

PROCUREMENT POLICY BOARD

1151 Punchbowl Street
Conference Room 410
Honolulu, Hawaii 96813

Regular Meeting

June 16, 2003

2:00 p.m.

A G E N D A

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES – Meeting of May 29, 2003
- III. NEW BUSINESS

For Action

A. Adoption of Proposed Interim Rules for:

1. Chapter 3-122, HAR.

- a. §3-122-9.01
- b. §3-122-21
- c. §3-122-22
- d. §3-122-23
- e. §3-122-24
- f. §3-122-26
- g. §3-122-46
- h. §3-122-60
- i. §3-122-63
- j. §3-122-67
- k. §3-122-69
- l. §3-122-70

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- m. §3-122-74
- n. §3-122-75
- o. §3-122-76
- p. §3-122-112

2. Chapter 3-124, HAR.

- a. Subchapter 6, Chapter 3-124
- b. §3-124-66

3. Chapter 3-126, HAR.

- a. §3-126-4
- b. §3-126-5

B. Approval of Procurement Directives.

- 1. Implementation Guidance for Act 52, SLH 2003.
- 2. Qualification Questionnaire.

C. Election of Officers.

IV. ADMINISTRATOR'S REPORT

V. ADJOURNMENT

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-122 (Interim)
Hawaii Administrative Rules

June 16, 2003

1. Section 3-122-9.01, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-9.01 Disclosure of [names of potential offerors] information. (a) A purchasing agency is not required to disclose [the records] information identifying the number or the organization or persons that obtained a solicitation; or attended a pre-offeror's conference; or submitted a notice of intent to offer or an offer itself; or an award until:

- (1) The purchase order is issued, in the case of small purchase requests for quotations;
- (2) The deadline for receipt and opening of bids, in the case of invitations for bids; and
- (3) After the contract has been awarded in the case of requests for proposals.

(b) In the case of procurement of professional services, the information specified in section 3-122-63(c) [list of qualified persons provided to the head of the purchasing agency] shall be made public after the award." [Eff and comp 11/17/97; am and comp 7/25/02; am] (Auth: HRS §103D-202)
(Imp: HRS §§103D-202, 103D-304)

2. Section 3-122-21, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§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]~~ per cent 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." [Eff 12/15/95; am and comp 7/25/02; am]
(Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-328)

3. Section 3-122-22, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§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]~~ paragraphs (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 SLH 2003, Act 52, §2, 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." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am
] (Auth: HRS §§103D-202, 103D-302)

(Imp: HRS §103D-302)

4. Section 3-122-23, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§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, a minimum of fifteen calendar 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.

~~[(e)]~~ (d) Bidders shall have a reasonable time to prepare their bids." [Eff 12/15/95; comp 11/17/97; am and comp 7/25/02; am] (Auth: HRS §§103D-202, 103D-302, SLH 2003, Act 52, §2) (Imp: HRS §103D-302, SLH 2003, Act 52, §2)

5. Section 3-122-24, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§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 paragraph (1) ~~[above]~~, the following may be used:
 - (A) ~~[For statewide]~~ Newspaper publication:
 - (i) ~~[A]~~ For statewide publication, a daily or weekly publication of statewide circulation; or

- ~~[(ii) Separate]~~ separate daily or weekly publications whose combined circulation is statewide~~[-and]~~.
- ~~[(B)]~~ (ii) For countywide publication, a daily or weekly publication in the pertinent county.
- ~~[(C)]~~ (B) Notice by mail or facsimile transmission to persons on any applicable bidders mailing list, if any ~~[-or]~~.
- ~~[(D)]~~ (C) 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." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am] (Auth: HRS §§103D-202, 103D-302) (Imp: HRS §103D-302)

6. Section 3-122-26, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§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 SLH 2003, Act 52, §2, 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 sufficiently before bid opening to allow consideration of the summary results to all those prospective bidders known to have received a solicitation, in addition to any addendum issued as a result of the conference." [Eff 12/15/95; am and comp 11/17/97; comp 7/25/02; am]
(Auth: HRS §103D-202, SLH 2003, Act 52, §2)
(Imp: HRS §103D-302, SLH 2003, Act 52, §2)

7. Section 3-122-46, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§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 calendar 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;

- (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 SLH 2003, Act 52, §2, 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." [Eff 12/15/95; am and comp 7/25/02; am] (Auth: HRS §103D-202, SLH 2003, Act 52, §2) (Imp: HRS §103D-303, SLH 2003, Act 52, §2)

8. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-60 to read as follows:

"§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.

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

(c) Debriefing shall be held, to the maximum extent practicable, within seven working days; provided the procurement officer may determine whether or not to conduct individual or combined debriefings.

(d) A protest submitted pursuant to section 103D-701, HRS, following a debriefing shall be filed within five working days, as specified in section 103D-303(h), HRS." [Eff] (Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

9. Section 3-122-63, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-63 General provisions. (a) Professional services shall be procured in accordance with section 103D-302, 103D-303, 103D-304, 103D-305, 103D-306, or 103D-307, HRS; provided that design professional services furnished by licensees under chapter 464, HRS, shall only be procured pursuant to section 103D-304 or 103D-307, 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 section 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 names of selection committee members, the ~~[screening]~~ selection

committee's criteria for selection established under section 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." [Eff 12/15/95; comp 11/7/97; am and comp 7/25/02; am] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

10. Section 3-122-67, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-67 Small purchases of professional services. Small purchases of professional services, except small purchase of design professional services furnished by licensees under chapter 464, HRS, may be conducted pursuant to ~~[subsection 103D-304(g)]~~ section 103D-304(j), HRS, or subchapter 8." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §§103D-304, 103D-305)

11. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-69 to read as follows:

"§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) 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:
 - (i) Attesting to having no personal, business, or any other relationship that will influence their decision in the review or selection process;
 - (ii) Agreeing not to disclose any information on the review or selection process; and

(iii) Agreeing that their names will become public information upon award of the contract." [Eff] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

12. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-70 to read as follows:

"§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 written request for a debriefing shall be made within three working days after the posting of the award of the contract.

