

PROCUREMENT POLICY BOARD

1151 Punchbowl Street
Conference Room 410
Honolulu, Hawaii 96813

Regular Meeting

May 29, 2003
2:00 p.m.

A G E N D A

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES – Meeting of October 31, 2002
- III. NEW BUSINESS
 - For Information - Act 52 (SB 1262, CD1), Proposed Interim Rules for Chapters 3-122 and 3-126
 - A. Section 2 (Subchapter 5, Chapter 3-122 Competitive Sealed Bidding, HAR)
 - B. Section 4 (Subchapter 6, Chapter 3-122 Competitive Sealed Proposals, HAR)
 - C. Section 5 (Subchapter 7, Chapter 3-122 Procurement of Professional Services, HAR)
 - D. Section 6 (Subchapter 13, Chapter 3-122 Responsibility of Bidders and Offerors, HAR)
 - E. Section 7 (Chapter 3-126 Legal and Contractual Remedies, HAR)
- IV. ADMINISTRATOR'S REPORT
- V. ADJOURNMENT

If special needs are required (i.e., sign language interpreter), please call Cheryl at (808) 587-4700 by 4:00 p.m. May 27, 2003
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Honolulu, Hawaii

April 25

, 2003

RE: S.B. No. 1262
S.D. 1
H.D. 1
C.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Second State Legislature
Regular Session of 2003
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Second State Legislature
Regular Session of 2003
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1262, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend various provisions of the state procurement code.

Your Committee on Conference met numerous times to discuss the differences between the House and Senate versions of this measure before reaching agreement. Your Committee on Conference used the S.D. 1 version of this measure as a base to prepare the C.D. 1 version, incorporating the amendments discussed below.

Your Committee on Conference amended the pre-bid conference provisions of this measure to require a pre-bid conference for all construction or design-build projects with a total estimated



contract value of \$500,000 or more that are awarded pursuant to competitive sealed bidding, and for all such projects with an estimated value of \$100,000 or more awarded through a request for proposals. Your Committee on Conference also amended the language to clarify that only one pre-bid conference is required.

In addition, your Committee on Conference inserted a provision to require the head of the purchasing agency to invite all potential interested subcontractors and union representatives to attend the pre-bid conference.

Your Committee on Conference also included language from the H.D. 1 version of this measure to authorize nonselected offerors and nonselected professional service providers to request a "debriefing" prior to filing an official protest. Rather than include the language in section 103D-701, Hawaii Revised Statutes (HRS), your Committee on Conference inserted the language directly into sections 103D-303 and 103D-304, HRS. Your Committee on Conference also amended section 103D-701, HRS, to make the protest timeframe consistent.

Your Committee on Conference retained the language from the S.D. 1 version regarding procurement of professional service providers, but added language to give the purchasing agency greater flexibility when awarding professional service contracts for less than \$25,000, and to require the head of the purchasing agency to document the reason if a contract is not successfully negotiated with the first or second ranked person on the list. Your Conference Committee also included language to require electronic posting of every professional service contract awarded for more than \$5,000, rather than \$25,000.

Your Committee on Conference amended the "offeror responsibility" provisions to address constitutionality concerns. As amended, offerors still must demonstrate compliance with Hawaii employment laws, but only once they are awarded a contract. In addition, offerors must be incorporated or organized under the laws of the State of Hawaii or must register a separate branch or division in the State that is capable of fully performing under the contract.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1262, S.D. 1, H.D. 1, as amended herein, and recommends



CCR92

Bill/Concurrent Resolution No.: SB 1262, SD1, HD1					Date/Time: <div style="font-size: 1.2em; margin-left: 10px;">04/25/03 1:30 pm</div>				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure.					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
KAWAMOTO, Cal (Chair)	<input checked="" type="checkbox"/>				HIRAKI, Kenneth T. (Co-Chr)	<input checked="" type="checkbox"/>			
ADUJA, Melodie Williams	<input checked="" type="checkbox"/>				MAGAOAY, Michael Y. (Co-Chr)	<input checked="" type="checkbox"/>			
ESPERO, Willie C.	<input checked="" type="checkbox"/>				HERKES, Robert N.	<input checked="" type="checkbox"/>			
SAKAMOTO, Norman				<input checked="" type="checkbox"/>	MEYER Colleen R.				<input checked="" type="checkbox"/>
WHALEN, Paul				<input checked="" type="checkbox"/>					
TOTAL	3			<input checked="" type="checkbox"/>	TOTAL	3			1
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted Senate Lead Chair's or Designee's Signature: _____					House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted House Lead Chair's or Designee's Signature: _____				
Distribution: Original -Lead Chair of Originating House Pink - Senate Clerk's Office					Blue - Drafting Agency Yellow - House Clerk's Office				

that it pass Final Reading in the form attached hereto as S.B.
No. 1262, S.D. 1, H.D. 1, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

