

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAII'Ī | KA MOKU'ĀINA O HAWAII'Ī
PROCUREMENT POLICY BOARD

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4701
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<http://spo.hawaii.gov>

**PROCUREMENT POLICY
BOARD**
RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
DIANE NAKAGAWA
KEITH REGAN

Procurement Policy Board Meeting
Thursday, April 20, 2023, 1:30 pm – 3:30 pm HST

Virtual Meeting Using Interactive Conference Technology – Zoom

<https://hawaii-gov.zoom.us/j/91785012960?pwd=Z1h1YjVjZkVuOEhUcVNQd2c4Tk5QT09>

Meeting: 917 8501 2960

Passcode: 136989

One tap mobile

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Dial by your location

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 719 359 4580 US

+1 646 931 3860 US

+1 689 278 1000 US

+1 305 224 1968 US

+1 309 205 3325 US

+1 360 209 5623 US

+1 386 347 5053 US

Meeting: 917 8501 2960

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Find your local number: <https://hawaii-gov.zoom.us/j/91785012960?pwd=Z1h1YjVjZkVuOEhUcVNQd2c4Tk5QT09>

Join by SIP

[91785012960@zoomcrc.com](https://hawaii-gov.zoom.us/j/91785012960?pwd=Z1h1YjVjZkVuOEhUcVNQd2c4Tk5QT09)

Join by H.323

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting: 917 8501 2960

Passcode: 136989

Physical Location

Kalanimoku Building, 1151 Punchbowl Street, Room 410, Honolulu, is available to the public and is guaranteed to be connected to the remote virtual meeting.

In the event that audiovisual communication cannot be maintained by all participating board members and quorum is lost, the meeting will automatically be recessed for 30 minutes, during which time an attempt to restore audiovisual communication will be made. If such attempt to restore is unsuccessful within said 30 minutes, all board members, members of the public, staff and other interested individuals shall log on again to the Zoom link on this Notice, whereby audio communication will be established for all participants and the meeting will continue. If reconvening the meeting is not possible because audio and visual communication cannot be re-established, the meeting will be terminated.

Written Testimony

Written testimony may be submitted by one of the methods listed below:

- By email to: procurement.policy.board@hawaii.gov
- By United States Postal Mail to: 1151 Punchbowl Street, Room 416, Honolulu, HI 96813
- By facsimile to: (808) 587-4703

Written testimony will only be accepted for the items listed on the meeting agenda. Written public testimony submitted to the Procurement Policy Board will be treated as public record and any information contained therein may be available for public inspection and copying.

Please include the word “Testimony” and the subject matter following the address line.

Copies of the Board Packet will be available on-line for review at <https://spo.hawaii.gov/procurement-policy-board/procurement-policy-board-meeting-agenda-minutes/>. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Procurement Policy Board Meeting
Agenda
Thursday, April 20, 2023, 1:30 pm – 3:30 pm

- I. Call to Order, Public Notice**
- II. Approval of Minutes – [Meeting of February 16, 2023](#)**
- III. Roll Call, Quorum**
- IV. Hawaii Administrative Rules**
 - A. Update on Rulemaking Pursuant to Chapter 91, Hawaii Revised Statutes**
 - B. Proposed Amendments to Hawaii Administrative Rules HAR §3-122 - Source Selection and Contract Formation**
 - i. Subchapter 1 – Definitions
 - ii. Subchapter 2 – General Provisions
 - iii. Subchapter 3 – Specifications
 - iv. Subchapter 4 – Methods of Source Selection and General Guidance
 - v. Subchapter 4.5 – Source Selection for Federal Grants
 - vi. **New** Subchapter 13.5 - Contractor Past Performance Assessment Form
 - vii. Form: Contractor Past Performance Assessment
- V. Announcements**
 - A. Next Meeting Date/Time:** Thursday, May 18, 2023, 1:30 pm
 - B. Future Meeting Date/Time:** Monday, June 5, 2023, 1:30 pm
- VI. Executive Session: Discussion of personnel matters in the recruitment for Administrator, State Procurement Office**

The Procurement Policy Board anticipates the need to meet in executive session pursuant to Section 92-5(a)(2) and (4), Hawaii Revised Statutes, to discuss personnel matters and to consult with the Board's attorney on questions and issues pertaining to the Board's powers and duties.

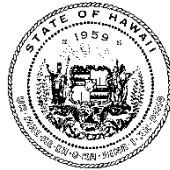
VII. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Ruth Baker at (808) 587-4701 or at ruth.a.baker@hawaii.gov as soon as possible, preferably by COB April 17, 2023. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

JOSH GREEN, M.D.
GOVERNOR
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**PROCUREMENT POLICY
BOARD**
RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
DIANE NAKAGAWA
KEITH REGAN

Procurement Policy Board

Minutes of Meeting

Date/Time: Thursday, February 16, 2023, 1:30 p.m.

Location: Comptroller's Conference Room
Kalanimoku Building, Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Virtual Meeting Using Interactive Conference Technology – Zoom

Members Present: Rick Heltzel
Lance Inouye
Lisa Maruyama
Diane Nakagawa
Keith Regan

Department of
the Attorney General: Stella Kam, Deputy Attorney General

State Procurement
Office Staff: Bonnie Kahakui, Acting Administrator
Christopher Amandi
Ruth Baker
Matthew Chow
Stacey Kauleinamoku
Jittima Laurita
Shannon Ota
Cynthia Sato
Kevin Takaesu

Other State Staff: Chris Butt, Department of Education
Lois Mow, Department of Education

Guests: Malcolm Barcarse
Christopher Delaunay, Pacific Resource Partnership

I. Call to Order, Public Notice

As Chair Protem, Keith Regan called the Procurement Policy Board (PPB) meeting to order at 1:30 pm.

II. Roll Call, Quorum

The PPB members introduced themselves as part of roll call.

- Keith Regan
- Rick Heltzel
- Lance Inouye
- Lisa Maruyama
- Diane Nakagawa

SPO

- SPO Acting Administrator Bonnie Kahakui
- Kevin Takaesu
- Stacey Kauleinamoku
- Ruth Baker

Other Introductions were made:

- Deputy AG Stella Kam

III. Election of Board Officers (Chair, Vice Chair, and Secretary)

Pursuant to Hawaii Revised Statutes 103D-201(3)(e), the members held an election for the position of chairperson, vice-chair and secretary. Chair Protem Regan opened the floor for nominations or volunteers.

Rick Heltzel nominated Lance Inouye as Chair. Mr. Inouye made the motion to nominate Lisa Maruyama as Chair and Mr. Heltzel as Vice Chair. Diane Nakagawa volunteered to serve as Secretary.

Mr. Heltzel withdrew his nomination of Mr. Inouye as Chair, then Mr. Inouye made the motion to officially nominate Ms. Maruyama as Chair, Mr. Heltzel as Vice Chair, and Ms. Nakagawa and Secretary, and Mr. Heltzel seconded the motion.

Mr. Inouye made the motion to accept the slate of nominees, and Ms. Nakagawa seconded the motion. The motion passed unanimously.

IV. 2023 Legislation

Chair Maruyama took over as Chair of the PPB and recognized the staff of the State Procurement Office. The staff provided an update of 2023 Legislation, which did not require any Board action.

A. State Procurement Office Legislation

Bonnie Kahakui, Acting Administrator of the State Procurement Office, Introduced Purchasing Specialist Christopher Amandi, who provided a summary of legislation.

- i. House Bill 977 / Senate Bill 1275, "RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES," Abolishes the Community Council on purchase of health and human services.
- ii. House Bill 978 / Senate Bill 1276, "RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES," Authorizes heads of purchasing agencies to issue requests for statements of qualification and to establish lists of qualified providers for treatment

purchase of services. Increases the small purchase threshold for health and human services.

B. Other Legislation that May Affect Hawaii Administrative Rules Related to Chapters 103D and 103F, Hawaii Revised Statutes

Ms. Kahakui provided a list of legislation that may affect the Hawaii Administrative Rules related to Chapters 103D and 103F of the Hawaii Revised Statutes and may require Board action in the future.

