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**INSTRUCTIONS FOR COMPLIANCE WITH
ACT 68, SLH 2010
EMPLOYMENT OF STATE RESIDENTS ON CONSTRUCTION
PROCUREMENT CONTRACTS**

1. Definitions for terms used in Act 68, SLH 2010:

- a. "Contract" means contracts for construction under 103D, HRS.
- b. "Contractor" has the same meaning as in section 103D-104, HRS, provided that "contractor" includes a Subcontractor where applicable.
- c. "Construction" has the same meaning as in section 103D-104, HRS.
- d. "Procurement Officer" has the same meaning as in section 103D-104, HRS.
- e. "Resident" means a person who is physically present in the State of Hawai'i at the time the person claims to have established the person's domicile in the State of Hawai'i and shows the person's intent is to make Hawai'i the person's primary residence.
- f. "Shortage trade" means a construction trade in which there is a shortage of Hawai'i residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.

2. Employment of State Residents Requirements - Act 68, SLH 2010:

- a. A Contractor awarded a contract shall ensure that Hawai'i residents compose not less than eighty percent of the workforce employed to perform the contract work on the project. The eighty percent requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours worked on the contract by all employees of the contractor in the performance of the contract. The hours worked by any Subcontractor of the Contractor shall count towards the calculation for this section. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.
- b. Prior to starting any construction work, the Contractor shall submit the subcontract dollar amount for each of its Subcontractors.

- c. The requirements of this section shall apply to any subcontract of \$50,000 or more in connection with the Contractor, that is, such Subcontractors must also ensure that Hawai'i residents compose not less than eighty percent of the Subcontractor's workforce used to perform the subcontract.
- d. The Contractor and any Subcontractor whose subcontract is \$50,000 or more shall comply with the requirements of Act 68 for the entire duration of the contract.
1. Certification of compliance shall be made on a monthly basis. If no progress payments are made for any month, the Contractor, and any Subcontractor as applicable, shall still be required to submit the certification on monthly basis to the Contracting Officer.
 2. The certification of compliance shall be made under oath by an officer of the company by completing a Certification of Compliance for Employment of State Residents form and executing the Certificate before a licensed notary public.
 3. In addition to the monthly certification as indicated above, the Contractor and Subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and time sheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and Subcontractor who performed work on the project to validate compliance with Act 68. The Contractor and Subcontractors shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four (4) year period, the Contractor and Subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four (4) year period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any Subcontractor.
- e. A Contractor who fails to comply with this section shall be subject to any of the following sanctions:

1. Temporary suspension of work on the project until the Contractor or its Subcontractor complies with Act 68;
2. Withholding of payment on the contract until the Contractor or its Subcontractor complies with Act 68;
3. Permanent termination of the Contractor or Subcontractor from any further work on the project;
4. Recovery by the State, as applicable, of any moneys expended on the contract or subcontract as applicable; or
5. Proceedings for debarment or suspension of the Contractor or Subcontractor under Hawai'i Revised Statutes §103D-702.

3. Conflict with Federal Law: This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the State from receiving Federal funds or aid.
