

PROCUREMENT POLICY BOARD MEETING

September 5, 1995

2:00 p.m.

Comptroller's Conference Room  
1151 Punchbowl Street, Room 410  
Honolulu, Hawaii 96813

Members Present

Tim Johnson, Vice Chairman  
Sam Callejo, Secretary  
Bill Gray, Member  
Robert Oyama, Member

Excused

Haruo Shigezawa, Chairman

Others

Lloyd Unebasami, Administrator  
Robert Governs, State Procurement Office  
Doris Lee, State Procurement Office  
Grant Turner, State Procurement Office  
Kay Fujimoto, State Procurement Office  
Diane Erickson, Deputy Attorney General  
Jack Rosenzweig, Deputy Attorney General  
Eric Tom, DOE Procurement Office  
Duff Zwald, University of Hawaii  
Gary Choy, Department of Transportation  
Sterling Morikawa, Department of Transportation

**Call to Order**

In the absence of the Chairman, the meeting was called to order at 2:00 p.m. by Vice Chairman Tim Johnson.

**Minutes**

Motion

A motion was made by Mr. Sam Callejo, seconded by Mr. Bill Gray, to approve the minutes of the meeting held on August 1, 1995.

AYES:        Mr. Tim Johnson  
              Mr. Sam Callejo  
              Mr. Bill Gray  
              Mr. Robert Oyama

NAYS:        None

The minutes were approved as distributed.

## **New Business**

### **A.    FOR ACTION**

#### **Chapter 3-122, Sole Source Procurement.**

Mr. Unebasami reported that the Department of Transportation (DOT) has requested a blanket exemption from the procurement code for contracts for repair, replacement, connection or relocation of equipment and/or facilities owned or controlled by utility companies. As the chief procurement officer for the executive branch, Mr. Unebasami explained that he is not authorized to grant such an exemption. In view of the public hearing process, which the interim rules are currently undergoing, a request will not be made at this time for the Board to approve DOT's request as an addition to the sole source list of exemptions because that list will expire on December 31, 1995. DOT will be informed to submit sole source requests on an as-needed basis.

Mr. Unebasami further explained that an approval as requested by DOT would have a statewide impact; and, therefore, should be addressed through the administrative rules.

The Vice Chairman requested that staff draft the language for this proposal before the next meeting.

### **B.    FOR INFORMATION**

1.    Chapter 3-122, Sole Source Procurement.
2.    Chapter 3-123, Cost Principles.
3.    Chapter 3-126, Legal and Contractual Remedies.

Mr. Jack Rosenzweig distributed copies of his committee's recommended changes to the aforementioned chapters. He explained that the revisions are minor and that most of the recommendations are "fine tuning" type changes.

In chapter 3-126 regarding debarment and suspension proceedings, the language was loose and unclear as to who would be presiding over meetings and how such meetings would

be conducted. It is being recommended that the hearings officer could be a corporation counsel or an individual on the agency staff, and does not necessarily need to be a professional hearings officer. The committee is also recommending that a new section be added regarding the effects debarment would have on existing contracts. As a consequence to debarment, immediate default is recommended.

### **Administrator's Report**

Mr. Unebasami reported that the State Procurement Office is not planning to recommend any changes to the procurement law during the next legislative session. He and his staff will focus on finalizing the administrative rules for the procurement code. The public hearing process for the rules will commence with the Kona public hearing which is scheduled for September 21, 1995, followed by Hilo on September 22, 1995, Honolulu on September 26, 1995, Maui on October 10, 1995, and Kauai on October 20, 1995. All amendments approved by the Board up through the August 1, 1995 meeting have been incorporated in the rules which are being presented in the public hearing process. The public may submit written testimony at any of the public hearings or directly to the State Procurement Office by October 23, 1995.

### **Next Meeting**

Tuesday, November 7, 1995 at 2:00 p.m.

### **Adjournment**

There being no further business, the meeting was adjourned at 2:45 p.m.

Respectfully submitted,

OCT. 23, 1995

Date



Sam Callejo, Secretary

## **A. RULES**

### **1. Responses to written comments and testimonies received on adoption of rules:**

- A. Chapter 3-120, HAR.  
Attorney General and Judiciary**
- B. Chapter 3-126, HAR.  
State Procurement Office**
- C. Chapter 3-120, HAR.  
Mr. Douglas Meller**
- D. Chapters 3-120, 3-121, and 3-122, HAR.  
National Association of Purchasing Managers of Hawaii**
- E. Chapter 3-122, HAR.  
Pacific Resource Partnership**
- F. Chapter 3-122, HAR.  
Consulting Engineers Council of Hawaii**
- G. Chapter 3-122, HAR.  
Mr. Daniel Chun**
- H. Chapter 3-122, HAR.  
AIA Hawaii State Council**
- I. Chapters 3-122 and 3-125, HAR.  
General Contractors Association of Hawaii**
- J. Hawaii Section - American Society of Civil Engineers.**
- K. Hawaii Society of Professional Engineers.**
- L. Rules without testimony**



BENJAMIN J. CAYETANO  
GOVERNOR



1.

MARGERY S. BRONSTER  
ATTORNEY GENERAL

STEVEN S. MICHAELS  
FIRST DEPUTY ATTORNEY GENERAL

**STATE OF HAWAII**  
DEPARTMENT OF THE ATTORNEY GENERAL  
425 QUEEN STREET  
HONOLULU, HAWAII 96813  
(808) 586-1500

95 SEP 14 P2:38

September 11, 1995

ADMINISTRATION  
STATE PROCUREMENT OFFICE  
STATE OF HAWAII

STATE PROCUREMENT OFFICE  
HONOLULU, HAWAII

95 OCT -9 P12:03

Mr. Haruo Shigezawa  
Chairperson, Procurement Policy Board  
Department of Accounting & General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Mr. Lloyd Unebasami  
Administrator, State Procurement Office  
Department of Accounting & General Services  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Gentlemen:

We are in receipt of Procurement Directive No. 94-03, Amendment 6, dated August 14, 1995, forwarding replacement pages for page 120-7 and its attached exhibit (list of procurements exempt from chapter 103D, HRS (7/5/95)).

My staff has advised that they have raised the concern I outline here with you already. I am writing to request that the State Procurement Office and the Procurement Policy Board reassess the appropriateness of including item 14, without qualification, in the list of exemptions the Policy Board included in the interim rules it adopted to implement the exemptions permitted by Haw. Rev. Stat. §103D-102 (b) (4), as amended by Act 178, 1995 Haw. Sess. Laws.

Item 14 reads as follows:

14. Services of legal counsel, guardian ad-litem; interpreters, psychiatrists, and psychologists in criminal and civil proceedings;

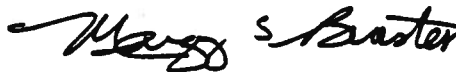
I understand the exemption was proposed by the Judiciary. Although we have not asked the Judiciary directly, we presume the proposal was advanced to document and expressly authorize the routine appointment of counsel, guardian-ad-litem (ordinarily, persons to represent the interest of a minor or incapacitated adult), interpreters, psychiatrists and psychologists, by court order, pursuant to statutes.

Mr. Haruo Shigezawa  
Mr. Lloyd Unebasami  
September 11, 1995  
Page 2

It is not my intent to dissuade the Board of its decision to confer the exemption for this purpose. However, I believe the exemption is too broad, particularly the inclusion of services of legal counsel, when Haw. Rev. Stat. §103D-304, with its reference back to §103D-303, expresses a preference for professionals, with attorneys literally specified, to be retained as competitively as possible.

Accordingly, I suggest that the following qualifying clause be added to the end of item 14: "when required by court order;". Please let me know whether you will adopt our suggestion or whether you have another alternative to suggest.

Very truly yours,

A handwritten signature in cursive script, reading "Margery S. Bronster".

Margery S. Bronster  
Attorney General



**Office of the Administrative Director — Fiscal and Support Services Division**

THE JUDICIARY • STATE OF HAWAII • 1111 ALAKEA STREET, 6TH FLOOR • HONOLULU, HAWAII 96813-2807  
TELEPHONE (808) 538-5805 • FAX (808) 538-5802

October 17, 1995

TO: Bob Governs,  
State Procurement Office

FROM: Jeffrey Agader,  
Fiscal & Support Services Director

SUBJECT: Exemption Permitted by HRS 103D-102(b)(4) and  
Hawaii Administrative Rules 3-120-4(b)

Thank you for giving us the opportunity to respond to Attorney General Margery Bronster's suggestion to qualify HAR 3-120-4(b) item 14 of the PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS (7/5/95). In retrospect, we agree that the exemption is too broad and accept her suggested qualifying clause, but with one additional clause: "when required by court order or by the Rules of Court". The addition of the Rules of Court allows interpreters to be included in the exemption since they are not appointed by a court order. Item 14 (with spelling changes) would then read as follows:

14. Services of legal counsel, guardian ad litem, interpreters, psychiatrists, and psychologists in criminal and civil proceedings when required by court order or by the Rules of Court.

Please call Jonathan Wong in my office at 538-5805 if you have any questions. Thank you.

Administrative Services — 1111 ALAKEA ST., 6TH FLOOR • HONOLULU, HI 96813-2807 • PHONE: (808) 538-5805 • FAX: (808) 538-5802  
Fiscal Services — 1111 ALAKEA ST., 6TH FLOOR • HONOLULU, HI 96813-2807 • PHONE: (808) 538-5800 • FAX: (808) 538-5802  
Contract & Purchasing — 1111 ALAKEA ST., 6TH FLOOR • HONOLULU, HI 96813-2807 • PHONE: (808) 538-5805 • FAX: (808) 538-5802  
Repro-Graphics — 1111 ALAKEA ST., 1ST FLOOR • HONOLULU, HI 96813-2807 • PHONE: (808) 538-5484 • FAX: (808) 538-5488  
Facilities Management — 1111 ALAKEA ST., 1ST FLOOR • HONOLULU, HI 96813-2807 • PHONE: (808) 538-5490 • FAX: (808) 538-5494



1. CHAPTER 3-120, HAR

Attorney General Margery Bronster in her letter of September 11, 1995, requested the State Procurement Office and the Procurement Policy Board to reassess the wording of item no. 14, of the list of exemptions permitted by 103D-102(b) (4), HRS.

It is the Attorney General's opinion, that the current wording of the exemption is too broad, particularly with the inclusion of the services of legal counsel, when the procurement code specifies that professionals shall be retained in accordance with sections 103D-302 through 103D-307, HRS.

Accordingly, the Attorney General has suggested that the following qualifying clause be added to the end of item no. 14: "when required by court order".

