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

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

Procurement Policy Board Meeting
Friday, March 28, 2025, 9:30 a.m. (HST)
Virtual and Physical Location

Virtual Meeting Using Interactive Conference Technology – Zoom

State Procurement Office is inviting you to a scheduled Zoom meeting.

Topic: Procurement Policy Board Meeting

Time: March 28, 2025 09:30 AM Hawaii

Join Zoom Meeting

<https://zoom.us/j/97752506842?pwd=YZhXRWCiK2L26PvpMs87nRgPm4DkPd.1>

Meeting ID: 977 5250 6842

Passcode: X0zdMS

One tap mobile

+13462487799,,97752506842#,,,,*717652# US (Houston)

+16694449171,,97752506842#,,,,*717652# US

Dial by your location

- +1 346 248 7799 US (Houston)
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 929 436 2866 US (New York)
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 646 931 3860 US
- +1 689 278 1000 US

Meeting ID: 977 5250 6842

Passcode: 717652

Find your local number: <https://zoom.us/u/ayx3K3m7t>

Physical Location

Bid Room of the State Procurement Office, Kalanimoku Building, 1151 Punchbowl Street, Room 416, Honolulu, is available to the public and is guaranteed to be connected to the remote virtual meeting.

Pursuant to Hawai'i Revised Statutes section 92.3.7, the Procurement Policy Board will meet remotely using interactive conference technology. The public may either attend the meeting in person, at the physical location noted above, or participate remotely by using the Zoom meeting information noted on page 1 of this agenda. If participating remotely, please mute your phone/device, except while testifying. Remote testifiers will be given the option of being on-camera via the Zoom link in this agenda or similar option for remote testimony.

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 successful 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.

Contact for Meeting Information/Written Testimony

To request email notification of meetings, email procurement.policy.board@hawaii.gov.

We request that testimony be submitted no later than 72 hours prior to the meeting to ensure time for review by Board members. Testimony received after that time will still be considered by the board but might not be distributed to board members until the start of the meeting. Written testimony may be submitted by one of the methods listed below:

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

In accordance with Hawai'i Revised Statutes, Chapter 92, all testimony, whether written or oral, should be related to an item that is on the 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.

If you need an auxiliary aid/service or other accommodation due to a disability, please contact Ruth Baker at (808) 587-4701 or at ruth.a.baker@hawaii.gov as soon as possible, preferably by 4:30 p.m. HST, March 25, 2025. If a response is received after March 25, 2025, we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled. Upon request, this notice is available in alternate formats such as large print or electronic copy.

Procurement Policy Board Meeting Agenda Friday, March 28, 2025, 9:30 a.m. (HST)

