits were conducted pursuant to Section 23-4, Hawaii Revised Statutes, which requires our office to conduct postaudits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State.

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### Background

The Department of Education reports that 85 percent of the operating budget of the public school system is spent on personnel. Included in this expense are contracts for personal services such as in-service training, diagnostic, evaluation, and planning services, and other consultant services. The department expended over \$15 million from July 1, 1994 through December 31, 1995 for contracted personal services. Generally, the need for these services is determined by personnel at various schools, district offices and state offices. Services are then acquired through the department's various contracting processes.

### *Prior audit findings and recommendations*

In our prior report, we found that the department had expended millions of dollars for personal services without knowing whether the expenditures had furthered its educational mission. The department did not know how much was being spent, for what purposes, or with what results. In addition, the department had neither controlled nor assessed the need for these services, resulting in a significant variation in use among schools, districts, and state offices.

We also found that the department's approach to administering contracts created considerable bureaucratic paperwork, yet failed to ensure the contracts were administered efficiently, economically, and fairly, and were subject to open competition. Specifically, responsibilities for managing personal services contracts were unclear and inappropriately assigned. Policies and procedures were outdated, cumbersome, and inadequate. Personal services contracts needed improvement in their dating and timeliness. Additional personal services were acquired in several ways that were uncertain and inconsistent. Control over small expenditures was excessive while overall control was ineffective. Laws and policies against parceling were being circumvented. Despite a formal policy strongly favoring competition, virtually no competition existed in the letting of department contracts for personal services.

We recommended that the superintendent of education establish a management system for the acquisition of additional personal services that would: ensure that additional contracted services acquired from department employees are appropriate and proper; allow for an assessment of the effectiveness, propriety, and efficiency of expenditures; ensure open competition; enforce accurate dating and timely processing of contracts; and establish controls appropriate to the level needed.

***Agency response***

The department responded that overall it agreed with some of the findings; however, it disagreed with others. In order to resolve the issues, the superintendent appointed a task force to revamp the administration of personal services contracts to effect needed changes to the system.

***Status of the task force***

The superintendent's task force was created to address primarily two issues. The first was how to process contracts with individuals who did not meet Internal Revenue Service guidelines for "independent contractors." The second was how to implement the new procurement code when contracting for personal services.

The task force was disbanded upon resolving these issues. It decided that individuals who did not meet the independent contractor guidelines would be treated as "temporary contract employees." Secondly, it decided that, when acquiring professional services, the department would follow procurement guidelines using either the small purchases or the qualified bidders list approach.

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**Objectives of the Follow-Up Audit**

1. Review the extent to which findings and recommendations contained in our prior audit are being addressed by the department.
2. Make recommendations as appropriate.

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**Scope and Methodology**

The follow-up audit focused upon the department's current management controls and administration of personal services contracts. We assessed the department's efforts to address the findings and recommendations of the prior report. Excluded from the scope of this audit and the prior audit were personal services contracts for grants, subsidies, and purchases of services pursuant to Chapter 42D, Hawaii Revised Statutes; contracts for services under the A+ Program; and agreements between the department and other governmental agencies. Personal services contracts of the public library system were also excluded from both audits.

We reviewed relevant laws, rules, policies, and procedures, and examined the department's contracts and other relevant documents. We interviewed department officials and personnel at state offices, district offices, and schools. We examined a sample of contracts awarded from July 1994 through December 1995.

Our work was performed from December 1995 through May 1996 in accordance with generally accepted government auditing standards.



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# Chapter 2

## Questionable Contracting Practices Continue

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The Department of Education has yet to resolve two issues in contracting personal services. The first is to ensure that such personal services are appropriate and effective in advancing the department's educational mission. The second is to adhere to the principle that undergirds government spending, that of open and fair competition for government's dollars. Given the cost and variety of the services provided, the types of contractors currently selected to provide services, a decentralization of the contracting process, and the stipulations of the Hawaii Public Procurement Code, these issues should not be avoided. The Department of Education's questionable contracting practices continue.

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### Summary of Findings

1. The Department of Education still lacks a policy and guidelines that would justify the need for and the appropriateness of contracted personal services and demonstrate how effectively those services contribute to the department's educational mission.
2. The department's practice of contracting with a limited pool of present and former employees continues.
3. The department has failed to comply with the requirements of the procurement code.

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### Justification and Guidelines Are Still Needed

In 1994, we pointed out that contracting practices varied throughout the public school system, and that the department needed to manage contracted personal services to ensure their relationship to the department's educational mission.

The department has standardized some contracting practices. For example, in 1994 we pointed out the inordinate and inefficient use of contracts for services costing less than \$1,000; some of these contracts were as small as \$25. The department now uses purchase orders instead of contracts, as we recommended in 1994.

However, the department continues to ignore the larger issue of establishing criteria for acquiring these additional services in the first place. The department continues to acquire a large variety of services throughout its various units without requiring the units to tie those services to educational outcomes.

***Centralized guidance would clarify purpose and boundaries of contracting***

As we pointed out in 1994, the department uses a highly decentralized approach to (1) determine the need for personal services, (2) assess resources, (3) select vendors, (4) monitor vendors, and (5) evaluate results. This approach does not absolve the department of the duty of addressing the basic issue: how do the additional personal services further the educational mission? Centralized guidance and direction, provided by the superintendent of education, is still needed to enable the districts and schools to justify the acquisition of services beyond those provided by department staff. Only then can the public and the department itself ensure that contract funds are spent with accountability, effectiveness, efficiency, and fairness.