(2) Debriefing shall be held, to the maximum extent practicable, within seven working days; provided the procurement officer may determine whether or not to conduct individual or combined debriefings.

(b) A protest submitted pursuant to section 103D-701, HRS, following a debriefing shall be filed within five working days, as specified in section 103D-303(h), HRS." [Eff] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

13. Section 3-122-74, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-74 General provisions. (a) Small purchases shall be subject to section 103D-305, HRS, and do not require public notice or public bid openings.

(b) Small purchase contracts for professional services may be procured pursuant to this subchapter or ~~[subsection 103D-304(g),]~~ section 103D-304(j), HRS; provided that small purchase of design professional services furnished by licensees under chapter 464, HRS, shall be procured in accordance with section 103D-304, HRS.

(c) Unless otherwise exempt, purchasing agencies delegated small purchase authority shall comply with state procurement office price or vendor lists, price schedules, or other chief procurement officer lists and schedules, where applicable.

(d) Purchases shall not be parceled by dividing the purchase of same, like, or related items of goods,

services, or construction into several purchases of smaller quantities, so as to evade the statutory competitive bidding requirements. For additional details, refer to chapter 3-131.

(e) Preferences pursuant to part X, chapter 103D, HRS, shall not apply to small purchases." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

14. Section 3-122-75, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-75 Goods [and], services, and construction. (a) Goods [and], services, and construction subject to section 103D-305, HRS, shall:

- (1) Insofar as it is practical be based on the agency's specifications, with adequate and reasonable competition[-];
- (2) Consider all criteria, including but not limited to quality, warranty, and delivery; and
- (3) Be awarded to the vendor providing the best value to the [state-] State.

(b) The procurement policy board shall by procurement directive establish the procedures to be used for this section." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

15. Section 3-122-76, Hawaii Administrative Rules (Interim), is repealed:

~~["§3-122-76 Construction. (a) Construction subject to section 103D-305, HRS, shall:~~

- ~~(1) Insofar as it is practical be based on the agency's specifications, with adequate and reasonable competition;~~
- ~~(2) Be awarded to the vendor submitting the lowest quotation.~~

~~(b) The policy board shall by procurement directive establish the procedures to be used for this section."] [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; R] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)~~

16. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-112 to read as follows:

"§3-122-112 Compliance with all laws governing entities doing business in the State. (a) This section shall be in accordance with section 103D-310(c), HRS, and shall apply to procurements of \$25,000 or more.

(b) This section shall not hinder or impede the State in contracting for any projects involving funding from the federal government." [Eff]
(Auth: HRS §§103D-202, 103D-310) (Imp: HRS §103D-310)

17. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

18. Additions to update source notes to reflect these amendments are not underscored.

19. These amendments to chapter 3-122, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on June 16, 2003, and filed with the Office of the Lieutenant Governor.

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-124(Interim)
Hawaii Administrative Rules

June 16, 2003

1. Section 3-124-40, Hawaii Administrative Rules, is repealed:

~~["§3-124-40 Purpose. (a) The purpose of these rules is to establish the method of determining preference to in-state contractors when awarding a contract for a public works project. The objective is to promote the use of in-state contractors.~~

~~(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402)."] [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02; R] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)~~

2. Section 3-124-41, Hawaii Administrative Rules, is repealed:

~~["§3-124-41 Definitions. The following definitions are also applicable to terms used in this chapter:~~

~~"State agency" means any board, commission, department, bureau, division, agency, or political subdivision of the state government, excluding the counties."] [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R~~

~~] (Auth: HRS §103D-202) (Imp: HRS §§103D-1007, 206M-31)~~

3. Section 3-124-42, Hawaii Administrative Rules, is repealed:

~~["§3-124-42 Applicability. (a) These rules shall apply to solicitations issued pursuant to sections 103D-302 and 103D-303, HRS, for public works projects.~~

~~(b) These rules shall not apply:~~

~~(1) Whenever the application will disqualify any state agency from receiving federal~~

~~funds or aid; or~~
(2) ~~To the counties.~~

~~(c) The in-state contractor preference may not be used in combination with any other preference otherwise available under state or federal law." [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)~~

4. Section 3-124-43, Hawaii Administrative Rules, is repealed:

~~["§3-124-43 Qualification procedure. (a) Any offeror desiring an in-state contractor preference pursuant to chapter 103D, HRS, shall complete an application for a tax clearance and submit it to the State department of taxation for a tax clearance certificate. Upon receipt of the application, the state department of taxation will verify that the applicant has filed all state tax returns, and has paid all amounts owing on such returns for the number of years and for the dollar amounts specified in section 103D-1007, HRS.~~

~~(b) The state department of taxation will issue a tax clearance certificate to the applicant upon its determination that the applicant has filed all state tax returns, and has paid all amounts owing on such returns, in accordance with section 103D-1007, HRS." [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)~~

5. Section 3-124-44, Hawaii Administrative Rules, is repealed:

~~["§3-124-44 Bidding procedure. Solicitations for public works projects issued by a state purchasing agency and consistent with section 3-124-41, shall:~~

- ~~(1) State that a price preference will be given to in-state contractors subject to the directions in the solicitation on applicability, qualification procedures, and limitations of the in-state contractor preference;~~
- ~~(2) Provide an appropriate space for the offeror to indicate whether the in-state preference is selected by the offeror;~~

- (3) ~~State that if the in-state contractor preference is selected, the price preference percentage, as provided in section 103D-1007, HRS, shall be used for price evaluation, as specified in section 3-124-45,~~
- (4) ~~State that the in-state preference may not be used in combination with any other preference available under state or federal law and that the selection of the in-state contractor preference takes precedence over the selection of any other preference and all other selections will be ignored by the procuring agency; and~~
- (5) ~~Require the offeror requesting an in-state contractor preference to submit with the offer an tax clearance certificate obtained in accordance with section 3-124-43 and shall caution the offeror that failure to submit the tax clearance certificate automatically voids the selection of the in-state contractor preference."~~ [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R] (Auth: HRS §103D-202) (Imp HRS §103D-1007)

