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PROCUREMENT CIRCULAR NO. 2014 -18

TO: Office of the Governor, Chief of Staff;
Office of the Lieutenant Governor, Chief of Staff;
Chief Procurement Officers;
Executive Department Heads;
Hawaii State Public Library System, State Librarian

ATTENTION: Administrative Services Officers

FROM: Sarah Allen, State Procurement Office Administrator 

SUBJECT: Interim Hawaii Administrative Rules, HAR §§ 3-120-4, Exhibit A, and 3-122-14

This Procurement Circular provides notice of amendments to sections 3-120-4, Exhibit A, and 3-122-14, Hawaii Administrative Rules (HAR) (Interim), regarding ethical considerations and contracting responsibility for procurements exempted from chapter 103D, Hawaii Revised Statutes (HRS), which is effective immediately.

The Procurement Policy Board amended HAR §§3-120-4, Exhibit A, and 3-122-14 through interim rulemaking procedures pursuant to HRS §103D-202.

- See Procurement Directives No. 2015-03 and 2015-04
- Copies of the rules may be downloaded from the State Procurement Office (SPO) website at www.spo.hawaii.gov.

NEW ADMINISTRATIVE RULE LANGUAGE

In procurement exemptions provisions of HRS §§ 3-120-4, Exhibit A and 3-122-14, a reminder of ethical and contractual responsibilities has been added:

- ***“[all public employees are responsible for adhering to] remaining ethical considerations in public procurement, as guided by relevant subsections in HRS §103D-101 and HAR §3-131-1.02.”***

REMAINING RESPONSIBILITIES FOR CODE EXEMPTED PROCUREMENTS

Any time public funds are used for purchases, government employees must adhere to a number of ethical and contractual requirements. Procurements that fall under our Hawaii State Procurement Code of HRS chapters 103D and 103F (Code) have detailed processes promulgated through Hawaii Administrative Rules to ensure compliance through various processes.

- HRS §103D-104 defines “procurement” as “buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.”

When procurement is exempted from the Code, the ethical considerations for governmental employees remain, as do standards of contract law.

- *See HRS Chapter 84, Standards of Conduct for public employees of the State;*
- *See HRS Chapter 103, Expenditure of Public Money and Public Contracts;*
- *Refer to County Ordinances regarding specific County ethical and contractual requirements.*

Although procurements may be exempted from the Code, HRS §103D-102(d) states that “Governmental bodies making procurements which are exempt from this chapter are nevertheless encouraged to adopt and use provisions of this chapter and its implementing rules as appropriate; provided that the use of one or more provisions shall not constitute a waiver of the exemption conferred and subject the procurement or the governmental body to any other provision of this chapter.”

- See HRS §103D-101 for Ethical Considerations of Public Procurement;
- See HAR §3-131-1.02

ETHICAL CONSIDERATIONS

All public employees shall conduct and participate in public procurement in an ethical manner. In conducting and participating in procurement, public employees should continue to consider the following remaining relative requirements of HRS §103D-101

- 1) **Act as a fiduciary** and trustee of public moneys;
- 2) **Remain independent** from any actual or prospective bidder, offeror, contractor, or business;
- 3) **Act only in the public interest;**
- 4) *Abide by [relevant] statutes and administrative rules*
- 5) **Encourage economic competition** by:
 - a. Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment; and
 - b. Researching innovative goods and services to meet the public's needs;
- 6) **Avoid the intent and appearance of unethical behavior;**
- 7) **Avoid social interactions** with any actual or prospective bidder, offeror, contractor, business, or other interested parties during the procurement process;
- 8) **Maintain confidentiality** in a manner that ensures a fair procurement process;
- 9) **Remain impartial** in dealings with any actual or prospective bidder, offeror, contractor, business, or other interested parties; and
- 10) **Identify and eliminate any conflicts of interest.**

Procurement personnel may contact me at Sarah.Allen@hawaii.gov, or 587-4700.