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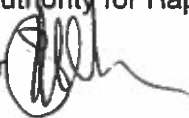
August 8, 2016

**PROCUREMENT CIRCULAR NO. 2017-02**

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

Chief Procurement Officers (CPOs):  
Department of Education, Superintendent  
University of Hawaii, President  
Office of Hawaiian Affairs, Chairperson of the Board  
Hawaii Health Systems Corporation, President and Chief Executive Officer  
Judiciary, Administrative Director of the Courts  
Senate, President  
House of Representatives, Speaker

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  
Honolulu Authority for Rapid Transportation, Executive Director

**FROM:** Sarah Allen, Administrator 

**SUBJECT:** ACT 253, SLH 2016, (HB 2060 HD 1, SD 2): SECTION 2, 3, and 4  
Updates to Procurement Code HRS Chapter 103D

House Bill No. 2060, HD 1, SD2, was signed into law as Act 253 by the Governor on July 12, 2016, with the effective date of July 1, 2016. ACT 253, SLH 2016 amended the following HRS 103D sections:

**A. Compliance Reviews**

- 1) HRS § 103D-205, Authority and duties of the chief procurement officer, (a) is amended by requiring all chief procurement officers to assist and cooperate with any compliance review by the state procurement administrator pursuant to section 103D-206.

- 2) HRS § 103D-206, Additional duties of the administrator of the procurement office, (1) is amended to clarify that the State Procurement Office administrator has the authority to perform periodic compliance reviews of the procurement practices and procedures of all governmental bodies, in collaboration with the state procurement policy board for compliance with the procurement code.

B. Pricing Policy

“103D-312 Fair and reasonable pricing policy; cost or pricing data.

- (a) A procurement officer shall purchase goods, services, and construction from responsible sources at fair and reasonable prices. A procurement officer shall make a written determination whether a price is fair and reasonable for each contracting action, including change orders and contract modifications that adjust prices. In establishing whether a price is fair and reasonable, the procurement officer shall obtain:
  - (1) Certified cost or pricing data for every contract to which subsection (c) applies; and
  - (2) Other data as necessary to perform a cost or price analysis of the data and determine a fair and reasonable price, regardless of whether subsection (c) applies to the contract.
- (b) The policy board may adopt rules, pursuant to chapter 91, to establish an order of preference in the type of data required under subsection (a)(2).
- (c) A contractor, except as provided in subsection (e), shall submit cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date before the date of:
  - (1) The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority, where the total contract amount is expected to exceed an amount established by rules adopted by the policy board; or
  - (2) The pricing of any change order or contract modification that is expected to exceed an amount established by rules adopted by the policy board. The requirement of this paragraph shall apply regardless of whether the original contract award did not require certified cost and pricing data.
- (d) Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the State, including profit or fee, shall be adjusted to exclude any

significant sums by which the State finds that the price was increased because the contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

- (e) The requirements of this section, except for the requirements of paragraph (c) (2), shall not apply to original contract awards:
- (1) Where the original contract price is based on adequate price competition;
  - (2) Where the original contract price is based on established catalog prices or market prices;
  - (3) Where the original contract prices are set by law or rule; or
  - (4) Where it is determined in writing in accordance with rules adopted by the policy board that the requirements of this section may be waived, and the reasons for the waiver are stated in writing; provided that the requirements for price and costing data required under subsection (a) (2) shall not be waived without the approval of the chief procurement officer; provided further that the chief procurement officer shall not delegate this authority.

### Highlights of the Pricing Policy:

#### Always:

1. **Conduct a Price Analysis** to determine your **procurement award** has a fair and reasonable price.
2. **Include documentation** in your contract file showing your **procurement award** was found to have a fair and reasonable price.
3. **Conduct a Price Analysis** to determine your **post-award funded contract actions** (e.g. change orders and modifications) have a fair and reasonable price.
4. **Include documentation** in your contract file showing your **post-award funded contract actions** (e.g. change orders and modifications) have a fair and reasonable price.

#### Guidance:

Consider Subsection (e). Although this section purports to say that price analysis is not required when the original price is based on price competition, catalog prices etc., we recommend that you always document your chosen vendor's price is fair and reasonable as there is precedence in the Hawaii court system that can award to a protestor if this analysis is not conducted and unreasonable pricing can be found.

Training will be forthcoming and will be published as an on-demand webinar. Please refer to the new SPO Procurement Wizard on the SPO website for guidance on pricing. It is in Section 4, Solicitation and Award, sub-section 4.7 Other Procurement Considerations, 4.7.2 Cost and Price Analysis, Data, and Fair and Reasonable Price Determination.

Should there be questions, procurement personnel may contact the listed SPO staff, or you may contact me at [Sarah.Allen@hawaii.gov](mailto:Sarah.Allen@hawaii.gov) or via phone at 587-4700

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