6. Section 3-124-45, Hawaii Administrative Rules, is repealed:

~~["§3-124-45 Evaluation procedure and contract award. (a) When the in-state contractor preference is not selected by an offeror, the offer shall be evaluated by applying all preferences selected by the offeror which are allowed by statute. Calculations for adjustments shall be based upon the original price offered. Should more than one preference apply, the evaluated price shall be the sum of the original price plus applicable preference adjustments.~~

~~(b) Whenever an offeror selects and qualifies for the in-state contractor preference, the prices offered by those not selecting or qualifying for the in-state contractor preference shall be increased by the percentage allowed in section 103D-1007, HRS, for evaluation purposes.~~

~~(c) The responsible and responsive offeror submitting the offer with the lowest evaluated price shall be awarded the contract.~~

~~(d) For offers submitted pursuant to 103D-302 and after taking into consideration all applicable~~

~~preferences, the contract amount shall be the original price offered.~~

~~(e) Should the price comparison result in identical evaluated prices, and the tied bidders meet the provisions of section 3-124-43, the procurement officer shall select the winning bid resulting from an invitation for bids, pursuant to section 3-122-34.~~

~~(f) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57."~~

[Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R]
(Auth: HRS §103D-202) (Imp: HRS §103D-1007)

7. Section 3-124-66, Hawaii Administrative Rules, is amended to read as follows:

"§3-124-66 Partners in employment program. The state procurement office shall:

- (1) Maintain and post to the internet a current list of [partners in employment program providers with descriptions for] participants in the partners in employment program and the goods [or] and services [that have been determined by the department to meet that department's criteria and annually distribute the list to all state and county purchasing agencies; they provide; and
- (2) Ensure that any good or service available from a qualified community rehabilitation program pursuant to this subchapter is not placed on the Hawaii products list under section 103D-1002, HRS." [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am] (Auth: HRS §§103D-202, 103D-1010) (Imp: HRS §§103D-1010, 103D-1011)"

8. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

9. Additions to update source notes to reflect these amendments are not underscored.

10. These amendments to chapter 3-124, Hawaii Administrative Rules, shall take effect ten days after

filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on June 16, 2003, and filed with the Office of the Lieutenant Governor.

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-126 (Interim)
Hawaii Administrative Rules

June 16, 2003

1. Section 3-126-4, Hawaii Administrative Rules, is amended to read as follows:

"§3-126-4 Protest of an award. (a) A protest of ~~[a]~~ an 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]~~ section 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]~~ section 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]~~ section 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; and
 - (B) ~~[Statement]~~ A statement that the decision is final and conclusive. [Eff 12/15/95; am and comp 11/25/02; am
] (Auth: HRS §§103D-202,

103D-701) (Imp: HRS §103D-701)

2. Section 3-126-5, Hawaii Administrative Rules, is amended to read as follows:

"§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." [Eff 12/15/95; am and comp 11/25/02; am] (Auth: HRS §§103D-202, 103D-701)
(Imp: HRS §103D-701)

3. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

4. Additions to update source notes to reflect these amendments are not underscored.

5. These amendments to chapter 3-126, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on June 16, 2003, and filed with the Office of the Lieutenant Governor.

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



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June 16, 2003

PROCUREMENT DIRECTIVE NO. 2003-01

TO: All Chief Procurement Officers
All Executive Department Heads

FROM: Aaron S. Fujioka, Administrator
State Procurement Office

SUBJECT: Implementation of Act 52, SLH 2003 (SB 1262, CD1)

The purpose of this circular is to summarize the requirements of Act 52 and issue guidelines for its implementation.

Summary of Act 52, SLH 2003:

Section 2. Adds a new section to Chapter 103D on Pre-bid conference. Requires a pre-bid conference for construction or design-build projects under §103D-302 totaling \$500,000 or more; and under §103D-303 totaling \$100,000 or more.

Section 3. Amends §103D-206, Additional duties of the administrator of the procurement office.

Adds to the responsibility of the Administrator to establish and maintain a procurement institute in cooperation with the William S. Richardson School of Law, to promote and develop procurement education and training.

Section 4. Amends §103D-303, Competitive sealed proposals. Includes a request for debriefing process for non-selected offerors.

Section 5. Amends §103D-304, Procurement of professional services. Amends the name of the "screening" committee to the "selection" committee; the requirement for members of the review and selection committees shall consist of a minimum of "three employees from the agency or from another governmental body" is amended to "three persons"; provides that the selection criteria employed by the selection committee shall be in descending order of importance; provides that the selection committee shall determine in writing any additional criteria used in the evaluation process;

provides that the ranking of offerors shall be determined by the selection committee rather than by the head of the purchasing agency; the requirement for all professional service contracts to be posted electronically was amended to require only contracts \$5,000 or more; includes a request for debriefing process for non-selected offerors; and provides that design professional services furnished by licensees under chapter 464, HRS, shall only be procured pursuant to §103D-304 (excluding the small purchase process) or §103D-307, HRS.

Note: Design professional services can no longer be procured as a small purchase under §103D-305, HRS. The §103D-304 (f), (g), (h), HRS, selection committee process shall be used. §103D-307, HRS, shall be used for emergency design professional services \$25,000 or more.

Section 6. Amends §103D-310, Responsibility of offerors

Adds provisions for all offerors, upon award of a contract, to comply with Chapters 237 (general excise tax); 383 (employment security); 386 (workers compensation); 392 (temporary disability insurance); and 393 (pre-paid health care); and shall be incorporated or organized under the laws of the State, or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Section 7. Amends §103D-701, Authority to resolve protested solicitations and awards
Includes the provision for a request for debriefing.

Section 8. Repeals §103D-1007, Preference to bidders on state agency contracts

Implementation of Act 52 (July 1, 2003):

The Procurement Policy Board is in the process of adopting Interim Hawaii Administrative Rules to implement the requirements of Act 52. However, the rules will not be ready for distribution until after July 1, 2003.