Guidance should require contracting units to document a determination of the educational purpose of the service, how the service would fulfill the purpose, the reason why the service cannot be provided by existing staff, justification for the vendor selection, and the basis for the fee paid. Responsibilities for monitoring and evaluating vendor performance also need to be articulated. Assessment should determine whether services met expectations as spelled out in the contract.

Without these guidelines, the department continues to expend millions of dollars on personal services without knowing whether and how well those services address its educational mission.

***Contracting with teachers for summer work illustrates the need for clarification***

The department contracts with selected teachers for summer work to develop curriculum and provide other services. Some contracts were granted through the department's Incentive and Innovation Grants Program. This program was funded by the Legislature to provide public schools with moneys to develop and test innovative methods to improve education. Schools submit grant proposals describing the innovative approaches they wish to undertake. Approved proposals receive grants for up to three years. Often, the projects involve the development of curriculum.

In one project, for example, a school received a grant "to align mathematics curriculum to National Council of Teachers of Mathematics (NCTM) standards." Five teachers were each given \$3,200 contracts to work on the project during one year. Four of them were each given two more contracts the following summer. The same four teachers earned \$4,000 apiece in that second summer, working seven and one half weeks each.

Through these contracts the department paid teachers to develop curriculum, a responsibility assigned to educational officers at the department's Office of Instructional Services. The office employs educational officers year round to develop curriculum. The practice of contracting with teachers for summer work to develop curriculum may

duplicate the work already being done or should be done by the Office of Instructional Services. The situation also raises the question of the cost-efficiency of having teachers at one school develop curriculum that, at least according to the grant application, would appear to have greater applicability than just to the one grantee school.

In addition, there is also no evidence that teachers contracted to work during summer months have been selected through open competition. Examples include a resource teacher contracted to promote science teaching one summer (\$1,500) and to conduct a two-week science workshop the next summer (\$1,500). Also, a speech pathologist was paid \$3,990 to maintain a database system one summer and \$3,998 to develop a computer program the following summer. These examples raise the question of whether the grant contracts are truly for the purpose of furthering the educational mission of the department or of providing additional compensation for selected employees, when there is no evidence that the contracts were awarded openly and competitively.

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### **Current and Former Employees Continue to Benefit from Contracts Unavailable to All**

We pointed out in 1994 that the department contracted extensively with current and former department employees through processes that were not available to all staff. We found that the department avoided statutory bidding requirements and issued multiple contracts to a limited range of individuals. In 1996, opportunities for additional compensation remain unavailable to all Department of Education staff, especially in the administrator training program. Sabbatical leaves also serve as opportunities for additional compensation.

### ***Hawaii School Leadership Academy negotiates contracts with a select few***

The Hawaii School Leadership Academy within the Office of Personnel Services trains school administrators. The training consists of seminars and workshops and one-to-one mentoring. The academy contracts with trainers from outside the department for their specific skills and training experience. The academy also contracts with current and former departmental employees for the same purposes. The contracts are negotiated in violation of the open competition principle that guides state acquisition of goods and services.

Open competition is the operating principle of the state procurement code. In their adherence to this requirement, state agencies may solicit proposals, bids, or letters of interest from qualified persons. Under the last option, those deemed qualified form a list of persons with whom the agencies may negotiate for services. The solicitations for proposals or bids and the list of solicited qualified persons must be documented and available for public inspection.

We note that the academy, via the Office of Personnel Services, contracted with five principals for the academy's Cohort Program, the one-to-one mentoring program. The contracts were for "Phase III of the Cohort School Leadership Program." Two contracts were for \$3,990 each for two months; three contracts were for \$2,150 each for two weeks. Also, two former employees were contracted to plan and conduct seminars for the same Cohort Program for two consecutive school years, for \$9,950 and \$9,500 apiece for the respective years.

We found no evidence that the Hawaii School Leadership Academy abides by the spirit or letter of open competition. There was no indication that the academy sought proposals, bids, or letters of interest from qualified individuals. The department did not solicit applications for academy work. No statewide or department-wide announcement was circulated that described the services needed, expected time periods, or qualifications necessary to provide these services. Instead, the department maintains a list of "exemplary" principals with whom the academy negotiates contracts. District superintendents recommended individuals for placement on this "exemplary" list. There was no documentation for how this list was created. Department staff informed us that district superintendents are in the best position to identify "exemplary" principals who are capable of providing the needed services.

***Contracting with employee on paid sabbatical leave costs department unnecessarily***

The department paid a school principal \$13,800 for contracted personal services while that individual was on *full pay* sabbatical, or professional improvement, leave. We found no evidence that the opportunities for this additional compensation were available to anyone else.

The Department of Education may grant sabbatical leave to teachers and educational officers who have served seven years in the public school system.<sup>1</sup> The department's administrative regulations state that the purposes for such leave are "improving professional services and providing opportunities to network with educators nationwide."<sup>2</sup> Criteria to be applied include mutual benefit to the employee and the department, consistency of the leave's purposes with the needs of the department, no adverse effect on departmental operations, acceptable work performance record and seniority, and availability of funds.<sup>3</sup>

The individual involved was granted full pay sabbatical leave "to engage in directed study, development, and documentation of the technological development and applications of the local area network at [name of school]."<sup>4</sup> It is legal for a teacher or educational officer to earn money from any source while on sabbatical leave.<sup>5</sup>

In addition to her full salary, this individual was also paid \$9,900 by the department for a contract to serve as coordinator of the Teacher in Technology and Telecommunications Program for the entire semester's

duration of the sabbatical leave, and another \$3,900 for a contract to develop and conduct three sessions of vice principal training and to prepare for the principalship of the Hawaii School Leadership Academy. The second contract period covered two and a half months of the same semester as the first contract—all of these contracted services occurring during the sabbatical semester, when the principal's absence from the school was not adversely affecting the department, according to the sabbatical leave criteria.