- I. **Call to Order, Public Notice**
- II. **Roll Call, Quorum**
- III. **Review and Approval of February 28, 2025, Meeting Minutes**
- IV. **Public Testimony – Public testimony will be taken on all items as those items occur during the meeting**
- V. **Administrator’s Report on 2025 Legislation Related to Procurement (For Information Only)**
The State Procurement Office provides a list of 2025 legislation related to procurement. The status indicated is as of March 21, 2025.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
Senate Bill No. 1175, Senate Draft 1 (Dead)	-	RELATING TO PROCUREMENT. Adds state contractor's performance assessment to information required to be included in the past performance database maintained by the State Procurement Office. Appropriates funds. Effective 1/1/2491. (SD1)	Support	Support: Department of Transportation Oppose: General Contractors Association
House Bill No. 381, House Draft 1 (Advancing)	Companion: Senate Bill No. 254, Senate Draft 1 (Dead). Similar Bill: Senate Bill 383, Senate Draft 2 (Advancing)	RELATING TO PROCUREMENT. Amends the procurement thresholds for small purchases. Effective 7/1/3000. (HD1)	Oppose	Support: Department of Corrections and Rehabilitation, Department of Transportation, Honolulu Mayor, Honolulu Police Department.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
Senate Bill No. 383, Senate Draft 2 (Advancing)	House Bill No. 381, House Draft 1 (Advancing)	RELATING TO SMALL PURCHASES. Increases the minimum amount for purchases constituting small purchase procurements not subject to an electronic system from \$25,000 to \$50,000. Requires a report to the Legislature. (SD2)	Oppose	Support: Hawaii State Public Library System, Honolulu Policy Department, Honolulu Mayor.
House Bill No. 1293, House Draft 2, Senate Draft 1 (Advancing)	Senate Bill No. 1548 (Deferred) Similar subject: Senate Bill 659, Senate Draft 2, House Draft 1 (Advancing)	RELATING TO DEPARTMENT OF EDUCATION PROCUREMENT. Exempts Department of Education purchases of local edible produce and packaged food products less than a certain amount from the electronic procurement system requirement. Requires at least three written quotes for Department of Education purchases of local edible produce and packaged food products between certain amounts. Requires at least two written quotes for Department of Education purchases of local edible produce and packaged food products between certain amounts for certain schools in rural communities. (SD1)	Comment	Support: Department of Education; Department of Agriculture; Office of Climate Change, Sustainability and Resiliency of the City and County of Honolulu; Ulupono Initiative; Hawaii Farm Bureau; MetroGrow; Local Food Coalition; and Hawaii Public Institute.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
Senate Bill No. 659, Senate Draft 2, House Draft 1 (Advancing)	Similar Subject: House Bill No. 1293, House Draft 2, Senate Draft 1 (Advancing)	RELATING TO THE DEPARTMENT OF EDUCATION. Exempts from the electronic procurement system the Department of Education's purchase of fresh local agricultural products and local value-added processed, agricultural, or food products not exceeding a certain amount, subject to certain requirements. Requires the Department of Education to establish guidelines for determining a geographic preference for locally sourced products. Exempts the Department of Education from the requirement that certain agricultural products are subject to the Hawai'i Public Procurement Code. (HD1)	Comment (SPO opposes the exemption of agricultural products from the Procurement Code)	Support: Department of Education; Department of Agriculture; City and County of Honolulu Office of Climate Change, Sustainability and Resiliency; Ulupono Initiative; Hawai'i Farm Bureau; Hawai'i Public Health Institute; Hawai'i Farmers Union; Food+ Policy Internship 2025.
House Bill 371, House Draft 1 (Advancing)	Senate Bill 257 (Dead) Similar: Senate Bill 809, Senate Draft 1 (Dead)	RELATING TO CAMPAIGN CONTRIBUTIONS. Prohibits state or county grantees and officers and immediate family members of state or county contractors or grantees from contributing to candidate or noncandidate committees, candidates, or any person for any political purpose for the duration of the contract. Requires any unlawful contribution to be returned to the contributor or it will escheat to the Hawai'i Election Campaign Fund. Requires the Campaign Spending Commission to publish the names of the state and county contractors and grantees, and their officers and adult immediate family members, on its website, as reported by the state and county agencies. (HD1)	Comment:	Support: Campaign Spending Commission, League of Women Voters of Hawaii, various individuals

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
House Bill No. 894 (Deferred)		RELATING TO GOVERNMENT. Prohibits state contractors, prospective state contractors, holders of procurement prequalification certificates, or principals of these groups from making contributions to, or soliciting contributions from their employees or from subcontractors or principals of subcontractors on behalf of, certain candidate committees, noncandidate committees, and political party committees. Requires the Procurement Policy Board to adopt rules to issue prequalification certificates to prospective contractors for public buildings or other public works.	Comment	Comment: Hawaii State Ethics Commission, Department of Accounting and General Affairs, Campaign Spending Commission. Support: Democratic Party of Hawaii Education Caucus.Hawaii Alliance for Progressive Action.
House Bill No. 412, House Draft 1 (Advancing)	Senate Bill 290 (Dead)	RELATING TO LOBBYING. Establishes certain presumptions regarding lobbying on behalf of private clients. Makes certain contracts voidable when entered into in violation of the state lobbying law. Expands the definition of "lobbying" in the state lobbying law to include certain communications with high-level government officials regarding procurement decisions. (HD1)	Comment	Support: Hawaii State Ethics Commission, Natalie Iwasa
House Bill No. 642, House Draft 1 (Dead)	Senate Bill No. 55, Senate Draft 1 (Deferred)	RELATING TO ADMINISTRATIVE RULES. Requires all state agencies proposing, adopting, amending, or repealing a rule to make the full text of the rules of the agency available on the website of the Office of the Lieutenant Governor in a digitally accessible and searchable format. (HD1)	Track	Support: Lieutenant Governor Sylvia Luke, League of Women Voters of Hawaii, Grassroot Institute of Hawaii, Public First Law Center, ACLU of Hawaii, private individual

