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SPO 07-0338

June 15, 2007

MEMORANDUM

TO: Executive Department Heads
Chief Procurement Officers

FROM: Aaron S. Fujioka
Administrator

SUBJECT: Informational Briefing on Act 291, SLH 2006 (Prompt Payment Act) and Impacts on State/County Construction Projects

On behalf of the State Comptroller, Department of Accounting and General Services, this information is being distributed to all affected governmental agencies.

Act 291, SLH 2006, also known as the Prompt Payment Act, becomes effective July 1, 2007, for State/County contracts that are executed on or after July 1, 2007. This Act enables prompt payment for general contractors, subcontractors, and material suppliers or vendors and achieves a reasonable balance between incentives for prompt payment and protecting the interests of general contractors, subcontractors, material suppliers or vendors, and government agencies. All government agencies are responsible for implementation.

The attached notice provides additional information.

The Department of Accounting and General Services, Public Works Division will conduct the following informational briefings:

- For State/County agencies at the STATE CAPITOL Auditorium, Friday, 6/22/07, 9:00 AM - 11:00 AM
- For contractors/sub-contractors/vendors at ALOHA STADIUM Hospitality Room, Monday, 6/25/07, 9:00 AM - 11:00 AM

If you have any questions, please call me at 587-4700 or your staff may contact Ralph Morita of DAGS, Public Works Division at 586-0500.

attachment

NOTICE OF INFORMATIONAL BRIEFING

Act 291, SLH 2006 (HB 3036) Prompt Payment Act

Act 291, SLH 2006, the Prompt Payment Act, goes into effect July 1, 2007 for contracts that are executed on or after July 1, 2007. The act enables prompt payment for government work of general contractors, subcontractors, and material suppliers. It achieves a reasonable balance between incentive for prompt payment and protecting the interests of general contractors, subcontractors, material suppliers, and government agencies. All government agencies are responsible for implementation. This briefing will cover the requirements of the following sections of Act 291.

SECTION 2:

1. Provides for prompt payment by the government procurement officer to the general contractor and by the general contractor to the subcontractor for work satisfactorily completed under the subcontract.
2. Clarifies requirements for bonding, documentation, and conditions that must be fulfilled by the subcontractor to receive prompt payment.
3. Specifies penalties that shall be imposed on the government agency or general contractor for failing to pay in accordance with the requirements of the section.
4. Enables payment of subcontractors including retainage when their work is done even if it is long before the total project is completed.
5. Allows for a "release of retainage bond" and adoption of Federal Prompt Payment Act documentation requirements for payments.

SECTION 3:

1. Requires that any retainage provided for in HRS section 103-32.1, be held by the government procurement officer. This provides assurance that general contractors cannot withhold payment for their use at the expense of the subcontractor.
2. Protects the right of the contractors and subcontractors to negotiate other conditions in their subcontracts.
3. Adopts documentation requirements from the Federal Prompt Payment Act.

SECTION 4:

1. Provides for prompt payment for change orders.
2. Provides for a force account method of cost determination when the government and general contractor cannot agree on change order costs.