If this individual was so needed within the department but not at the school, the more appropriate course of action would have been a temporary transfer to the open position plus assignment of the training responsibilities and the department could have saved itself \$13,800. More importantly, a transfer would have demonstrated a commitment to effective utilization of resources rather than reinforce the perception that the department gives select individuals opportunities for additional compensation.

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## **Department Has Failed to Comply with Specific Requirements of the Hawaii Public Procurement Code**

The Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes, was enacted in 1993 to standardize the purchase of goods and services by state and county governments, encourage open and fair competition, and update purchasing practices. The code set a bidding threshold of \$10,000—a purchase above that threshold requiring sealed bids, a purchase below being possible with more informal processes. The procurement code also set out specific provisions for acquiring professional services.

We found that the Department of Education has interpreted the procurement code to enable it to continue to limit, rather than expand, competition for its personal services contracts. It has avoided complying with the under-\$10,000 provisions, it has confused provisions of the procurement code with the requirements of the Internal Revenue Service, and it has inappropriately used a requirement of the procurement code pertaining to a qualified bidders list.

### ***Provisions for competition in under-\$10,000 contracts are avoided***

On two fronts, the department has avoided the competition requirements of the procurement code and the guidelines of the attorney general in its under-\$10,000 personal services contracts. Section 103D-304 of the procurement code requires that professional services be secured after public announcement and on the basis of "demonstrated competence and qualification...and at fair and reasonable prices."<sup>6</sup> The code also requires, with three exceptions, that the means for acquiring such services be competitive sealed bids, competitive sealed proposals, or negotiations with qualified persons who submit letters of interest and statements of

qualifications in response to a public notice.<sup>7</sup> The three exceptions are (1) small purchases, (2) sole source procurements, and (3) emergency procurements. "Small purchases" are purchases of goods and services valued at less than \$10,000. The rules of the Procurement Policy Office govern such purchases. The law prohibits the breaking up of purchases to bring each one under the \$10,000 threshold in avoidance of open competition. "Sole source" procurement is permitted, i.e., without competition, when there is only one source for the required services. Agencies must adopt rules to govern the use of sole source procurement. Emergency procurements are permitted without competition when the definitions set out in the law are met.

### **Misuse of small purchase exemption**

The department asserts that all services it contracts for under \$10,000 are small purchases as provided in Section 103D-305, HRS and therefore it need not solicit competitive sealed bids or proposals, nor solicit letters of interest and qualifications through a public notice. However, it then fails to follow the State's requirements for small purchases. The rules of the Procurement Policy Office require that when services are expected to be between \$1,000 and \$10,000, the state agency must solicit, record, and file three quotations for each expected contract.

We found no evidence that three quotations were ever solicited before the awarding of any of the contracts we reviewed. Nor was the sole source exemption invoked. In FY1994-95, the department awarded 438 contracts for under \$10,000. All but three ranged from \$1,000 to \$9,999. Fourteen of those ranged from \$9,900 to \$9,999. Under the Procurement Policy Office rules, the 435 contracts should have evidenced quotations before being awarded. Department of Education staff confirmed with us that it contracted with selected individuals without soliciting quotations.

### **DOE "small purchases" do not meet attorney general criteria**

Whether all of the under-\$10,000 contracts were indeed "small purchases" and therefore exempt from public notice and competition is also questionable. The Department of the Attorney General has developed a checklist for reviewing the contracts of state agencies. The checklist pertaining to professional services small purchases is presented in Exhibit 2.1. The checklist was developed for deputy attorneys general to review their respective agencies' contracts. The reviewer is instructed to verify, among other things, whether:

- (a) it is reasonable or likely that more goods or services of the type to be delivered by the vendor will be required by the purchasing agency in the near future;
- (b) the purchasing agency procured similar goods or services in the recent past (i.e., 12 months or less); and

Exhibit 2.1  
Department of the Attorney General Checklist

B. Small Purchase Agreements

- | Yes                      | No                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Verify the award was made to the provider of professional services with the most advantageous quotation, taking into consideration all factors, including price, quality, warranty, and delivery. (§3-122-75(a)(2)) |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Verify that the client recorded all quotations and placed them in a procurement file. (§3-122-77)   |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. If fewer than three quotes were obtained, the client must have recorded the reason(s) for not obtaining at least three quotes and placed them in the procurement file. (§3-122-77)                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Does the procurement file contain a justification for making the award to a provider of professional services other than the one submitting the lowest quotation? (§3-122-77)                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. If a specification for general or common use exists for this service, was it used in this solicitation? (§3-122-11(b))  |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Verify with the client whether:   |
| <input type="checkbox"/> | <input type="checkbox"/> | (a) it is reasonable or likely that more services of the type to be delivered by the provider of professional services will be required by the purchasing agency in the near future;                                   |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) the purchasing agency procured similar professional services in the recent past (i.e., 12 months or less); and   |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) other units or sections within the purchasing agency have been queried on whether such units or sections will require such professional services in the near future?   |

If yes to any of the foregoing, the small purchase method of procurement should probably not be used. (§3-122-74(d))

- (c) other units or sections within the purchasing agency have been queried on whether such units or sections will require such goods or services in the near future.<sup>8</sup>

The checklist states that if there is a “yes” response to any of the foregoing, the small purchase method “should probably not be used.” The repetitive nature of the 438 contracts of the Department of Education belies any claims the department could make that these were indeed small purchases. Since the small purchase exemption is the most flexible of the exemptions from open competition, the department has relied on this exemption to avoid making its personal services contracts available to all who believe themselves qualified.

