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GOVERNOR



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PROCUREMENT CIRCULAR NO. 2019-03

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

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University of Hawai'i, President
Office of Hawaiian Affairs, Chairperson of the Board
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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 233 SLH 2015 (HB 206 HD2, SD1, CD1): SECTION 2
Hawai'i Plants; use in public landscaping

This Procurement Circular is intended to provide notice and explanation of recent statutory amendments to HRS § 103D-408, pursuant to Act 233 (2015), regarding the use of Hawaiian plants in new or renovated landscaping for state projects using public moneys. The information provided below is intended to assist with implementation of Act 233 (2015). Additional information may be provided in the future in the form of Procurement Policy Board Guidelines and Procurement Circulars.

I. Overview of Statutory Changes

In 2015, the State Legislature amended HRS § 103D-408 to set clear mandates for the use of Hawaiian (native and Polynesian-introduced) plants in public landscaping, in furtherance of the preservation of Hawai'i's cultural and ecological heritage, among other purposes. See Preamble, Act 233 (Reg. Sess. 2015). Act 233 amended HRS § 103D-408 by removing the "wherever and whenever feasible" qualification for the use of native plants in public landscaping, and instead requiring new and renovated public landscaping projects to include gradually increasing minimum percentages of Hawaiian plants, subject to exclusions, as discussed below.

Act 233 was signed by Governor Ige on July 13, 2015, and became effective on June 30, 2016. The amendments made by the Act should not affect landscaping plans or projects that had already been solicited or contracted as of its effective date of June 30, 2016.¹

This guidance material is intended to provide guidelines for purchasing agencies to evaluate possible exclusions from HRS § 103D-408(c), and to provide additional information to support the implementation of Act 233.

II. Act 233 Requirements

HRS § 103D-408 defines Hawaiian plants as endemic or indigenous plant species as well as those brought to Hawai'i by Polynesians before European contact, such as kukui, kalo, wauke, niu, noni, and kamani. The law intends to set clear mandates for the use of Hawaiian plants in public landscaping.

This law applies to all plans, designs, and specifications for construction of new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, or housing developed by the State with public moneys.

All plans, designs, and specifications for all State-developed, publicly-funded landscaping approved or solicited after the dates described below, must include the minimum Hawaiian plant footprints required by each date, subject further to the conditions and exceptions found in HRS 103D-408(a) and (d).

HRS § 103D-408 continues to require that:

1. Cultivated plants can be used to fulfill Hawaiian plant requirements so long as they do not jeopardize wild plants in their natural habitat;
2. Wherever and whenever possible, the Hawaiian plants used to fulfill these requirements should be sourced from the island and ahupua'a in which they were found or known to occur prior to European contact;
3. Each Hawaiian plant or group of plants used to fulfill these requirements shall be clearly identified with signs for the edification of the general public.

¹ Section 3 of Act 233 provides that "[t]his Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawai'i State Constitution or article I, section 10, of the United States Constitution."

Whereas HRS § 103D-408 formerly required the use of Hawaiian plants “wherever and whenever feasible,” the statute now requires a gradually increasing minimum percentage of public landscaping projects to be composed of Hawaiian plants. Currently, HRS § 103D-408 requires that, subject to exclusions, Hawaiian plants shall compose:

- a. 10% of the total plant footprint for landscaping by 2019;
- b. 25% of the total plant footprint for landscaping by 2025; and
- c. 35% of the total plant footprint for landscaping by 2030.

As noted, this requirement is subject to some exclusions, whereby areas landscaped for certain functions can be excluded from the total plant footprint upon which the minimum percentage of Hawaiian plants is based. Calculation of the total plant footprint and excluded areas are described in greater detail below.

III. Definition of Hawaiian Plants

“**Hawaiian plants**” are endemic, indigenous, and Polynesian introduced plants. Specifically, Hawaiian plants are defined in Act 233 (2015) as “any endemic or indigenous plant species, including land, freshwater, and marine plant species, growing or living in Hawai‘i without having been brought to Hawai‘i by humans; or any plant species, including land, freshwater, and marine plant species, brought to Hawai‘i by Polynesians before European contact, such as kukui, kalo, niu, noni, and kamani.” HRS § 103D-408e.

IV. Procedures for Exclusion from Total Plant Footprint

In a written memo for record for the contract file, the purchasing agency for any new or renovated landscaping may exclude from total footprint calculations those areas where Hawaiian plant species are not appropriate for the particular landscaping needs or environmental conditions of the plan or subject site.

At the sole discretion of the head of the purchasing agency (“HOPA”), an exclusion may be applied only to the footprint area necessary to serve the project functions for which there is no Hawaiian plant alternative including, but not limited to:

- 1) Areas of turf grass necessary for functional lawn space needed and intended for gatherings, events, recreation, roadway shoulders used for pedestrian access, etc.;
- 2) Landscaping for extreme environmental conditions (e.g.- where severe erosion threats require a level of control Hawaiian plants cannot provide);
- 3) The canopy footprints of trees designated as exceptional trees under chapter 58, and street trees; and
- 4) Landscaping associated with the following types of properties or uses:
 - a) A “historic property” under HRS § 6E-2 designated as “significant” under HAR § 13-275-6;
 - b) Property listed in the National Register of Historic Places;
 - c) Property listed in the Hawai‘i Register of Historic Places;
 - d) Research sites;
 - e) Food or medicinal production plots; and
 - f) Cultural heritage gardens.

Contact Information

If your staff has questions on the procedures for requesting an exclusion, they may contact Stacey Kauleinamoku at 586-0571 or e-mail stacey.l.kauleinamoku@hawaii.gov or you may call me at 587-4700.

For information on invasive species, the Hawaii-Pacific Weed Risk Assessment and Plant Pono, contact the Coordinating Group on Alien Pest Species (CGAPS): www.cgaps.org; (808) 722-0095.