



**U.S. Department of Housing and Urban Development**

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# HUD


# Information Bulletin

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**CPD-HI-10-01**

**September 16, 2010**

**MEMORANDUM FOR:** All CPD Consolidated Plan Contacts within the  
Jurisdiction of the Honolulu Field Office

**FROM:**   
Mark A. Chandler, Director,  
Office of Community Planning and Development

**SUBJECT:** State of Hawaii Procurement Related Legislation  
Act 68 – Employment of Hawaii Residents  
Act 17 – Apprenticeship Programs

Recipients of Community Planning and Development (CPD) grants are subject to the procurement requirements set forth in 24 CFR 85.36 in procuring property, goods, and services to be paid for with grant funds. The U.S. Department of Housing and Urban Development (HUD) Honolulu Field Office, Office of CPD has reviewed the State of Hawaii's (State's) Act 68 of 2010 (Act 68) regarding the employment of Hawaii residents and Act 17 of 2009 (Act 17) regarding apprenticeship programs as it applies to procurement of construction contracts funded with CPD grants. This information bulletin serves to provide recipient of CPD grants with HUD's guidance.

Act 68 requires contractors awarded construction contracts through the State and counties of the State to maintain a workforce employed on the contract that is composed of not less than 80 percent Hawaii residents. Act 68 subjects all construction procurements to the 80 percent Hawaii resident requirement including IFB, RFP, sole source, emergency procurement methods, and subcontracts of \$50,000 or more in connection with any general contract that is covered under Act 68. Procurements for professional services and small purchases are not subject to Act 68.

Act 17 requires the State and counties of the State to apply a five percent bid reduction for evaluation purposes to bids for public works contracts for bidders that are parties to apprenticeship agreements. Act 17 applies to public works contracts for development, construction, renovation, and maintenance related to the refurbishment of any real or personal property that have an estimated value of \$250,000 or more. Bidders eligible for the five percent bid adjustment are bidders that are parties to a registered apprentice program with the State of Hawaii's Department of Labor and Industrial Relations.

HUD hereby provides notice to the State, City and County of Honolulu, County of Hawaii, County of Kauai, and County of Maui that the imposition of Act 68 and Act 17 preferences is in violation of HUD procurement regulations. Procurement requirements set forth at 24 CFR 85.36(c)(2) prohibit "the use of statutorily or administratively imposed in-State or local geographically preferences in the evaluation of bids or proposals" (except in rare circumstances with respect to architectural and engineering services).

Due to the seriousness of the matter and the impact on all HUD funded projects in Hawaii, the Office of CPD in Honolulu has referred this matter to HUD's Office of General Counsel (OGC). The HUD OGC is still analyzing Act 68 and Act 17 as it relates to all HUD programs. Our office will provide all CPD grantees with additional guidance when it becomes available. In the mean time, the State, County of Honolulu, County of Hawaii, County of Kauai, County of Maui, subrecipients, and contractors using CPD funds may not apply Act 68 and Act 17 to the procurement of contracts funded with CPD funds. Should you have any questions, concerns, or comments regarding this matter, please submit your questions in writing to the Office of CPD in Honolulu.

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