In order for all purchasing agencies to be in compliance with the July 1, 2003 effective date of Act 52, the following guidelines are provided:

- Procurements pursuant to §§103D-302 and 103D-303, HRS, solicited (legal advertised date) before July 1, 2003, are exempt from Act 52 requirements.
- Procurements for professional services pursuant to §103D-304, HRS, solicited (legal advertised date), and if persons are determined to be most qualified by a committee before July 1, 2003, are exempt from Act 52 requirements even though the award is subsequent to July 1, 2003. However, if the selection committee evaluates persons on or after the July 1, 2003 effective date of this Act, then the requirements of Act 52 shall apply.
- All §103D-304, HRS, professional service awards for \$5,000 or more are to be posted electronically within seven days of the award. This is a change. All §103D-304, HRS, awards previously required posting.

Procurement Directive No. 2003-01

June 16, 2003

Page 3

Questions concerning this circular may be directed to:

Justin Fo (586-0577), justin.fo@hawaii.gov ;

Ruth Yamaguchi (585-0567), ruth.yamaguchi@hawaii.gov; or

Bob Governs (586-0554), robert.governs@hawaii.gov.

Attach. Act 52, SLH 2003 (SB1262, CD1)

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



Hawaii State Legislature

CCR92

Record of Votes of a Conference Committee

Bill/Concurrent Resolution No.:

SB 1262, SD1, HD1

Date/Time:

04/25/03

1:30 pm

☒ The recommendation of the House and Senate managers is to pass with amendments (CD).

☐ The Committee is reconsidering its previous decision.

☐ The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure.

☐ 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)	✓				HIRAKI, Kenneth T. (Co-Chr)	✓			
ADUJA, Melodie Williams	✓				MAGAOLAY, Michael V. (Co-Chr)	✓			
ESPERO, Willie C.	✓				HERKES, Robert N.	✓			
SAKAMOTO, Norman				✓	MEYER Colleen R.				✓
WHALEN, Paul				✓					
TOTAL	3			2	TOTAL	3			1

A = Aye

WR = Aye with Reservations

N = Nay

E = Excused

Senate Recommendation is:



Adopted



Not Adopted

House Recommendation is:



Adopted



Not Adopted

Lead Chair's or Designee's Signature:

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



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



SECTION 2. Part X of chapter 103D, Hawaii Revised

"§103D- Pre-bid conference. (a) At least fifteen days
to submission of bids pursuant to section 103D-302 for a
uction or design-build project with a total estimated
contract value of \$500,000 or more, and at least fifteen days
to submission of proposals pursuant to section 103D-303
construction or design-build project with a total
estimated contract value of \$100,000 or more, the head of the
leasing agency shall hold a pre-bid conference and shall
invite all potential interested bidders, offerors,
contractors, and union representatives to attend.

"[f]103D-206[f] Additional duties of the administrator of the procurement office. In addition to the duties referred to in section 103D-205, the administrator shall:

- (1) Perform periodic review of the procurement practices of all governmental bodies;
- (2) Assist, advise, and guide governmental bodies in matters relating to procurement;
- (3) Develop and administer a statewide procurement orientation and training program;
- (4) Develop, distribute, and maintain a procurement manual for all state procurement officials; ~~and~~
- (5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties[-]; and
- (6) Establish and maintain a Hawaii procurement institute, in cooperation with the University of Hawaii William S. Richardson school of law and other public and private entities and/or persons, to promote and develop a professional acquisition workforce and to improve and enhance the State of Hawaii's contractor industrial base through education and training. The Hawaii procurement institute may:
 - (A) Conduct and participate in procurement education and training for entry level and higher qualified

1 agency determines in writing that the use of competitive sealed
2 bidding is either not practicable or not advantageous to the
3 State.

4 (b) Proposals shall be solicited through a request for
5 proposals.

6 (c) Notice of the request for proposals shall be given in
7 the same manner as provided in section 103D-302(c).

8 (d) Proposals shall be opened so as to avoid disclosure of
9 contents to competing offerors during the process of
10 negotiation. A register of proposals shall be prepared in
11 accordance with rules adopted by the policy board and shall be
12 open for public inspection after contract award.

13 (e) The request for proposals shall state the relative
14 importance of price and other evaluation factors.

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best

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

nonselected offerors may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed."

2003-2414 SB1262 CD1 SMA-4.doc

1 "§103D-304 Procurement of professional services. (a)

2 Professional services shall be procured in accordance with
3 sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or
4 this section[-]; provided that design professional services
5 furnished by licensees under chapter 464 shall be procured
6 pursuant to this section or section 103D-307. Contracts for
7 professional services shall be awarded on the basis of
8 demonstrated competence and qualification for the type of
9 services required, and at fair and reasonable prices.

10 (b) At a minimum, before the beginning of each fiscal
11 year, the head of each purchasing agency shall publish a notice
12 inviting persons engaged in providing professional services
13 which the agency anticipates needing in the next fiscal year, to
14 submit current statements of qualifications and expressions of
15 interest to the agency. Additional notices ~~[may]~~ shall be given
16 if:

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

5 The committee shall review and evaluate all submissions and
6 other pertinent information, including references and reports,
7 and prepare a list of qualified persons to provide these
8 services. Persons included on the list of qualified persons may
9 amend their statements of qualifications as necessary or
0 appropriate. Persons shall immediately inform the head of the
purchasing agency of any change in information furnished which

1 would disqualify the person from being considered for a contract
2 award.

(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

S.D. 1
H.D. 1
C.D. 1

1 committee may conduct confidential discussions with any person
2 who is included on the list prepared pursuant to subsection (c)
3 regarding the services which are required and the services they
4 are able to provide. In conducting discussions, there shall be
5 no disclosure of any information derived from [proposals
6 ~~submitted by competing offerors. The committee shall provide~~
7 ~~the head of the purchasing agency with the names of a minimum of~~
8 ~~three persons who the committee concludes are the most qualified~~
9 ~~to provide the services required, with a summary of each of~~
0 ~~their qualifications.] the competing professional service
1 offerors.~~

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
 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,
0 complexity, and nature of the services to be rendered. If a
1 satisfactory contract cannot be negotiated with the first ranked
2 person, negotiations with that person shall be formally
3 terminated and negotiations with the second ranked person on the
4 list shall commence. The contract file shall include
5 documentation from the head of the purchasing agency, or
6 designee, to support selection of other than the first ranked or
7 next ranked person. Failing accord with the second ranked
8 person, negotiations with the next ranked person on the list
9 shall commence. If a contract at a fair and reasonable price
0 cannot be negotiated, the [~~screening~~] selection committee may be
1 asked to submit a minimum of three additional persons for the
2 head of the purchasing agency to [~~rank, and~~] resume negotiations

1 in the same manner provided in this subsection. Negotiations
2 shall be conducted confidentially.