- i. House Bill 536, "RELATING TO PROCUREMENT," Amends the competitive sealed bidding process for construction projects to require joint contractors and subcontractors to submit their bids to a bid depository established under DCCA. Authorizes joint contractors and subcontractors to submit different bids to different general contractors bidding on the project.
- ii. House Bill 816 / Senate Bill 1441, "RELATING TO PUBLIC PROCUREMENT," Clarifies the deadline for submitting written protests that are based on the content of a solicitation.
- iii. House Bill 1164 / Senate Bill 1135, "RELATING TO PROCUREMENT," Requires cash or protest bonds to be returned to the initiating parties, minus administrative costs, except in cases where the appeal was frivolous or made in bad faith.
- iv. House Bill 1184 / Senate Bill 1465, "RELATING TO PROCUREMENT," Allows agencies to rank fewer than three persons for professional services when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

V. Update of State Procurement Office Initiatives

- A. Procurement Consolidation Working Group Interim Report (attached), pursuant to Act 282, Session Laws of Hawaii 2022, "A Bill for An Act Relating to Procurement," establishing a working group to develop a plan for the phased-in consolidation of procurement services and staff within executive branch agencies within a five-year timespan and requiring the working group to make recommendations for attracting high-quality procurement professionals to the State.

Ms. Kahakui provided a summary of the work of the Working Group, which included all Executive Branch Departments and the Department of Education. With the assistance of a hired consultant, the Group's work in 2022 included an assessment of departments' staffing that handled purchasing, the percentage of time staff handled procurement, a discussion of various procurement models, and the creation of an interim report on the Group's findings.

Mr. Inouye asked for clarification on what is non-delegated and delegated procurement, and noted what staff are conducting procurement. Ms. Kahakui clarified that all procurement is delegated, and any staff who conducts procurement must take training. The challenge is that some staff may conduct procurement every once in a while, or as a secondary task. The Consolidation Working Group is to come up with a plan to have staff that is fully dedicated to procurement.

Ms. Maruyama asked if there is a financial assessment of procurement consolidation. Ms. Kahakui responded that the financial implication will be a substantial component. She added that the procurement consolidation plan will need to involve the Department of Human

Resources and Development and labor union. Ms. Maruyama also asked how the financial requests will be transmitted to the Legislature. Ms. Kahakui replied that this will be an administrative request. Ms. Kahakui responded to Mr. Regan that the interim report was submitted to the State Legislature in December 2022 and is posted on the SPO website.

- B. Past Performance Database, pursuant to Act 188, Session Laws of Hawaii 2021, “A Bill for An Act Relating to Procurement,” defining past performance of contractors in Section 103D-204, HRS, requiring the State Procurement Office to establish and administer a past performance database and adopt rules regarding information and procedures associated with the past performance database, and requiring procurement officers to consider specific factors, including past performance, when available.

SPO Staff Stacey Kauleinamoku reported that the State Procurement Office is in the development of the Past Performance Database and rules, and that the Database is on schedule to be deployed by May 2023 and implemented by the end of fiscal year 2023.

Mr. Heltzel asked that in a best-value procurement format, if past performance may outweigh the price in grading the proposals, that past performance can be subjective. Ms. Kauleinamoku responded that the SPO did not get any feedback on the Past Performance Database from contractors. The formulation of Past Performance questions and rules were based on feedback from State agencies and on General Services Administration’s method of assessing contractors as satisfactory or unsatisfactory.

Ms. Maruyama asked if the SPO can provide some background and context on how some of the laws were enacted. Ms. Kahakui said that the Special Senate Committee on Procurement concluded that a Past Performance Database was needed to address low-performing contractors and give the contractors the opportunity to refute any comments. Vendors will be allowed to see only their own evaluation and assessments.

Mr. Inouye pointed out that the rating is very subjective. Ms. Kahakui said that the Past Performance statute, which says to “consider” past performance, may be vague and be open to challenges, and the SPO may ask the Legislature to clarify the language in the statute. Ms. Kauleinamoku added that it is important to launch the database early to allow vendors and government agencies to review and the database and allow for adjustments. Ms. Maruyama added that the Past Performance Database applies to HRS 103D procurement, but not HRS 103F.

- C. Small Business Initiative, pursuant to Act 168, Session Laws of Hawaii 2022, “A Bill for An Act Relating to Procurement,” establishing a five-year small business assistance initiative and providing staffing for the implementation of Part IX of the Hawaii Public Procurement Code, relating to assistance to small business.

SPO Staff Kevin Takaesu explained that Act 42 (SLH 2017) created a three-year small business office, but that initiative did not receive additional funding to continue. Small Business Assistance Initiative, established by Act 168, SLH 2022, is similar to Act 42 (SLH 2017). Solutions Pacific, which had work on previous Small Business, has shown interest in submitting a proposal to run the small business office.

Mr. Inouye stated out that the State Department of Transportation has a small business office and a small business database, but the qualifications of a small business don’t meet what is needed for large projects. Mr. Takaesu stated that the SPO has met with DOT. Ms. Kahakui stated that the Act specifies engagement of businesses owned by veterans, Native Hawaiians, and women. She added that we don’t have an accurate count of the number of small businesses. The database originally contained hundreds of small businesses, but that

number whittled down after certification of businesses. The challenge is that the initiative has funding only for year one of the five years.

Ms. Maruyama asked about the origin of the bill, how the Small Business Database differs from other databases, and whether this is a conflict of interest for the SPO. Ms. Kahakui said that the statute says that the SPO can provide assistance but not contract. Mr. Regan commented that our Deputy Attorney General is available as a resource to address any issues on the conflict of interest. Ms. Kam responded that there were concerns about the Small Business Office. It is the Legislature's prerogative to create a small business office within the SPO.

Mr. Heltzel commented why the State can't tap into the Small Business Administration database.

VI. Next Meeting:

The proposed date/time for the next Procurement Policy Board is Thursday, March 16, 2023, at 10:30 am. It will be a hybrid meeting on Zoom and in person at the physical location of Room 410 in 1151 Punchbowl Street.

VII. Executive Session: Discussion of personnel matters in the recruitment for Administrator, State Procurement Office

Mr. Regan made a motion to go into Executive Session. Ms. Nakagawa seconded the motion. There were no objections. At 2:55 p.m., the Board recessed its regular meeting and went into Executive Session pursuant to Section 92-5(a)(2) and (4), Hawaii Revised Statutes, to discuss personnel matters and to consult with the Board's attorney on questions and issues pertaining to the Board's powers and duties.

The Board reconvened its regular meeting at 3:40 p.m. Ms. Maruyama reported that the Board met in Executive Session and voted to assemble a Selection Committee, consisting of Diane Nakagawa and Lisa Maruyama, to recruit a permanent SPO Administrator for a four-year term. This Selection Committee, which is a Permitted Interaction Group, will report its findings to the Board at a later date.

VIII. Adjournment

Since there was no new business, Mr. Regan moved to adjourn the meeting; and Mr. Heltzel seconded the motion. The vote to end the meeting was unanimous. The meeting adjourned at 3:47 pm.