Because the exemption was originally proposed by the Judiciary, they were asked to respond to Attorney General Margery Bronster's suggestion to qualify the item no. 14 exemption. In a October 17, 1995 letter to the State Procurement Office, the Judiciary agreed that the exemption was too broad and accepted her suggestion to qualify the clause, but with one additional clause: "when required by court order or by the Rules of Court". The addition of or by the Rules of Court allows interpreters to be included in the exemption since they are not appointed by a court order.

It is therefore proposed that item no. 14 of the list of exemptions permitted by 103D-102(b) (4), HRS should read as follows:

14. Services of legal counsel, guardian ad litem, interpreters, psychiatrists, and psychologists in criminal and civil proceedings when required by court order or by the Rules of Court.

[A nonsubstantial change.]

-

B

## 2. CHAPTER 3-126, HAR

### COMMENTS/RECOMMENDATIONS:

We have a conflict between Section 103D-703, HRS, and Sections 3-126-28 and 3-126-31, HAR, regarding time allowed to resolve controversies. (Ninety days vs. one hundred twenty days).

#### §3-126-28 Procurement officer's decision.

(c) The procurement officer shall issue a written decision within the following time limitations:

- (1) For claims not exceeding fifty thousand dollars: [one hundred twenty] ninety calendar days after receipt of claim.
- (2) For claims exceeding fifty thousand dollars: [one hundred twenty] ninety calendar days after receipt of the claim; provided that if a decision is not issued within [one hundred twenty] ninety calendar days, the procurement officer shall notify the contractor of the time within which such officer will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of the contractor's supporting data and other relevant factors.

If the procurement officer fails to issue a decision on a claim not exceeding fifty thousand dollars within [one hundred twenty] ninety calendar days after receipt, or does not issue a decision within the time promised for a claim in excess of fifty thousand dollars, the contractor may proceed as if an adverse decision has been received.

§3-126-31 Disputes clause. Language substantially similar to the following clause shall be inserted in all state contracts:

"Disputes

- (1) All controversies between the State and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the procurement officer in writing, within [one hundred twenty] ninety calendar days after a written request by the contract for a final decision concerning the controversy; provided that if the procurement officer does not issue a written decision within [one hundred twenty] ninety calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

Comments. Changes were made to both sec. 3-126-28 and 3-126-31 to agree with corresponding sections in HRS.

[A nonsubstantial change.]



-



Post-it brand fax transmittal memo 7871 # of pages > 1	
To Lloyd Unebasami	From Doug Meller
Ca.	Ca.
Dept.	Phone #
Fax # 587-4703	Fax # 587-1787

2749 Rooke Avenue  
Honolulu, HI 96817

September 19, 1995

Lloyd Unebasami, Administrator  
State Procurement Office  
1151 Punchbowl Street Room 230-A  
Honolulu, HI 96813

Dear Mr. Unebasami:

Subject: Procurements Exempt from Chapter 103D, HRS  
Proposed Administrative Rules on Procurement

It would defeat the purpose of Chapter 103D, HRS, for construction bid documents to require use of specific subcontractors, purchase bid documents to require use of specific vendors, or consultant bid documents to require use of specific subconsultants. Hence I question the merits of Exemption Number 11 which would exempt all "Subgrants and subcontracts to organizations directed by the funding agency" from compliance with Chapter 103D. Perhaps the exemption class should be limited to "Subgrants and subcontracts to public agencies or non-profit organizations directed by the funding agency". You should bear in mind that Section 3-120-5, Hawaii Administrative Rules, also allows case-by-case exemption of procurement from Chapter 103D.

Rather than total exemption of insurance from Chapter 103D, I would suggest rewording Exemption Number 14 to allow negotiated contracts with claims adjustors and rewording Exemption Number 17 to allow negotiated insurance contracts provided only one company is interested in bidding. It would be an expensive mistake for the State to hire a claims adjusting consultant for a State self-insurance program strictly on a low-bid basis. However, it would be an even more expensive mistake for the State to negotiate a conventional insurance contract when more than one reasonably solvent company is interested in submitting competitive bids.

Thank you for considering my testimony.

Sincerely,



Douglas Meller

1.

STATE PROCUREMENT OFFICE  
SEP 19 1995

95 OCT 18 A8:06

# **NAPM OF HAWAII TESTIMONY**

**SUBJECT: PROCUREMENT POLICY BOARD -  
DRAFT ADMINISTRATIVE RULES  
TITLE 3 SUBTITLE 11, CHAPTERS  
120, 121 AND 122.**

**DATE: October 18, 1995**



**TESTIMONY OF NAPM OF HAWAII COMMENTS REGARDING**  
**DRAFT ADMINISTRATIVE RULES ON PROCUREMENT POLICY BOARD**

The Hawaii Chapter of the National Association of Purchasing Managers (NAPM) continues to be very interested and concerned with the Draft Hawaii Administrative Rules of Title 3 Subtitle 11, especially Chapters 120, 121 and 122.

As background NAPM was founded in 1915 and is currently one of the most respected professional organizations in the United States. NAPM is a communication link with more than 35,000 purchasing professionals throughout the country as well as internationally.

The State of Hawaii is to be commended in its efforts to improve its procurement system. Hopefully the State will continue this momentum, but to do so it must be willing to invest in and upgrade its procurement resources, particularly the staff. The private sector has found that the "KEY" to having effective procurement is having a well trained and professional purchasing staff.

Although there are several areas where we believe the proposed rules need revision and/or clarification we have limited our comments to those which we feel are the most important to the success of this initiative.

1. **CHAPTER 120-4:** This empowers the procurement policy board to grant exemptions from Chapter 103D of the Hawaii Revised Statutes. Upon examination of the list of exemptions, it appears that many items are specific only to particular agencies. For example, opponents for athletic competitions would probably be procured only by the University of Hawaii. In such instances, the Chief Procurement Officer for that agency should be allowed to grant "blanket approvals" for the affected agency. To apply such exemptions statewide opens the door to potential abuse. For example, your exemption for lecturers and public speakers could be used to justify hiring consultants for training programs under the guise of a lecturer.
2. **CHAPTER 121-7-3** addresses the importance of training. The administrator of the procurement office is tasked with developing and administering a "statewide procurement orientation and training program". Though the Rules have not been officially adopted, we strongly endorse this aspect because it will provide the following:
  - A forum for procurement professionals to express their concerns and experiences which will facilitate better understanding and improvements in the process.

- Training which is essential for the procurement professional to remain current in their field and to assure the continued proper implementation of the code.

**3. CHAPTER 121-16** deals with the delegation of authority. Authority is currently delegated from the Chief Procurement Officers to Agency or Department Heads, who in turn delegate to their Deputy Directors. The delegation of purchasing authority should be made to trained professionals rather than simply to agency or Department Heads. These administrators may have little knowledge of purchasing practices and principles. The Chief Procurement Officers as defined by Chapter 121-6, need not have any prior purchasing experience.

The effectiveness of the purchasing function will be increased by placing the profession in an authoritative position to effectively deal with the many pressures from their agency, other departments, and vendors. Purchasing organizations which are not clearly defined and with no clear-cut authority are quickly recognized as having limited stature and are treated accordingly. The function of the purchasing professional in the State should be to guide the user through proper purchasing procedures, rather than correct improper purchases. The procurement professional should be the catalyst to properly procure goods, services and construction in accordance with the rules.

Delegation of authority should be vested in trained procurement professionals. A certification or qualifying factor for these procurement professionals which tests not only competency in general purchasing practices, but competency in the code is required. Furthermore, delegated professionals should be civil servants, protected from political concerns.

**4. CHAPTER 121-25** empowers the procurement policy board to establish a procurement advisory council. We view this as an excellent vehicle to allow procurement professionals to voice their opinions and exchange experiences regarding procurement procedure. Inclusion of field professionals not only gets them to buy into the program but provides a basis for continuous improvement in the procurement program for the State. The advisory council should be comprised of professionals in procurement from each State Department. Both the State and the policy board need to tap these valuable resources.

**5. CHAPTER 122-9** disallows bids in excess of \$25,000 to be submitted via fax. This may be over restrictive and not permit the needed streamlining of the procurement process. Why not have the ability to fax (to a secure location) with a follow-up in writing required as it is with bids below \$25,000 now.

**6. CHAPTER 122-65** dealing with procurement of professional services could be prone to abuse. Act 178 empowers the head of the purchasing agency or

the Department head to exercise the use of a professionals list in securing services. The process calls for generically advertising for professional services a minimum of once per year. From this list a committee submits the names of three qualified applicants from which the purchasing agency head negotiates a contract.

We do not view this as fair and equal competition. The one time notice to the public is not sufficient to provide for adequate competition and leaves room for potential abuse. The request for proposal method of competition is adequate to procure such services. The National Institute of Government Purchasing concurs that the use of a professional's list is an inadequate method of assuring effective competitive bids.

**7. CHAPTER 122-81** dealing with sole source procurement is insufficient in that cost savings is not justification for the use of a sole source. There are clearly justifiable sole sources which do not fit into the existing justification requirements. The continued services of an attorney who has been processing litigation for an agency or who has intimate knowledge of the agency's program is a justifiable sole source. If the agency can prove a cost savings to the State, including the cost to solicit, a sole source should be allowed.

**8. CHAPTER 122-51** dealing with the receipt and registration of proposals should be open to the public. Private opening of proposals allows for potential abuse. Late proposals could be included for consideration. A public opening, which reveals only the offeror's name, would eliminate the possibility of such abuse. The National Institute of Government Purchasing recommends such public openings in their training manuals.

Although there are other areas in these draft rules which need some attention the major point and concern from our organization is having well trained professionals doing the procurement for our State. We believe very strongly that if the procurement policy board actively trains, delegates authority and solicits input from the State's purchasing professionals, the objectives of the procurement rules stated in **Chapter 120-1** would be accomplished economically, efficiently, and effectively. Properly trained professionals are the key to reaching the objectives outlined for the procurement policy board.

We strongly recommend these draft rules be thoroughly reviewed prior to approval and would offer our assistance in any way possible to assure this occurs. Our members have a tremendous amount of experience and represent almost all the major procurement operations in Hawaii today.

Thank you for allowing us to comment and we look forward to your favorable consideration of these comments.

2. CHAPTERS 3-120, 3-121, AND 3-122, HAR, TESTIMONY OF THE  
NATIONAL ASSOCIATION OF PURCHASING MANAGERS (NAPM) - HAWAII  
CHAPTER

Comments/Recommendations:

Par. 1. NAPM-HI states that many of the exemptions permitted by 103D-102(b) (4), HRS, are specific only to particular agencies and to apply such exemptions statewide, opens the door to potential abuse. Each Chief Procurement Officer should be allowed to grant "blanket approvals" for the affected agency.