3 ~~[(f)]~~ (i) Contracts awarded under this section for \$5,000
4 or more shall be posted electronically within seven days of the
5 contract award by the chief procurement officer or designee and
6 shall remain posted for at least one year. Information to be
7 posted shall include ~~[-]~~, but not be limited to:

8 (1) The names of the ~~[top five]~~ persons submitted under
9 subsection ~~[(d), or, if the list submitted under~~
10 ~~subsection (d) is less than five, all of the persons~~
11 ~~submitted]~~ (g);

12 (2) The name of the person or organization receiving the
13 award;

14 (3) The dollar amount of the contract;

15 (4) The name of the head of the purchasing agency or
16 designee ~~[head]~~ making the selection; and

17 (5) Any relationship of the principals to the official
18 making the award.

19 ~~[(g)]~~ (j) Contracts for professional services of less than
20 ~~[\$25,000]~~ the limits in section 103D-305, may be negotiated by
21 the head of the purchasing agency, or designee, with at least
any two persons ~~[who appear]~~ on the list of qualified persons

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
0 award of the contract. Thereafter, the head of the purchasing
1 agency shall provide the requester a prompt debriefing in
2 accordance with rules adopted by the policy board. Any protest
3 by the requester pursuant to section 103D-701 following
4 debriefing shall be filed in writing with the chief procurement
5 officer or designee within five working days after the date that
6 the debriefing is completed."

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

1 written notice of the intention to submit an offer to the
2 procurement officer responsible for that particular procurement.

(b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer's discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board. Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the offeror applies for administrative review pursuant to section 103D-709.

4 (1) Be incorporated or organized under the laws of the
5 State; or

9 Offerors shall produce documents to the procuring officer to
0 demonstrate compliance with this subsection. Any offeror making
1 a false affirmation or certification under this subsection shall
2 be suspended from further offerings or awards pursuant to
3 section 103D-702.

SECTION 7. Section 103D-701, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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~~(f) If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public works project because of preference awarded by this section, this section shall not apply insofar as its application would preclude or reduce federal assistance for that work."~~

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.

13 SECTION 10. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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)



**Procurement Directive - Implementation
Guidance for Act 52, SLH 2003**

To Be Presented at the Meeting

June 16, 2003

PROCUREMENT DIRECTIVE NO. 2003-01

TO: All Chief Procurement Officers
All Executive Departments

FROM: Aaron S. Fujioka, Administrator
State Procurement Office

SUBJECT: Qualification Questionnaire, SPO Form-21

The purpose of this directive is to:

- 1) Rescind Procurement Directive No. 1995-01, dated December 15, 1995, Amendment 1 dated June 9, 1998, and Amendment 2, dated May 30, 2000; and
- 2) Reissue the qualification questionnaire required by section 3-122-108(b), HAR, pursuant to section 103D-310(b).

Pursuant to §103D-310, HRS, and §3-122-108, HAR, a determination of responsibility or nonresponsibility of an offeror or prospective offeror to perform the work called for in the solicitation shall be made by the procurement officer on the basis of available information.

Effective immediately, if the procurement officer requires additional information, [the offeror or prospective offeror may be requested to answer questions contained in the attached sample questionnaire prepared by the procurement policy board. *may be used.*

Should there be any questions, please contact me at (808) 587-4700 or your staff may contact Justin Fo at (808) 586-0577.

c: Administrative Services Office (DAGS)

Attachment

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and the same

SAMPLE
STATE OF HAWAII
STANDARD
QUALIFICATION QUESTIONNAIRE

FOR
PROSPECTIVE BIDDERS
ON
PUBLIC WORKS CONTRACTS

issued by the
PROCUREMENT POLICY BOARD
STATE OF HAWAII

June 16, 2003

To be filed with the officer calling for bids
in accordance with Section 103D-310, HRS, as amended.

Submitted By _____

Address _____

Date _____

STANDARD QUALIFICATION QUESTIONNAIRE

COVERING EXPERIENCE, EQUIPMENT AND FINANCIAL STATEMENT OF PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS. THE OFFICER CALLING FOR BIDS MAY REQUIRE THE PROSPECTIVE BIDDER TO FURNISH ANY ADDITIONAL INFORMATION NOT SPECIFICALLY COVERED HEREIN. ALL ITEMS MUST BE ANSWERED AND OMISSIONS MAY BE CONSIDERED GOOD CAUSE FOR UNFAVORABLE CONSIDERATION.

GENERAL INFORMATION

1. The statements contained in this Questionnaire are being furnished for consideration in submitting a bid for the following project:

(a) Project Title _____

(b) Location _____

(c) Bid Opening Date _____

2. The Questionnaire is being submitted in behalf of:

(a) Name of Bidder _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual
☐ A Joint-Venture

(b) Address _____

(c) Telephone No. _____

(d) Date Submitted _____

3. If the bid is submitted by a joint venture, composed of two or more individual firms, then each member firm comprising the joint venture must submit all information listed on pages 3 through 16, inclusive, of the Questionnaire and, in addition, answer the following:

(a) Members of joint Venture _____

(b) Date of Joint Venture Agreement _____

(c) Is agreement between members comprising the joint venture joint and several liability? _____