Respectfully submitted,

Diane Nakagawa
Secretary, Procurement Policy Board

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-122
Hawaii Administrative Rules

April 20, 2023

1. Chapter 122 of Title 3, Hawaii Administrative Rules, entitled "Source Selection and Contract Formation (Interim)" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 122

SOURCE SELECTION AND CONTRACT FORMATION

Subchapter 1 Definitions

§3-122-1 Definitions

Subchapter 2 General Provisions

- | | |
|----------|--|
| §3-122-2 | Extension of time for acceptance of offer received in response to a solicitation |
| §3-122-3 | Extension of time on contracts |
| §3-122-4 | Multiple or alternate offers |
| §3-122-5 | Repealed |

§3-122-6	Conditioning offers upon other contracts not acceptable
§3-122-7	Determination of contractual terms and conditions
§3-122-8	Purchase of items separately from construction contract
§3-122-9	Use of facsimile machines, electronic mail, or electronic procurement systems
§3-122-9.01	Disclosure of information
§3-122-9.02	Request for information

Subchapter 3 Specifications

§3-122-10	Purpose
§3-122-11	Authority to prepare specifications
§3-122-12	Duties of the administrator
§3-122-13	Development of specifications
§3-122-14	Exempted items
§3-122-15	(Reserved)

Subchapter 4 Methods of Source Selection and General Guidance

§3-122-16	Methods of source selection
§3-122-16.01	Procurement dollar thresholds
§3-122-16.02	Preparation time for offer
§3-122-16.03	Public notice
§3-122-16.04	List of potential offerors
§3-122-16.05	Pre-bid or pre-proposal conference
§3-122-16.06	Amendment and clarification to solicitation
§3-122-16.07	Pre-opening modification or withdrawal of offer
§3-122-16.08	Late offer, late withdrawal, and late modification
§3-122-16.09	Cancellation of solicitation and rejection of offer

Subchapter 4.5 Source Selection for Federal Grants

- §3-122-16.30 Purpose
- §3-122-16.31 Exception; request for interest

Subchapter 5 Competitive Sealed Bidding

- §3-122-17 Purpose
- §§3-122-18 to 3-122-20 Repealed
- §3-122-21 Preparing a competitive sealed bid
- §§3-122-22 to 3-122-29 Repealed
- §3-122-30 Receipt, opening, and recording of bids
- §3-122-31 Mistakes in bids
- §3-122-32 Repealed
- §3-122-33 Bid evaluation and award
- §3-122-34 Low tie bids
- §3-122-35 Waiver to competitive sealed bid process
- §§3-122-36 to 3-122-40 (Reserved)

Subchapter 6 Competitive Sealed Proposals

- §3-122-41 Purpose
- §3-122-42 Repealed
- §3-122-43 [~~When competitive sealed bidding is not practicable or advantageous~~] Procurement planning
- §3-122-44 Repealed
- §3-122-45 Determinations
- §3-122-45.01 Evaluation committee
- §3-122-46 Preparing a request for proposals
- §§3-122-47 to 3-122-50 Repealed
- §3-122-51 Receipt and registration of proposals
- §3-122-52 Evaluation of proposals
- §3-122-53 Discussions with offerors
- §3-122-54 Best and final offers
- §§3-122-55 to 3-122-56 Repealed
- §3-122-57 Award of contract
- §3-122-58 Public inspection

§3-122-59	Waiver to competitive sealed proposal process
§3-122-60	Debriefing
§3-122-61	(Reserved)

Subchapter 6.5 Multi-Step Competitive Sealed Bidding

§3-122-61.05	Purpose
§3-122-61.06	Preparing a multi-step invitation for bids
§3-122-61.07	Phase one
§3-122-61.08	Phase two

Subchapter 7 Procurement of Professional Services

§3-122-62	Repealed
§3-122-63	General provisions
§§3-122-64 to 3-122-65	Repealed
§3-122-66	Repealed
§3-122-67	Small purchases of professional services
§3-122-68	Repealed
§3-122-69	Review and selection committees
§3-122-70	Debriefing
§§3-122-71 to 3-122-72	(Reserved)

Subchapter 8 Small Purchases

§3-122-73	Definitions
§3-122-74	General provisions
§3-122-75	Goods, services, and construction
§3-122-76	Repealed
§3-122-77	Procurement file and disclosure of information
§3-122-78	Electronic procurement
§§3-122-79 to 3-122-80	(Reserved)

Subchapter 9 Sole Source Procurement

§3-122-81 General provisions
§3-122-82 Sole source approvals and amendments
§§3-122-83 to 3-122-84 Repealed
§§3-122-85 to 3-122-87 (Reserved)

Subchapter 10 Emergency Procurement

§3-122-88 General provisions
§3-122-89 Repealed
§3-122-90 Procedures
§3-122-91 Repealed
§§3-122-92 to 3-122-94 (Reserved)

Subchapter 11 Cancellation of Solicitations and Rejection of Offers

§3-122-95 Cancellation of solicitations and
rejection of offers
§3-122-96 Cancellation of solicitation
§3-122-97 Rejection of offer
§3-122-98 Disposition of offers
§§3-122-99 to 3-122-101 (Reserved)

Subchapter 12 Contract Not Binding Unless Funds Available

§3-122-102 Contract not binding unless funds
available
§§3-122-103 to 3-122-104 Repealed
§§3-122-105 to 3-122-107 (Reserved)

Subchapter 13 Responsibility of Bidders and Offerors

§3-122-108 Qualification of offeror or prospective
offeror

	certain types of contracts
§3-122-134	Selection of contract types
§3-122-135	Types of contracts
§3-122-136	Fixed-price contract
§3-122-137	Cost-reimbursement contract
§3-122-138	Cost-incentive contract
§3-122-139	Performance incentive contract
§3-122-140	Time and materials contract
§3-122-141	Labor hour contract
§3-122-142	Definite quantity contract
§3-122-143	Indefinite quantity contract
§3-122-144	Incremental award contract
§3-122-145	Multiple award contract
§3-122-146	Geographic or regional award contract
§3-122-147	Lease contract
§3-122-148	Installment purchase payment contract
§3-122-149	Multi-term contract
§§3-122-150 to 3-122-154	(Reserved)

Subchapter 17 Repealed

§§3-122-155 to 3-122-165 Repealed

Subchapter 18 Right to Inspect Plant

§3-122-166	Inspection of plant or site
§3-122-167	Access to plant or place of business
§3-122-168	Inspection and testing of goods and services
§3-122-169	Conduct of inspections
§3-122-170	Inspection of construction projects
§§3-122-171 to 3-122-174	(Reserved)

Subchapter 19 Right to Audit Records

§3-122-175	Statutory authority to audit
§3-122-176	Auditors' audit reports
§3-122-177	Cost or pricing data audit
§3-122-178	Cost or pricing data audit report

§3-122-179 Contract audit
§3-122-180 Contract audit report
§3-122-181 Retention of books and records
§3-122-182 Sanctions for lack of cooperation
§§3-122-183 to 3-122-185 (Reserved)

Subchapter 20 Repealed

§§3-122-186 to 3-122-190 Repealed

Subchapter 21 Reporting of Anticompetitive Practices

§3-122-191 Anticompetitive practices
§3-122-192 Independent price determination
§3-122-193 Detection of anticompetitive practices
§3-122-194 Identical bidding and price fixing
§3-122-195 Other anticompetitive practices
§3-122-196 Reporting suspected anticompetitive practices
§§3-122-197 to 3-122-200 (Reserved)

Subchapter 22 Retention of Procurement Records

§3-122-201 Retention of procurement records
§§3-122-202 to 3-122-210 (Reserved)

Subchapter 23 Repealed

§§3-122-211 to 3-122-220 Repealed

Subchapter 24 Bid Security, Contract Performance and Payment Bonds

§3-122-221 General
§3-122-222 Acceptable bid security, contract performance and payment bonds

§3-122-223	Bid security
§3-122-224	Contract performance and payment bonds
§3-122-225	Reduction of contract performance and payment bond amounts
§3-122-226	Repealed
§3-122-227	Payment claims against the bond
§3-122-228	Bond forms
§§3-122-229 to 3-122-240	(Reserved)

Subchapter 25 Fiscal Responsibility

§3-122-241	Fiscal responsibility
§3-122-242	(Reserved)

Historical Note: This chapter 122, effective
, subtitle 11 of title 3, Hawaii

Administrative Rules:

1. Replaces interim rules effective 03/21/2008 (file no. 2802) which compiled Chapter 122.
2. Replaces interim rules effective 08/21/2016 (file no. 3193) which amended section 3-122-14; and repealed section 3-122-66.

SUBCHAPTER 1

DEFINITIONS

§3-122-1 Definitions. Definitions for terms used in this chapter are in section 103D-104, HRS. The following definitions are also applicable to terms used in this chapter:

"Alternative procurement method" means a procurement method used due to a waiver from the competitive sealed bids or proposals process when one or no responsive, ~~[and]~~ responsible offer is received.

"Award" means the written notification of the State's acceptance of a bid or proposal, or the

presentation of a contract to the selected offeror.