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
House Bill No. 808 (Deferred)		RELATING TO THE PROCUREMENT CODE. Requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State to provide funds for curing construction defects discovered within ten years after the completion of the contract. Authorizes the State to institute an action against the contractor for the total costs of curing those defects.	Comment	Comment: Department of Accounting and General Services. Oppose: General Contractors of Association, Subcontractors Association of Hawaii, Building Industry Association.
House Bill No. 812, House Draft 1 (Dead)		RELATING TO AGRICULTURE. Authorizes a contract for the purchase of local produce having a value of more than \$25,000 to be for a term of at least five years, under certain conditions. (HD1)	Comment	Comments: Department of Education. Support: Hawaii Farm Bureau, Hawaii Farmers Union United, Hawaii Food + Policy
House Bill No. 987, House Draft 1 (Advancing)	Senate Bill No. 1306, Senate Draft 1 (Dead)	RELATING TO PROCUREMENT. Establishes a procurement automation system special fund. Adds the Executive Director of the School Facilities Authority as a chief procurement officer. (HD1)	Support	Support: Department of Accounting and General Services
House Bill No. 988, House Draft 1 (Advancing)	Senate Bill No. 1307 (Dead) Similar Bill: Senate Bill No. 382 (Advancing)	RELATING TO PROCUREMENT. Prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror. Authorizes the disclosure of a competing offeror's proposal or evaluation score after a protest is resolved and the contract is executed.	Support	Support: Department of Accounting and General Services, Department of Transportation. Oppose: General Contractors Association.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
House Bill No. 1155, House Draft 1 (Advancing)	Senate Bill No. 1474 (Dead)	RELATING TO PROCUREMENT. Exempts from the Hawai'i Public Procurement Code contracts by government bodies to procure certain construction projects. (HD1)	Support	Support: Department of Transportation. Oppose: International Brotherhood of Electrical Workers, Subcontractors Assn of Hawaii.
House Bill No. 1221, House Draft 1 (Dead)		RELATING TO PROCUREMENT. Requires a bidder and their subcontractors for certain public works construction contracts to utilize apprentices if the bidder receives a bidding advantage for being a party to an apprenticeship agreement registered with the State at the time of general bidding and is awarded the contract. Effective 7/1/3000. (HD1)	Track	
House Bill No. 1297, House Draft 1 (Advancing)		RELATING TO PROCUREMENT. Sets a time limit for submitting bid protests. Makes the 75-day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party. (HD1)	Support	Support: Department of Accounting and General Services, Department of Transportation. Oppose: General Contractors Association.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
House Bill No. 1414, House Draft 1 (Advancing)		RELATING TO PROCUREMENT. Authorizes the head of a procurement agency to award a contract to a bidder who is not the lowest responsible and responsive bidder, for procurements conducted by competitive sealed bidding, if the head of the procuring agency determines that the award is most beneficial to taxpayers or otherwise in the best interests of the State. (HD1)	Oppose	Oppose: SPO, Department of Accounting and General Services, City & County of Honolulu Budget and Fiscal Services, General Contractors Association. Support: various individuals.
Senate Bill No. 382 (Advancing)	Similar Bills: House Bill No. 988 (Advancing), Senate Bill No. 1307 (Dead)	RELATING TO PROCUREMENT. Prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror. Authorizes the disclosure of a competing offeror's proposal or evaluation score after any protest is resolved and the contract is executed.	Support	Support: Department of Transportation. Comments: General Contractors Association.
Senate Bill No. 418, Senate Draft 1 (Dead)		RELATING TO REGULATORY SUNSET REVIEW IN HAWAII. Establishes a regulatory review program overseen by the Department of the Attorney General to evaluate all Hawaii Administrative Rules adopted by state agencies and identify any rules that should be retained, modified or repealed. (SD1)	Oppose	Oppose: Department of the Attorney General, Department of Labor and Industrial Relations, Department of Commerce and Consumer Affairs, Department of Land and Natural Resources. Support: Grassroot Institute of Hawaii, Maui Chamber of Commerce

