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COMPTROLLER'S MEMORANDUM NO. 2010-29

TO: Heads of Departments and Agencies

FROM: Russ K. Saito, State Comptroller

RE: Act 17, SLH 2009 – Apprenticeship Program

This memorandum, effective upon issuance, amends and replaces Comptroller's Memorandum No. 2010-27 and provides procedures to implement and administer the 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to HRS §103-55.6. Changes to Comptroller's Memorandum No. 2010-27 include an amended definition of "employ" and clarification of the signature requirements of the certification forms.

CONTENTS

SECTION 1 Purpose and Applicability
SECTION 2 Definitions
SECTION 3 Qualification Procedures
SECTION 4 Solicitation Procedures
SECTION 5 Evaluations and Contract Award
SECTION 6 Contract Administration

SECTION 1 Purpose and Applicability

A. The purpose of these procedures/rules is to implement and administer the 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to HRS §103-55.6.

B. These procedures/rules shall apply to public works contracts having an estimated value of $250,000 or more, entered into by a governmental body under HRS chapter 103.

SECTION 2 Definitions

A. "Apprenticeable trade" shall have the same meaning as 'apprenticeable occupation' pursuant to Hawaii Administrative Rules (HAR) §12-30-5.

B. "Department" means the department of labor and industrial relations.

C. "Director" means the director of labor and industrial relations.

D. "Employ" means the employment of a person in an employer-employee relationship.

E. "Governmental body" means as defined in HRS section 103D-104.

F. "Party to an apprenticeship agreement" means party to a registered apprenticeship program with the department of labor and industrial relations.

G. "Preference" means the 5% by which the qualified offeror's offer amount would be decreased for evaluation purposes.

H. "Public work" shall be as defined in HRS §104-2 and HAR 12-22-1.

I. "Registered apprenticeship program" means a construction trade program approved by the department pursuant to HAR §12-30-1 and §12-30-4.

J. "Sponsor" means an operator of an apprenticeship program and in whose name the program is approved and registered with the department of labor and industrial relations pursuant to HAR §12-30-1.

SECTION 3 Qualification Procedures

A. Any offeror seeking the preference must be a party to an apprenticeship agreement registered with the department at the time the offer is made for each apprenticeable trade the offeror will employ to construct the public works project for which the offer is being made.

(1) The apprenticeship agreement shall be registered and conform to the requirements of HRS chapter 372.

(2) Subcontractors do not have to be a party to an apprenticeship agreement for the offeror to obtain the preference.

(3) The offeror is not required to have apprentices in its employ at the time of submittal of an offer to qualify for the preference.

B. The department shall:

(1) Develop and maintain a list of construction trades in registered apprenticeship programs which conform to HRS chapter 372; and

(2) Electronically post the list, including any amendments, on the department website.

C. Offeror is responsible to comply with all submission requirements for registration of its apprenticeship program before requesting a preference.

D. Offeror shall provide a certification by the sponsor of the respective registered apprenticeship programs covering the relevant trade(s) for the public works project.

E. *Certification Form 1* issued by the department shall include:

(1) Contractor information;
(2) Solicitation reference;
(3) Trade(s);
(4) Date and name of apprenticeship program;
(5) Signature of authorized training coordinator or training trust fund administrator certifying that the contractor is a participant in the program, and that the program is registered with the department;
(6) Contact information for sponsor's authorized representative signing the form;
(7) Number of apprentices enrolled in the program, number who successfully completed the apprenticeship program in the past 12 months, including whether the contractor is signatory to a collective bargaining agreement for that trade, or if not, provide for attachment of a copy of the agreement between the contractor and the program.

SECTION 4 Solicitation Procedures

A. The procurement officer shall determine whether the solicitation is for a public works construction project with an estimated value of $250,000 or more, provided that even if all offers submitted are less than $250,000, the preference shall be applied.

B. The solicitation for a public works construction project with an estimated value of $250,000 or more shall include apprenticeship preference provisions which indicate the following:

(1) Allow offeror seeking to claim the preference to state the trades the offeror will employ to perform the work;

(2) For each trade to be employed to perform the work, the offeror shall submit a completed signed original *Certification Form 1* verifying participation in an apprenticeship program registered with the department;

(3) The *Certification Form 1* shall be authorized by an apprenticeship sponsor of the department list of registered apprenticeship programs. The authorization

shall be an original signature by an authorized official of the apprenticeship sponsor; and

(4) The completed *Certification Form 1* for each trade must be submitted by the offeror with the offer. Previous certifications shall not apply unless allowed by the solicitation.

C. Upon receiving *Certification Form 1*, the procurement officer will verify with the department that the apprenticeship program is on the list of apprenticeship programs registered with the department. If the programs are not confirmed by the department, the offeror will not qualify for the preference.

SECTION 5 Evaluation and Contract Award

A. If the offeror certifies participation in an apprenticeship program for each trade which will be employed by the offeror for the project, the procurement officer shall apply the preference and decrease the offeror's total bid amount by five per cent (5%) for evaluation purposes.

B. Should the offeror qualify for other statutory preferences (for example, Hawaii products), all applicable preferences shall be applied to the offer's price

C. The contract amount shall be the original offer amount, exclusive of any preference; the preference is only for evaluation purposes.

D. Any claims challenging an offeror's representation that the offeror is a participant in an apprenticeship program(s) as claimed, shall be submitted to the procurement officer. The procurement officer will refer the challenge to the department of labor and industrial relations who shall investigate any such claims and shall make a determination.

SECTION 6 Contract Administration

A. For the duration of a contract awarded utilizing the apprenticeship preference, the contractor shall certify each month that work is being conducted on the project, that it continues to be a participant in the relevant apprenticeship program for each trade it employs.

B. Monthly certification shall be made on *Monthly Certification Form 2* prepared and made available by the department, be a signed original by the respective apprenticeship program sponsors authorized official, and submitted by the contractor with its monthly payment requests.

C. Should the contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a party to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

(1) Withholding of the requested payment until the required form(s) are submitted;

(2) Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the contractor; provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or

(3) Proceed to debar or suspend pursuant to HRS §103D-702.

D. If events such as "acts of God," acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and expeditiously complies with the certification process when the event is over.