***IRS requirements are confused with procurement code provisions***

In 1994, we found that the Department of Education was not following Internal Revenue Service (IRS) requirements when *paying* contractors whose scope of work is controlled by the department. The IRS stipulates that *payments* to such contractors should be through normal payroll channels so that income taxes and FICA can be withheld. The IRS rules do not pertain to the *acquisition* of contracted services—that is, the IRS does not require that contractors be acquired under a payroll system.

However, the department has now classified these contractors as “temporary contract employees,” thus placing them under the ordinary personnel administration process and not under the procurement process and rules. The department has decided that the procurement code requirements of open competition do not apply to the *acquisition* of services since it *pays* these contractors through the payroll system. At the same time, however, the department does not follow the requirements of the ordinary personnel administration process. It ignores the rules and acceptable practices for hiring full-time, permanent personnel—the posting of notices and other hiring practices designed to ensure that qualified persons apply and are hired.

***Qualified bidders list is inappropriately used to channel contract***

In the course of our audit testing, we came upon an instance of misuse of an authorized procurement method, the qualified bidders list, for what appears to be the purpose of channeling a contract to a pre-selected individual.

**What a qualified bidders list is**

The procurement code authorizes the use of lists of qualified bidders when acquiring professional services expected to cost more than \$10,000. A qualified bidders list is prepared from letters submitted by interested and qualified professionals in response to a public notice. The notice is usually in the form of a legal advertisement in a newspaper and outlines

the types of professional services needed and how to submit letters of interest and qualifications. Exhibit 2.2 is a *Notice to Providers of Professional Services*.

The soliciting department forms a committee to screen the letters of interest, review qualifications, determine which professionals are qualified, and place their names on the “qualified bidders list.” As services are needed, the department follows established procedures to negotiate contracts with professionals on the list.

### **A notice to bidders that wasn’t**

On September 16, 1995, the department published a *Notice to Providers of Professional Services* that resembled Exhibit 2.2 in title only. That notice, shown in Exhibit 2.3, calls for the services of a *consultant*. No minimum education or certification qualifications were specified. The notice does not cite the applicable section of the procurement code that authorizes the process. There was to be no form to be filled out, just a letter of interest and resume, so no common information would be available for all applicants.

Perhaps the most questionable features of this notice were the unrealistic response time and the narrowly defined duties and responsibilities. The purpose of public notices is to solicit interest from a qualified public that is as large as possible and to give service providers adequate response time. The notice was published in the *Honolulu Advertiser* on Saturday, September 16, 1995. The deadline for receipt of the letter of interest and the resume was 3:00 p.m. Wednesday, September 20, 1995—less than five full response days.

Two persons expressed interest in the position, but only one submitted a letter of interest and resume. That applicant had been a part-time teacher in the same subject area as that advertised and at the same school. The applicant had also been a co-writer of that school’s grant application for federal vocational education funds.

If public notices are supposed to attract a large applicant pool from which a qualified bidders list can be developed, a reasonable response time, much more than five days, is logical. If the public notice is seeking one position, then the standard job position announcement should be published, with minimum qualifications, salary range, etc. The department used an advertisement whose title indicates a process of developing a qualified bidders list, but in reality is simply meeting the legal notice requirement for services estimated to cost more than \$10,000.

The department should have followed the process of soliciting competitive sealed proposals as required by Section 103D-303. The procurement code sets a \$10,000 threshold for sealed bidding and proposing.

Exhibit 2.2  
Public Notice to Develop a Qualified Bidders List

**NOTICE TO PROVIDERS OF PROFESSIONAL SERVICES**

The Department of Education, State of Hawaii, plans to use professional services in the following categories of work during the fiscal year 1995-1996 to provide the following services to children and youth, ages 3-20, in public schools throughout the state:

**Psychological Services**

- Psychiatrist, MD
- Psychologist, Ph.D., Psy.D. and State of Hawaii licensed
- Social Worker, M.S.W. or higher
- Counselor, M.A. or higher

**Speech Pathology Services**

- Speech Pathologist, M.A. or higher, State of Hawaii licensed

**Occupational Therapists**- certified by the American Occupational Therapy Association

**Physical Therapists**, State of Hawaii licensed

**Comprehensive Educational Evaluation Services**

- (e.g. Intellectual/Emotional/Behavioral Assessment, Educational/Academic Assessment, Social Work Assessment, Medical - Pediatric, Neurological, Ophthalmological)

These assessments would be conducted by appropriate degreed and/or licensed professionals

**School Consultative Services** - (e.g. Primary School Adjustment, Evaluation of Special Programs)

Under the requirements of HRS Sec. 103D-304, such professional services are subject to competitive selection. Accordingly, interested parties are invited to request and submit an Application Form For Providers of Professional Services.

Qualified responders to this solicitation will be placed on a list to provide such services, and as needs arise, will be considered for selection, according to the requirements of the State Procurement Code. Individuals or firms wishing to be considered for more than one category of service listed above should submit an application form for each individual professional service, with a cover letter for each clearly stating which discipline and geographic area(s) it is in application for. Applicants names may be shared with other State Departments who serve children and youth with disabilities.

Application forms can be requested from the Department of Education, Special Education Section, 3430 Leahi Avenue, Honolulu, HI 96815, (808) 733-4990. Periodic screening of applicants will take place as needed.