"Best value" means the most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves the State is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the vendor, quality of goods, services, or construction, delivery, and proposed technical performance.

"Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

"Brand name or equal specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers, commonly referred to as a restrictive specification.

"Capability" means capability at the time of award of contract.

"Chief financial officer" means, depending upon the purchasing agency, either the comptroller, a county's director of finance, or the respective chief financial officers of the University of Hawaii, the department of education, the judiciary, or the legislative branches of the State or county.

"Contract administrator" means the person designated to manage the various facets of contracts to ensure the contractor's total performance is in accordance with the contractual commitments and obligations to the purchasing agency are fulfilled.

"Contract price" means the amount designated on the face of the contract for the performance of the work including allowances for extras, if any.

"Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operation

of an item which enables the State to consider whether the item meets its needs.

"Design specifications" means the dimensional and other physical requirements of the item being purchased, how a product is to be fabricated or constructed.

"Discussion" means an exchange of information to promote understanding of a state agency's requirements and offeror's proposal and to facilitate arriving at a contract that will be the best value to the State. Discussions are not permissible in competitive sealed bidding, except to the extent permissible in the first phase of multi-step sealed bidding to determine the acceptability of technical offers.

"Non-disclosure agreement (NDA)" means legally enforceable agreements between parties to ensure that certain information will remain confidential.

"Opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

"Performance specifications" means the functional or performance requirements of the item, what a product does and how well it performs.

"Practicable" and "Advantageous" shall be given ordinary dictionary meanings. "Practicable" means what may be accomplished or put into practical application. "Advantageous" means a judgmental assessment of what is in the State's best interest. The use of competitive sealed bidd'ng may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest.

"Qualified products list" means an approved list of goods, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirement.

"Quotation" means a statement of price, terms of sale, and description of goods, services, or construction offered by a prospective seller to a prospective purchaser, usually for purchases pursuant

to section 103D-305, HRS.

"Recent" means performance information in which all or some of the performance has occurred within 5 years or as determined by the procurement officerⁱ that is closely connected and appropriate to consider for the type of requirement being solicited or evaluated.

"Relevant" means performance information that is similar in size, scope, and complexity to the requirements being solicited or evaluated.

"Request for information" means a request soliciting information to obtain recommendations from suppliers for a procurement that cannot be described in sufficient detail to prepare a solicitation.

"Standard commercial product" means a product or material, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor, or dealer for the marketing of the product. [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp

] (Auth: HRS §103D-202) (Imp: HRS §§103D-104, 103D-202)

SUBCHAPTER 2

GENERAL PROVISIONS

§3-122-2 Extension of time for acceptance of offer received in response to a solicitation. After opening offers, the procurement officer may request offerors to extend the time during which the State may accept their offers, as stated in the terms and conditions of the solicitation, provided that, with regard to competitive sealed bids, no other change is permitted. The reasons for requesting the extension shall be documented. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-3 Extension of time on contracts. (a)

If a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon approval of the chief procurement officer, provided:

- (1) The period of each extension is for one hundred eighty calendar days or less;
- (2) The procurement officer makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for reasons to include but not be limited to the following:
 - (A) A new contract cannot be executed by the time the contract expires; or
 - (B) The need for the good or service is short term;
- (3) All parties agree to the extension of time of performance; and
- (4) The price(s) or conditions of the contract remain the same as the original contract, or as amended per the contract; or if not the same or as amended, they are fair and reasonable.

(b) If paragraph (2) of subsection (a) is met, but paragraph (3) or (4) of subsection (a) or both are not met and the procurement officer determines in writing that the need for the good or service continues, provided subchapters 8, 9, and 10 do not apply, the chief procurement officer, may upon request in writing, approve an alternative procurement method, including but not limited to direct negotiations with a party other than the contractor, subject to the maximum one hundred eighty calendar day contract period, and provided the prices are fair and reasonable.

(c) This section shall not apply to adjustments in performance time under chapter 3-125. [Eff 12/15/95; am and comp 11/17/97; comp 03/21/2008; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-4 Multiple or alternate offers. (a) Unless specifically provided for in the solicitation, multiple or alternate offers shall not be accepted and all such offers shall be rejected.

(b) If multiple or alternate offers are allowed, the solicitation shall specify their treatment. [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-5 REPEALED. [R 03/21/08]

§3-122-6 Conditioning offers upon other contracts not acceptable. Any offer which is conditioned upon receiving a contract other than as provided for in the solicitation shall be deemed nonresponsive and not acceptable. [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)n

§3-122-7 Determination of contractual terms and conditions. The chief procurement officer or the head of a purchasing agency is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts, provided the provisions, terms, and conditions are not contrary to statutory or chapter 91 administrative rule requirements governing the procurement. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-8 Purchase of items separately from construction contract. The chief procurement officer or the head of a purchasing agency is authorized to determine whether a good item or group of good items shall be included as part of, or procured separately from, any contract for construction. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp]

(Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-9 Use of ~~[facsimile machines, electronic mail, or electronic procurement systems]~~ electronic communication. (a) Copies of documents transmitted by vendors via ~~[facsimile machine, electronic mail, or an electronic procurement system]~~ electronic communication may include the notice of intent to offer; the offer with required documentation for evaluation purposes; and modifications or withdrawal of offers and contract documents, pursuant to subsections (b) and (c).

(b) Notices of intent to submit an offer and modifications or withdrawal of an offer may be submitted ~~[by facsimile machine, electronic mail, or an electronic procurement system]~~ electronically pursuant to sections 3-122-111 and 3-122-16.07, respectively.

(c) An offer transmitted ~~[via facsimile machine, electronic mail, or through an electronic procurement system]~~ electronically shall be acceptable only when specifically allowed in the ~~[invitation for bids or request for proposals]~~ solicitation, provided:

- (1) The ~~[facsimile or the]~~ electronically submitted offer is received at the designated office by the time and date set for receipt of offers; and
- (2) The ~~[facsimile or the]~~ electronically submitted offer contains:
 - (A) The identification number of the ~~[invitation for bids or request for proposals]~~ solicitation;
 - (B) The item;
 - (C) The quantity;
 - (D) The price for the offer;
 - (E) All pages of the offer requiring an original signature;
 - (F) The bid bond, if required; and
 - (G) A signed statement that the offeror agrees to all the terms, conditions, and provisions of the ~~[invitation for~~

~~bids or request for proposals]~~
solicitation; and
(H) Any other requirement in the
solicitation.

(d) Unless otherwise specified in the solicitation, if the ~~[facsimile or]~~ electronically submitted offer is the lowest responsive bid, or is the proposal determined in writing to provide the best value to the State, the offeror must submit the ~~[complete original offer, with the]~~ original bid bond, if required, so that it is received within five working days from the notification of intent to award. If the offeror fails to comply with this requirement, the procurement officer has the option to reject the ~~[facsimile or]~~ electronically submitted offer. [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp 03/21/08; am and comp]
(Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-310)
(Imp: HRS §§103D-302, 103D-303, 103D-310)

§3-122-9.01 Disclosure of information. (a) A purchasing agency is not required to disclose information identifying the number or the names of organizations or persons that obtained a solicitation, attended a pre-offeror's conference, or submitted a notice of intent to offer; or an offer until:

- (1) ~~[The purchase order is issued or the purchasing card order is placed]~~ After the time and date set for receipt for quotes, in the case of a small purchase request for quotations pursuant to subchapter 8;
- (2) After the time and date set for receipt of priced bids, in the case of invitation for bids pursuant to subchapters 5 and 6.5; and
- (3) The posting of the award in the case of a request for proposals pursuant to subchapter 6.

(b) A purchasing agency shall not disclose the name of members of an evaluation committee members established by section 3-122-45.01 prior to the posting of the award pursuant to section 3-122-57(a)

for multi-step bids and competitive sealed proposals.