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
Senate Bill No. 462, Senate Draft 1 (Dead)		RELATING TO PROCUREMENT CONTRACTS. Requires all performance incentive contracts to specify a pricing basis, performance goals, and a formula in calculating the contractor's profit, fees, or price decrease if the specified performance goals are exceeded or not met. (SD1)	Comment	Comments: Department of Education
Senate Bill No. 615 (Deferred)		RELATING TO PROCUREMENT. Requires that any procurement change order that increases the contract cost by more than fifty per cent or substantially increases the scope of work be considered a new contract for procurement purposes.	Comment	Comments: Department of Accounting and General Services. Oppose: American Council of Engineering Companies of Hawaii.
Senate Bill No. 809, Senate Draft 1 (Dead)		RELATING TO CAMPAIGN CONTRIBUTIONS. Prohibits state or county grantees, officers and immediate family members of state or county contractors, and officers and immediate family members of state or county grantees, from contributing to candidate committees and noncandidate committees for the duration of the contract. (SD1)	Comment	Support: Campaign Spending Commission, League of Women Voters of Hawaii, Democratic Party of Hawaii Education Caucus, Our Hawaii, plus lots of individuals
Senate Bill No. 1057, Senate Draft 2 (Advancing)		RELATING TO PROCUREMENT. Clarifies that the bid incentive given to bidders for public works construction projects who are parties to an apprenticeship agreement is based on apprenticeable trades utilized, rather than employed, to construct the public works. Requires the bidder and the bidder's subcontractors to be parties to all apprenticeable trades utilized to construct the	Support	Support: Department of Accounting and General Services, Hawaii Building & Construction, International Union of Painters and Allied Trades District Council 50, Plumbers and Fitters Local 675, International Brotherhood of Electrical Workers Local Union 126, Goodfellow Bros.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
		project for which a state-approved apprenticeship program exists. (SD2)		Support with amendments: International Brotherhood of Electrical Workers Local Union 1186. Oppose: General Contractors Association of Hawaii
Senate Bill No. 1543, Senate Draft 2 (Advancing)		RELATING TO GOVERNMENT ACCOUNTABILITY. Requires each purchasing agency to provide justification for hiring external consultants. Caps the amount each agency can spend on external consultants. Requires each agency to seek approval from the Legislature for consulting contracts exceeding a certain dollar amount. Requires each agency to disclose new contracts with external consultants. Requires annual reports to the Legislature. Requires the Compliance Audit Unit to conduct regular audits of agency consultant contracts to assess cost-effectiveness and compliance. Requires each chief procurement officer to ensure that inherent government functions are not delegated to a contractor. (SD2)	Comment	Comments: Department of Budget and Finance, Department of Education, Hawaii State Public Library System, University of Hawaii, Department of Accounting and General Services, Employees' Retirement System Board of Trustees, Hawaii Health Systems Corporation. Oppose: Department of Corrections and Rehabilitation, American Council of Engineering Companies of Hawaii, 1 individual. Support: 2 individuals.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
Senate Bill No. 1556 (Dead)		RELATING TO TRUSTED PUBLIC REPRESENTATIVES. Establishes a Trusted Public Representative Program within the Office of Information Practices under which the Office assigns a volunteer Trusted Public Representative trained in the requirements of the Sunshine Law and observes public agency meetings closed to the public.	Track	No hearing
Senate Bill No. 1587, Senate Draft (Dead)		RELATING TO RETAINAGE. Allows procurement officers to withhold a retainage fee from the total budget from contractors to ensure satisfactory project completion. (SD1)	Comment	Comments: Department of Accounting and General Services. Support: Subcontractors Association of Hawaii
Senate Bill No. 1651, Senate Draft 1 (Advancing)		RELATING TO PUBLIC MEETINGS. Requires board packets to be posted three no later than 7:45 am on the third business day before a public meeting. Requires boards to provide notice to persons requesting notification of meetings at the time the board packet is made available for public inspection. (SD1)	Track	Comments: Office of Information Practices; Hawaii Public Housing Authority; Department of Human Services; Hawaii State Commission on Fatherhood; Hawaii State Lesbian Gay, Bisexual, Transgender, Queer Plus Commission; Hawaii Employer-Union Health Benefits Trust Fund. Support: Society of Professional Journalists, League of Women Voters of Hawaii Public First Law Center, Individuals