If not, state the terms of agreement in this respect: _____

EXPERIENCE QUESTIONNAIRE

Submitted by _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual

Principal Office _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

1. How many years has your organization been in business as a general contractor under your present business name? _____
2. How many years experience in _____ construction work has your organization had: (A) as a general Contractor _____; (B) as a Sub-Contractor _____
3. Show what construction projects your organization has completed in the past five (5) years in the following tabulation:

Contract Amt.	Class of Work	When Completed	Name and Address of Owner

4. Have you ever failed to complete any work awarded to you? _____ If so, state when, where and why? _____

5. Has any officer or partner of your organization in the past five (5) years been an officer or partner of some other organization that failed to complete a construction contract? If so, state name of individual, other organization and reason therefore _____

6. Has any officer or partner of your organization in the past five (5) years failed to complete a construction contract handled in his own name? _____ If so, state name of individual, name of Owner and reason therefore. _____

7. In what other lines of business are you financially interested? _____

8. For what corporations or individuals in the past five (5) years have you performed work, and to whom do you refer? _____

9. For what counties within the State of Hawaii have you performed work and to whom do you refer? _____

10. For what Bureaus or Departments of the State government have you performed work and to whom do you refer? _____

11. Have you performed work for the U. S. Government? _____ If so, when and to whom do you refer? _____

12. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? _____ If so, when and to whom do you refer? _____

13. What is the construction experience of the principal individuals of your organization?

Individual's Name	Present Position or Office	Years of Construction Experience	Magnitude and Type of Work	In What Capacity?

☐ A Corporation
☐ A Partnership
☐ An Individual



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- [illegible]

- [illegible]

- [illegible]

11. What equipment do you intend to purchase for use on the proposed work, should the contract be awarded to you?

Quantity	Item	Description, Size, Capacity, Etc.	Approximate Cost

12. How and when will you pay for the equipment to be purchased? _____

13. Do you propose to rent any equipment for this work? _____ If so, state type, quantity and reasons for renting _____

FINANCIAL STATEMENT

Submitted by _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual

Principal Office _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

BALANCE SHEET

As of _____, 20____

Assets

Current assets:

Cash and cash equivalents (1)	\$ _____
Short-term investments (2)	_____
Accounts receivable, net (3)	_____
Inventories (4)	_____
Costs and estimated earnings in excess of billings on uncompleted contracts (5)	_____
Prepaid expenses and other (6)	_____
Sub-Total Current Assets	_____

Property and equipment:

Land (7)	_____
Buildings (8)	_____
Vehicles, machinery and equipment (9)	_____
Furniture and fixtures (10)	_____
Less accumulated depreciation	(_____)
Sub-Total Net Property and Equipment	_____

Other assets:

Cash surrender value of life insurance policies (11)	_____
Deposits and other (12)	_____
Sub-Total Other Assets	_____

Total Assets: \$ _____

BALANCE SHEET (Continued)

Liabilities and Stockholder's Equity

Current liabilities:

Current portion of long-term debt (1)	\$ _____
Accounts payable (2)	_____
Billings in excess of costs and estimated earnings on uncompleted contracts (3)	_____
Accrued liabilities and other (4)	_____
Sub-Total Current Liabilities	_____

Long-term debt, net of current portion (5) _____

Sub-Total Liabilities & Long-term Debt: \$ _____

Stockholder's equity:

Capital stock (6)	_____
Additional paid-in capital (7)	_____
Retained earnings	_____
Treasury stock (8)	(_____)
Sub-Total Stockholder's Equity	\$ _____

Total Liabilities and Stockholder's Equity \$ _____

DETAILS RELATIVE TO ASSETS

(1) Cash and cash equivalents:

<u>Financial Institution</u>	<u>Type of Account</u>	<u>Amount</u>
		\$ _____

		\$ _____

(2) Short-term investments:

<u>Type of Security</u>	<u>Cost</u>	<u>Unrealized Gains</u>	<u>Unrealized Losses</u>	<u>Estimated Fair Value</u>
	\$ _____	\$ _____	\$ _____	\$ _____
	_____	_____	_____	_____
	_____	_____	_____	_____
	\$ _____	\$ _____	\$ _____	\$ _____

(3) Accounts receivable (list major debtors):

Completed contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Amount Receivable</u>
		\$ _____	\$ _____	\$ _____
		_____	_____	_____
		_____	_____	_____
		\$ _____	\$ _____	\$ _____

Other than completed contracts

<u>Name</u>	<u>Description</u>	<u>Due Date</u>	<u>Amount Receivable</u>

Less allowance for doubtful accounts			(_____)
			\$ _____

(4) Inventories

<u>Description</u>	<u>Cost</u>	<u>Market Value</u>	<u>Lower of Cost or Market Value</u>
	\$ _____	\$ _____	\$ _____
	_____	_____	_____
	_____	_____	_____
	\$ _____	\$ _____	\$ _____

DETAILS RELATIVE TO ASSETS (Continued)

(5) Costs and estimated earnings in excess of billings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Costs and Estimated Earnings Excess of Billings</u>
			\$	\$	\$	\$
			\$	\$	\$	\$

(6) Prepaid expenses and other

<u>Description</u>	<u>Amount</u>
	\$
	\$

(7) Land

<u>Description</u>	<u>Location</u>	<u>Amount</u>
		\$
		\$

(8) Buildings

<u>Description</u>	<u>Location</u>	<u>Amount</u>
		\$
		\$

(9) Vehicles, machinery and equipment

<u>Description</u>	<u>Amount</u>
	\$
	\$

(10) Furniture and fixtures

<u>Description</u>	<u>Amount</u>
	\$
	\$

DETAILS RELATIVE TO ASSETS (Continued)

(11) Cash surrender value of life insurance policies

<u>Key Employee</u>	<u>Insurance Company</u>	<u>Policy Amount</u>	<u>Paid-Up Additional Insurance</u>	<u>CSV Amount</u>
		\$ _____	\$ _____	\$ _____
		_____	_____	_____
		_____	_____	_____
Less loans payable		_____	_____	(_____)
		\$ _____	\$ _____	\$ _____

(12) Deposits and other

<u>Description</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
	\$ _____

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY

(1) Current portion of long-term debt (maturing within 12 months)

