

**Independent Contractor Cooperation Guidance
Department of Defense Administration**

Background and Purpose of the Bi-Lateral Purchase Order

In FY10-11 a bi-lateral purchase order was created for personal services agreements with a sole proprietor. The bi-lateral purchase order consists of a purchase order and the exhibit for independent contractor provisions (the exhibit is attached to this guidance). DPA created the exhibit to address possible issues with misclassification of independent contractors and specifically, independent contractors claiming and

Provisions of the Exhibit in the Bi-Lateral Purchase Order

The exhibit includes nine provisions (letters A through I). **A** of these provisions must be met for the State to obtain a rebuttable presumption that the individual is an independent contractor.

The provisions in the exhibit of the bi-lateral purchase order are only some of the variables that are considered and analyzed in determining independent contractor status. The provisions establish the parties' intent that the requirements of CRS §8-70-115 for obtaining a rebuttable presumption of an independent contractor relationship are met, and that the vendor is, in law and in fact, an independent contractor. None of the bi-lateral purchase order provisions are intended to be a standalone determination; however, not meeting one or more of the provisions on the bi-lateral purchase order could indicate possible misclassification of an employee, as an independent contractor. For example, if a sole proprietor is not a registered entity with the Secretary of State or the Internal Revenue Service, that *could* be a red flag or indicator that the sole proprietor is not an independent contractor, but rather an employee, depending on many

It is important to note that even though a bi-lateral purchase order or contract is executed and clearly states that a sole proprietor is an independent contractor, it does not by itself, legally establish an independent contractor relationship. The key is how the employer treats the independent contractor. This includes aspects such as control exercised over the contractor. Each situation must be analyzed on the totality of circumstances, as variables change case-by-case. Establishing independent contractor status cannot be concluded based on only one or two variables.

Certification for Personal Services Agreement

August 17, 2010