VI. Discussion and Possible Approval of Proposed Amendments to Hawaii Administrative Rules, Chapter 3-122 – Source Selection and Contract Formation
The proposed rules summarized below are included in this board packet.

As provided in section 91-2.6, Hawaii Revised Statutes, the proposed rules may be viewed as follows:

- In person at 1151 Punchbowl Street, Room 416, Honolulu, HI 96813
- Online at this direct link:
<https://spo.hawaii.gov/wp-content/uploads/2025/03/AM-HAR-3-122-Subchapter-parts-of-4-4.5-5-am.pdf>

Online through the SPO website at <https://spo.hawaii.gov>: click on [Procurement Policy Board](#) > [Procurement Policy Board](#) > <https://spo.hawaii.gov/wp-content/uploads/2025/03/AM-HAR-3-122-Subchapter-parts-of-4-4.5-5-am.pdf>

1. Subchapter 4 – Methods of Source Selection and General Guidance

- §3-122-16.03 – Public notice – Amend subsections (b), (c), and (d).
 - Remove “and a phone number or e-mail address where interested parties may request a copy” in subsection (b)(2) and add “contact information” to subsection (b)(4), which is inclusive of all types of contact information (like emails, phone number, etc.).
 - Remove “how long the solicitation will be available” from subsection (b)(3) and replace with “The deadline for the responses to the solicitation” so there is a clear due date when offers are due.
 - Addition of “if any” to subsection (b)(4) to clarify that pre-offer conferences are optional and addition of new subsection (b)(7) “A copy of the solicitation shall be made available electronically and/or may be picked up at the respective issuing office” to reflect that most agencies make their solicitations available online.
 - Amend subsection (c) to state, “Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 shall invite persons to submit statements of qualification that includes:”
 - Remove “or provider” in subsection (d)(1) to reflect that the public notices, at a minimum, will be publicized on a purchasing agency internet site.
 - Amended (d)(2)(B) for clarity, consistency, and style to reflect that the notice may be sent by mail or electronically to persons on any applicable mailing list, if any.

Note: The proposed amendments to §§3-122-16.03(b)(2), (b)(3), (b)(4), part of §3-122-16.03(c), and §§3-122-16.03(d)(1) and (d)(2)(B) were discussed by the Procurement Policy Board on February 28, 2025; there were no objections to the aforementioned amendments.

The Procurement Policy Board will resume discussion on the proposed amendment listed below:

- §3-122-16.03 – Public notice – This will not be amended because the Deputy Attorney General opined that “class” and “category” are not defined in the

Hawaii Revised Statutes. During the February 28, 2025, Procurement Policy Board meeting, the proposal was to amend subsection (c) to add “include the requested professional class or category and shall.”