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ <u>_____</u>

(2) Accounts payable (list major creditors)

<u>Name</u>	<u>Past Due Amount</u>	<u>Amount</u>
	\$ _____	\$ _____
	_____	_____
	_____	_____
	\$ <u>_____</u>	\$ <u>_____</u>

(3) Billings in excess of costs and estimated earnings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Billings in excess of costs and estimated earnings</u>
			\$ _____	\$ _____	\$ _____	\$ _____
			_____	_____	_____	_____
			\$ <u>_____</u>	\$ <u>_____</u>	\$ <u>_____</u>	\$ <u>_____</u>

(4) Accrued liabilities and other

<u>Description</u>	<u>Amount</u>
	\$ _____

	\$ <u>_____</u>

(5) Long-term debt, net of current portion

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ <u>_____</u>

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY (Continued)

(6) Capital stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares Authorized</u>	<u>No. of Shares Issued and Outstanding</u>	<u>Par Value</u>	<u>Amount</u>
				\$	\$
					\$

(7) Additional paid-in capital

<u>Description</u>	<u>Amount</u>
	\$
	\$

(8) Treasury stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares</u>	<u>Cost</u>
			\$
			\$

STATEMENTS OF INCOME AND RETAINED EARNINGS

For the Years Ended _____, 20____ and 20____

	20____	20____
	_____	_____
Contract revenues	\$ _____	\$ _____
Costs of contracts	_____	_____
Gross income from contracts		
General and administrative expenses	_____	_____
Income from operations		
Other income (expense)	_____	_____
Income before income taxes		
Income taxes	_____	_____
Net income		
Retained earnings, beginning of the year	_____	_____
Retained earnings, end of the year	\$ _____	\$ _____

If a corporation, answer this: Capital paid in cash, \$ _____ When Incorporated _____ In what State _____ Date registered in Hawaii _____ President's name _____ Vice-President's name _____ Secretary's name _____ Treasurer's name _____	If a partnership, answer this: Date of organization _____ Date registered in Hawaii _____ State whether partnership is general or limited _____ <hr/> <table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 80%;">Name and address of partners:</td> <td style="border: none; width: 20%;">Age</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> </table>	Name and address of partners:	Age	_____	_____	_____	_____	_____	_____
Name and address of partners:	Age								
_____	_____								
_____	_____								
_____	_____								

The undersigned hereby declares: that the foregoing is a true statement of the financial condition of the individual, partnership or corporation herein first named, as of the date herein first given; that this statement is for the express purpose of inducing the party to whom it is submitted to award the submitter a contract; and that any depository, vendor or other agency herein named is hereby authorized to supply such party with any information necessary to verify this statement.

NOTE: A partnership must give firm name and signatures of all partners. A corporation must give full corporate name, signature of official, and affix corporate seal.

Affidavit for Individual

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that the foregoing financial statement, taken from his books, is a true and accurate statement of his financial condition as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

 (Applicant must also sign here)

 Notary Public

Affidavit for Partnership

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that he is a member of the firm of _____; and that he is familiar with the books of the said firm showing its financial condition; that the foregoing financial statement, taken from the books of the said firm, is a true and accurate statement of the financial condition of the said firm as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

 (Members of firm must also sign here)

 Notary Public

Affidavit for Corporation

STATE OF HAWAII

COUNTY OF _____

_____ of the _____, the corporation described in and which executed the foregoing statement; that he is familiar with the books of the said corporation showing its financial condition; that the foregoing financial statement, taken from the books of the said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

 (Officer must also sign here)

 Notary Public

New Business

Mr. Aaron Fujioka informed the Board that a statewide public hearing via video conferencing was held on October 16, 2002 on Chapters 3-123, 3-124, 3-128 and 3-131. He also thanked Mr. Gregory King for his assistance and attendance. It was requested that the Board adopt these 4 chapters.

A. For Action

Chapter 3-123

Mr. Bob Govers explained the only addition to the rules previously approved by the Board is the language providing the historical notes of the interim rules being rescinded.

Mr. Gordon Ing made a motion to adopt the rules and Mr. Myron Tong, seconded. The rules were adopted.

Chapter 3-124

Mr. Bob Govers explained the changes done, were the same as in Chapter 3-123.

Mr. Myron Tong made a motion to adopt the rules and Mr. Gregory King, seconded. The rules were adopted.

Chapter 3-128

Mr. Bob Govers explained the changes done, were the same as in Chapter 3-123.

Ms. Winnie Odo made a motion to adopt the rules and Mr. Gordon Ing, seconded. The rules were adopted.

Chapter 3-131

Mr. Bob Govers explained the changes done, were the same as in Chapter 3-123.

Ms. Claire Motoda made a motion to adopt the rules and Mr. Myron Tong, seconded. The rules were adopted.

Rules for Chapter 3-126

Ms. Ruth Yamaguchi said the last time these rules were discussed was on July 12, 2002. There were changes made in conference with the Attorney General's Office. The first change was adding a definition for person. In section 7 amended to make it consistent with 103D-712, HRS to state 7 calendar days, instead of 5 working days. Section 12 added the word designee for consistency. Under subsection (1) changed the language to shall not exceed three months to

conform to the statutes. The last change made is in Section 42 to state seven calendar days, again to be consistent with 103D-712, HRS.

Mr. Gordon Ing moved to adopt Chapter 3-126 as interim rules and Mr. Myron Tong, seconded. The rules were adopted as interim rules.

Procurement Directive 2002-03, Procurement Policy Board

Mr. Aaron Fujioka explained that this Procurement Directive would delegate authority to the Administrator of the State Procurement Office to sign and distribute information on the Board's actions and decisions. After discussion on the order and accepted language for the directive, Mr. Myron Tong made a motion to approve the directive, as amended and Ms. Winnie Odo, seconded. The directive was approved as amended.