Kenneth T. Hiraki
KENNETH T. HIRAKI, Co-Chair

Cal Kawamoto
CAL KAWAMOTO, Chair

Michael Y. Magaoay
MICHAEL Y. MAGAOAY, Co-Chair



Honolulu, Hawaii

April 25

, 2003

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H.D. 1
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President of the Senate
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Your Committee on Conference met numerous times to discuss the differences between the House and Senate versions of this measure before reaching agreement. Your Committee on Conference used the S.D. 1 version of this measure as a base to prepare the C.D. 1 version, incorporating the amendments discussed below.

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In addition, your Committee on Conference inserted a provision to require the head of the purchasing agency to invite all potential interested subcontractors and union representatives to attend the pre-bid conference.

Your Committee on Conference also included language from the H.D. 1 version of this measure to authorize nonselected offerors and nonselected professional service providers to request a "debriefing" prior to filing an official protest. Rather than include the language in section 103D-701, Hawaii Revised Statutes (HRS), your Committee on Conference inserted the language directly into sections 103D-303 and 103D-304, HRS. Your Committee on Conference also amended section 103D-701, HRS, to make the protest timeframe consistent.

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As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1262, S.D. 1, H.D. 1, as amended herein, and recommends



CCR92

Blue - Drafting Agency
Yellow - House Clerk's Office

that it pass Final Reading in the form attached hereto as S.B.
No. 1262, S.D. 1, H.D. 1, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

Kenneth T. Hiraki
KENNETH T. HIRAKI, Co-Chair

Cal Kawamoto
CAL KAWAMOTO, Chair

Michael Y. Magaoay
MICHAEL Y. MAGAOAY, Co-Chair



A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to establish
2 procurement policies and procedures that:

3 (1) Ensure in-state contractors' ability to win awards of
4 public funds for state contracts;

5 (2) Promote public confidence in the integrity of the
6 procurement process;

7 (3) Increase openness in the award of competitive sealed
8 proposals and professional services contracts;

9 (4) Enhance procurement education in the Pacific by
10 creating a Hawaii procurement institute;

11 (5) Require a pre-bid conference to be attended by all
12 potential bidders, offerors, subcontractors, and union
13 representatives, that will allow all interested
14 parties to raise their protests prior to bidding, so
15 that any subsequent protests can be resolved quickly
16 and efficiently pursuant to the timeframe established
17 in section 103D-701, Hawaii Revised Statutes; and



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(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

20 SECTION 5. Section 103D-304, Hawaii Revised Statutes, is
21 amended to read as follows:

- (1) The response to the initial notice is inadequate;
- (2) The response to the initial notice does not result in adequate representation of available sources; [ex]
- (3) [~~Previously unanticipated~~] New needs for professional services arise[-]; or
- (4) Rules adopted by the policy board so specify.

(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a ~~[screening]~~ selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (c) along with any other pertinent information, including references and reports. The ~~[screening]~~ selection committee shall be comprised of a minimum of three ~~[employees of the purchasing agency]~~ persons with sufficient education, training, and licenses or credentials in the area of the services 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 of other governmental bodies.]~~ In designating the members of the selection committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of

12 (g) The selection committee shall rank a minimum of three
13 persons based on the selection criteria and send the ranking to
14 the head of the purchasing agency. The contract file shall
15 contain a copy of [the criteria established for the selection
16 and] the [committee's] summary of qualifications for the ranking
17 of each of the persons provided to the head of the purchasing
18 agency [by the committee.] for contract negotiations. If more
19 than one person holds the same qualifications under this
20 section, the selection committee shall rank the persons in a
21 manner that ensures equal distribution of contracts among the
22 persons holding the same qualifications.

