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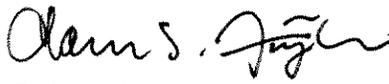
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July 20, 2009

PROCUREMENT CIRCULAR NO. 2009-07

TO: Office of the Governor
Office of the Lieutenant Governor
Executive Department Heads
State Librarian
Chief Procurement Officers

FROM: Aaron S. Fujioka 

SUBJECT: 2009 Procurement Related Legislation

The following summarizes two bills passed by the Legislature and enacted into law that affect procurement. Guidance and information on these Acts will be forthcoming.

Act 150/SLH 2009 - SB 21, SD1, HD1, CD1 - Relating to Government

Act 150, signed into law on June 24, 2009 and effective as of July 1, 2009, provides an optional expedited procurement process using federal funds authorized by the American Recovery and Reinvestment Act (ARRA) of 2009, and matching state funds, if any. Act is repealed on June 30, 2011.

SECTION 1 & 2

- Authorizes temporary procurement processes exempt from HRS chapters 103D and 103F, and HRS §§103-8.5 and 103-53.3(a), when expending ARRA funds, to allow the State to take full advantage of the ARRA funds.

SECTION 3

- Procurement processes for goods, services, construction, and health and human services on an electronic procurement system; award to the lowest responsive, responsible offer or 'best value' offer;
- Protest procedures, protest filed shall not stay the award of any contract, unless ordered by the Chief Procurement Officer;
- Vendors shall be registered on Hawaii Compliance Express (HCE) to expedite purchasing agencies verification of vendor compliance with state laws;
- Award information shall be posted on a Internet website for public view.

SECTION 4

- The State Procurement Office (SPO) to adopt interim rules to implement the procurement procedures outlined in Act 150, effective only to December 31, 2010

SECTION 5

- Appropriates funds for temporary assistance for needy families (TANF) to be expended by the Department of Human Services.

SECTION 6

- Establishes a legislative federal economic stimulus program oversight commission with specific responsibilities to ensure accountability, transparency, auditing and investigatory oversight on the distribution of ARRA funds and expenditure.

Act 175/SLH 2009 - HB 1470, HD1, SD1, CD1 - Relating to Hawaii Public Procurement Code

Signed into law on July 13, 2009, Act 175 became effective as of July 1, 2009 amending several sections to the procurement code, Chapter 103D.

PART I – PROCUREMENT EXEMPTIONS (To be repealed 7/1/2012)

SECTION 1

- Allow state agencies to contract with U.S. General Services Administration (GSA) approved vendor when expending federal funds or authorized matching state funds; provided the approved vendor was responsible for obtaining the federal funding and has been designated as the recipient of the federal funds.

SECTION 2

- Temporary amendment to HRS §103D-305 to raise the small purchase levels for goods, services and construction to \$100,000 and \$250,000 respectively; includes bonding for construction contracts greater than \$50,000.

PART II – PROCUREMENT PREFERENCES

SECTION 3

- New section for agricultural products subject to competitive requirements for 'fresh meats and produce' and 'animals and plants' (exempt procurements are no longer allowed for these items).

SECTIONS 4 to 6

- New section for failure to comply with Hawaii products section.
- Amends definitions for "Hawaii input" and "Hawaii product"
- Amends Hawaii products Class I - 10% and Class II -15% preference; provides process for Hawaii manufacturers to self-certify their Hawaii products.

PART III – PROCUREMENT PROTESTS AND DISPUTES (To be repealed 7/1/2011)

SECTION 7

- The SPO shall maintain procurement statistics on protested solicitations and awards

SECTION 8

- Amends HRS §103-32.1 on contract provisions for retainage; subcontractors.

SECTION 9 to 10

- Amends the Department of Commerce and Consumer Affairs administrative proceedings to set timeframe for determination of a procurement protest within 45 days of a request for hearing, and requires protest bond.
- Amends the judicial review proceedings to limit to 30-days the decision on judicial review of the circuit court on an appeal of a protest.

Copies of Act 150 and Act 175 are available on the State Procurement Office webpage at http://www4.hawaii.gov/spo/procapps/procurement_circulars.cfm?&ShowAll=Yes for your reference; under the "Quick Links" menu, click on "Procurement Circulars" for "2009-07 Act150" and "2009-07 Act175".