Procurement Directive 2002-04, Guidelines for Small Purchase Procurements

Mr. Justin Fo explained that because the Chapter 122 interim rules deleted the small purchase levels and other procedures from the rules, the purpose of the directive is to notify agencies of the threshold and procedures as they were in the rules. During the course of the discussion on this directive, it was noted awards for goods & services may be made by best value whereas awards for construction must be made by lowest quotation. Ms. Ruth Yamaguchi stated the existing rules in Chapter 3-122 state that awards for construction must be made to the lowest quotation. Mr. Governs explained the rules would have to be amended before a change by procurement directive can be made. It was agreed that the board would consider amending the rules to address this issue. After further discussion and with the exception to some grammatical revisions, the board agreed to issue the directive as is, at this time.

Mr. Myron Tong made a motion to approve the directive and Mr. Gordon Ing, seconded. The directive was approved.

Procurement Directive 2002-05, Qualification Questionnaire for Prospective Bidders on Public Works Contracts

Mr. Robert Governs stated this directive is to reissue the same information. Mr. Governs also informed the Board that Audit Division is updating the questionnaire, but no time frame has been set. The Board had considerable questions regarding the issuance of the questionnaire. It was decided to defer this directive for the next board meeting and to have Public Works Division give the Board an informational briefing on this and if possible, find out from Audit Division a completion date for the updated questionnaire.

B. For Information:

Mr. Aaron Fujioka provided the Board with a summary of audit reports from the Office of the Auditor on Procurement and Contracting. Mr. Fujioka explained that this list is a compilation of audit summaries that focus on procurement and contracting. If an audit focused

on another issue and only touched upon procurement, it would be listed in another category and would not be included on this list.

Administrator's Report

Mr. Aaron Fujioka informed the Board that there are no new updates on legislation at this time.

For the eprocurement initiative, the evaluation committee has been meeting regularly to complete the process.

On the procurement card, UPW's concurrence has been obtained. We are finalizing the agreement with First Hawaiian Bank and hope to issue the charge cards sometime in early December. The pilot will likely involve DAGS' Central Services Division and Automotive Management Division, Honolulu Board of Water Supply, Department of Labor & Industrial Relations and the Honolulu City Council.

Plans are also being finalized for the 3rd Conference on Purchases of Health and Human Services, to be held next January at the Hawaii Convention Center. Approximately 500 attendees are expected. Invitations will be sent to the Board members.

Next Meeting

The next meeting will be at the call of the Chair.

Adjournment

There being no further business, the meeting was adjourned at 3:15 p.m.

Respectfully submitted,

Nov 15, 2002
Date

Mary Alice Evans
MARY ALICE EVANS, Secretary
Procurement Policy Board

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(D) Establish and maintain a procurement library
within the State of Hawaii."

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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:

1262
S.D. 1
H.D. 1
C.D. 1

"§103D-304 Procurement of professional services. (a)

Professional services shall be procured in accordance with sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or this section[-]; provided that design professional services furnished by licensees under chapter 464 shall be procured pursuant to this section or section 103D-307. Contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the head of each purchasing agency shall publish a notice inviting persons engaged in providing professional services which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. Additional notices ~~may~~ shall be given if:

(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.

1 would disqualify the person from being considered for a contract
2 award.

3 (d) Whenever during the course of the fiscal year the
4 agency needs a particular professional service, the head of the
5 purchasing agency shall designate a ~~[screening]~~ selection
6 committee to evaluate the statements of qualification and
7 performance data of those persons on the list prepared pursuant
8 to subsection (c) along with any other pertinent information,
9 including references and reports. The ~~[screening]~~ selection
10 committee shall be comprised of a minimum of three ~~[employees of~~
11 ~~the purchasing agency]~~ persons with sufficient education,
12 training, and licenses or credentials in the area of the
13 services required. ~~[If the purchasing agency and using agency~~
14 ~~are different, the committee shall include at least one~~
15 ~~qualified employee from the using agency. When the committee~~
16 ~~includes an employee from a using agency, the employee shall be~~
17 ~~appointed by the head of the using agency. If qualified~~
18 ~~employees are not available from these agencies, the officers~~
19 ~~may designate employees of other governmental bodies.]~~ In
20 designating the members of the selection committee, the head of
21 the purchasing agency shall ensure the impartiality and
2 independence of committee members. The names of the members of

3 (e) The ~~[primary]~~ selection criteria employed ~~[by the~~
4 ~~screening committee]~~ in descending order of importance shall
5 ~~[include but not]~~ be ~~[limited to]~~:

8 (2) Past performance on projects of similar scope for
9 public agencies or private industry[~~and~~], including
10 corrective actions and other responses to notices of
11 deficiencies;

14 (4) Any additional criteria determined in writing by the
15 selection committee to be relevant to the purchasing
16 agency's needs or necessary and appropriate to ensure
17 full, open, and fair competition for professional
18 services contracts.

2003-2414 SB1262 CD1 SMA-4.doc

1 committee may conduct confidential discussions with any person
2 who is included on the list prepared pursuant to subsection (c)
3 regarding the services which are required and the services they
4 are able to provide. In conducting discussions, there shall be
5 no disclosure of any information derived from [proposals
6 ~~submitted by competing offerors. The committee shall provide~~
7 ~~the head of the purchasing agency with the names of a minimum of~~
8 ~~three persons who the committee concludes are the most qualified~~
9 ~~to provide the services required, with a summary of each of~~
10 ~~their qualifications.] the competing professional service
11 offerors.~~

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

3 [~~(f)~~] (i) Contracts awarded under this section for \$5,000
4 or more shall be posted electronically within seven days of the
5 contract award by the chief procurement officer or designee and
6 shall remain posted for at least one year. Information to be
7 posted shall include~~(f)~~, but not be limited to:

2 (2) The name of the person or organization receiving the
3 award;

(4) The name of the head of the purchasing agency or
designee [~~head~~] making the selection; and

9 ~~[(g)]~~ (j) Contracts for professional services of less than
0 ~~[\$25,000]~~ the limits in section 103D-305, may be negotiated by
1 the head of the purchasing agency, or designee, with at least
2 any two persons ~~[who appear]~~ on the list of qualified persons

(b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer's discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board. Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the offeror applies for administrative review pursuant to section



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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)]~~ (j), 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.