6 (h) The head of the purchasing agency or designee shall
7 negotiate a contract with the first ranked person, including a
8 rate of compensation which is fair and reasonable, established
9 in writing, and based upon the estimated value, scope,
10 complexity, and nature of the services to be rendered. If a
11 satisfactory contract cannot be negotiated with the first ranked
12 person, negotiations with that person shall be formally
13 terminated and negotiations with the second ranked person on the
14 list shall commence. The contract file shall include
15 documentation from the head of the purchasing agency, or
16 designee, to support selection of other than the first ranked or
17 next ranked person. Failing accord with the second ranked
18 person, negotiations with the next ranked person on the list
19 shall commence. If a contract at a fair and reasonable price
20 cannot be negotiated, the [~~screening~~] selection committee may be
21 asked to submit a minimum of three additional persons for the
22 head of the purchasing agency to [~~rank, and~~] resume negotiations

6 (k) In cases of awards made under this section,
7 nonselected professional service providers may submit a written
8 request for debriefing to the chief procurement officer or
9 designee within three working days after the posting of the
10 award of the contract. Thereafter, the head of the purchasing
11 agency shall provide the requester a prompt debriefing in
12 accordance with rules adopted by the policy board. Any protest
13 by the requester pursuant to section 103D-701 following
14 debriefing shall be filed in writing with the chief procurement
15 officer or designee within five working days after the date that
16 the debriefing is completed."

19 "§103D-310 Responsibility of offerors. (a) Unless the
20 policy board, by rules, specifies otherwise, before submitting
21 an offer, a prospective offeror, not less than ten calendar days
22 prior to the day designated for opening offers, shall give

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12 SECTION 8. Section 103D-1007, Hawaii Revised Statutes, is
13 repealed.

~~(b) The preference in this section may not be used in combination with any other preference otherwise available to a bidder under state or federal law.~~

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7 SECTION 9. If any provision of this Act, or the
8 application thereof to any person or circumstance is held
9 invalid, the invalidity does not affect other provisions or
10 applications of this Act which can be given effect without the
11 invalid provision or application, and to that extent the
12 provisions of this Act are severable.

15 SECTION 11. This Act shall take effect on July 1, 2003.

Report Title:

Procurement; Offeror Compliance With State Employment Laws;
Pre-bid Conference; Procurement Institute; Professional Service
Providers

Description:

Requires that all offerors awarded state contracts be incorporated or organized under the laws of the State or create an in-state division and comply with all applicable state employment laws. Requires a pre-bid conference to be held at least fifteen days prior to submission of bids pursuant to section 103D-302 for construction or design-build projects with a total contract value of \$500,000 or greater, or proposals pursuant to section 103D-303 for projects over \$100,000. Establishes a Procurement Institute to improve and enhance the efficiency, integrity and transparency of the State procurement process. Provides that design professional services may only be procured under section 103D-304, Hawaii Revised Statutes, or pursuant to emergency procurement procedures. Requires that an independent selection committee rank the applying professional service providers according to relevant criteria. Requires the awarding procurement official to negotiate award of the contract with the providers in the rank order set by the committee. Requires equal distribution of contract awards where providers hold the same qualifications or ranking. Repeals state taxpayer procurement preference. (CD1)



Section 2: Ref: Chapter 3-122, Subchapter 5, Competitive Sealed Bids.

§3-122-21 Preparing an invitation for competitive sealed bid. (a) The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include:

- (1) Instructions and information to bidders concerning the bid submission requirements, including:
 - (A) The time and date set for receipt of bids;
 - (B) The address of the office to which bids are to be delivered;
 - (C) The maximum time for bid acceptance by the procurement officer issuing the bid; and
 - (D) Any other special information, such as any requirement of intention to bid or the time, date and location of the pre-bid conference.

The time, date, and location of the receipt of bids and the bid opening shall be the same.

- (2) The purchase description or specifications, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements as are not included in the purchase description.
- (3) The contract terms and conditions, including but not limited to the following, as applicable:
 - (A) Tax clearance requirements pursuant to section 103D-328, HRS;
 - (B) Warranty requirement;
 - (C) Bonding or other security requirements pursuant to

subchapter 24;

(D) Contract extension provisions; and

(E) Statement that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the invitation for bids.

(4) A bid form which shall include space for, but not limited to, the following:

(A) Bid price;

(B) Brand name and model number and packaging for goods; and

(C) Information on applicable preferences.