(c) In the case of procurement of professional services, a purchasing agency is not required to disclose the information specified in section 3-122-63(b) until after the contract is awarded. [Eff and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-9.02 Request for information. When it is considered impractical to initially prepare a definitive purchase description or when discussions with vendors are not productive, the procurement officer may, prior to issuing a competitive sealed bid or proposal, issue a request for information which shall include but not be limited to:

- 1) The objective of the procurement;
- 2) That the response is to provide the purchasing agency with recommendations that will serve to accomplish the work required by the procurement;
- (3) That the purchasing agency reserves the right to incorporate in a solicitation, if issued, any recommendations presented in the response to the request for information; and
- (4) That neither the purchasing agency nor the supplier responding has any obligation under the request for information. [Eff and comp 11/17/97; am and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

SUBCHAPTER 3

SPECIFICATIONS

§3-122-10 Purpose. A specification is the basis for procuring a good, service, or construction item adequate and suitable for the State's needs in a cost

effective manner. Purchasing agencies shall seek to procure standard commercial products, if practicable, and obtain the most advantageous prices. All specifications shall seek to promote overall competition, shall not be unduly restrictive, and provide a fair and equal opportunity for every supplier that is able to meet the State's needs. In developing specifications, unique requirements should be avoided. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §§103D-202, 103D-401) (Imp: HRS §§103D-401, 103D-405)

§3-122-11 Authority to prepare specifications.

- (a) The chief procurement officer, with the assistance of the using agency, shall prepare and approve specifications, and may delegate, in writing, to purchasing or using agencies the authority to prepare and use its own specifications, provided the delegation may be revoked by the chief procurement officer.
- (1) The written delegation shall include a determination made by the chief procurement officer that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State.
- (2) Using agencies delegated the authority to prepare specifications may use any of the specifications defined herein.
- (b) If a specification for general or common use item or a qualified products list exists for an item to be procured under subchapter 8, for small purchases, it shall be used. If no specification exists, purchasing agencies are hereby granted the authority to prepare specifications for use in such purchases.
- (c) In an emergency under subchapter 10, any necessary specifications may be utilized by the purchasing agency without regard to the provisions of this subchapter. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §§103D-

202, 103D-401) (Imp: HRS §§103D-401, 103D-402)

§3-122-12 Duties of the administrator. (a) The administrator of the state procurement office shall serve as the central procurement officer to coordinate, guide, and distribute specifications used by purchasing agencies, including specifications on recycled products and the guidelines for purchasing energy-efficient vehicles. This effort will allow for the use of standard specifications by purchasing agencies on purchases for common or general use items or standard commercial products or energy-efficient vehicles.

(b) The administrator of the state procurement office shall review and establish purchase specifications to guide state and county purchasing agencies in the procurement of recycled products.

(1) The specifications shall:

- (A) Be consistent with applicable current federal specification standards on recycled products [~~incorporated in Presidential Executive Orders No. 12873, dated October 20, 1993, and any subsequent amendments to that order~~];
- (B) Include minimum standards of recovered material and post-consumer content; and
- (C) Ensure, to the maximum extent economically feasible, the purchase of materials which may be recycled or reused when discarded and avoid the purchase of products deemed environmentally harmful.

(2) The administrator [~~shall~~] may periodically review its specifications to determine whether discrimination against procured goods with recycled content exists and [~~shall~~] may revise these specifications to eliminate any discrimination.

(3) Purchase specifications [~~shall~~] may include, but not be limited to, office paper, printed material, paper products, paper, glass-by-

products, plastic products, mulch and soil amendments, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials. Paving materials to be considered ~~[shall]~~ may include, but are not limited to, asphalt, tires, crushed concrete for base, subbase, and paving materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for any product or construction.

(c) Pursuant to section 103D-412, HRS, the procurement policy for all agencies purchasing or leasing motor vehicles shall be to obtain energy-efficient vehicles in accordance with the guidelines established by the department of business, economic development and tourism. [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; am and comp] Auth: HRS §§103D-202, 103D-401) (Imp: HRS §§103D-401, 103D-412)

§3-122-13 Development of specifications. (a) A specification should provide for the following:

- (1) Identify minimum requirements;
- (2) Allow for competition;
- (3) List reproducible test methods to be used in testing for compliance with specifications; and
- (4) Provide for an equitable award at the best value.

(b) Types of specifications include the following, and may be used in combination when developing the specification:

- (1) Design specification sets the requirements for the product, detailing the characteristics that the item must possess, how the item is to be manufactured;
- (2) Performance specifications describes the capabilities that the product must meet, use of test or criteria are developed to measure the item's ability to perform as required;

- (3) Brand name specification commonly referred to as restrictive specifications, may be used upon approval of the chief procurement officer after the purchasing agency makes a written determination that only the identified brand name item will satisfy the State's needs, and it is not practicable to use a less restrictive specification, provided that procurements pursuant to section 103D-305, HRS, ~~[do not]~~ requires approval by the procurement officer and shall be placed in the procurement file;
 - (4) Brand name or equal specification cites one or more brand names, model numbers, or other designations that identify the specific products as having the characteristics of the item desired; and
 - (5) Qualified or pre-approved products list is a list of goods, services, or construction items, which, prior to the opening of the competitive solicitation, are examined, tested, and determined to meet the applicable specification requirements.
- (c) To the extent practicable, the State may procure standard commercial products using accepted commercial specifications. Specifications shall emphasize functional or performance criteria. Design or other detailed physical descriptions may be used when necessary to meet the needs of the State. Specifications shall not discriminate against the use of recycled materials; and when purchasing or leasing motor vehicles; specifications shall be developed in compliance with section 103D-412, HRS, as follows:
- (1) Agencies are directed to the acquisition of motor vehicle guidelines established by the department of business, economic development and tourism. When acquiring new vehicles, agencies shall determine its motor vehicle fleet as defined by these guidelines; and
 - (2) Motor vehicle fleets determined to be outside of the "covered fleet" definition, shall obtain energy-efficient vehicles in

order to increase energy efficiency and use of renewable energy resources pursuant to section 103D-412(b), HRS, and further defined in the guidelines established by the department of business, economic development and tourism.

~~[(d) The using agency shall submit advice and assistance in the development of specifications or plans pursuant to a request from the purchasing officer.]~~

~~[(e)]~~ (d) A contractor paid for services to develop or prepare specifications or work statements shall be precluded from submitting an offer or receiving a contract for that particular solicitation.

~~[(f)]~~ (e) Specifications prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the State's needs and shall not be unduly restrictive. [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-401, 103D-402) (Imp: HRS §§103D-401, 103D-404, 103D-405, 103D-406, 103D-412)

§3-122-14 Exempted items. Purchasing agencies are granted the authority to prepare specifications for goods, services, and construction procured under sections 103D-102 and 103D-304, HRS. However, all public employees are responsible for adhering to remaining ethical considerations in public procurement, as guided by section 103D-101, HRS, and section 3-131-1.02, HAR. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; am 08/21/16; comp] (Auth: HRS §§103D-202, 103D-403) (Imp: HRS §§103D-102, 103D-304, 103D-403)

§3-122-15 (Reserved).

SUBCHAPTER 4

METHODS OF SOURCE SELECTION AND GENERAL GUIDANCE

§3-122-16 Methods of source selection. Unless authorized by law, all contracts shall be awarded by competitive sealed bidding pursuant to subchapters 5 and 6.5, except as provided in:

- (1) Subchapter 4.5 - Source selection for federal grants;
- (2) Subchapter 5 - Competitive Sealed Bidding;
- ~~[(2)]~~ (3) Subchapter 6 - Competitive sealed proposals;
- ~~[(3)]~~ (4) Subchapter 6.5 - Multi-step Competitive Sealed Bidding;
- (5) Subchapter 7 - Professional services procurement;
- ~~[(4)]~~ (5) Subchapter 8 - Small purchases;
- ~~[(5)]~~ (6) Subchapter 9 - Sole source procurements; and
- ~~[(6)]~~ (7) Subchapter 10 - Emergency procurements.
 [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; am and comp]
 (Auth: HRS §103D-202) (Imp: HRS §103D-301)

§3-122-16.01 Procurement dollar thresholds. Procurements exceeding the threshold of section 103D-305, HRS, shall be made pursuant to subchapters 5, 6, 6.5, 7, 9, and 10. [Eff and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-305)

§3-122-16.02 Preparation time for offer. (a) The minimum time period between the first date of the public notice of the solicitation and the date set for receipt of offers, except as provided by subsection (b) for construction, including design-build projects, shall be as follows:

- (1) For a single-step invitation for bids pursuant to subchapter 5, ten calendar days;

- (2) For competitive sealed proposals pursuant to subchapter 6, thirty calendar days, unless the procurement officer makes a written determination that a shorter time will provide for adequate competition; and
- (3) For multi-step invitation for bids pursuant to subchapter 6.5, fifteen calendar days for the phase one unpriced technical proposal, unless the procurement officer makes a written determination that a shorter time will be provided for adequate competition; and ten calendar days for the phase two priced bid.