Examples given were:

"Opponents for athletic competitions" would probably be procured only by the University of Hawaii; and

"Contracts for services of lecturers and public speakers" could be used to justify hiring consultants for training programs under the guise of a lecturer.

Response:

The contracting for opponents for athletic competitions may be a requirement for other agencies, such as the DOE or Aloha Stadium. Expenditures for consultants providing training programs, would not be approved under the exemption for lecturers and public speakers. The code and rules allows each chief procurement officer to grant

103D-102(b) (4) exemptions for their respective jurisdictions.

Recommend no change be made.

Par. 2. NAPM-HI provides comments in support of the Administrator's responsibility to provide "statewide procurement orientation and training program" for purchasing personnel.

Response:

In this area, we concur that proper procurement training will foster greater understanding and compliance with the code and its rules.

No rule changes are recommended.

Par. 3. NAPM-HI recommendation to §3-121-16 on delegation of authority is to have the CPO delegate this procurement authority to qualified procurement personnel rather than a department head or Deputy Director without procurement knowledge on purchasing practices and procedures. NAPM-HI also recommended that these delegated personnel be civil servants, free from political concerns.

Response:

The delegation recommendation would be difficult to implement as most departments do not have qualified procurement personnel. The idea is good, that these individuals would guide the user through proper purchasing procedures rather than correcting improper purchases. Along this same line of thinking, to have proper training for all personnel involved in the procurement process would greatly help using agencies in their work.

No rule changes are recommended.

Par. 4. §3-121-25 allows the Procurement Policy Board to establish a procurement advisory board. NAPM-HI recommends that this advisory board be established to include professional procurement personnel from each agency.

Response:

NAPM-HI recommendations would certainly enhance the exchange of procurement problems, solutions, experiences and opinions. This group would be a resource of information and expertise. The rules allow for council and advisory groups in Subchapter 4, Chapter 3-121, HAR.

No rule changes are recommended.

Par. 5. §3-122-9(c) disallows offers \$25,000 or over to be submitted via facsimile. NAPM-HI would like to see this changed to allow facsimile offers for any dollar amount.

Response:

Recommend that we delete the restriction that allows facsimiles for only offers under \$25,000 since the rule allows acceptance of facsimiles only when specifically allowed in the IFB or RFP.

Recommend revising §3-122-9(c) as follows:

(c) An offer transmitted via facsimile machine shall be acceptable only [if the offer is under \$25,000] when specifically allowed in the invitation for bids or request for proposals; provided:

[A nonsubstantial change]

Par. 6. NAPM-HI references §3-122-65, but the content of their concern relates to §3-122-64 which calls for at least one legal advertisement for purposes of establishing a list of professionals from which an agency could select to fulfill their professional services needs. NAPM-HI feels that the one time notice is inadequate and that the competitive sealed proposals method is appropriate. They also state that NIGP concurs that the list method is

inadequate for assuring competition.

Response:

Recommend no change be made since the requirement is in Chapter 103D, HRS.

- Par. 7. NAPM-HI feels that cost savings should be in 122-81 as a justification for sole source.

*May be good idea.  
Some time bargain  
are available e.g.  
fire alarm, business  
going broke, etc.  
need to act fast!*

Response:

Competitive sealed bidding or proposals would determine if there are any cost savings.

Recommend no change be made.

- Par. 8. NAPM-HI feels that §3-122-51 which does not allow public to be present at an opening of proposals should be changed to allow the names of the offerors to be revealed at a public opening. They feel that current rule could lead to abuse, such as allowing a late proposal to be considered. They state that NIGP training manuals recommend such public openings.

*This has merit.  
Some time political  
considerations require  
naming of offerors.  
e.g. Convention center  
waterfront project -  
Kapiolani Transit*

Response:

The current rules are a reflection of the ABA's



recommended regulation for the Model Procurement Code for  
State and Local Government.

Recommend no change be made.



**ADMINISTRATIVE RULES STATE PROCUREMENT  
PUBLIC HEARING- TUESDAY, SEPTEMBER 26, 1995  
MABEL SMYTH AUDITORIUM**

**Written testimony by: PACIFIC RESOURCE PARTNERSHIP  
3660 WAIALAE AVE.  
HONOLULU, HAWAII 96816**

**Good evening. I am James C. Pacopac, representing the Pacific Resource Partnership, a joint program of Hawaii's 433 Unionized Contractors and the 8,500 members of the Hawaii carpenter's union.**

**These Administrative rules have great impact on our construction industry, especially on our unionized contractors and unionized workers. In review of your proposed administrative rules, and in dealing with the interim rules over the years, we have focused on some problem areas of concern. We feel that the following proposed changes are needed to address these problem areas, and recommend the incorporation to your proposed Administrative Rules.**

**1. Page 122-23, Section 3-122-24 Public Notice. We believe that the intent of the Administrative Rules is clearly to maximize public notice of solicitations whenever possible. Changes in Section 3-122-23 should support that intent by making the following revisions.**

**A. (c) "The broadest possible relevant public notice of availability of solicitation shall be published [as follows]:"**  
**Limited public notice results in limited competition which, in the long run, increases the cost of projects. The intent to maximize public notification of solicitations should be explicitly stated somewhere in the Administrative rules.**

**B. (c) (1) "At a minimum, a one time legal advertisement published [either] in [a] newspapers of general circulation [within the State or in a newspaper of local circulation in the county]."**  
**HRS 103D-302 (c) (1) requires" publication in a newspaper of general circulation."**  
**It is in the public interest that administrative rules responding to statutory law expand public notice of solicitations whenever possible, not further limit the availability of such information.**

CONT.

C. (d) "A copy of the solicitation shall be made available for the public inspection at a location designated by each chief procurement officer for such purpose [at the office of the procurement officer issuing the solicitation] ."

There are numerous procurement officers issuing solicitations, all located in countless offices with each office delegated unique responsibilities. Getting information can be like running a maze. There are fewer Chief Procurement officers than there are procurement officers issuing solicitations. The proposed change will tend to expand public notice because the information will be more centralized, and therefore more accessible to the public.

2. Page 122-65, Section 3-122-110 (a) Determination of Responsibility. We feel that a change in this section is pertinent in aiding the procurement officers in their decision of responsibility.

(a)" The procurement officer shall determine on the basis of the most current information available [collected], the responsibility or non-responsibility of a prospective bidder . The extent or source of the information necessary to make that determination is within the broad discretion of the procurement officer."

Administrative rules require that any prospective bidder meet legal qualifications for contracting with the State. Some of those qualifications, such as contractor licensing and insurance coverage, are perishable. In determining responsibility, currently available information should be preferred to information that was "collected". However, procurement officers should not be limited to or overwhelmed by sources of information required to make a decision as to responsibility.

3. CHAPTER 3-122, HAR, TESTIMONY OF PACIFIC RESOURCE PARTNERSHIP

Comments/Recommendations:

Par. 1. Pacific Resource Partnership (PRP) believes that the intent of §3-122-24 Public Notice is to maximize public notice of solicitations whenever possible.

Response:

We agree that it would be in the State's best interest to maximize public notification of solicitations. We also agree that it should be done "whenever possible", but it would be prudent for each procurement officer to weigh the resulting increase in cost or effort against the increased benefits, if any.

No rule changes are recommended.

Par. 1.A. PRP recommends adding "broadest possible relevant" to §3-122-24(c) to describe the public notice of availability.

Response:

It is not necessary to include the words "broadest possible relevant" since the rule clearly specifies the

methods of public notification that the policy board deems appropriate.

Recommend no change be made.

Par. 1.B. PRP recommends amending §3-122-(c)(1) such that the public notice be publicized at a minimum in a newspaper of general circulation. Current rules allow neighbor island purchases to be advertised in the appropriate local newspaper without additional notice in a newspaper of general circulation.

Response:

The rule is not limiting the availability of bidding information. Instead, it is mandating a minimum requirement that, at the least, will assure a reasonable response. Procurement officers have the discretion to expand public notices of solicitations, as they see fit.

Recommend no change be made.

Par. 1.C. PRP recommends that §3-122-24(d) be amended to require that a copy of a solicitation be available for purposes of public inspection at one location that the chief procurement officer designates, in lieu of the many

procurement officer locations.

Response:

The idea to centralize solicitations has merit. However, the means to effectuate it will be costly because most chief procurement officers, especially the Administrator of the State Procurement Office, do not have a location for the dissemination of all solicitations under their jurisdiction.

Recommend no change be made.

Par. 2. PRP recommends changing §3-122-110 to reflect "most current information available" and allowing the procurement officer broad discretion in determining the extent or source of information necessary to determine responsibility.

Response:

The point is well taken; however, the recommended phrases are wordy. We recommend the elimination of the word collected. This puts the burden solely upon the procurement officer to determine the information used for a determination.

Recommend revising §3-122-110 as follows:

§3-122-110    Determination of responsibility.    (a)    The procurement officer shall determine, on the basis of available information [collected], the responsibility or nonresponsibility of a prospective bidder.

[A nonsubstantial change (clarification).]







**ACEC**

## Consulting Engineers Council of Hawaii

A member of the American Consulting Engineers Council

'95 OCT 18 A8:57

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

4.

'95 OCT 17 P3:40

ADMINISTRATION  
STATE PROCUREMENT OFFICE  
STATE OF HAWAII

October 17, 1995

**President:**

Lester Fukuda  
Hawaii Pacific Engineers, Inc.  
524-3771/Fax: 538-0445

**President-Elect:**

James P. Kwong  
Pacific Geotechnical Engineers, Inc.  
841-8024/Fax: 848-5102

**Secretary:**

Gary Yamamoto  
Barrett Consulting Group  
521-8377/Fax: 523-8876

**Treasurer:**

Brian Bowers  
KFC Airport, Inc.  
836-7787/Fax: 834-4833

**Directors:**

Lee Mansfield  
GMP Associates  
521-4711/Fax: 538-3269

June Nakamura  
Engineering Solutions, Inc.  
488-0477/Fax: 488-3776

Roy Yamashiro  
Consulting Structural Hawaii  
945-0198/Fax: 944-1177

**National Director to ACEC:**

Richard M. Moss  
MOSS Engineering, Inc.  
951-6632/Fax: 941-0917

**Executive Director:**

Joyce Haupt  
533-2263/Fax: 538-7171

**Mr. Lloyd Unebasami**  
**Administrator**  
**State Procurement Office**  
**1151 Punchbowl Street**  
**Honolulu, Hawaii 96813**

Dear Mr. Unebasami,

**Subject: Testimony of Consulting Engineers Council of Hawaii (CECH)**  
**on the Administrative Rules, State Procurement Office**

Pursuant to Chapter 91, Hawaii Revised Statutes, the Consulting Engineers Council of Hawaii submits the required three (3) copies of our written testimony on the Administrative Rules for the State Procurement Office for consideration by the Procurement Policy Board.