(5) A requirement that the bidder shall sign the bid form in ink and submit the bid form with the original signature included in the offer.

(6) Documents by reference, provided that the invitation for bids specifies where the documents can be obtained.

(7) A statement that bidders shall designate those portions of their offer that contain trade secrets or other proprietary data that are to remain confidential, subject to section 3-122-30(c) and (d); and that the material designated as confidential shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

- (8) For construction projects the bidder shall provide:
- (A) The name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract; and
 - (B) The nature and scope of the work to be performed by each.

Construction bids that do not comply with the above requirements may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount.

(b) The terms, requirements and conditions set out in an invitation for bids, including the specifications appended or incorporated by reference therein, may be altered only by a written addendum issued by the procurement officer. The invitation for bids may require the acknowledgment of the receipt of all amendments issued. Any amendment issued shall be in the form of an addendum pursuant to section 3-122-27.

§3-122-22 Multi-step sealed bidding. (a) Multi-step sealed bidding is designed to obtain the benefits of competitive sealed bidding by award to the lowest responsive, responsible bidder, and at the same time obtaining the benefits of the competitive sealed proposals procedure through the solicitation of unpriced technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

(b) Multi-step sealed bidding is a two-phase process consisting of:

- (1) A technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State based on criteria set forth in the first phase of the invitation for bids; and
 - (2) A second phase in which those bidders whose unpriced technical offers are determined to be acceptable based on criteria set forth in the first phase have their priced bids considered and award is made to the lowest responsive, responsible bidder.
- (c) The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price and it is desirable:
- (1) To invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirement;
 - (2) To conduct discussions for the purposes of facilitating understanding of the unpriced technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;
 - (3) To accomplish subparagraphs (1) and (2) prior to soliciting priced bids; and
 - (4) To award to the lowest responsive, responsible bidder in accordance with the competitive sealed bidding procedures.

(d) A pre-bid conference as contemplated by section 3-122-26 may be conducted by the procurement officer, provided a pre-bid conference shall be required for construction and design-build projects, pursuant to section 103D-___, HRS.

(e) Prior to the preparation of phase one a determination shall be made by the procurement officer that the procurement officer or an evaluation committee selected in writing by the procurement officer shall evaluate the phase one proposals. A copy of the document identifying any committee members and any subsequent changes thereto shall be placed in the contract file.

(f) Phase one of multi-step sealed bidding shall be initiated by the issuance of an invitation for bids in the form required by section 3-122-21, except as hereinafter provided, and in addition shall state:

- (1) That unpriced technical offers are requested;
- (2) Whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, the priced bids shall be submitted in a separately sealed envelope;
- (3) That it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
- (4) That the State, to the extent the procurement officer finds necessary, may conduct confidential oral or written discussions of the unpriced technical offers the contents of which shall not be publicly disclosed until the contract is signed by all parties; and

- (5) That the item being procured shall be furnished generally in accordance with the bidder's unpriced technical offer as found to be finally acceptable and shall meet the requirements of the invitation for bids.

(g) Addenda to the invitation for bids may, after receipt of unpriced technical offers, be issued and distributed only to bidders who submitted unpriced technical offers.

- (1) Those bidders may respond to the amendments in the form of new unpriced technical offers or amendments to the offers submitted.

- (2) If, in the opinion of the procurement officer, a contemplated addendum will significantly change the nature of the procurement, the invitation for bids shall be cancelled in accordance with subchapter 11, and a new invitation for bids issued.

(h) The unpriced technical offers shall:

- (1) Not be opened publicly but shall be opened in front of two or more procurement officials;
- (2) Be subject to nondisclosure of trade secrets and other proprietary data to unauthorized persons, as requested by bidders, in writing.

(i) The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids. The unpriced technical offers shall be categorized as:

- (1) Acceptable;
- (2) Potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(3) Unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(j) The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the invitation for bids or engage in technical discussions set forth in subsection (k).

(k) The procurement officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable unpriced technical offer, subject to the following rules:

(1) During the course of the discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder.

(2) Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the procurement officer.

The submission may be made:

(A) At the request of the procurement officer, or

(B) Upon the bidder's own initiative.

