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**PROCUREMENT CIRCULAR NO. 2020-11**

TO: Office of the Governor, Chief Operating Officer  
Office of the Lieutenant Governor, Chief of Staff  
Executive Department Heads  
Hawaii State Public Library System, State Librarian  
All other CPO Jurisdictions

CC: Administrative Services Offices

FROM: Sarah Allen 

SUBJECT: Guidance: Contractor Responsibility Guidance During COVID-19 Crisis

Questions have been raised as to whether all procurement is exempt under Governor's Declaration or if only COVID-related procurement is exempt from the procurement code. In addition, with the closing of the local IRS office, normal procurement processes such as vendor award and payment are being held up because of statutory requirements (better known as Hawaii Compliance Express, HCE).

The State Procurement Office (SPO) in partnership with the Attorney General's office, is publishing guidance on clarifying when you can use the procurement exemption (COVID-related), as well as navigating the HCE compliance requirements for normal procurements, foreign vendors, and COVID-related procurements.

HCE was implemented to ensure that buyers conduct due diligence in ensuring the contractors who do business with the State are responsible business owners. This requirement is not diminished with or without exemption. In addition, per FEMA reimbursement rules, we must follow our procurement code, and thus responsibility checks are required here also. For more tools and resources on how to submit a 'FEMA-Ready' procurement package, please visit our site at: <http://spo.hawaii.gov/for-state-county-personnel/disaster-preparedness-procurement/fema-reimbursement/>.

The purpose of this procurement circular is twofold:

- To provide clarity on what procurements are exempt under the COVID19 disaster, and
- To introduce SPO-080 a contractor responsibility check list to verify vendor responsibility.

## **I. Is Your Procurement Exempt from the Procurement Code?**

On March 4, 2020, the Governor's Emergency Proclamation relating to COVID-19 temporarily suspended section 103-53 and chapters 103D and 103F, Hawaii Revised Statutes (HRS). This suspension continued with subsequent supplementary proclamations; the latest being the Governor's 8<sup>th</sup> Supplementary Proclamation issued on May 18, 2020.

To clarify the application and extent of the temporary suspension of these statutes, as applied to government purchasing, the State Procurement Office, in consultation with the Department of the Attorney General, provides the following guidelines.

### **PURPOSE OF THE SUSPENSION**

The suspension of the procurement statutes is intended to allow "county and state agencies to provide emergency relief and engage in emergency management functions as defined in section 127A-2, Hawaii Revised Statutes...." The definition of "emergency management functions" means "those tasks required to prepare for and carry out actions to prevent, prepare for, respond to, mitigate, and recover from emergencies and disasters, and includes management of resources, personnel, and facilities and administration of economic controls as needed to provide relief in anticipation of, during, or after emergencies or disasters."

The suspension of the procurement statutes does not prohibit agencies from conducting their normal agency procurements following the procedures in chapters 103D and 103F, HRS.

### **APPLICATION OF THE SUSPENSION**

Agencies should be following all procurement laws at this time unless following the procurement laws impede the agency's ability to "prevent, prepare for, respond to, mitigate, and recover from" the COVID-19 emergency. There are limited circumstances which justify use of the procurement laws suspension. Some examples are:

- Agency needs to procure COVID-related goods or services and the agency cannot prepare for and respond to the emergency if it follows regular procurement procedures.
- Agency needs to procure non COVID-related goods or services necessary for the agency to continue agency functions, but the agency cannot comply with regular procurement procedures due to the emergency.
- Emergency funding, such as CARES Act funding, will be lost because the award of the contract cannot be made within the funding deadline if the agency follows regular procurement procedures.
- Agency is contracting for COVID-related goods with a foreign vendor who cannot obtain the Hawaii Compliance Express certificate at this time.

- Final payment cannot be made to a vendor because the IRS is not providing clearances at this time, but all goods or services under the contract have been provided by the vendor and the agency may incur interest payments under section 103-10, HRS, if the vendor is not paid within 30 days.

In the examples above, particularly for the non COVID-19-related procurements, agencies must document for the contract file the reasons why the agency could not follow regular procurement procedures and how following regular procurement procedures negatively impacts the agency's ability to perform its emergency management functions as defined in section 127A-2, HRS. Agencies also should be aware that federal reimbursements generally are contingent upon state agencies following their state procurement laws. Federal reimbursement may be denied even if the State's procurement laws are suspended and the agency has documentation showing the need to procure outside of the regular procurement procedures. For this reason, agencies must make every effort to fully comply with the State's procurement laws.

## **II. SPO Form: SPO-080 Contractor Responsibility**

In response to Governor Ige's emergency proclamation regarding COVID-19 the State Procurement Office (SPO) created form SPO-080, "Contractor Responsibility Guidance for FEMA Reimbursements", identified as #14 on our website at <http://spo.hawaii.gov/for-state-county-personnel/disaster-preparedness-procurement/fema-reimbursement/>. This form is recommended for the departments to use when seeking FEMA reimbursements as it relates to this crisis and for those procurements that are not related, as means to document vendor responsibility for the procurement file. This form is also located on SPO's Forms page at <http://spo.hawaii.gov/all-forms/>. Form SPO-080 and any HCE certification should be printed and kept in the contract file.



For questions on FEMA-Ready procurement packages, please contact Carey Ann Sasaki at [careyann.r.sasaki@hawaii.gov](mailto:careyann.r.sasaki@hawaii.gov).

For questions on this procurement circular, please contact Kevin Takaesu at 586-0568, or email [kevin.s.takaesu@hawaii.gov](mailto:kevin.s.takaesu@hawaii.gov), or contact me at 587-4700.

Mahalo.