(b) For construction, including design-build projects, a minimum of fifteen calendar days shall be provided between the date of the pre-bid conference pursuant to section 3-122-16.05(b) and the date set for receipt of offers. [Eff and comp 03/21/08; comp] (Auth: HRS §§103D-202, 103D-302, 103D-303) (Imp: HRS §§103D-302, 103D-303)

§3-122-16.03 Public notice. (a) Public notice of the solicitation pursuant to subchapter 4.5, 5, 6, 6.5, or 7 shall be made for the purpose of securing competition.

(b) The public notice of the solicitation pursuant to subchapters 4.5, 5, 6, and 6.5 shall include the following information:

- (1) A brief description of the good, service, or construction desired; or for solicitations seeking providers for federal grant contracts, the title of the grant application or funding source and a brief description of the services being sought;
- (2) Where and when the solicitation will be available~~[and a phone number or e-mail address where interested parties may request a copy];~~
- (3) ~~[How long the solicitation will be available, i.e., the]~~The deadline for the responses to the solicitation;

- (4) Other appropriate information, e.g., [~~a notice of intention to offer pursuant to section 3-122-111 or~~] contact information, the time, date, and location of the pre-bid or pre-proposal conference;
- (5) For request for interest pursuant to section 3-122-16.31, a statement that the purpose of the request is to select a provider or providers for federal grants; and
- (6) For a multi-step invitation for bids pursuant to subchapter 6.5, a general statement that the bid is multi-step and the due date(s) of the unpriced technical offer and priced offer.

A copy of the solicitation [~~shall~~] may be made available [~~for public inspection and pick up~~] electronically, and may be picked up at the respective issuing office [~~of the procurement officer issuing the solicitation~~].

(c) Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 shall include the requested professional class or category and shall invite persons to submit statements of qualifications that [~~may include but not be limited to~~] includes:

- (1) The name of the firm or person, the principal place of business, and location of all of its offices;
- (2) The age of the firm and its average number of employees over the past years;
- (3) The education, training, and qualifications of key members of the firm;
- (4) The names and phone numbers of up to five clients who may be contacted, including at least two for whom services were rendered during the preceding year; and
- (5) Any promotional or descriptive literature which the firm desires to submit.

Firms or persons may amend statements of qualifications at any time by filing a new statement and shall immediately inform the head of the purchasing agency of any change in their submission

that would disqualify the firm or person from being considered for a contract award.

(d) The public notice under subsections (b) and (c) shall be publicized as follows:

- (1) At a minimum, statewide and countywide public notices shall be publicized on [~~a purchasing agency or provider~~] an internet site;
- (2) Optionally, and in addition to paragraph (1), the following may be used:
 - (A) Newspaper publication:
 - (i) For statewide publication, a daily or weekly publication of statewide circulation; or separate daily or weekly publications whose combined circulation is statewide;
 - (ii) For countywide publication, a daily or weekly publication in the pertinent county;
 - (B) Notice by mail [~~, electronic mail, or facsimile transmission~~] or electronically to persons on any applicable bidders mailing list, if any; and
 - (C) Any other method the procurement officer deems effective for publicizing the solicitation. [Eff and comp 03/21/08; am and comp]
(Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-304) (Imp: HRS §§103D-302, 103D-303, 103D-304)

§3-122-16.04 List of potential offerors. (a) A list may be compiled to provide the procurement officer with the names of businesses that may be interested in competing for various types of contracts.

(b) Unless otherwise provided, inclusion of the name of a business is discretionary and does not indicate whether the business is responsible in respect to a particular procurement or otherwise

capable of successfully performing a contract; nor does it guarantee notification of each solicitation.

(c) Businesses that fail to respond to solicitations or notices of availability may be removed from the list.

(d) Names and addresses on the list shall be available for public inspection. [Eff and comp 03/21/08; comp] (Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-304) (Imp: HRS §§103D-302, 103D-303, 103D-304)

§3-122-16.05 Pre-bid or pre-proposal conference.

(a) The purpose of a pre-bid or pre-proposal conference is to explain the procurement requirements and allow potential offerors to ask questions.

(1) An agency may hold a pre-bid or pre-proposal conference ~~[and require or not require attendance by all prospective bidders as a condition for submitting an offer for solicitations that have special or unusual requirements, e.g., requiring physical inspection]~~.

(2) For construction, including design-build projects, pursuant to section 103D-303.5, HRS, an agency shall hold a pre-bid or pre-proposal conference and invite all interested parties to attend.

~~[(b) If conference attendance is mandatory for submission of an offer, the requirement:~~

~~—— (1) Shall be stated in the public notice issued pursuant to section 3-122-16.03; and~~

~~—— (2) Prominently in the solicitation or if the decision to hold a mandatory pre-bid or pre-proposal conference is made after the issuance of the solicitation, the mandatory requirement shall be announced in an addendum.]~~

~~[(c)]~~ (b) A pre-bid or pre-proposal conference shall be announced ~~[to all prospective offerors]~~ in the public notice issued pursuant to section 3-122-16.03 and in the solicitation, or if the decision to

hold a pre-bid or pre-proposal conference is made after the issuance of the solicitation, the conference shall be announced in an addendum.

~~[(d)]~~ (c) The conference should be held long enough after the solicitation has been issued to allow offerors to become familiar with the solicitation, but sufficiently before the deadline for receipt of offers to allow consideration of the conference results in preparing their offers.

~~[(e)]~~ (d) Unless a change is made by written addendum as provided in section 3-122-16.06, nothing stated at the pre-bid or pre-proposal conference shall change the solicitation.

~~[(f)]~~ (e) A summary of the conference, including questions and answers, in addition to any changes to the solicitation, ~~[shall]~~ may be issued by addendum ~~[and shall be supplied sufficiently]~~ before the deadline for receipt of offers. ~~[to allow consideration of the summary results and changes to all those prospective offerors known to have received a solicitation.]~~ [Eff and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-303.5) (Imp: HRS §§103D-302, 103D-303.5)

§3-122-16.06 Amendment and clarification to solicitation. (a) An addendum shall be issued for amendments and clarifications to a solicitation prior to submission of offers, except as provided in subsection ~~[(f)]~~ (d).

- (1) Amendments include any material changes to the solicitation as in quantity, purchase descriptions, delivery schedules, scope of work, and opening dates. The addendum shall reference the portions of the solicitation it amends and detail the amendments;
 - (2) Clarifications include pre-bid or pre-proposal communications other than amendments.
- (b) Addenda shall be used to:
- (1) Correct minor defects or ambiguities;
 - (2) Furnish to other offerors information given

to one offeror if the information will assist the other offerors in submitting offers or if the lack of the information would prejudice the other offerors; and

- (3) Provide any other information or clarification to the solicitation that will result in fair competition.

~~[(c) Addenda may require that offerors acknowledge receipt of the addendum issued.~~

~~—(d) Addenda shall be issued to all prospective offerors known to have received a solicitation, or if issued after the deadline for submission of notice of intention to offer, to those persons who have submitted such notice.]~~

~~[(e)]~~ (c) Addenda for:

- (1) Amendments shall be ~~[distributed]~~ published within a reasonable time to allow prospective offerors to consider them in preparing their offers; however, if the time and date set for receipt of bids will not permit adequate time for preparation, the time shall be increased to the extent possible in the addendum or, if necessary, by facsimile or telephone and confirmed in the addendum;
- (2) Clarifications may be issued any time up to the scheduled deadline for receipt of offers.