(1) Upon completion of phase one, the procurement officer shall:

- (1) If priced bids were required to be submitted in phase one, open the priced bids from bidders whose unpriced technical offers were found to be acceptable; or
- (2) If technical discussions have been held, or if material modifications to the procurement item, project or procedure have been made after the original submission of priced bids, return the sealed priced bids to bidders and provide them reasonable opportunity to submit a modified priced bid; or
- (3) If priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

(m) Phase two shall be conducted as any other competitive sealed bid procurement except as specifically set forth in this subsection:

- (1) No public notice need be given to phase two, submission of priced bids, because the notice was previously given;
- (2) After the contract is signed by all parties, the unpriced technical offers of all bidders shall be open for public inspection and disclosed as follows:
 - (A) The procurement officer shall examine written request of confidentiality for trade secrets and proprietary data in the technical offer of the bidder to determine the validity of the requests.
 - (B) If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portions of the unpriced technical offer will be disclosed and that, unless

the bidder protests under chapter 3-126, the offer will be so disclosed.

(C) If the parties agree to the disclosure, the unpriced technical offers shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

(n) Mistakes may be corrected or bids may be withdrawn at any time during phase one, provided, during phase two, mistakes may be corrected or withdrawal permitted only in accordance with sections 3-122-28, 3-122-29, and 3-122-31.

§3-122-23 Bidding time. (a) A minimum of ten ~~[calendar]~~ days shall be provided between the date of the last public notice of the solicitation and the date set for receipt of bids.

(b) For construction and design-build projects, pursuant to section 103D-___, HRS, a minimum of fifteen days shall be provided between the date of the pre-bid conference and the date set for receipt of bids.

~~[(b)]~~ (c) For the technical first phase of a multi-step sealed bid a minimum of fifteen ~~[calendar]~~ days shall be allowed between the date of the last public notice of the solicitation and the date set for receipt of unpriced technical offers, unless the procurement officer makes a written determination that a shorter time will provide for adequate competition.

~~[(c)]~~ (d) Bidders shall have a reasonable time to prepare their bids.

§3-122-24 Public notice. (a) Public notice of the solicitation shall be made for the purpose of securing competition.

(b) The public notice of the solicitation shall include the following information:

- (1) A brief description of the good, service, or construction desired;
- (2) Where and when the solicitation will be available;
- (3) How long the solicitation will be available, i.e., the deadline for the responses to the solicitation;
- (4) Other appropriate information, e.g., a notice of intention to offer pursuant to section 3-122-108 or the time, date and location of the pre-bid conference pursuant to section 3-122-26; and
- (5) For a multi-step sealed bid, a general statement that the bid is multi-step and the due date(s) of the technical offer and price offer.

(c) The public notice of availability of the solicitation shall be publicized as follows:

- (1) At a minimum, statewide and countywide public notices shall be publicized on a purchasing agency or provider internet site.
- (2) Optionally, and in addition to (1) above, the following may be used:
 - (A) For statewide publication:
 - (i) A daily or weekly publication of statewide circulation; or

(ii) Separate daily or weekly publications whose combined circulation is statewide [~~+~~and].

(B) For countywide publication, a daily or weekly publication in the pertinent county.

(C) Notice by mail or facsimile transmission to persons on any applicable bidders mailing list, if any; or

(D) Any other method the procurement officer deems effective for publicizing the solicitation.

(d) A copy of the solicitation shall be made available for public inspection at the office of the procurement officer issuing the solicitation.

§3-122-26 Pre-bid conferences. Pre-bid conferences may be conducted to explain the procurement requirements; provided pre-bid conferences for construction and design-build projects shall be required, pursuant to section 103D-___, HRS. The purchasing agency may, for offers that have special or unusual requirements, e.g., requiring physical inspection, make attendance at a pre-bid conference a condition for submitting a bid. The condition must be stated prominently in the bid solicitation or in the written notice of a pre-bid meeting.

(1) Pre-bid conferences shall be announced to all prospective bidders in the solicitation or if decision to hold a pre-bid conference is made after the issuance of the solicitation, the conference shall be announced in an addendum.

- (2) The conference should be held long enough after the solicitation has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids.
- (3) Nothing stated at the pre-bid conference shall change the solicitation unless a change is made by written addendum as provided in section 3-122-27.
- (4) A summary of the conference shall be supplied to all those prospective bidders known to have received a solicitation, in addition to any addendum issued as a result of the conference.