2. Subchapter 4.5 – Source Selection for Federal Grants

1. §3-122-16.30 - Purpose – Amended subsections (a) and (b) to replace “providers” with “contractors” for clarity, consistency, and style to reflect that providers selected for federal grants are contractors.

Note: The proposed amendments to §§3-122-16.30(a) and part of (b) were discussed by the Procurement Policy Board on February 28, 2025; there were no objections to the aforementioned amendments.

The Procurement Policy Board will resume discussion on the proposed amendment listed below:

§3-122-16.30 – Purpose – Remove “the appropriate source selection methods” to reference the whole section 3-122-16 for clarity in subsection (b).
Note: The Deputy Attorney General opined that this language does not affect, reduce, or limit the methods of source selection used.

3. Subchapter 5 – Competitive Sealed Bidding

- §3-122-21 - Preparing a competitive sealed bid - Amend subsections (1), (2), and (5).
 - Remove “and” from subsection (1)(C) and add it in subsection (1)(D) for grammar.
 - Add subsection (1)(E) with revised language for clarity, consistency, and style. Language is changed from “The bid opening shall be held at the time, date, and location of the receipt of bids” to “The date, time, and location of the opening of bids”.
 - Amend subsection (2) by deleting “or” and “as are not included in the purchase description” and adding “and” for clarity as “the purchase description, specifications, evaluation factors, delivery and/or performance schedule, and inspection and acceptance requirements” should all be included in the invitation for bids.
 - Amend subsection (5) to revise the language to “The bid form shall be signed by an authorized agent of the vendor and may be submitted with a digital or original signature;” to clarify that electronic signatures are accepted.
- §3-122-34 – Low tie bids – Amend subsection (b)(2) to correct misspelled word. Add “r” in “contracts”.
- §3-122-35 – Waiver to competitive sealed bid process – Amend subsection (c) for clarity, consistency and style and to add that the procurement officer shall be responsible to ensure proper documentation of the selected alternative procurement method is in the contract file and it also contains a determination that the price is fair and reasonable.

VII. Announcements

Future meeting dates for the Procurement Policy Board, subject to change:

- Friday, April 11, 2025, 9:30 a.m. (HST)
- Friday, April 25, 2025, 9:30 a.m. (HST)
- Friday, May 16, 2025, 9:30 a.m. (HST)

These meetings will be hybrid, on Zoom and in-person in a physical location at 1151 Punchbowl Street, Room 416.

VIII. Adjournment

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
Amendments to Chapter 3-122

Interim
Hawaii Administrative Rules

March 28, 2025

Historical Note: This amendment of Chapter 3-122,
Hawaii Administrative Rules:

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

**1. §3-122-16.03, Hawaii Administrative Rules,
is amended to read as follows:**

"§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, if any;
- (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.
- (7) A copy of the solicitation shall be made available [~~for public inspection and pick up at the office of the procurement officer issuing the solicitation~~] electronically and/or may be picked up at the respective issuing office.

(c) Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 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~~] 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)

2. §3-122-16.30, Hawaii Administrative Rules, is amended to read as follows:

"§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)

SUBCHAPTER 5

COMPETITIVE SEALED BIDDING

3. §3-122-21, Hawaii Administrative Rules, is amended to read as follows:

§3-122-21 Preparing a competitive sealed bid. 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 or if bid submittal is required through an electronic procurement system;
 - (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, if required, or the time, date, and location of the pre-bid conference~~[-]~~; and
 - (E) [The bid opening shall be held at the]The date, time, [date,-]and [location-]location of the [receipt of bids] opening of bids;
- (2) The purchase description, ~~[or]~~ specifications, evaluation factors, delivery and/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) Requirements pursuant to section 103D-310(c), 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) The bid form shall be signed by an authorized agent of the vendor and may be submitted with a digital or original signature; ~~[.With the exception of bid offers submitted through an electronic procurement system, 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. Unless otherwise specified in the solicitation, if facsimile or other electronically transmitted bid offer is allowed, then the bidder shall submit the signed original offer in accordance with section 3-122-9(d).]~~