CECH is pleased to provide you with a copy of our 1995-96 Membership Directory for your information and use.

If you have any questions regarding this testimony, please call at 524-3771.

**Sincerely,**  
**Consulting Engineers Council of Hawaii**

**Lester H. Fukuda**  
**President**

TESTIMONY OF THE  
**CONSULTING ENGINEERING COUNCIL OF HAWAII (CECH)**  
ON THE  
**ADMINISTRATIVE RULES**  
**STATE PROCUREMENT OFFICE**  
TO THE  
PROCUREMENT POLICY BOARD

OCTOBER 11, 1995

The Consulting Engineering Council of Hawaii (CECH) submits this written testimony for your consideration in the adoption process of the Administrative Rules for the State Procurement Office.

CECH strongly supports Chapter 103D, Hawaii Public Procurement Code, Hawaii Revised Statutes (HRS), with its latest amendment [Act 178/95, Session Laws of Hawaii (SLH)]. We feel that the law now provides State and county government the ability to procure the best qualified professional service at fair and reasonable prices, and still provides accountability of the procurement process.

Our following recommendations and supporting comments focus on CHAPTER 122 SOURCE SELECTION AND CONTRACT FORMATION:

**Subchapter 6 Competitive Sealed Proposal.**

Recommendation:

**Adopt the "AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector", for design-build procurement.**

Comment:

CECH supports the AIA and GCA in their concerns regarding the use of design-build as a procurement method and the need to adopt acceptable standard guidelines in the implementation of this method.

**Subchapter 7 Procurement of Professional Services.**

1. Section 3-122-62 Definition. (pg. 122-46)

Recommendation:

**Delete "professional" before the word engineering.**

Comment:

The word "professional" before engineering within the definition of "Professional Services" is redundant.

2. Section 3-122-64 Annual public notice for professional services. (pg. 122-47)

- A. Subsection 3-122-64(b)

Recommendation:

**Subsection 3-122-64 (b) be amended pursuant to Chapter 103D-304 (b), HRS (as amended by Act 178/95, SECTION 10.) as follows: "...if the response to the initial notice is not adequate, the response to the initial notice does not result in an adequate representation of available resources, or previously unanticipated needs for professional services arise. (Underlined words are the recommended additions)**

Comment:

The recommended additions will make this subsection consistent with the language of Chapter 103D-304(b), HRS.

B. Subsection 3-122-64(c)

Recommendation:

**Delete this provision.**

Comment:

Making the qualified persons lists interchangeable between agencies is unfair to the persons responding to specific public notices required under this subsection, and seems to be inconsistent with the law since the responses are for specific notices published by the purchasing agency. The use of "other" agency qualified lists seems to circumvent the intent of "public" notification.

3. Section 3-122-65 Procedures for procurement of professional services. (pg. 122-48 to 122-49)

A. Subsection 3-122-65 (a)

Recommendation:

**That Subsection 3-122-65 (a) be amended pursuant to Chapter 103D-304 (c), HRS (as amended by Act 178/95, SECTION 10.), requiring the members of the review committee must meet the prescribed qualifications.**

Comment:

Subsection 3-122-65 (a) does not require that the members of the review committee shall be "...from the agency or from another governmental body, with sufficient education, training, and licenses or credentials for each type of professional service which may be required." It is imperative that the rules require the review committee consists of qualified members to prepare the list of qualified professional that will be evaluated by the screening committee.

B. Subsection 3-122-65 (b)(1)

(1) Recommendation:

**That Subsection 3-122-65 (b)(1) be amended pursuant to Chapter 103D-304 (d), HRS (as amended by Act 178/95, SECTION 10.), requiring the members of the screening committee must meet the prescribed qualifications.**

Comment:

Subsection 3-122-65 (b)(1) must require the members of the screening committee to be "...from the agency or from another governmental body, with sufficient education, training, and licenses or credentials for each type of professional service which may be required. If the purchasing agency and using agency are different, the committee shall include at least one qualified employee from the using agency. When the committee includes an employee from a using agency, the employee shall be appointed by the head of the using agency. If qualified employees are not available from these agencies, the officers may designate employees from other governmental bodies." At this stage, it becomes imperative that the rules require the review committee to be made up of qualified members that will prepare the list of three (3) qualified professional that will be ranked by the head of the purchasing agency.

(2)

Recommendation:

**That Subsection 3-122-65 (b)(1) be amended pursuant to Chapter 103D-304 (d), HRS (as amended by Act 178/95, SECTION 10.), requiring the screening committee to establish criteria for the selection, and evaluate the submissions against this criteria.**

Comment:

Subsection 3-122-65 (b)(1) must require the screening committee to establish criteria for selection, and evaluate the submissions of persons on the list prepared by the review committee and any other pertinent information which may be available to the agency, against that selection criteria. Selection criteria is necessary to insure that the three (3) persons are evaluated on the same pertinent factors.

(3)

Recommendation:

**That Subsection 3-122-65 (b)(1) be amended pursuant to Chapter 103D-304 (d), HRS (Act 178/95, SECTION 10.), requiring the screening committee to prepare a contract file that contains the copy of the criteria established for the selection, and the committee summary of the qualification for each of the persons, and shall be provided to the head of the purchasing agency for ranking.**

Comments:

Subsection 3-122-65 (b)(1) must require the screening committee to prepare a contract file containing a copy of (a) the criteria established for the selection, and (b) the committee's summary of qualifications for each of the persons, which will be provided to the head of the purchasing agency by the screening committee for ranking. The documentation of the criteria and summary of qualification is a basic requirement for head of the purchasing agency to rank the persons in the most informed, fair, and objective manner.

(4)

Recommendation:

**That Subsection 3-122-65 (b)(1) be amended pursuant to Chapter 103D-304 (d), HRS (Act 178/95, SECTION 10.), allowing the screening committee to conduct confidential discussions with any person who is included on the list prepared by the review committee.**

Comment:

To be consistent with Chapter 103D-304 (d), HRS, Subsection 3-122-65(b)(1) must provide the screening committee the opportunity to conduct confidential discussions with any person who is included on the list prepared by the review committee.

C. Subsection 3-122-65 (b)(2)

Recommendation:

**That Subsection 3-122-65 (b)(2) be amended pursuant to Chapter 103D-304 (e), HRS (Act 178/95, SECTION 10.), allowing the head of the purchasing agency to conduct discussions with any of the three persons provided by the screening committee.**

Comment:

To be consistent with Chapter 103D-304 (d), HRS, Subsection 3-122-(b)(2) must provide the head of the purchasing agency the opportunity to conduct additional discussions with any of the three persons provided by the screening committee.

D.. Subsection 3-122-65 (c)

Recommendation:

**Define "vendor", or change to term that is consistent with the definition of professional services under Subsection 3-122-62 Definition.**

Comment:

The dictionary definition of vendor is to 1. One that vends: seller (especially as a hawker or peddler), 2. Vending machine.

E. Subsection 3-122-65 (e)

(1) Recommendation:

**Correct the sequencing of the subsection following Subsection 3-122-65(c).**

Comment:

Subsection 3-122-65 (e) is out of sequence with the previous subsection 3-122-65 (c).

(2) Recommendation:

**Correct the referencing of the non-existent Subsection 3-122-59 (d).**

Comment:

There is no subsection 3-122-59 (d) as referenced in this subsection.

(3) Recommendation:

**Require the contract file, including the list of qualified persons, criteria established by the screening committee, and summary of qualification for each person, be open to public inspection, at a specified site that is publicly announced, seven (7) days after award.**

Comment:

In addition to the list of qualified persons and the award as required by Subsection 3-122-65(e) in this version of the rules, the contract file prepared by the screening committee which includes (a) the established criteria, and (b) the summary of qualification for each person, should also be open to public inspection, at a specified site that is publicly announced, seven (7) days after award. This will promote accountability and a better understanding of the professional service selection process by the public.

(4) Recommendation:

**Require the using agency to conduct individual debriefing sessions with the other two (2) unsuccessful persons of the three (3) ranked by the head of the purchasing agency to discuss their non-selection, at the request of the unsuccessful persons.**

Comment:

This process will enhance accountability in the process, as well as assist the unsuccessful persons to better prepare for future consideration.

4. Section 3-122-66. Waiver to requirement for procurement of professional service. (pg. 122-49 to 144-50)

Subsection 3-122-66 (c)

Recommendation:

**Under Subsection 3-122-65<sup>6</sup>(c), add the requirement to make the documentation of the alternative procurement method selected to be open to public inspection, at a specified site that is publicly announced, seven (7) days after award.**

Comment:

The documentation of the alternative procurement method selected should also be open to public inspection, consistent with subsection 3-122-65<sup>6</sup>(e) of this version of the rules.

5. Section 3-122-66<sup>1</sup> Small purchases of professional services. (pg. 122-50)

Recommendation:

**Include the entire procedures contained in Chapter 103D-304(f), HRS, rather than referencing this subchapter of the law.**

Comment:

Using the language contained in Chapter 103D-304(f), HRS, will make this subsection clearer and eliminates the requirement to refer to the law if details of the procedures are needed.

6. Section 3-122-68 Record of procurement actions. (pg. 122-50)

Recommendation:

**Section 3-122-68 be amended pursuant to Chapter 103D-321, HRS (as amended by Act 178/95, SECTION 14.), requiring the records to contain (1) Each contractor's name; (2) The amount of the contract; and (3) A list of the goods, services, or construction procured under each contract.**

Comments:

Section 3-122-68 is inconsistent with Chapter 103D-321, HRS, where the law requires that the contents of the records shall contain the three (3) items listed in the above recommendation.

In summary, we strongly feel that our recommendations are consistent with the intent of the enabling Legislation, clarify the procedures, provide accountability, serve the public interest, and will enhance confidence in the procurement system by the professional service providers in our State.

Thank you for the opportunity to provide this written testimony.



4. CHAPTER 3-122, HAR, TESTIMONY OF THE CONSULTING ENGINEERING  
COUNCIL OF HAWAII (CECH)

Comments/Recommendations:

Subchapter 6, Competitive Sealed Proposals: CECH recommends adopting the "AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector", for design-build procurement.