(Hon. Adv.: May 28, 1995)

(A-33899)

Notice

Brief descriptions of services and qualifications

Applicable statute

Description of process and provider list

Open deadline

Exhibit 2.3

Questionable Public Notice to Develop a Qualified Bidders List

**NOTICE TO PROVIDERS OF PROFESSIONAL SERVICES**

Kabuku High and Intermediate School anticipates for the fiscal year 1995-1996 the need for professional services that shall include but not be limited to the following:

Services of a consultant to coordinate the Vocational Technical Program at Kabuku High and Intermediate School. Applicants must provide evidence of demonstrated ability to design and write proposals as well as success in the acquisition of grants for vocational-technical programs; evidence of ability to coordinate services in order to ensure the delivery of a comprehensive, integrated vocational program which provides equal opportunity for the geographically isolated students of Kabuku. Other responsibilities of the consultant will include successful marketing a diversified vocational program to students, parents, community members; establishing links with local, state, national and international industries, other school programs; job training programs; facilitating communication, meetings and collaboration with department students, staff and programs; service as a liaison with outside departments, agencies and organizations; assistance in planning and implementing various learning activities; providing vocational career guidance and career exploration; determining need and organize staff inservice for staff and students; supervision, maintenance and scheduling of use of Vocational-Technical Center; maintenance of Center inventory; design and maintenance of student portfolios and facilitation of academic-vocational integration efforts. Applicants must submit letter of interest and resume to Lea E. Albert, Principal, Kahuku High and Intermediate School, P. O. Box 308, Kahuku, HI 96731.

The letter of interest and resume shall be submitted and received by the principal no later than 3:00 p.m. September 20, 1995.

[Ruby Hiraishi, Windward District Superintendent]

(Hon. Adv.: Sept. 16, 1995)

(A-35618)

- Notice
- Stipulates need for only one consultant
- Specific experience—writing grant proposals for vocational-technical programs, no minimum qualifications
- Duties and responsibilities of the consultant
- No applicable statute
- September 20, 1995 submission deadline (Wednesday, 3:00 p.m.)
- September 16, 1995 publication (Saturday morning)

Competitive sealed bidding requires the government agency to accept the lowest bid and is more often used in the procurement of goods.

Competitive sealed proposing is more often used in the procurement of services. It allows the government agency some flexibility in evaluating the quality of the proposals, the qualifications of the proposers, and the proposed fees. The agency need not take the lowest priced proposal. Also the rules require that interested persons be given 30 days from the date of notice to respond. What may have appeared to be a proper contracting process in fact was not.

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## Conclusion

The Department of Education must provide better guidance to schools and offices that contract for personal services. The dollars that the department spends for such services can result in measurable benefits to the public school system. Currently, however, the department cannot demonstrate the link between the services it contracts and their outcomes.

Further, the law demands and the public expects that contracts for personal services be awarded through an open competitive process that ensures the best value for the public dollar spent. Current contracting practices for personal services within the public school system do not comply with the Hawaii Public Procurement Code. The department has in this respect failed to ensure that public funds are properly spent.

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## Recommendations

1. We again recommend that the superintendent of education establish policies and guidelines that ensure public funds are spent only for personal services that are essential to carrying out the educational mission of the department.
2. The Department of Education should cease its practice of contracting with a limited pool of present and former employees and should instead enter contracts openly and competitively.
3. The department should adopt procurement practices that conform to the Hawaii Public Procurement Code. In doing so, it should:
  - a. follow rules promulgated by the Procurement Policy Board,
  - b. follow guidelines and checklists developed by the Department of the Attorney General, and
  - c. comply with the procurement directives of the superintendent of education.

---

## Notes

### Chapter 2

1. Section 297-22, Hawaii Revised Statutes.
2. Department of Education Regulation #5407.
3. Ibid.
4. Department of Education, Application for Educational Officer Professional Improvement Leave With Pay or Professional Improvement Leave Without Pay, dated February 28, 1994.
5. Section 297-23, HRS.
6. Section 103D-304(b), HRS.
7. Section 103D-304(a), HRS.
8. Paragraph I.B.6.(a)(b)(c), Department of the Attorney General, *CHECKLIST FOR PROFESSIONAL SERVICE AGREEMENTS*, Form AG2-Ckfst(1)(1/96).



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## Response of the Affected Agency

### Comments on Agency Response

We transmitted a draft of this report to the Department of Education on September 4, 1996. A copy of the transmittal letter to the department is included as Attachment 1. The department's response is included as Attachment 2.

The department generally agrees with our recommendations, but disagrees with the content of our findings. With respect to the finding concerning the need for guidance from the superintendent when contracting for services, the department states that it has procedures in place. Yet it does agree that "more specific information as to the relationship of the requested personal services to the Department's mission, objectives or standards" should be included in the "Request for Personal Service Contracts" form. This is precisely our point: the department needs to demonstrate why it contracts for services and with what results. It also states that a revised procedures manual is being finalized that will address this issue, and that the procedures will be made available to all schools through the department's computer-linked network. We hope these efforts will result in the department's ability to show how these contracts advance public education.

The department agrees with our recommendation that it cease its practice of contracting with a limited pool of present and former employees and enter contracts openly and competitively. It states that steps have been taken to ensure that the Hawaii School Leadership Academy engages in open and competitive contracting. The department further states that all personal service contracts will be entered into on an open and competitive basis.

The department takes exception to our finding that it is not in compliance with the Hawaii Public Procurement Code. It asserts that we "seem to imply that the Department has completely neglected the Procurement Code requirements..." when a sample of the 435 contracts was examined. The department further states, "Therefore, it is not plausible to suggest, based on limited sample results, that all 435 contracts of the Department were not in compliance."

In our review of sample contracts under \$10,000, we found no evidence of the required solicitation and documentation of three quotes for services. Our sample selection was sufficient for us to assess the department's compliance with the code. We are under no obligation to examine all contracts. Since the Procurement Code applies to all contracts, finding non-compliance with even one contract can merit mention, let alone finding non-compliance with the entire sample selected.

