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August 9, 2021

**PROCUREMENT CIRCULAR NO. 2022-03**

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

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

Counties of Hawaii, Kauai, and Maui, and City & County of Honolulu  
Executive Branch, Finance Director  
Legislative Branch, City/County Council Chair  
Board/Departments of Water Supply, Manager/Chief Engineer  
Honolulu Authority for Rapid Transportation, Executive Director

CC: Administrative Services Offices

FROM: Bonnie Kahakui, Acting Administrator *Bonnie A Kahakui*

SUBJECT: Summarized Updates to Procurement Code HRS Chapter 103D for:  
ACT 224, SLH 2021 (SB 1329 SD2, HD3, CD1): SECTION 2 and 3  
ACT 188, SLH 2021 (HB 526 HD1, SD2, CD1): SECTION 2, 3, 4, 5, 6, 7, and 8  
ACT 074, SLH 2021 (HB 552 HD1, SD2, CD1): SECTION 4

**Senate Bill No. 1329, SD2, HD3, CD1** was signed into law as Act 224 by the Governor on July 6, 2021 with the effective date upon its approval. ACT 224, SLH 2021 amended the following HRS 103D sections:

HRS §103D-701, Authority to resolve protested solicitations and awards, by establishing a time limit for a written decision to uphold or deny the protest within seventy-five (75) calendar days of receipt of the protest; and an extension, not to exceed forty-five (45) calendar days, may be granted based on written justification of extenuating circumstances.

HRS §103D-709, Administrative proceedings for review, by amending the cash or protest bond amount for parties initiating administrative proceedings for review of certain protest decisions to the amount of one percent (1%) of the estimated value of the contract.

**House Bill No. 526, HD1, SD2, CD1** was signed into law as Act 188 by the Governor on July 6, 2021 with the effective date upon its approval. ACT 188, SLH 2021 amended the following HRS 103D sections:

Adds a new section to part III, to implement and administer with administrative rules, a past performance data base by December 31, 2023.

HRS §103D-104, Definitions, by adding a new definition for “Past performance;” and amending the definition of “responsible bidder or offeror” pursuant to the responsibility determination standards adopted by the policy board.

HRS §103D-302, Competitive sealed bidding, (f) by requiring procurement officers to also consider past performance, if available, as part of the criteria that will affect the bid price and be considered in evaluation for award.

HRS §103D-303, Competitive sealed proposals, subsections (e) and (i)(4) by:

- 1) Requiring request for proposals to include past performance, as an evaluation factor, on projects of similar scope for public agencies or private industry, and shall state the relative importance of past performance as an evaluation factor; and
- 2) Requiring past performance, on projects of similar scope, to be an evaluation factor for the prequalification of offerors when construction projects are solicited through request for proposals using the design-build method.

HRS §103D-306, Sole source procurement, (a) by: requiring a review of past performance to be conducted, if available; and requiring past performance evaluations, relied upon, to be included in the contract file.

HRS §103D-310, Responsibility of offerors, (b) by requiring procurement officers to obtain available information, including past performance, sufficient to be satisfied that a prospective offeror meets the applicable standards for a responsibility determination.

HRS §103D-320, Retention of procurement records, by requiring written past performance evaluations for all procurements over the small purchase threshold to be maintained in the department’s procurement files and in the statewide past performance database.

**House Bill No. 552, HD1, SD1, CD1** was signed into law as Act 074 by the Governor on June 24, 2021 with the effective date of July 1, 2021. ACT 074, SLH 2021 amended the following HRS 103D section:

HRS §103D-412, Light – duty motor vehicle requirements, by redefining fuel-based vehicles and other requirements.

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**Pursuant to ACT 074, SLH 2021, the Department of Transportation (DOT) and the Department of Business, Economic Development & Tourism (DBEDT)'s Hawaii State Energy Office shall develop strategies to transition all light-duty motor vehicles in the State's fleets to meet the clean ground transportation goal established pursuant to section 196-9(c)(10).**

It is advised that departments be completely familiarized with the entire amendments made to the subject sections of HRS 103D. A complete listing of all current Procurement Circulars is available at <https://spo.hawaii.gov/>, under the *References* menu, click on *Procurement Circulars*.

Questions concerning this Procurement Circular may be directed to Stacey Kauleinamoku at 586-0571 or email [stacey.l.kauleinamoku@hawaii.gov](mailto:stacey.l.kauleinamoku@hawaii.gov) or you may contact me at phone at 587-4701.

Mahalo.