~~[(f)]~~ (d) After submission of proposals, amendments may be made by addenda for solicitations pursuant to subchapters 6 and 6.5, subject to sections 3-122-53(d) and (e) and 3-122-54(b). [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

§3-122-16.07 Pre-opening modification or withdrawal of offer. (a) ~~[Bids or proposals]~~ Offers submitted pursuant to subchapters 5, 6, and 6.5 may be modified or withdrawn prior to the established due date by submitting the following ~~[documents]~~:

- (1) ~~[Modification]~~ For modification of ~~[bids or~~

~~proposals~~] the offer:

- (A) A written notice accompanying the ~~[actual]~~ offeror's modification received in the office designated in the solicitation, stating that a modification to the ~~[bid or proposal]~~ offer is submitted; or
 - (B) ~~[A facsimile or]~~ An electronic notice accompanying the ~~[actual]~~ offeror's modification submitted ~~[either by facsimile machine, electronic mail, or an electronic procurement system]~~ electronically pursuant to section 3-122-9 to the office designated in the solicitation; provided if other than through an electronic system, offeror submits the actual written notice and modification within two working days of receipt of the facsimile or the electronic transmittal.
- (2) Withdrawal of bids or proposals:
- (A) A written notice received in the office designated in the solicitation; or
 - (B) A notice ~~[by facsimile machine or other electronic]~~ submitted ~~[electronic]~~ electronically ~~[method]~~ pursuant to section 3-122-9~~[, to the office designated in the solicitation]~~.

For the purposes of this section and section 3-122-16.08, the established due date for proposals pursuant to subchapter 6 or 6.5 is either the time and date announced for receipt of proposals or as amended ~~[receipt of modifications to proposals]~~, if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only priority listed offerors may submit best and final offers.

(b) The documents shall be made a part of the ~~[appropriate]~~ procurement file. [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

§3-122-16.08 Late offer, late withdrawal, and late modification. (a) Any ~~[notice of withdrawal, notice of modification of a bid or proposal with the actual modification, or any bid or proposal is late when received at the place designated for receipt and opening of an offer after the established due date, additionally defined in section 3-122-16.06(a),]~~ offer, withdrawal and modification submitted manually or digitally after the established due date, shall not be accepted, except when received before contract award and would have been timely but for the action or inaction of personnel, supported by a written determination by the head of the purchasing agency, within the ~~[procurement activity]~~ procuring agency.

(b) A late bid or proposal or late modification will not be considered for award and shall be returned to the offeror unopened as soon as practicable, accompanied by a letter from the ~~[procurement activity]~~ procuring agency stating the reason for its return.

(c) A late withdrawal request except as provided for in section 3-122-31, shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

(d) Records of each late offer, late modification, or late withdrawal and any related correspondence shall be made a part of the appropriate procurement file, except for the late offer or late modification itself which shall be disposed of in accordance with subsection (b). [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

§3-122-16.09 Cancellation of solicitation and rejection of offer. Cancellation of solicitations and rejection of bids or proposals shall be pursuant to subchapter 11 and section 103D-308, HRS. [Eff and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303, 103D-308)

SUBCHAPTER 4.5

SOURCE SELECTION FOR FEDERAL GRANTS

§3-122-16.30 Purpose. (a) The purpose of this subchapter is to provide rules for the selection of ~~[providers]~~ contractors for federal grants.

(b) The selection of ~~[providers]~~ contractors for federal grants shall be in accordance with the appropriate source selection methods in section 3-122-16. [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-301)

§3-122-16.31 Exception; request for interest.

(a) "Request for ~~[interest]~~ federal grants" as used in this subchapter means all documents utilized for soliciting interest in providing goods, services, or construction under a federal grant, when applying or after receipt of a grant.

(b) Where time or economic situations preclude the use of other source selection methods in section 3-122-16, purchasing agencies may, with the approval of the head of purchasing agency, issue a request for interest to select a ~~[provider or providers]~~ contractor(s) for a federal grant.

(c) A public notice shall be publicized pursuant to section 3-122-16.03(d) and shall include but not be limited to the information in section 3-122-16.03(b).

(d) The request for interest may include but not be limited to the following:

- (1) Identification and purpose of the federal funding;
- (2) The target population ~~[or clients]~~ to be served;
- (3) A description of the good, service, or construction;
- (4) The evaluation criteria and their relative weights for selecting a ~~[provider or providers]~~ contractor(s);
- (5) The format, if any, and procedure for

- submitting responses to the request;
- (6) The deadline for submittal of written responses to the request which shall be a minimum of five working days from the date of public notice;
- (7) A statement that the purchasing agency reserves the right to incorporate or not incorporate in the State's application for federal grants any recommendations presented in response to the request; and
- (8) A statement that neither the purchasing agency nor the interested ~~[provider]~~ contractor has any obligation under the request.
- (e) The selection of a ~~[provider or providers]~~ contractor(s) shall be based on the criteria established in the request for interest.
- (f) A notice of the selected ~~[provider or providers]~~ contractor(s) shall be posted to a state governmental website ~~[or]~~ and all respondents shall be notified in writing.
- (g) Nothing in this section shall be construed to disqualify a purchasing agency from receiving federal funds. [Eff and comp 03/21/08; am and comp
] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

SUBCHAPTER 13.5

Contractor Past Performance Assessment Form

- § 3-122-115.01 Contractor past performance assessment.ⁱⁱ (a) Except for any contract entered into pursuant to sections 103D-307 or 103D-305, HRS or as directed by the Chief Procurement Officer, all state and county procurement officers or agents shall complete a contractor past performance assessment form approved by the procurement policy board.
- (b) The contractor past performance assessment shall include information contained in Act 188, SLH 2021.

(c) The contractor past performance assessment process shall include the following:

- (1) Procurement officers shall prepare the contractor past performance assessment form at the end of the contract, or more frequently as designated by the CPO or designee:
 - (A) Procurement officer shall begin preparing the Contractor past performance assessment form prior to contract completion and shall enter information into an electronic past performance database system;
 - (B) Procurement officer who rates a vendor an unsatisfactory performance assessment is required to document the action (i.e., notice to cure) used to notify the vendor of the contractual deficiencies;
 - (C) Agency assessments of contractor past performance shall be provided to the contractor as soon as practicable after completion of the assessment. The contractor shall receive a notification when an assessment is ready for comment;
 - (D) Contractor shall review the Contractor past performance assessment form within 10 working days from the date of notification of the contractor past performance assessment and submit comments, rebutting statements, or additional information, or the Contractor past performance assessment form shall be considered accepted by the contractor;
 - (E) Procurement officer shall submit a copy of the final Contractor past performance assessment form in the agency's contract file and electronically in the past performance

- database system within five working days of receipt;
- (F) The final contractor past performance assessment form is required prior to making a final payment.
- (2) Contractor's past performance assessment form dispute process:
- (A) Contractor shall submit a request with substantial evidence to the procurement officer for reconsideration within 10 working days from the date of notification of the past performance assessment;
- (B) The procurement officer shall update the past performance database system taking into consideration any contractor comments;
- (C) The final determination on the contractor's past performance assessment shall be the decision of the head of the purchasing agency or designee. [Eff and comp _____] (Auth: HRSS§§103D-202, 103D-329) (Imp: HRS §§103D-104, 103D-202)"

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

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

I certify that the forgoing 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 on April 20, 2023, by the Procurement Policy Board and filed with the Office of the Lieutenant Governor.

LISA MARUYAMA
Chairperson
Procurement Policy Board

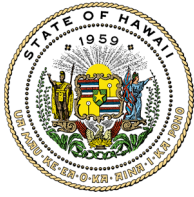
KEITH REGAN
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General

ⁱ“Recent” time periods for consideration may be different according to the type of requirement, however the Contractor Past Performance Assessment Report shall only be available on the database for three years. If the procurement officer determines that the requisition justifies seeking past performance information that is older than three years (i.e., by request of the offeror or the chief procurement officer), then they may seek specific contract files from the contracting agency which would contain the assessment report information.