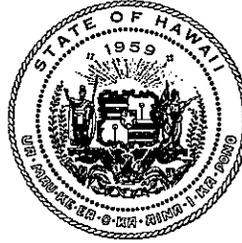
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The department takes issue with our conclusion that the Attorney General's checklist is appropriate to analyze the contracts. It states that the portion of the checklist cited in our report relates to parceling of purchases into small increments. We point out that the Attorney General's checklist is an excellent guide to help the department determine whether its purchases are true small purchases.

The department also believes that our selection of two contracts over the \$10,000 limit is not sufficient for analysis. At the time of our fieldwork, we were provided with a list of 50 contracts exceeding \$10,000 for the fiscal year 1995-96. Of the 50, only 22 were with individuals and within the scope of the audit. We selected two contracts from the 22 for analysis and immediately found one to be problematic. The contrast between the two was striking.

The department took exception to our conclusion, citing our sample size and interpretation of the Hawaii Procurement Code. As we pointed out earlier, however, the fact that we find instances of non-compliance at all should be taken by the department as a wake-up call. We are pleased that, despite its protestations, the department states that it will correct areas of noncompliance and "is committed to ensuring that public funds are properly spent."

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



MARION M. HIGA  
State Auditor

(808) 587-0800  
FAX: (808) 587-0830

September 4, 1996

*COPY*

The Honorable Herman M. Aizawa  
Superintendent of Education  
Department of Education  
Queen Liliuokalani Building  
1390 Miller Street  
Honolulu, Hawaii 96813

Dear Dr. Aizawa:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Follow-Up Audit of the Administration of Personal Services Contracts of the Department of Education*. We ask that you telephone us by Friday, September 6, 1996, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, September 16, 1996.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Marion M. Higa'.

Marion M. Higa  
State Auditor

Enclosures

BENJAMIN J. CAYETANO  
GOVERNOR

HERMAN M. AIZAWA, PH.D.  
SUPERINTENDENT



STATE OF HAWAII  
DEPARTMENT OF EDUCATION

P. O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

RECEIVED

SEP 18 2 47 PM '96

OFFICE OF THE AUDITOR  
STATE OF HAWAII

DATE: September 18, 1996

MEMO TO: Ms. Marion M. Higa, State Auditor

FROM: Herman M. Aizawa, Ph.D., Superintendent

SUBJECT: **RESPONSE TO AUDITOR'S REPORT:**  
**Follow-up Audit of the Administration of Personal Service Contracts  
of the Department of Education**

Thank you for the opportunity to review and comment on the above-named audit report. Our comments on the three audit recommendations are as follows:

**Recommendation #1:**

*We again recommend that the superintendent of education establish policies and guidelines that ensure public funds are spent only for personal services that are essential to carrying out the educational mission of the department.*

**DOE Response:**

We do not agree with the audit findings which seem to imply that the Department has no policies or guidelines at all for personal service contracts. To the contrary, the Department does have established policies, guidelines and procedures for the initiation and use of personal service contracts. (See pages 7 and 8 of this response for detailed information as to the Department's existing policies, guidelines and procedures.) Our existing "Request for Personal Service Contracts" form does require all requestors to indicate:

- \* Nature, purpose and reason for acquiring the services;
- \* Expected duration of the services; and
- \* Cost of the services.

However, we agree that the quality of our existing "Request for Personal Service Contracts" form (or the contract agreement itself) could be improved to require more specific information as to the relationship of the requested personal services to the Department's mission, objectives or standards. In compliance with Legislative directives to decentralize decision-making to the school level, principals and office administrators are responsible for ensuring that all expenditures are consistent with the educational objectives of the schools, or are consistent with

the objectives of offices, supporting the mission of the Department of Education. In most cases, in good faith, the contracting school or office has:

- \* Established a need for personal services;
- \* Related the need for personal services to its educational or related office objectives;
- \* Determined that the service cannot be provided by existing staff;
- \* Established a justification for the vendor selection;
- \* Established a basis for the fee paid; and
- \* Monitored and evaluated vendor performance.

The above information should be noted in each "Request for Personal Services" form. As the audit points out, the quality of the information recorded can be improved. We will ensure that proper procedures include requirements for appropriate record-keeping of the above items.

In addition, we are finalizing a complete revision to the Department's existing procedures manual for personal service contracts, to include the most recent procurement and tax laws, as well as relevant administrative rules. Our staff has been working with the Department of the Attorney General, the State Procurement Office, and the State Ethics Commission in this effort. The revised manual will include guidelines to address the issues raised in this audit report. We also anticipate that, by the end of this fiscal year, we will have the procedures available on the Department's computer-linked network. In this format, all schools and offices will have readily available access to the procedures, and revisions can be made quickly, efficiently, and consistently for all areas of the Department.

The audit report questions one instance of a school receiving a mathematics grant. We disagree with the auditor's suggestion that this may be a duplication of responsibility relative to the Office of Instructional Services. Please refer to our detailed comments on following pages 7 and 8.

**Recommendation #2:**

*The Department of Education should cease its practice of contracting with a limited pool of present and former employees and should instead enter contracts openly and competitively.*

**DOE Response:**

Although our policies and procedures relating to personal service contracts do emphasize open and competitive contracting, we agree with the recommendation as it pertains to certain instances identified by the audit that were not in compliance.

