

September 17, 2002

PROCUREMENT CIRCULAR NO. 2002-06

TO: All Executive Departments
(Except DOE, OHA & UH)

FROM: Aaron S. Fujioka, Administrator
State Procurement Office

SUBJECT: IMPLEMENTATION OF THE HAWAII SUPREME COURT'S
JANUARY 28, 2002 DECISION IN THE OKADA TRUCKING CASE

This Procurement Circular replaces Procurement Circular No. 2002-05, same subject, dated August 7, 2002.

The following revised guidance is provided to assist State agencies to consistently apply the contractor's licensing laws recently interpreted by the Hawaii Supreme Court in the Okada Trucking Co., Ltd. v. Board of Water Supply case (*See, 97 Haw. 450 (2002)*). It is the intent of this Procurement Circular to facilitate consistent implementation of procedures to minimize the number of complaints and protests by bidders and contractors.

1. For construction contracts entered into prior to January 28, 2002, the date the Okada Trucking decision was issued, general contractors may proceed with their respective construction projects without deviation from the contracts which followed established past practices relating to contractor's licensing.
2. For construction contracts entered into after the Okada Trucking decision, from January 29, 2002 to June 30, 2002, general contractors shall be required to comply with the Okada Trucking decision (i.e., all general contractors are prohibited from undertaking any work, solely or as part of a larger construction project, that would require the general contractor to act as a specialty contractor in an area in which the general contractor has no license). General contractors will be allowed to obtain the necessary licenses themselves or to supplement their workforce by hiring the services of the appropriately licensed specialty subcontractors.
3. Construction solicitations issued prior to June 30, 2002 and entered into contract after June 30, 2002 shall comply with paragraph 2 above.
4. Construction solicitations issued after June 30, 2002 shall include the language below to notify general contractors that they are responsible for complying with the Okada Trucking decision.

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Contract Language:

Note: "A" general engineering contractors and "B" general building contractors are reminded that due to the Hawaii Supreme Court's January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the general contractor to act as a specialty contractor in any area where the general contractor has no license. Although the "A" and "B" contractor may still bid on and act as the "prime" contractor on an "A" or "B" project (See, HRS § 444-7 for the definitions of an "A" and "B" project.), respectively, the "A" and "B" contractor may only perform work in the areas in which they have the appropriate contractor's license (*An "A" or "B" contractor obtains "C" specialty contractor's licenses either on its own, or automatically under HAR § 16-77-32.*). The remaining work must be performed by appropriately licensed entities. It is the sole responsibility of the contractor to review the requirements of this project and determine the appropriate licenses that are required to complete the project."

Questions regarding licensing requirements should be directed to the Department of Commerce and Consumer Affairs and procurement issues should be directed to the State Procurement Office. Other issues may be directed to your respective Deputy Attorney General.

Thank you for your cooperation on this matter.

AARON S. FUJIOKA

c: CPO's