Response:

Although the "AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector" may be a good reference, we object to its adoption as a State guideline. We would probably use portions of the reference but we want to reserve our wholesale approval until we have thoroughly studied its intent and recommendations.

Recommend no change be made.

Subchapter 7, Procurement of Professional Services:

1. CECH recommends deletion of "professional" before the word engineering in §3-122-62 Definition.

Response:

Recommend no change be made since Chapter 103D, HRS, lists

"professional engineering."

- 2A. CECH recommends modifying §3-122-64(b) to reflect the recent changes to the code.

Response:

Recommend that §3-122-64(b) be modified as follows per their recommendation:

(b) Additional public notices inviting persons engaged in providing professional services may be made if the response to the initial notice is not adequate, the response to the initial notice does not result in an adequate representation of available sources, or previously unanticipated needs for professional services arise.

[Not a substantial change.]

- 2B. CECH recommends deleting §3-122-64(c) which allows the professional services list of qualified persons to be interchangeable between agencies.

Response:

This issue should be reviewed in the future.

Recommend no change be made.

3. CECH recommends several changes to §3-122-65 to reflect recent changes in the code:

- A. Change §3-122-65(a) to include the qualifications of the review committee.
- B(1). Change §3-122-65(b)(1) to include the qualifications of the screening committee and other changes.
- B(2). Change §3-122-65(b)(1) to include the requirement that the screening committee establish criteria for the selection and evaluate submissions against the criteria.
- B(3). Change §3-122-65(b)(1) to include the required items as part of the contract file.
- C. Change §3-122-65(b)(2) to include the provision that allows the head of the purchasing agency to conduct additional discussions with any of the three persons provided by the screening committee.

Response:

Recommend that §3-122-65(a) and (b) be modified as follows to reflect CECH's recommendations:

§3-122-65     Procedures for procurement of professional services. (a) [At least annually, the] The head of the [each] purchasing agency[,] shall designate a review committee [of at least three employees] to evaluate statements of qualifications and

related information submitted to that purchasing agency for the purpose of compiling a list of qualified persons to provide particular types of professional services. The review committee shall consist of at least three employees from the agency or from another governmental body with sufficient education, training, and licenses or credentials for each type of professional service which may be required.

(b) If the purchasing agency identifies a need to procure professional services pursuant to section 103D-304(d), HRS, it shall proceed as follows:

- (1) Establish a screening committee of at least three employees of the purchasing agency with sufficient education, training, and licenses or credentials in the area of the services required. If the purchasing agency and the using agency are different, at least one qualified employee shall be from the using agency, appointed by the head of the using agency. Employees of other agencies may be designated to serve on the committee only if qualified employees from the purchasing and using agencies are not available.
- (2) The screening committee shall establish criteria for the selection of the names of three persons from the subsection (a) list of qualified persons who the committee concludes are the most qualified to provide the services required.
- (3) The screening committee [who] shall evaluate the submissions of subsection (a) list of qualified persons against the criteria established for selection. The

committee may conduct confidential discussions with any person on the subsection (a) list of qualified persons regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors;

(4) The screening committee shall provide [and submit] the head of the purchasing agency with the names of the three persons that have been determined to be the most qualified, together with a summary of their qualifications[, to the head of the purchasing agency];

[(2)](5) The head of the purchasing agency shall evaluate the summary of qualifications of the three persons [designated] provided by the screening committee and may conduct discussions with any of the three persons. He shall rank each person [by] in order of preference;

[(3)](6) The head of the purchasing agency shall [thereafter seek to] negotiate a [fair and reasonable] contract [price with the first ranked person] that is established in writing and based upon the estimated value, scope, complexity, and nature of the services to be rendered, including the rate of compensation which is fair and reasonable, as follows:

(A) Negotiation shall be conducted with the first person;

(B) If a satisfactory contract cannot be negotiated with the first [first-ranked] person, [such] negotiations with that person shall be formally terminated and negotiations with the second person [other persons in order of their rankings] shall commence;

(C) If negotiations fail with the second person, negotiations with the last person shall commence; and

[(4)](D) If a contract at a fair and reasonable price cannot be negotiated, the screening committee may be asked to submit the names of three additional [names] persons for [to] the head of he purchasing agency ✓ to rank, and [to then] resume negotiations in the same manner [as] provided in this subsection.

[(5)](6) [All negotiations] Negotiations shall be conducted confidentially.

[Not a substantial change.]

3D. The word "vendor" is used in §3-122-65(c). CECH recommends that it either be defined, or substituted by another word consistent with the definition of professional services.

Response:

Deleting "by the vendor" does not change the intent of the

subsection. Recommend that "by the vendor" be deleted from the subsection as follows:

(c) Pursuant to subchapter 15, cost or pricing data shall be submitted to the head of the purchasing agency [by the vendor] for any contract expected to exceed \$100,000. This requirement may be waived only under the provisions of section 3-122-124.

[Not a substantial change.]

3E. CECH recommends correcting §3-122-65 as follows:

- (1) Correct the sequencing of subsection (e) from (e) to (d);  
and
- (2) Delete the referencing in subsection (e) of a non-existent subsection 3-122-59(d) .

Response:

Recommend correcting the existing subsection (e) as follows:

~~[(e)]~~(d) After the contract is signed by all parties, the list of qualified persons and the award, except those portions for which a qualified person has made a written request for confidentiality subject to [subsections] subsection 3-122-59(c) [and (d)], shall be open to public inspection.  
[Eff ] (Auth: HRS §103D-304) (Imp: HRS §103D-

[Not a substantial change.]

3E(3). Currently, subsection 3-122-65(e) requires that the list of qualified persons and the award be made available for public inspection after the contract is signed by all parties. CECH is recommending that in addition to the list of qualified persons and the award, the established criteria and the summary of qualification for each person be available for public inspection seven days after award via a public notice.

Response:

Recommend no change be made on the basis that disclosure prior to signing of contract may result in frustration of government purpose.

3E(4). CECH recommends that the rules require the using agency to conduct debriefing sessions with the two unsuccessful persons, at their request, to discuss their non-selection.

Response:

There is no need to make this a requirement by rule. At the request of the unsuccessful person, any prudent



1. CHAPTER 3-120, HAR, TESTIMONY OF DOUGLAS MELLER

Comments/Recommendations:

Par. 1. Mr. Meller questions the merit of item no. 11 of the list of exemptions permitted by 103D-102(b) (4), HRS, which exempts all "Subgrants and subcontracts to organizations directed by the funding agency".

In his interpretation of the exemption, he states that the exemption defeats the purpose of Chapter 103D, HRS, when construction bid documents can require the use of specific subcontractors, purchase bid documents can require the use of specific vendors, or consultant bid documents can require the use of specific subconsultants.

It is his suggestion that the exemption should be amended and limited to read as follows: "Subgrants and subcontracts to public agencies or non-profit organizations directed by the funding agency".

Mr. Meller further states that section 3-120-5, HAR, also allows case-by-case exemptions by each chief procurement officer.

Response:

The concerns of Mr. Meller do not apply to exemption item no. 11. The purpose of the exemption was to address those situations where applications for grant proposals for educational programs and research, indicate that the funds should be directed to specific

organizations through a subgrant or subcontract. In these instances, the funding agency has determined that the success of the proposal is dependent on the utilization of particular organizations and has conditioned its proposal on retaining the specified organizations through subgrants or subcontracts.

In regards to Mr. Meller's suggested revision of exemption no. 11, it should be noted that the reference to public agencies would fall under section 103D-102(b) (3) and the reference to non-profit organizations is inappropriate, as subgrants or subcontracts may be directed to organizations other than non-profit entities, such as a private research firm. The exemption as it is presently drafted, is consistent with Chapter 103D and should remain with the list of 103D-102(b) (4) exemptions, as other governmental jurisdictions may also require subgrants and subcontracts under their grants.

Recommend no change be made.

Par. 2 It is Mr. Meller's suggestion that item no. 17 of the list of exemptions permitted by 103D-102(b) (4), HRS, should be revised to allow negotiated contracts with claims adjustors and to allow negotiated insurance contracts provided only one company is interested in bidding.

Mr. Meller believes it would be a mistake to hire a claims adjusting consultant on a low bid basis and it would also be a mistake to negotiate a conventional insurance contract when more than one company is interested in submitting competitive bids.

Response:

A claims adjusting consultant can be hired under the competitive sealed proposal process and in regards to the procurement of insurance, the rules state that even if a procurement is exempt, purchasing agencies are encouraged to adopt and use provisions of the chapter and its implementing rules as appropriate.

Recommend no change be made.



2.  
'95 OCT 19 A9:19

October 16, 1995

'95 OCT 19 A8:13

To: Administrator - State Procurement Office  
1151 Punchbowl Street Room 230-A  
Honolulu, Hawaii 96810-0119

ADMINISTRATION  
STATE PROCUREMENT OFFICE

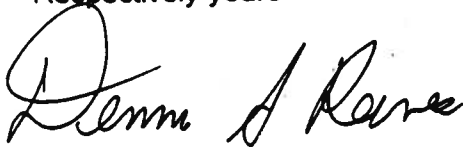
From: Hawaii Chapter-National Association of Purchasing Managers

Subject: Draft Administrative Rules on Procurement Policy Board - Comments

Attached are three (3) copies of comments from the Hawaii Chapter of NAPM concerning changes to Title 3 subtitle 11 of Hawaii Administrative Rules.

We appreciate the opportunity to participate in the effort. If there are any questions regarding this submission please contact the undersigned.

Respectively yours



Dennis S. Reeves  
1st Vice President - NAPM of Hawaii  
547-3230 or FAX 547-3615

government official should be willing to discuss the non-selection.

Recommend no change be made.

4. Currently, paragraph 3-122-66(c)(4) requires that the documentation of the alternative procurement method selected be made a part of the contract file upon award. CECH recommends requiring such documentation to be open to public inspection seven days after award and public notice.

Response:

The documentation is automatically available for public inspection after award is made.

Recommend no change be made.

5. CECH recommends that the entire small purchase procedures contained in the code be included in §3-122-67, in lieu of referencing the code.

Response:

Recommend revising §3-122-67 as follows per CECH's recommendation:

§3-122-67 Small purchases of professional services. (a)

Contracts for professional services of less than \$10,000 may be [procured pursuant to section 103D-305, HRS, or pursuant to section 103D-304(f), HRS.] negotiated by the head of a purchasing agency with any two persons who appear on the list of qualified persons established pursuant to section 3-122-65(a).

(b) Negotiations shall be conducted in the manner set forth in section 3-122-65(b)(5) but without establishing any order of preference. [Eff ] (Auth: HRS §§103D304, 103D-305) (Imp: HRS §§103D-304, 103D-305)

[Not a substantial change.]