ⁱⁱ Although it is not required, it is recommended that a new clause of consent to assessment and evaluation process should be included in the solicitation and the contract’s general conditions, identifying the process by which the contractor specifically consents to the process of performance assessment, review, finalization, and posting of final Contractor Past Performance Assessment to be accessible for the following three years for future solicitation evaluations as a condition of award for applicable methods of procurement.



CONTRACTOR PAST PERFORMANCE ASSESSMENT

Section 1. GENERAL INFORMATION - To be completed by each Procuring Agency.

Please complete form, by providing the information requested below, for whom the Contractor has provided or is currently providing products, services and/or construction specified herein.

PROCURING AGENCY INFORMATION	
Procuring Agency Department:	
Procuring Agency Division	Procuring Agency Jurisdiction
Procuring Agency Contact Name:	Procuring Agency Contact Title:
Procuring Agency Postal Address:	Procuring Agency Contact Phone:
Procuring Agency Contact Email:	Procuring Agency Contact Fax:
Procurement Officer Name:	
Procurement Officer Email:	
CONTRACTOR INFORMATION	
Contractor/Business Name:	Contractor Contact Name:
Contractor Contact Phone:	Contractor Contact Email:
Business Address:	
License Requirement(s) Placed on Bidders for Project, if applicable (i.e., A, B, C13, etc.):	
Name(s) of Responsible Managing Employees for Project:	
SOLICITATION/PROJECT INFORMATION	
Solicitation Title:	Term of Contract/Project Date(s), including all supplemental periods, if applicable:
Method of Procurement: <input type="checkbox"/> Competitive Sealed Bidding <input type="checkbox"/> Competitive Sealed Proposals <input type="checkbox"/> Sole Source	
Solicitation/Contract No.:	Original Awarded Amount (Size of the Project):
Notice of Award Date:	Notice to Proceed Date:
Brief Description of the Project:	

Estimated Start & Completion Dates:	From:		To:	
Actual Start & Completion Dates:	From:		To:	
Reason(s) for Difference Between Estimated and Actual Dates, if applicable:				
Project's Authorized Budget:			Project's Final Cost:	
Positive or Negative Difference, if applicable:				
Reason(s) for Change in Cost, if applicable:				

CONTRACTOR PAST PERFORMANCE ASSESSMENT GUIDANCE (to be used to best reflect your assessment of the contractor's performance):

Rating	Definition + General Factors	Notes
Satisfactory (S)	<p>Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.</p> <p><i>This rating represents contractors meeting expected performance to support the project.</i></p> <p>To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order:</p> <ul style="list-style-type: none"> • Meets standards, objectives, and all performance requirements. • Stayed within project's authorized budget. • Deliveries on-time. • Schedule not impacted. • Met expectations. • Adequate user satisfaction. • Met goals and expectations of the project. <p>NOTE: The term "authorized budget" is defined as the initial funds allocated to a project and encumbered.</p>	<p>There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be assessed with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.</p>
Unsatisfactory (U)	<p>Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains serious problems for which the contractor's corrective action appear or were ineffective (i.e., reports, letters, etc.).]</p> <p><i>This rating represents contractors whose performance consistently does not meet requirements defined in the contract.</i></p> <p>To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government:</p> <ul style="list-style-type: none"> • Work consistently fails to meet contract requirements. • Close supervision of the contractor was necessary to progress/complete the work. • Many performance requirements were not met. • Did not stay within project's authorized budget. • Missed multiple schedule deadlines which negatively impacted cost. • Lack of cooperation. • Unnecessary changes. 	<p>A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency).</p>

	<ul style="list-style-type: none"> • Delayed • Lack of user satisfaction. <p>NOTE: If a contractor is deemed “unsatisfactory,” the rating must be accompanied with multiple letters (department head) sent to the contractor to cure the problem. If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment.</p>	
Not Applicable (N/A)	No information or did not apply to contract requirements.	NOTE: Rating will be neither positive nor negative.

Section 2. ASSESSMENT - To be completed by each Procuring Agency.

Please provide an adjectival rating for the following questions (the adjectival rating is defined above. In addition, please provide comments to substantiate the assigned rating. At a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).

1. Technical (Quality of Product and/or Service):			
	S	U	N/A
Quality of technical data/report preparation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Met quality standards specified for technical performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timeliness/effectiveness of contract problem resolution without extensive customer guidance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adequacy/effectiveness of quality control program and adherence to contract quality assurance requirements (without adverse effect on performance)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).			
2. Schedule/Timeliness of Performance (for Goods, Services, & Construction):			
	S	U	N/A
Complied with contract delivery/completion schedules including any significant intermediate milestones. (If liquidated damages were assessed or the schedule was not met, please address below)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).			

3. Cost/Financial Management (for Goods, Services, & Construction):			
	S	U	N/A
Met the terms and conditions within the contractually agreed price(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contractor's timeliness and accuracy in submitting monthly invoices with appropriate back-up documentation, monthly status reports/budget variance reports, compliance with established budgets and avoidance of significant and/or unexplained variances (under runs or overruns)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contractor managed and tracked costs accurately	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rate Contractor's financial management abilities to pay subcontractors/suppliers timely	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).			
4. Management/Personnel/Labor (for Goods, Services, & Construction):			
	S	U	N/A
Management of suppliers, materials, and/or labor force, including subcontractors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Managed Government-Owned Property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Implemented changes in requirements and/or priority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transitioned personnel and operations when taking over from the incumbent Contractor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).			
5. Customer Satisfaction (for Goods, Services, & Construction):			
	S	U	N/A
Contractor cooperated in dealing with your staff (including resolving disagreements/disputes; responsiveness to administrative reports, businesslike and communication)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall customer satisfaction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).

6. Safety/Security (for Goods, Services, & Construction):

	S	U	N/A
Contractor maintained and/or exceeded an environment of safety, adhere to its approved safety plan, and respond to safety issues? (Includes: following the user's rules, regulations, and requirements regarding housekeeping, safety, correction of noted deficiencies, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contractor complied with all security requirements for the project and personnel security requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).

7. General (for Goods, Services, & Construction):

	S	U	N/A
Responded to emergency and/or urgent situations (including notifying HOPA, Project Manager, or Procurement Officer in a timely manner regarding urgent contractual issues)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).

Section 3. CONTRACTOR COMMENTS - To be completed by the Contractor

Contractor Name:

Procuring Agency Name:

Comments, Rebuttals, or Additional Information by Contractor assessed in Section 2.

Comments, Rebuttals, or Additional Information from the Contractor
Please cite specific assessment criteria you are providing comments, rebuttals, or additional information to.
<i>Pursuant to HAR section 3-122-115.01(c)(1)(D), Contractor shall review the Contractor past performance assessment form within 10 working days, from the date of notification of the contractor past performance assessment, and submit comments, rebutting statements, or additional information, or the Contractor past performance assessment form shall be considered accepted by the contractor.</i>

Section 4. PROCUREMENT OFFICER DETERMINATION - To be completed by the Procuring Agency

Keep a copy of this assessment in your agency's procurement/contract file.

Validation of Referenced Project Data assessed herein.

Comments from Procuring Agency	
As a Buyer/Contract Administrator/Project Manager, etc. of the Procuring Agency listed above, I approve the responses to the statements and ratings about the performance of the Company/Contractor listed above on the project identified in Section 2 of this Contractor Past Performance Assessment.	
Name:	Title:
Signature:	Date:
<i>Pursuant to HAR sections 3-122-115.02(c)(2)(B), The procurement officer shall update the past performance database system with any contractor comments; (c)(2)(C), The final determination on the contractor's past performance assessment shall be the decision of the head of the purchasing agency or designee.</i>	
As a Procurement Officer of the Procuring Agency listed above, I approve the responses to the statements and ratings about the performance of the Company/Contractor listed above on the project identified in Section 2 of this Contractor Past Performance Assessment.	
Name:	Title:
Signature:	Date:

Thank you for providing this valuable feedback. Please keep a copy of this assessment in your agency's procurement/contract file.