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PROCUREMENT CIRCULAR NO. 2023-02

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 168, SLH 2022 (HB1974 HD1, SD2, CD1): SECTION 2
ACT 173, SLH 2022 (SB2383 SD2, HD2, CD1): SECTION 2
ACT 174, SLH 2022 (SB2384 SD2, HD2, CD1): SECTION 3 and 4
ACT 175, SLH 2022 (SB2387 SD1, HD2, CD1): SECTION 2
ACT 176, SLH 2022 (SB3040 SD2, HD1, CD1): SECTION 2, 3 and 4
ACT 180, SLH 2022 (SB3372 SD1, HD2, CD1): SECTION 1
ACT 282, SLH 2022 (SB3369 SD2, HD2, CD1): SECTION 2

House Bill No. 1974, HD1, SD2, CD1 was signed into law as Act 168 by the Governor on June 27, 2022, with the effective date upon its approval and the term of initiative five years from the enactment of the Act. Act 168, SLH 2022 amended the following HRS 103D section:

HRS §103D-902, Small business assistance, to add subsection (b), requiring the State Procurement Office to establish the small business initiative program, to ensure that small businesses, including businesses owned by veterans, Native Hawaiians, and women, are able to effectively participate in small business contracting opportunities in the State.

Senate Bill 2383, SD2, HD2, CD1 was signed into law as Act 173 on June 27, 2022, with the effective date upon its approval. ACT 173, SLH 2022 amended the following:

HRS §103D-201, Amends the membership of the procurement policy board, subsections (b), (2), and (3) by:

- 1) Decreasing the number of members on the state procurement policy board from seven to five.
- 2) Requiring that two members be appointed by the governor; provided that one member shall have five years of high-level construction procurement experience and one member shall have five years of high-level county procurement experience.
- 3) Requiring that one member be appointed by the president of the senate provided that the member shall have five years of general procurement experience: and
- 4) Requiring that one member be appointed by the speaker of the house of representatives, provided that the member shall have five years of general procurement experience.

Senate Bill 2384, SD2, HD2, CD1 was signed into law as ACT 174 on June 27, 2022, with the effective date upon its approval. ACT 174, SLH 2022 amended the following:

HRS §103D-1002, Hawaii Products, subsections (a), (b), (i), (i)(2), (k), and (l) by:

- 1) Only including agricultural goods, value-added products, and commodities subject to availability and policy considerations.
- 2) Hawaii product preference shall not apply to solicitations for public works construction.

HRS §103D-1010, Purchase from qualified community rehabilitation program, subsection (b)(3) by removing the restriction on placement of goods or service purchased from community rehabilitation program on Hawaii products list.

Senate Bill 2387, SD1, HD2, CD1 was signed into law as ACT 175 on June 27, 2022, with the effective date upon its approval. ACT 175, SLH 2022 amended the following:

HRS §103D-308, Cancellation of invitations for bids or requests for proposals, by requiring that reasons for cancellation for invitations for bids and requests for proposals be publicly posted, for a minimum of ten business days, on a purchasing agency's website, government electronic notification system, or by any other means the procurement officer deems effective for publicizing the cancellation notice.

Senate Bill 3040, SD2, HD1, CD1 was signed into law as ACT 176 on June 27, 2022, with the effective date of July 1, 2022. ACT 176, SLH 2022 amended the following:

HRS §103D-104, Definitions, by adding a new definition to be appropriately inserted and to read as follows:

""Procurement automation system" means an electronic procurement, accounting-oriented, multi-module, data-based system that integrates procurement activities from solicitation to contract management."

HRS §103D-206, Additional duties of the administrator of the procurement office, by adding subsection (7), requiring the administrator to develop and administer procurement automation systems, including methods to assess, charge, and collect a transaction fee for the use of the procurement automation systems to cover procurement automation system costs.

HRS §103D-1010, purchases from qualified community rehabilitation programs, by removing the requirement to maintain a disabled employee ratio equal to or in excess of three to one for work hours of direct labor at all times on the week contracted.

Senate Bill 3372, SD1, HD2, CD1 was signed into law June 27, 2022, as ACT 180, with the effective date of July 1, 2022. ACT 180, SLH 2022 amended the following:

HRS §103D-707, Remedies after an award, by adding subsections (a) and (b), allowing an award that was made in violation of law, and the award is rescinded and the contract is null and void, then:

(1) For solicitations issued pursuant to section 103D-302, Competitive sealed bidding, the contract may be awarded to the next lowest responsive and responsible bidder; provided that all prices remain the same as originally bid; or

(2) For solicitations issued pursuant to section 103D-303, Competitive sealed proposals, the contract may be awarded to the next responsive and responsible offeror whose proposal is determined in writing to be the next most advantageous, taking into consideration the evaluation factors set forth in the solicitation; provided that all prices remain the same as originally offered."

Senate Bill 3369, SD2, HD2, CD1 was signed into law as ACT 282, on July 12, 2022, SLH2022 with the effective date of July 1, 2022. ACT 282, SLH 2022 establishes a procurement services consolidation working group to develop a plan for a five-year phased in consolidation, under the state procurement office, of all state executive branch procurement services and staff, except the Hawaii Health System Corporation, University of Hawaii, and office of Hawaiian affairs. The working group shall dissolve on June 30, 2024.