Ref: Chapter 3-122, Subchapter 6, Competitive Sealed Proposals

§3-122-46 Preparing a request for proposals. (a) The request for proposals is used to initiate a competitive sealed proposal procurement and shall include:

- (1) The specifications for the goods, services, or construction items to be procured, including a description of the performance or benefit required;
- (2) All contractual terms and conditions applicable to the procurement;
- (3) A statement as to when and in what manner prices are to be submitted;
- (4) A statement concerning whether the proposal shall be accompanied by a proposal security pursuant to subchapter 24 or other evidence of financial responsibility;

- (5) The term of the contract and conditions of renewal or extension, if any;
- (6) Instructions and information to offerors, including pre-proposal conferences, the location where proposals are to be received, and the date, time and place where proposals are to be received and reviewed;
- (7) Proposal preparation time set to provide offerors a reasonable time to prepare their proposals. A minimum of thirty calendar days between the date of last legal advertisement of the solicitation and the time and date set for receipt of proposals, unless a shorter time is deemed appropriate for a particular procurement that will allow for adequate competition as determined in writing by the procurement officer; provided a minimum of fifteen days shall be provided between the date of the pre-proposal conference and the date set for the receipt of proposals for construction and design-build projects, pursuant to section 103D-____, HRS;
- (8) The relative importance of price and other evaluation criteria; and specific evaluation criteria to be used in evaluation of proposals which may include but is not limited to:
 - (A) Technical capability and approach for meeting performance requirements;
 - (B) Competitiveness and reasonableness of price;
 - (C) Managerial capabilities; and
 - (D) Best value factors.

- (9) A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without discussions; and
- (10) A statement that offerors shall designate in writing those portions of the unpriced proposal that contain trade secrets or other proprietary data that are to remain confidential, subject to section 3-122-58; that the material designated as confidential shall be readily separable from the proposal in order to facilitate inspection of the nonconfidential portion of the proposal.

(b) Public notice for goods, non-professional services, and construction shall be given by a purchasing agency with delegated procurement authority by distributing the request for proposals in the same manner provided for distributing an invitation for bids under section 3-122-24. Public notices for professional services shall be in accordance with section 3-122-64.

(c) Pre-proposal conferences may be conducted in accordance with section 3-122-26; provided a pre-proposal conference shall be required for construction and design-build projects, pursuant to section 103D-____, HRS.

(d) Prior to the public notice for a request for proposals, a determination shall be made by the procurement officer that the procurement officer or an evaluation committee selected in writing by the procurement officer shall evaluate the proposals pursuant to section 3-122-52.

Section 4: Ref: Chapter 3-122, Subchapter 6, Competitive
Sealed Proposals.

§3-122-60 Debriefing. (a) The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award.

(1) A request for a debriefing shall be made within three working days after the posting of the award of the contract.

(2) Debriefing shall be scheduled within [seven] working days; provided the procurement officer may determine whether to conduct a single or several debriefings.

(b) A protest submitted pursuant to section 103D-701, HRS, following a debriefing shall be filed within the time period specified in section 103D-303(h), HRS.

Section 5: Ref: Chapter 3-122, Subchapter 7, Procurement of Professional Services.

§3-122-63 General provisions. (a) Professional services shall be in accordance with section 103D-304, HRS.

(b) Professional service offerors shall be informed in writing prior to their submission of statements of qualifications of any additional criteria as allowed under paragraph 103D-304(e), (4), HRS.

~~[(b)]~~ (c) After the contract is awarded, the following information shall be open to public inspection, including but not limited to the contract, the list of qualified persons, the ~~[screening]~~ selection committee's criteria for selection established under subsection 103D-304(d), HRS, and the statements of qualifications and related information submitted by the qualified persons, except those portions for which a written request for confidentiality has been made subject to section 3-122-58.

~~[(e)]~~ (d) Amendment to a professional services contract shall require prior approval of the head of the purchasing agency when the increase is at least \$25,000 and ten per cent or more of the initial contract price.

§3-122-67 Small purchases of professional services. Small purchases of professional services may be conducted pursuant to subsection 103D-304~~[(g)]~~ (i), HRS, or subchapter 8, provided that the small purchase of design professional services furnished by

licensees under chapter 464 shall only be conducted pursuant to subsections 103D-304(f), (g), and (h), HRS.