In the specific case of the Hawaii School Leadership Academy, steps have already been taken to ensure that the Academy engages in open and competitive contracting. While contracts were offered to highly qualified individuals, the opportunity to apply may not have been known to all potential applicants. In future contracting, the Academy will solicit proposals, bids, or letters of interest from all qualified persons through public advertisement, and will maintain a list of interested potential contractors from which the awardees will be considered, evaluated and selected on a fair and equitable basis.

In the case of the sabbatical leave, the practice of limiting access to contracted positions will cease. All personal service contracts will be entered into on an open and competitive basis.

**Recommendation #3:**

*The department should adopt procurement practices that conform to the Hawaii Public Procurement Code. In doing so, it should:*

- a. follow rules promulgated by the Procurement Policy Board,*
- b. follow guidelines and checklists developed by the Department of the Attorney General, and*
- c. comply with the procurement directives of the superintendent of education.*

**DOE Response:**

We disagree with the audit findings which seem to imply that the Department is completely ignoring the Hawaii Public Procurement Code. To the contrary, the Department established and communicated information in written policy to all schools and offices in April 1995 to fully explain the Procurement of Professional Services in accordance with the rules promulgated by the Procurement Policy Board, including examples and exhibits to help clarify the information. Numerous informational training sessions have been held at various locations throughout the Department to ensure proper compliance with the Procurement Code.

**“Small purchases”**

We do agree that, in the limited sample of contracts examined during the audit, some of the files for “small purchase” personal service contracts did not include record-keeping to substantiate that three quotes were obtained, as required by the Procurement Code rules for small purchases. We also acknowledge that, in some instances, our Department staff stated that quotes were not obtained.

However, we disagree with the audit comments that seem to imply that the Department has completely neglected the Procurement Code requirements for three quotations for all small purchases of personal service contracts. On page 10 of the audit report, the audit states that *“In FY 1994-95, the department awarded 438 contracts for under \$10,000. All but three ranged from \$1,000 to \$9,999...Under the Procurement Policy Office rules, the 435 contracts should have evidenced quotations before being awarded.”* This implies that all 435 contracts were not in compliance. This is simply not true. The auditor’s office was contacted, and it was confirmed that only a small sample of the 435 contracts was examined during the audit. Therefore, it is not plausible to suggest, based on limited sample results, that all 435 contracts of the Department were not in compliance.

To the contrary, the Department fully recognizes the Procurement Code requirements for three quotes to be obtained for small purchases. At the same time, we recognize that there is a need for additional training of the staff at our schools and offices in order to ensure proper compliance with the quotation requirements, including keeping records of the quotations.

Our revised procedures manual for personal service contracts will include an emphasis on the requirement for three quotes to be obtained and noted in the files. We will also remind the schools and offices within the Department as to these specific procurement rules.

### Attorney General's checklist

The checklist developed by the Department of the Attorney General was attached to voluminous procurement documents which were received at the DOE in April 1996, subsequent to the audit period of July 1994 to December 1995. The checklist was received without any instructions as to its use. On page 10 of the audit report, the auditor states that the "checklist was developed for deputy attorneys general to review their respective agencies' contracts." Although the checklist may not have been perceived to be mandatory for use by agency staff, for all intents and purposes, we can agree that we will utilize the checklist as a reference document as we seek to improve our procedures for personal service contracts.

However, we disagree with the auditor's interpretation of the checklist items 6a, 6b and 6c as a determinant for the use of "small purchase" rules. The checklist refers to Section 3.122.74(d) of the Procurement Administrative Rules, which actually relates to parceling of purchases into smaller increments. We believe the auditor has misinterpreted the purpose of the checklist and has misapplied its use as a condition for decision-making on small purchases. (See page 9 of this response for more details.)

We also disagree with the audit statement that the Department relies on the small purchase exemption to "avoid" making its personal services contracts available in an open and competitive manner. As stated earlier, our policies and procedures emphasize open and competitive contracting, and require compliance with the Procurement Code for all purchases, regardless of dollar amount. We recognize that there is a need for additional training of the staff at our schools and offices in order to ensure proper compliance with the specific requirements for purchases as they relate to personal service contracts.

All schools and offices are expected to comply with the Procurement Code and the procurement directives of the superintendent of education. As we monitor our contracting procedures for compliance, if necessary, we will take disciplinary action if we find any instances of disregard for the Procurement Code or procurement directives.

### Qualified bidders list

Regarding contracts in excess of \$10,000, the audit report questions one Notice to Providers of Professional Services (Exhibit 2.3, page 15). We acknowledge that the particular Notice does not comply with our existing policies and procedures. However, we firmly believe that this one case is not representative of the rest of our contracts in excess of \$10,000. Our policies and procedures clearly emphasize the requirements of open and competitive bidding for all personal service contracts.

For example, Exhibit 2.2 of the audit report (page 14) is representative of the Department's contract notices in excess of \$10,000 that are completely in compliance with the Procurement Code requirements. In our exit conference, the auditor's office confirmed that the audit sample for contracts in excess of \$10,000 consisted of only two Notices, and stated that one of the sample was in compliance; the other was not. The audit report has not provided a full explanation of the facts.

**Comments on Auditor's Conclusion:**

The Department agrees that guidance to schools and offices can be improved regarding personal service contracts. We agree that personal services can and do result in measurable benefits to the public school system. However, we feel that the overall comment that we "cannot demonstrate" the link between services and outcomes is not a fair representation of the facts. We do have policies and procedures in place to require proper justification for personal service contracts. We also acknowledge that the quality of the information provided can be improved on Requests for Personal Service forms, as to the relationship of the contracts to the Department's educational mission and school or office objectives which support the mission.