- (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, instructions to the bidder that the bidder shall include in its offer information on joint contractor or subcontractor pursuant to section 103D-302(b), HRS. Construction bids that do not comply with this requirement may be accepted pursuant to section 103D-302(b), HRS. The terms, requirements, and conditions of an invitation for bids, including the specifications appended or incorporated by reference therein, may be amended only by a written addendum issued by the procurement officer, pursuant to section 3-122-16.06. [Eff 12/15/95; am and comp 11/17/97; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-310)

4. §3-122-34, Hawaii Administrative Rules, is amended to read as follows:

§3-122-34 Low tie bids. (a) Low tie bids are bids from responsive, responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation for bids.

(b) At the discretion of the procurement officer, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

- (1) Award the contract to a business providing

goods produced or manufactured in this State or to a business that otherwise maintains a place of business in this State; and

- (2) Award the contract to the bidder offering a low tie bid who received the previous award, and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

(c) If no permissible method will be effective in resolving tie bids and a written determination is made so stating, award may be made by drawing lots.

(d) Records shall be made of all invitations for bids on which tie bids are received showing at least the following information and shall be made a part of the procurement file:

- (1) The identification number of the invitation for bids;
- (2) The good, service, or construction item; and
- (3) A listing of all the bidders and the prices submitted. [Eff 12/15/95; comp 11/17/97; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-302)

5. §3-122-35, Hawaii Administrative Rules, is amended to read as follows:

§3-122-35 Waiver to competitive sealed bid process. (a) If for a given invitation for bids, including multi-step bidding, there is only one responsive, responsible bidder:

- (1) An award may be made to the single bidder, provided:
 - (A) The procurement officer determines in writing that the price submitted is fair and reasonable, and that either:
 - (i) Other prospective bidders had reasonable opportunity to respond; or
 - (ii) There is not adequate time for resolicitation; or

- (B) The bid exceeds available funds as certified by the appropriate fiscal officer and the price is negotiated pursuant to section 103D-302(h), HRS;
- (2) The bid may be rejected pursuant to subchapter 11 and new bids or offers may be solicited if the conditions in paragraph (1) are not met;
- (3) The proposed procurement may be canceled; or
- (4) An alternative procurement method may be conducted to include but not be limited to direct negotiations with the sole bidder first, and then with any contractor or vendor should negotiations with the sole bidder fail, provided the procurement officer determines in writing that the need for the good, service, or construction continues, but that the price of the one bid is not fair and reasonable and either that:
 - (A) There is no time for resolicitation; or
 - (B) Resolicitation would likely be futile.
- (b) If for a given invitation for bids, including multi-step bidding, there are no bids received or there are no responsive, responsible bidders, the procurement officer may determine that it is neither practicable, nor advantageous to the State to issue a new solicitation.
 - (1) When making this determination, consideration shall be given to:
 - (A) Time constraints;
 - (B) Competition in the marketplace; and
 - (C) Whether the additional potential cost of preparing, soliciting, and evaluating competitive sealed bids is expected to exceed the benefits normally associated with the solicitations;
 - (2) In the event of this determination, an alternative procurement method may be selected to include, but not be limited to, direct negotiations.

(c) The procurement officer shall be responsible to ensure proper [D]documentation of the alternative procurement method selected in the contract file, and shall include:

- (1) ~~[State the r]~~Reasons for selection and length of contract period;
- (2) A determination that the price is fair and reasonable; and
- (~~[2]~~3) ~~[Receive p]~~Prior approval of the chief procurement officer or a designee. ~~[+ and~~
- ~~(3) Be made a part of the contract file upon award by the procurement officer.] [Eff~~
~~12/15/95; am and comp 11/17/97; am and~~
~~comp] (Auth: HRS §103D-202)~~
~~(Imp: HRS §103D-302)~~

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

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

8. 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 March 28, 2025, 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