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PROCUREMENT CIRCULAR NO. 2010-04

TO: Chief Procurement Officers:
University of Hawaii, President
Office of Hawaiian Affairs, Chairperson of the Board
Hawaii Health Systems Corporation, Chief Executive Officer
Senate, President
House, Speaker of the House of Representatives
Counties of Hawaii, Kauai, Maui and City & County of Honolulu:
Executive Branch, Finance Director
Legislative Branch, Chairperson of the County Council
Board/Departments of Water Supply, Manager/Chief Engineer

FROM: Aaron S. Fujioka 

SUBJECT: ACT 69, SLH 2010, Guidance on Section 2, Proposals and Awards
HRS Chapter 103F, Purchases of Health and Human Services

The following guidance on subject Act is provided for your jurisdiction's information and use, as applicable, when contracting for health and human services pursuant to HRS chapter 103F, Purchases of Health and Human Services. Your jurisdiction may not be frequent users of HRS chapter 103F, or in the case of the counties, use of the requirements of HRS chapter 103F is optional.

In accordance with Act 69, SLH 2010, effective April 29, 2010, HRS Chapter 103F has been amended by adding a new section, which reads as follows:

"103F-___ **Proposals and awards.** (a) No contract proposals shall be accepted from any applicant who lacks any license necessary to conduct the business being sought by the request for proposals.

(b) Proposals submitted under this chapter shall include all costs, fees, and taxes, and any award or contract shall be for the amount of the proposal. No award or contract shall include any other payment, rebate, or direct or indirect consideration that is not included in the proposal, such as insurance premium or general excise tax rebates to or waivers for an applicant or bidder."

This circular provides the following guidance on implementation of this new section.

(a) No contract proposals shall be accepted from any applicant who lacks any license necessary to conduct the business being sought by the request for proposals.

1. If Hawaii or federal law requires a provider to be licensed to perform services, then any proposal submitted by an applicant lacking the requisite license(s) by the proposal submittal deadline shall be rejected and not evaluated; and
2. If the health and human service requires a provider to be accredited or certified, then the timely submission of the requisite accreditation/certification shall be in accordance with the provisions of the RFP.

(b) Proposals submitted under this chapter shall include all costs, fees, and taxes, and any award or contract shall be for the amount of the proposal. No award or contract shall include any other payment, rebate, or direct or indirect consideration that is not included in the proposal, such as insurance premium or general excise tax rebates to or waivers for an applicant or bidder.

1. The intent of Act 69 is to prohibit "hidden costs" not included in the proposal from appearing in the contract; therefore, the RFP should include the following:
 - The proposal amount shall include all costs, fees, and taxes;
 - The specific conditions under which price increases/decreases would be permitted by any subsequent contract amendment, negotiation, or extension; and
 - By submitting a proposal in response to the RFP, the applicant agrees to all of the provisions, terms, and conditions of the RFP.
2. For cost reimbursement contracts, provisions should be included stating that the contract costs are subject to adjustment by the State or as agreed upon during the term of the contract. However, agencies should then list the specific conditions under which such cost adjustments would be permitted. Ensure that the RFP includes all terms and conditions necessary for any amendments or negotiations which may be required during the contract term. All cost reimbursement conditions for supplemental years should be included in the RFP;

NOTE: Any contract adjustment made during the term of the contract shall be based upon the availability of funds, and pursuant to applicable statutes or as provided for in the RFP. The RFP should specify the type of adjustments to the contract that are allowed (e.g., increase in funding, salary increases, etc.), when they will be allowed, and the documentation required to be submitted by the provider to justify the adjustment.

Your staff may contact Corinne Higa at 587-4706, or corinne.y.higa@hawaii.gov if they have any questions, or you may call me at 587-4700.