6. CECH recommends modifying §3-122-68 to reflect recent changes to the code.

Response:

Current rules comply with the recent changes to the code, however, we recommend modifying the section to more completely reflect the code:

§3-122-68 Record of procurement actions. (a) Pursuant to section 103D-321, HRS, the chief procurement officer shall maintain a record by fiscal year of all procurements made under section 103D-304, HRS, for a minimum of five years. The record shall be available for public inspection.

(b) By August 15 of each year, the chief procurement officer

shall forward a copy of the record to the administrator. The record shall reflect procurement actions for the prior fiscal year and [be in the format prescribed by the administrator] shall contain at a minimum:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the goods, services, or construction procured under each contract.

(c) The administrator shall forward a consolidated report to the legislature by October 1 and provide an information copy to the procurement policy board. [Eff ] (Auth: HRS §103D-321) (Imp: HRS §103D-321)

[Not a substantial change.]





5.  
delivered  
mail to Prominent  
offices October 29, 1995

September 25, 1995

My name is Daniel Chun, a licensed architect and partner in a medium-sized local architectural firm. I am also a past president of the American Institute of Architects.

**Chapter 3-122 Subchapter 6, Competitive Sealed Proposals**

My testimony today concerns <sup>3-122-45(c)</sup> Chapter 3-122 Subchapter 6, Competitive Sealed Proposals and specifically 3-122-46(b) the request-for-proposals rule covering the submission of a design provided by the offeror with a single price that includes both design and build.

I am concerned that the rules do not provide for monetary compensation for the design provided by the offeror. To date architects and engineers have had to bear the brunt of these costs.

If the state derives a public benefit from architects' designs then the state should pay for this benefit. In the recent Hawaii Convention Center RFP, in which I was a competitor, the submission of designs provided by the offeror was used to solicit public comment and generate public interest to the state's advantage.

The present lack of any compensation for the design submitted by the offeror results in increased business costs which must be passed on to the state and Hawaii's private sector. Hawaii is already a place in which business costs are very high. The state seems completely unconcerned that its actions are aggravating this poor business climate.

I suggest that 50 percent of design costs be paid by the state to each unsuccessful short-listed offeror. This would be accomplished by adding an item 3 to 3-122-46(b) requiring compensation for designs provided by the offeror.

I understand that individual agency staff have frequently advocated compensation for designs provided by the offeror. However the final request-for-proposal documents never offer any compensation. Therefore I believe that the remedy to this situation is a change to these draft administrative rules to insert a requirement to provide compensation.

## **Chapter 3-122 Subchapter 7, Procurement of Professional Services**

The second portion of my testimony concerns the use of competitive sealed proposals in procuring professional services specifically 3-122-64(3c) which lists architecture and engineering as services for which competitive sealed proposals may be appropriate. I question this section because the 1995 procurement legislation eliminated the preference for competitive sealed proposals in procuring professional services. The legislative intent appeared to allow an agency to use any method of procurement for professional services which it believed to be in the state's best interest. So I question why the administrative rules should now contain a preference for competitive sealed proposals when the legislature intended this decision to be in the hands of the respective chief procurement officers.

Thank you for this opportunity to provide testimony.

BENJAMIN J. CAYETANO  
GOVERNOR



SAM CALLEJO  
COMPTROLLER

MARY PATRICIA WATERHOUSE  
Deputy Comptroller

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES  
P O BOX 119  
HONOLULU, HAWAII 96810-0119

PO-96-226.2

September 29, 1995

Mr. Daniel Chun  
Kauahikaua and Chun Architects  
567 S. King Street, Suite 108  
Honolulu, Hawaii 96813

Dear Mr. Chun:

Thank you for your written testimony presented at the September 26, 1995 public hearing on procurement rules. Your recommendation to Section 3-122-46(b) which is now Section 3-122-45(c) will be presented for decision at the Procurement Policy Board meeting on November 7, 1995.

We believe your concerns with Section 3-122-64(c) have been addressed. Subchapter 7 of chapter 3-122, HAR, as well as other sections of the rules were amended by the Board on August 1, 1995 to reflect the changes due to Act 178, HSL, 1995. We have attached a copy of the amended rules that are currently going through the public hearing process. It appears that the rules you reviewed were the ones that were distributed for the May 24, 1995 informational hearing.

If, after your review, you wish to provide any further written testimony, please do so by October 23, 1995.

Again, thank you for your participation in our public hearing process.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lloyd I. Unebasami".

LYLOD I. UNEBASAMI  
Administrator  
State Procurement Office

Attach.

bcc: PWD - Gordon Matsuoka  
DOT - Gary Choy  
SPO - Doris Lee  
SPO - Justin Fo  
SPO - Ruth Yamaguchi

5. CHAPTER 3-122, HAR, TESTIMONY OF DANIEL CHUN

Comments/Recommendations:

Mr. Chun's testimony was submitted in two parts:

Part 1: The first part addressed §3-122-45(c) regarding submission of a design provided by the offeror with a single price that includes both design and build. He expressed concerns that the rules do not provide monetary compensation to unsuccessful offerors for the design portion.

Response:

We do not support the proposal to compensate unsuccessful candidates. It may not be statutorily possible to pay for goods or services that may not be used. Additionally, in view of the State's current fiscal crisis, compensation is a burden we want to avoid.

Recommend no change be made.

Part 2: The second part addressed the preference to use the competitive sealed proposals method in the selection of professional services that was eliminated by the 1995 legislative session (Act 178, HSL, 1995).

Response:

The rules have been amended to include Act 178, HSL, 1995. No changes required.





# ALA Hawaii State Council

A Council of The American Institute of Architects

'95 OCT -4 A7:57

6.

'95 OCT -3 A7:59

**President**  
Charles A. Ehrhorn, AIA

**Vice President**  
**President-elect**  
Glenn E. Mason, AIA

**Secretary/Treasurer**  
Paul H.W. Louie, AIA

**Directors**  
Theodore E. Garduque, AIA  
N. Robert Hale, AIA  
Steven H. Heller, AIA  
Gerald N. Hiyakumoto, AIA  
Eugene E. Leucht, AIA  
Kurt H. Mitchell, AIA  
Darrell G. Welch, Jr., AIA

**Past Presidents**  
Dennis T. Toyomura, FAIA  
Arthur A. Kohara, AIA  
Nancy Lyman Peacock, AIA  
Daniel G. Chun, AIA  
Stanley S. Gima, AIA

September 28, 1995  
ADMINISTRATION  
STATE PROCUREMENT OFFICE  
STATE OF HAWAII

**Mr. Lloyd Unebasami**  
**Administrator**  
**State Procurement Office**  
**Department of Accounting & General Services**  
**State of Hawaii**  
**P. O. Box 119**  
**Honolulu, HI 96813**

**Re: Chapter 3-122, Subchapter 6,**  
**Competitive Sealed Proposals**

**Dear Mr. Unebasami:**

3-122-45(c)

As President of the Hawaii State Council of The American Institute of Architects, I wish to comment on paragraph 3-122-46(b) dealing with the request-for-proposals rule governing the submission of a single price contract that includes both design and construction of the project. This procurement method harms design professionals, the construction industry, and the State of Hawaii for the following reasons:

1. It stifles and discourages fair competition.
2. It gives preference to out-of-state companies.
3. It is unfair to the local design and construction community.
4. It is an uneconomical way to produce a building.

Design-build procedures reduce competition because the companies that are competing expend a great deal of time and money to produce their submittals with a low chance of selection. For example, if there were 10 firms turning in a proposal/bid, the chances are about only 10% that any company competing, will win a contract. The converse is that 90% of the firms will fail to win the contract, with considerable front end expenses associated with turning in a design-build submittal. In Hawaii, very few firms can afford to engage in this

**Beverly H. McKeague**  
**Executive Director**  
1128 Nuuanu Avenue  
Honolulu, HI 96817  
Tel: (808) 545-4244  
Fax: (808) 537-1463



Mr. Lloyd Unebasami  
September 28, 1995  
Page 2

high-risk gambling process. Inherently, this favors the larger firms with deeper pockets, and eliminates many smaller firms who would otherwise like to participate if the risk/cost ratio of applying for work was lower. This stifles and discourages fair competition.

As a result of the built-in bias for the larger companies, and the fact that Hawaii has a higher tax and regulatory burden than most other states and nations; the design-build process has awarded many of these large design-build projects to out-of-state firms. Good examples of this are that almost all local US Army and Navy housing projects are done by large companies from other states, with no general excise tax and other burdens. The recent \$12 million Navy Exchange was also awarded to a design-build joint venture firm from out of state. The chances are high that the State of Hawaii will, especially for the bigger contracts, be giving design-build contracts to out-of-state firms. This loss of revenue is intolerable and unfair to the local A&E community and construction industry.

The third flaw in the use of design-build contracts is that it is simply unfair to the design community and the rest of the building team. The design process required to put together a good bid submittal is about 30% of the total design required for a project. When 10 firms are submitting for the same design, they have expended, by the time the bid has been submitted, an aggregate total of 300% of the typical fee for a project (and the project design is not yet completed and the building built). Also, the construction team has to give a firm price based on 30% drawings, which leads to all kinds of future problems during construction, i.e. cost cutting, adjustments, etc. This means that on a typical design-build project the costs of producing the design are several times higher than they would be in a typical project. Also, the construction team opens themselves to huge losses and liabilities by giving a firm price based on only 30% design development drawings.

This grossly inefficient method of procuring a building project would not be tolerated by any entity, including the State, if it were not being subsidized by other people/sources. In this case, those "other sources" are members of the design community and the building industry. The State and other federal agencies will, in engaging in continuing the design-build processes, be asking an already crippled construction

Mr. Lloyd Unebasami  
September 28, 1995  
Page 3

industry to pay for a process which is highly unfair, costly, and uneconomical. The only fair way for the State to engage in this process, would be for the State to pay at least part of the costs of all of the bidders (say, 50% of direct costs).

In addition, the process will cost the State more in the long run. It is extremely difficult for a design-build bid package to answer most of the questions required to put together a good design and good building. It requires a lot more time for the State agency and their staff to put this design-build package together and administer it, than for a normal procurement process.

In conclusion, it must be recognized by the State that the design-build process has some severe problems, and continued use is damaging to the construction industry overall, i.e., architects, engineers, contractors, subcontractors, and developers. The design-build process should only be used in extremely limited circumstances, and be fairly implemented as per the National AIA/GCA guidelines for Design-Build projects on competitions.

Thank you for allowing me to testify.