In summary, the Department's existing policies and procedures relating to personal service contracts do emphasize the rules for open and competitive contracting. However, in certain instances identified in the audit, we were not in compliance. Those areas will be corrected, and we will monitor our contracting practices to ensure that all personal service contracts are entered into in an open and competitive basis.

Given the limited number of instances that were not in compliance, we disagree with the audit comments which imply that all current contracting practices for personal services within the public school system do not comply with the Hawaii Procurement Code, and with the audit statement that the department has "in this respect failed to ensure that public funds are properly spent." To the contrary, the audit has selected small samples of the Department's personal service contracts, and has extrapolated its findings to reach conclusions about the entire Department's personal service contracting procedures. We feel that the limited samples taken by the audit are not representative of the entire personal service contracting practices of the Department as a whole. In all respects, the Department is committed to ensuring that public funds are properly spent.

HMA:EK

Attachments

## ADDENDUM

The current audit report is a follow-up audit of a previous report, entitled *Audit of the Administration of Personal Services Contracts in the Department of Education*, Report No. 94-27, dated as of December 1994.

### PROGRESS SINCE THE PREVIOUS AUDIT:

#### a. Controls and procedures implemented to prevent "parceling."

In the previous audit report in 1994, the Department was criticized for not complying with laws and policies against parceling. Parceling is defined as "the intent to divide purchases into smaller amounts to evade applicable bidding requirements."

Since the previous audit, the Department has made a substantial effort to inform and educate schools and offices as to the procurement laws, including the explicit laws prohibiting the practice of parceling. As a result, we are pleased to note that this follow-up audit examination did not identify any occurrences of parceling.

#### b. Revising and updating our existing procedures manual for personal service contracts.

As mentioned earlier, we are finalizing a complete revision to the Department's existing procedures manual for personal service contracts. The revised manual will include guidelines to address the issues raised in this audit report.

In the 1994 audit report, the Department was criticized for the physical binding of the procedures manual which made it difficult for revisions to be added. As mentioned earlier in this response, we anticipate that we will have the procedures available on the Department's computer-linked network by the end of this fiscal year. In this format, all schools and offices will have readily available access to the procedures, and revisions can be made quickly, efficiently, and consistently for all areas of the Department.

#### c. Standardized contracting practices for personal services costing less than \$1,000.

In the 1994 audit report, the Department was cited for "the inordinate and inefficient use of contracts for services costing less than \$1,000." Since the audit, the Department has standardized its contracting practices for those items. (See page 5 of the audit report.) Procedures have been implemented such that purchase orders are now used instead of contracts for those services costing less than \$1,000 as the audit report recommended in 1994.

## **EXISTING POLICIES AND PROCEDURES: PERSONAL SERVICE CONTRACTS**

The Department does have detailed policies and guidelines regarding the initiation and use of personal service contracts. The existing manual for personal service contracts covers the following areas:

- \* Definition of Terms
- \* Legal Requirements
- \* Role of Hawaii State Governmental Agencies
- \* Functional Responsibilities in DOE
- \* Procurement Standards
  - Free and Open Competition
  - Competitive Bids
  - Negotiated Contracts
  - Sole-Source Procurement
  - Bid Waiver
  - Contractor's Attributes
  - Parceling of Contracts
- \* Departmental Policy
- \* Standards of Conduct
- \* Departmental Procedures
  - Personal Services Which May Be Procured Through Independent Contracts
  - Services Which May Not Be Procured Through Independent Contracts
  - Guidelines Applicable to Independent Contract Service
  - Processing of Contracts/Memorandum of Agreements
  - Contract Review Process
- \* Preparation Instructions
- \* Checklist of Documents Required
- \* Flowchart

On April 18, 1995 and May 17, 1995, the Department issued memorandums to all schools and offices, providing guidance and procedures to properly implement the new procurement law and administrative rules, Subchapter 7, 3-122 Hawaii Administrative Rules, as promulgated by the Policy Procurement Board.

The 1994 audit report stated that the existing procedures manual is outdated. As mentioned on pages 2 and 6 of this response, we are finalizing a complete revision to the Department's existing procedures manual for personal service contracts. The revised manual will include guidelines to address the issues raised in this audit report.

The audit report mentioned an instance where a school received a grant "to align mathematics curriculum to National Council of Teachers of Mathematics (NCTM) standards." Certain teachers were paid during summer months. The audit states that the responsibility for developing curriculum is assigned to educational officers at the Department's Office of Instructional Services, and therefore may be duplication of work. We disagree with the conclusion of possible duplication. The Office of Instructional Services has been responsible for development of general curriculum standards in accordance with the Hawaii Content and Performance

Standards established by the Hawaii State Commission on Performance Standards, dated June 1994. Frequently, in the decentralization of decision-making at the school level, schools may decide to enhance their curriculum to address specific needs. In this case, the school applied for a grant, received it, and compensated specific teachers relevant to the areas of the grant. The work was performed, and compensation was also appropriately given, during non-regular school year hours, i.e. during the summer.

**ATTORNEY GENERAL'S CHECKLIST:**

We disagree with the auditor's interpretation of the Attorney General's criteria as a determinant for the use of "small purchase" rules. The auditor interprets the criteria as a restriction, which is not the intent of the Attorney General's checklist, items 6a, 6b and 6c. The checklist refers to section 3.122.74(d) of the Procurement Administrative Rules, which actually relate to parceling of purchases into smaller increments. The specific section states:

*Small purchases shall not be parceled by dividing the purchases of same, like or related items of goods, services, or construction into several purchases of smaller quantities, so as to evade statutory competitive bidding requirements.*

The auditor misinterprets the purpose of the checklist and has misapplied its use as a condition for decision-making as to whether or not to apply the small purchase rules.