§3-122-69 Review and selection committees. Persons who serve on the review or selection committee who are not employees of the purchasing agency shall:

- (1) Demonstrate they have sufficient knowledge to serve on the review or selection committee;
- (2) Serve without compensation, unless justified and determined in writing by the head of the purchasing agency that compensation is justified; and
- (3) Sign an affidavit attesting that they have no personal, business, or any other relationship that will influence their decision in the review or selection process, and agreeing to not disclose any information prior to award.

§3-122-70 Debriefing. (a) The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award.

- (1) A request for a debriefing shall be made within three working days after the posting of the award of the contract.
- (2) Debriefing shall be scheduled within [seven] working days; provided the procurement officer may determine

whether to conduct a single or several debriefings.

(b) A protest submitted pursuant to section 103D-701, HRS,
following a debriefing shall be filed within the time period
specified in section 103D-303 (h), HRS.

Section 6: Ref: Chapter 3-122, Subchapter 13,
Responsibility of Bidders and Offerors.

§3-122-112 Compliance with all laws governing entities doing business in the State. (a) This section shall be in accordance with subsection 103D-310(c), HRS, and applies to procurements [\$5,000 or more].

(b) Unless a different deadline is imposed by the solicitation, offeror shall furnish prior to the award and by the deadline imposed by the procurement officer, the following documentation as proof of compliance with the requirements of subsection 103D-310(c), HRS:

- (1) A certificate of good standing issued by the business registration division of the department of commerce and consumer affairs, [current within thirty days of issuance date].
- (2) A tax clearance certificate from the department of taxation and the Internal Revenue Service, subject to subsections 103D-328(a) and (e), HRS, [current within six months of issuance date].
- (3) [Verbiage pending receipt of information from DLIR on required documentation for chapter 383, Hawaii Employment Security Law];
- (4) [Verbiage pending receipt of information from DLIR on required documentation for chapter 386, Workers' Compensation Law];

(5) [Verbiage pending receipt of information from DLIR on required documentation for chapter 392, Temporary Disability Insurance]; and

(6) [Verbiage pending receipt of information from DLIR on required documentation for chapter 393, Prepaid Health Care Act].

Section 7: Ref: Chapter 3-126, Subchapter 1, Authority to
Resolve Protested Solicitations and Awards.

§3-126-4 Protest of an award. (a) A protest of a award shall be submitted in writing to the chief procurement officer or as otherwise specified in the solicitation, within five working days after the posting of the notice of award for solicitations pursuant to section 103D-302 or 103D-303, HRS; provided a protest following a debriefing pursuant to section 103D-303(h), HRS, shall be submitted in writing within five working days after the debriefing is completed. The provisions of subsections 3-126-3(c) and (d) to file a protest shall be complied with. Heads of purchasing agencies shall not proceed with the award upon receipt of a timely protest, and shall comply with section 3-126-5.

(b) Protest of an award pursuant to sections 103D-304, 103D-305, or 103D-306 shall be submitted in writing by the protestor to the procurement officer, within five working days of knowledge giving rise to the protest; provided a protest following a debriefing pursuant to section 103D-304(k), HRS, shall be submitted in writing within five working days after the debriefing is completed.

- (1) A protest shall be filed in accordance with subsections 3-126-3(c) and (d), with supporting exhibits, evidence, or documents to substantiate the protest;
- (2) A decision shall be made by the procurement officer as expeditiously as possible after

reviewing all relevant information, and shall be final. A decision issued in resolution of a protest shall contain the following:

- (A) A statement of the action to be taken or resolution to the protest;
- (B) Statement that the decision is final and conclusive.

§3-126-5 Stay of procurements during protest. When a protest has been filed pursuant to section 3-126-3 or 3-126-4, ~~[the chief procurement officer or designee shall take]~~ no further action shall be taken until the protest has been settled, unless the chief procurement officer ~~[or designee]~~ makes a written determination, after consulting with the head of the purchasing agency, that the award of the contract is necessary to protect the substantial interests of the State.

Section 3: Ref: Chapter 3-121, Procurement Organization.

§103D-206 Additonal duties of the administrator of the
procurement office.

Information on the Hawaii Procurement Institute will be discussed
under the Administrator's Report.