Sincerely,

A large, bold, handwritten signature in black ink, appearing to read 'CAE', with a long horizontal stroke extending to the right.

Charles A. Ehrhorn, AIA  
President

cc: Executive Committee  
AIA Hawaii State Council

**6. CHAPTER 3-122, HAR, TESTIMONY OF THE AMERICAN INSTITUTE OF  
ARCHITECTS - HAWAII STATE COUNCIL (AIA)**

Comments/Recommendations:

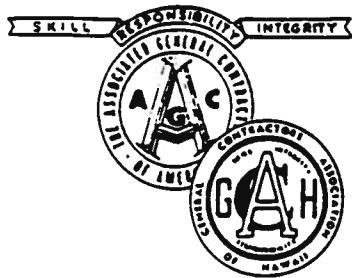
AIA addresses §3-122-45(c) regarding submission of a single price contract that includes both design and construction of a project. They state in summary that this procurement method 1) stifles and discourages fair competition; 2) gives preference to out-of-state companies; 3) is unfair to the local design and construction community; and 4) is an uneconomical way to produce a building.

Response:

We acknowledge that the design-build process has problems. However, we reserve the right to pursue such methods of procurement until such time that we accumulate hard evidence that the process is "...damaging to the construction industry overall". Accordingly we intend to use the process under limited circumstances.

Recommend no change be made.





7.

**GENERAL CONTRACTORS ASSOCIATION OF HAWAII**

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • TELEPHONE 833-1681

95 SEP 29 10:14

ADMINISTRATION  
STATE PROCUREMENT OFFICE  
STATE OF HAWAII

September 25, 1995

Mr. Lloyd Unebasami, Administrator  
State Procurement Office  
DEPT. OF ACCOUNTING & GENERAL SERVICES  
State of Hawaii  
P. O. Box 119  
Honolulu, HI 96813

REVISED

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

95 SEP 29 11:13

Dear Mr. Unebasami:

The General Contractors Association (GCA), and the Construction Industry Legislative Organization (CILO) formed a joint committee to review the proposed Hawaii Administrative Rules on procurement. The committee generally agrees with the rules as proposed, however, we have several questions and suggested amendments.

We request that the following be submitted as our testimony on the proposed rules:

1. §3-122-23. The minimum number of days between the date of the last advertisement and the date set for receipt of offers be increased from ten(10) to fifteen(15) days. The rationale for this suggestion is that §3-122-108 provides that the notice of the intention to bid must be submitted not less than ten(10) days prior to the date designated for opening of bids. In the event the last advertisement is only ten(10) days prior to bid opening, a prospective bidder who sees only the last advertisement would not have time to file an intention to bid; therefore, the last advertisement could not serve to solicit additional bids.

2. §3-122-24(c-1). Change the requirement that the public notice be published either in a newspaper of general circulation within the state or in the county, to require both state and county agencies to publish in a statewide publication as well as in a county publication. This will insure the widest notice and the greatest possible competition for projects at both levels of government.

Mr. Lloyd Unebasami

Page 2

September 25, 1995

3. §3-122-21(6). Add also, that the value of the work to be done is equal to or less than one percent (1%) of the total bid amount (see §9, Act 186, SLH 1994). Present language is inconsistent with the law.
4. §3-122-34(2). We question the rationale for awarding the bid to the contractor farthest from the point of delivery; a more objective method to award identical bids should be implemented. Also, the measurement from the contractor's office or yard may become a problem.
5. 3-122-45(c) §3-122-46(b). We Join the AIA and other design professionals in their concerns regarding the use of design-build as a procurement method for construction in Hawaii. In line with this we respectfully suggest favorable consideration by the State Procurement Office of the adoption of the "AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector." These guidelines were jointly developed at the national level and are intended to improve the process and provide some uniform standards which can be used by public owners for the mutual benefit of the owners and the design/construction community.
6. §3-122-96 & 97. Change the word may to shall. This will eliminate any question about when a solicitation must be cancelled or a bid rejected by an agency.
7. Standard Qualification Questions for Prospective Bidders on Public Works Contract. This questionnaire is obsolete and many of the questions are not applicable or unnecessary to determine whether a contractor is qualified to bid. The use of bid bonds and performance bonds will insure that the contractor has the ability to compete a job. We recommend that the form be revised and shortened. We also recommend that the form be filed only periodically, either annually or semi-annually and not with each bid.

We will be happy to work with the Procurement Office to update this questionnaire, so that it is more responsive to the agencies needs for relevant information for the prospective bidders.
8. §3-125-4. We believe that this section needs to be changed. However, to institute these changes requires amendments to Chapter 103D to provide a definition of the term "scope of the contract" as it is applied to change orders in construction contracts. The proposed rule does not adequately address the use of change orders as traditionally used in construction contracts.

Mr. Lloyd Unebasami  
Page 3  
September 25, 1995

9. §3-125-16 (a). Change the term unusually severe weather to rain or adverse conditions resulting, thereon. Delay in work can result from merely rain all day, not necessarily unusually severe weather.
10. §3-125-16(2). Add the words and other reasons beyond the contractors' control after the semicolon, on line 2 pages 125-20. This would reinstate language that is currently applied to determine time extensions.

Thank you for permitting us to review and comment on the proposed rules.

Very truly yours,



---

Melvin Miyamoto  
President, GCA



---

Myron Nakata  
President, CILO

BENJAMIN J. CAYETANO  
GOVERNOR



SAM CALLEJO  
COMPTROLLER  
Comptroller

MARY PATRICIA WATERHOUSE  
Deputy Comptroller

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES

P O BOX 119  
HONOLULU, HAWAII 96810-0119

PO-96-225.2

September 29, 1995

General Contractors Association of Hawaii  
1065 Ahua Street  
Honolulu, Hawaii 96819-4493

Attention: Mr. Melvin Miyamoto, President, GCA  
Mr. Myron Nakata, President, CIO

Gentlemen:

Thank you for your testimony letter of September 25, 1995 on our proposed Hawaii Administrative Rules on procurement.

In reviewing your suggested amendments, we found that the rules you reviewed have since been revised and are not the same as the ones currently going through the public hearing process. For example, we believe both paragraphs 3 and 4 of your letter have been addressed in our current proposed chapter 3-122.

I have attached a set of all the rules for you to use in revising your testimony. I would suggest you revisit the entire chapter 3-125 as it has had numerous changes.

Your revised testimony must be received by October 23, 1995 to be considered by the Procurement Policy Board.

Please call Mr. Robert J. Govers, 586-0554, should you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lloyd I. Unebasami".

Lloyd I. Unebasami  
Administrator  
State Procurement Office

Attach.

bcc: PWD - Gordon Matsuoka  
SPO - Doris Lee  
SPO - Justin Fo  
SPO - Ruth Yamaguchi





**GENERAL CONTRACTORS ASSOCIATION OF HAWAII**

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • TELEPHONE 833-1681

95 OCT 19 48:13

ADMINISTRATION  
STATE PROCUREMENT OFFICE  
STATE OF HAWAII

STATE PROCUREMENT OFFICE

95 OCT 19 19:20

Mr. Lloyd Unebasami, Administrator  
State Procurement Office  
DEPT. OF ACCOUNTING & GENERAL SERVICES  
State of Hawaii  
P. O. Box 119  
Honolulu, HI 96813

Dear Mr. Unebasami:

This is in response to your letter of September 29, 1995, regarding the testimony previously presented by the GCA and CILO. We reviewed the proposed Procurement Code enclosed with your letter and found that indeed, the committee had used the proposed rules that were distributed at the May 24, 1995 informational meeting rather than the revised rules, which accounts for the discrepancies in the sections cited in our testimony.

The correction to our original testimony should be made as follows:

- 1) Items (1) and (6) in our testimony are still valid and cite the correct sections. Items (4) and (7) have been addressed in the revised proposal and are no longer necessary.
- 2) Item (8) requires a change in the statutes to implement and we realize that it cannot be addressed by a rule change; we merely would like to bring it to your attention.
- 3) Finally, the correct citation for items (9) and (10) should be 3-125-18(4)(a) of the revised proposed rules.

The GCA and CILO will attempt to review the changes made to Chapter 125, however, due to the time constraints, may not be able to submit our comments by the October 23rd deadline.

Mr. Lloyd Unebasami, Administrator  
page 2

Thank you for your consideration of our views regarding the  
proposed Procurement Code.

Very truly yours,



Melvin Miyamoto  
President, GCA



Myron Nakata  
President, CILO

7. CHAPTER 3-122, HAR, TESTIMONY OF GENERAL CONTRACTORS  
ASSOCIATION OF HAWAII (GCA)

Comments/Recommendations:

Note: GCA's original testimony has been revised twice; however, the final revision received on October 10, 1995 still contained inconsistencies. We contacted a Mr. Ken Takenaka on October 20, 1995 and requested clarification; however, GCA did not respond. Instead of disregarding those concerns that had incorrect references, we believe we have identified the correct references and addressed their concerns.

Par. 1. GCA recommends that §3-122-23 Bidding Time be amended to require a minimum of fifteen days between date of last advertisement and deadline for receipt of offers in lieu of the current ten days. The current ten days is insufficient time to submit the §3-122-108 intent to bid that must be received not less than ten days prior to receipt of offers.

Response:

We do not agree with the GCA's request to lengthen the response time for bid solicitations. The rationale cited by GCA is not valid because it cites a specific condition of procurement, which is construction projects of \$25,000 or more.

The minimum response time of ten days between the last advertisement and the opening of bids is adequate for a bid solicitation. In fact, it may be too conservative for construction bids less than \$25,000 and for some

goods and services bids.

The rule is reasonable and satisfies all situations. The GCA's rationale cites a specific situation that should be left to the discretion of the procurement officer whose integrity we must have confidence and trust in. The prudent procurement officer will allow adequate time for the receipt of notices of intention to bid, addenda, etc. Section 3-122-23(b) requires procurement officers to allow bidders a reasonable time to prepare their offers.

Recommend no change be made.

Par. 2. GCA recommends that §3-122-24(c)(1) be amended to require the public notice to be published in a statewide newspaper of general circulation and in a county publication.

Response:

Although requiring publications in both statewide and county publications has merit, it would place a financial burden on the agencies. Prior law required a notice to be published three times; however, under the new procurement code the legislature deleted the three-time notice requirement and left it to the policy board to determine the appropriate publication method. Although the law does not mandate that the notice be placed in a

statewide or county publication, the policy board determined that the most appropriate method is the newspaper of general circulation in the State or county. The intent of the rule is to publish in a newspaper of general circulation in the county or on the island pertinent to the procurement.

Recommend no change be made.

Par. 3. Language they recommend has already been incorporated into the HAR.

Par. 4. Language they recommend has already been incorporated into the HAR.

Par. 5. GCA questions the use of design-build as a procurement method of construction. Suggests consideration of the adoption of the "AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector."

Response:

Although the "AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector" may be a good reference, we object to its adoption as a State guideline. We would probably use portions of the reference but we want to reserve our

wholesale approval until we have thoroughly studied its intent and recommendations.

Recommend no change be made.

Par. 6. GCA recommends amending §§3-122-96 and 97 by replacing the word "may" with "shall" to eliminate any question as to when a solicitation must be cancelled or a bid rejected by an agency.

Response:

Recommend that their suggestion be incorporated along with technical changes to Subchapter 11, as follows:

SUBCHAPTER 11

CANCELLATION OF SOLICITATIONS AND REJECTION  
OF [BIDS AND PROPOSALS] OFFERS

§3-122-95 Cancellation of solicitations and rejection of [bids and proposals] offers. (a) An invitation for bids, a request for proposals, or any other solicitation may be cancelled, or a bid, proposal, or any other offer may be rejected in whole or in part as may be specified in the solicitation, in accordance with the provisions of this section.

(b) The reasons for the cancellation or rejection shall:

(1) Include but not be limited to cogent and compelling reasons why the cancellation of the solicitation or rejection of the [solicitation] offer is in the purchasing agency's best interest; and

(2) Be made part of the contract file.

(c) Each solicitation issued by the purchasing agency shall state that the solicitation may be cancelled or offers may be rejected in whole or in part when in the best interest of the purchasing agency as provided in this [section] subchapter.

[Eff ] (Auth: HRS §103D-308) (Imp: HRS §103D-308)

§3-122-96 Cancellation of solicitation. (a) A solicitation [may] shall be cancelled [prior to or after opening] for reasons including but not limited to the following:

(1) [If cancelled] Cancellation prior to opening[, the following reasons for cancellation shall apply but not be limited to]:

(A) The agency no longer requires the goods, services, or construction;

(B) The agency no longer can reasonably expect to fund the procurement; or

(C) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(2) [If cancelled] Cancellation after opening but prior to award[, the following reasons for cancellation shall apply but not be limited to]:

- (A) The goods, services, or construction being procured are no longer required;
- (B) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (C) The solicitation did not provide for consideration of all factors of significance to the agency;
- (D) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (E) All otherwise acceptable [bids or proposals] offers received are at clearly unreasonable prices; or
- (F) There is reason to believe that the [bids or proposals] offers may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(b) A notice of cancellation shall be sent to all businesses solicited and the notice shall include:

- (1) Identity of the solicitation;
- (2) Brief explanation of the reason(s) for cancellation; and
- (3) Where appropriate, an explanation that an opportunity will be given to compete on any resolicitation or any future procurements of similar goods, services, or construction.

(c) Documentation on the reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection. [Eff ] (Auth: HRS §103D-308)

(Imp: HRS §103D-308)



§3-122-97 Rejection of bids and proposals. (a) Bids [may] shall be rejected for [the following] reasons including but not limited to:

- (1) The bidder that submitted the bid is nonresponsive as determined by subchapter 13;
- (2) The bid is not responsive, that is, it does not conform in all material respects to the invitation for bids under the provisions of subchapter 13; or
- (3) The good, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids under the provisions of section 3-122-33.

(b) Proposals need not be unconditionally accepted without alteration or correction, unless the solicitation states otherwise, and the agency's stated requirements may be revised or clarified after proposals are submitted.

- (1) This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal.
- (2) Reasons for rejecting proposals include but are not limited to:
  - (A) The offeror that submitted the proposal is nonresponsive as determined under subchapter 13;
  - (B) The proposal ultimately, after any opportunity has passed for altering or clarifying the proposal, fails to meet the announced requirements of the

agency in some material respect; or

(C) The proposed price is clearly unreasonable.

(c) Unless allowed by the solicitation, [a bid or proposal] an offer may not limit acceptance to the entire [bid or proposal] offer [offering]:

(1) If acceptance is so limited, such [bids or proposals] offers shall be deemed to be nonresponsive.

(2) If the [bid or proposal] offer is properly so limited, the purchasing agency shall not reject part of such [bid or proposal] offer and award on the remainder.

(d) A notice of rejection shall be sent to the individual [bidder or] offeror advising of the reasons therefor.  
[Eff ] (Auth: HRS §103D-308) (Imp: HRS §103D-308)

§3-122-98 Disposition of [bids and proposals] offers. When [bids or proposals] offers are rejected, or a solicitation cancelled after [bids or proposals] offers are received:

(1) The [bids or proposals] offers which have been opened shall be retained in the procurement file; and

(2) The unopened [bids or proposals] offers shall be returned to the [bidders or] offerors upon request; or otherwise disposed of. [Eff ] (Auth: HRS §103D-308) (Imp: HRS §103D-308)

§§3-122-99 to 3-122-101 (Reserved).

[Not a substantial change.]

Par. 7. GCA believes that the Standard Qualification Questions for Prospective Bidders on Public Works Contract (previously attached to Subchapter 13 RESPONSIBILITY OF BIDDERS AND OFFERORS) is obsolete and that the use of bid and performance bonds will insure that the contractor has the ability of complete a job. They recommend that the questionnaire be shortened, and that the form be filed periodically and not with each bid. They also offer this assistance in working towards an update of the questionnaire.

Response:

The questionnaire is no longer attached to the rules. The rules now require the policy board to issue a sample questionnaire. This sample questionnaire has not been issued as of this date. We plan to request DAGS Public Works Division's assistance in updating the questionnaire prior to issuance. Our target date is by December 31, 1995.

Recommend no change be made.

Par. 8. GCA believes that the procurement code must be changed to provide a definition for "scope of work". It also believes that §3-125-4 does not adequately address the use of change orders as traditionally used in construction contracts.

In a later letter, the GCA indicated that they realize the above changes require a change to the statutes, and cannot be addressed by a rule change; but would like to bring their concern to your attention.

Response:

Recommend no change be made.

Par. 9. This item has a wrong reference. Instead of §3-125-16(a), reference could be <sup>125</sup>§3-122-17(d) and <sup>125</sup>§3-122-18(d)(1). Sections 3-125-17(d) and 3-122-18(d)(1) reference "unusually severe weather" as one of the causes that result in delay and the failure in performance. GCA wants to replace "unusually severe weather" to "rain or adverse conditions resulting, thereon" since work can be delayed or not performed due to rain and not necessarily unusually severe weather. ?

Response:

Recommend that the suggestion be incorporated as follows by adding "rain or adverse conditions resulting, thereon", instead of replacement:

<sup>125</sup>§3-122-17:

(d) "Excuse for nonperformance or delayed performance.

Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the contractor has notified the procurement officer within fifteen days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes, rain or adverse conditions resulting thereon, or unusually severe weather.

<sup>175</sup>  
§3-122-18(d):

- 3-175
- (1) The delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; rain or adverse conditions resulting thereon; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the

procurement officer proof that the contractor has diligently made every effort to obtain such materials from all known sources, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

[Not a substantial change.]

Par. 10. Again, a wrong reference. In lieu of §3-125-16(2), the reference could be §3-125-18(d) (1):

GCA wants to include "other reasons beyond the contractors' control" to the list of reasons for allowing time extensions. Prior to the new procurement code, the proposed language was applied to determine extensions.

Response:

Recommend that we incorporate their suggestion as follows:

- (1) The delay in completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the

State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; other reasons beyond the control of the contractor; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the procurement officer proof that the contractor has diligently made every effort to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

[Not a substantial change.]







1.

'95 OCT 12 A8:01

STATE OF HAWAII  
PROCUREMENT OFFICE

## HAWAII SECTION-AMERICAN SOCIETY OF CIVIL ENGINEERS

P. O. BOX 917  
HONOLULU, HAWAII 96808

'95 OCT 11 A9:37

October 3, 1995  
ADMINISTRATION  
STATE PROCUREMENT OFFICE  
STATE OF HAWAII

State of Hawaii  
Department of Accounting  
And General Services  
P.O.Box 119  
Honolulu, Hawaii 96810-0119

Dear Mr. Unebasami:

Thank you for your letter of August 21, 1995 notifying us the schedule of public hearings on the proposed Hawaii Administrative Rules on procurement. ASCE - Hawaii Section has recently formed a committee to learn more about the State's new procurement process. At this time, we do not have any specific comments except we are in full support of the quality based selection process and the Brook's law. We believe that the quality based selection process provides quality results that benefits D.A.G.S. and the State of Hawaii.

We appreciate the opportunity to provide you with our comments. We would appreciate if you can keep us informed with any development regarding the new procurement rules. If we can be of further assistance, please do not hesitate to contact the undersigned at 841-8024.

Sincerely,

*Kenneth Fan*

Kenneth K. Fan  
President-Elect  
ASCE-Hawaii Section





**Hawaii Society of  
Professional Engineers**

*A state society of the National Society of Professional Engineers*

'95 OCT 23 P2:18

2.

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

October 19, 1995

'95 OCT 23 P12:58

ADMINISTRATION  
STATE PROCUREMENT OFFICE  
STATE OF HAWAII

Administrator  
State Procurement Office  
151 Punchbowl Street, Room 230-A  
Honolulu, Hawaii 96813

Re: State Procurement Procedures  
Rules and Regulations

Dear Sir/Madam:

On behalf of the Honolulu Chapter of the Hawaii Society of Professional Engineers (HSPE), we would like to comment on the rules and regulations being proposed for the purpose of selecting consultants and professional services.

Our organization has long advocated the use of a quality based selection method for securing professional engineering services. This method has proved to be successful in fulfilling the needs of government agencies as they meet their obligation to provide public services. As many of the projects are not easily quantifiable in the early planning and developmental stages, the quality based method allows a project to be developed in cooperation with the agencies and the professionals designated to produce a desirable product. We strongly urge the State Procurement Office to continue to utilize this selection method in the future to continue the high level of quality work clearly demonstrated in the projects that have been completed.

We stand ready to work with the State Procurement Office to provide advice and service if so needed to continue to promote the quality based selection method. Feel free to contact our organization at any time for assistance and information.

Sincerely,

HAWAII SOCIETY OF PROFESSIONAL  
ENGINEERS, HONOLULU CHAPTER

C. Michael Street  
President

CMS:aks



No testimonies were received for new rules in Chapters 3-123, 3-124, 3-126, 3-128, 3-129, 3-130, and 3-131 and for the rules to be repealed in Chapters 3-60, 3-61, and 3-62.

