

PROCUREMENT POLICY BOARD (PPB)
1151 Punchbowl Street, Conference Room 410
Honolulu, Hawaii 96813

Regular Meeting
March 17, 2011
1:00 pm

AGENDA

- I. Call to Order.
- II. Approval of Minutes - Meeting of November 18, 2010.
- III. Election of Officers.
- IV. Interim Hawaii Administrative Rules (HAR) § 3-125-13, Price adjustment for construction contracts.
- V. Interim Hawaii Administrative Rules (HAR) chapter 3-120, Exhibit A, Procurements Exempt from chapter 103D, HRS.
- VI. Interim Hawaii Administrative Rules (HAR) § 3-120-4, Procurements exempt from chapter 103D, HRS.
- VII. Announcements.
- VIII. Adjournment.

Agenda and available agenda items may be viewed at <http://hawaii.gov/spo/procurement-policy-board-minutes-of-meeting>. Individuals may present testimony on matters on the Procurement Policy Board's agenda when the agenda item is taken up by the Board. Individuals intending to testify should contact the State Procurement Office at (808) 587-4700 at least 48 hours before the scheduled meeting. Written testimonies will be accepted through e-mail at procurement.policy.board@hawaii.gov or faxed to (808) 587-4703 until 1:00 pm, March 15, 2011. Testimonies received after the March 15, 2011 deadline will be forwarded to the board as time permits. Individuals submitting written testimony at the meeting and would like the written testimony distributed to the board at this meeting, are requested to provide 12 copies.

Individuals requiring special assistance or services may call (808) 587-4700 by 1:00 p.m., March 14, 2011 to discuss accommodation arrangements.

Agenda Item IV

"§3-125-13 Price adjustment in construction contracts.
The paragraph or similar statement expressing the intent of this paragraph, shall be included in all construction contracts for which price adjustments will be allowed:

"Price Adjustment Clause

- (1) Price adjustment methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:
 - (A) By agreement on a fixed price adjustment before commencement of the pertinent performance;
 - (B) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - (C) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - (D) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance; or
 - (E) In the absence of agreement between the parties the provisions of section 103D-501(b)(5), HRS, shall apply.
- (2) Submission of cost or pricing data. The contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs (1)(A) through (1)(D) shall be issued within ten days after agreement on the method of adjustment.
- (3) Determining Adjustments in Price. In determining the adjustment in price to the government resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and branch office overhead) and profit

combined shall not exceed the percentages set forth below:

- (A) For the contractor, for any work performed by its own forces, twenty percent (20%) of the cost;
- (B) For each subcontractor involved, for any work performed by its own forces, twenty percent (20%) of the cost;
- (C) For the contractor or any subcontractor, for work performed by their subcontractors, ten percent (10%) of the amount due the performing subcontractor.

Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

- (4) The government in determining an adjustment in price using any of the methods listed in subparagraphs (1)(A) through (1)(D) above may not mandate that the contractor submit its proposal for a price adjustment at a specified percentage that it unilaterally considers to be acceptable.
- (5) Subparagraphs (3) and (4) shall not be construed to impair the right of a contractor and government from mutually agreeing to a price adjustment under any method listed in subparagraphs (1)(A) through (1)(D) above." [Eff 12/15/95; am and comp NOV 17 1997; am 10/3/08; am 8/24/09; am] (Auth: HRS §§103D-202, 103D-501) (Imp: HRS §§103D-501, 103D-601, 103D-703)

JUSTIFICATION:

HAR section 3-125-13 was previously approved as interim by the board July 16, 2009, which is effective for eighteen months, that expired on February 24, 2011.

As a follow up, several departments were contacted to see how the amendment affected their contracts and if any changes were recommended. Departments responded with no recommendation to amend this section.

SPO plans to take both section 3-125-13 and Chapter 3-124, Subchapter 1 (Hawaii products) to public hearing during this interim period.

Agenda Item V

"EXHIBIT A"

HAR Chapter 3-120
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS
~~[7/17/08]~~ 03/17/2011

The following list of exemptions, pursuant to HAR §3-120-4, has been determined to be exempt from HRS ~~[Chapter]~~ chapter 103D by the procurement policy board:

<u>Exemption Number</u>	<u>Exemption</u>
1.	Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases, and costs associated with publication of articles in scholarly journals;
2.	Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
3.	Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter;
4.	Services of legal counsel, guardian ad litem, psychiatrists, psychologists, receivers and masters when required by court order;
[5.]	[Fresh meats and produce;]

<u>Exemption Number</u>	<u>Exemption</u>
[6.] <u>5.</u>	Insurance to include insurance broker services;
[7.]	[Animals and plants;]
[8.] <u>6.</u>	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
[9.] <u>7.</u>	Food and fodder for animals;
[10.] <u>8.</u>	Facility costs for conferences, meetings, and training sessions;
[11.] <u>9.</u>	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
[12.] <u>10.</u>	Arbitrator and mediator services;
[13.] <u>11.</u>	Interpreter services;
[14.] <u>12.</u>	Procurement of repair services when dismantling is required to assess the extent of repairs;
[15.] <u>13.</u>	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses;
[16.] <u>14.</u>	Radio and television airtime when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc);
[17.] <u>15.</u>	Subscription costs and registration or workshop fees for conferences or training; and

Exemption
Number

Exemption

[~~18.~~]16. Court reporter services.

Agenda Item VI

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to Chapter 3-120 (Interim)
Hawaii Administration Rules

March 17, 2011

1. Section 3-120-4, Hawaii Administration Rules (Interim), is amended to read as follows:

"§3-120-4 Procurements exempt from chapter 103D, HRS. (a) Notwithstanding the intent of chapter 103D, HRS, to require governmental bodies to procure their goods and services through competitive bidding, it is acknowledged that there may be situations where procurement by competitive means is either not practicable or not advantageous to the State.

(b) Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [~~07/17/08~~] 03/17/11, is located at the end of this chapter. This exhibit provides a list of goods and services which the procurement policy board has determined to be exempt from chapter 103D, HRS, because although such goods and services may be available from multiple sources, their procurement by competitive means would be either not practicable or not advantageous to the State.

(c) Chief procurement officers may request periodic reports from the heads of purchasing agencies of procurements made pursuant to subsection (b). The heads of purchasing agencies may be required to include in their reports, descriptions of the process or procedures the agency used to select the vendor ensuring maximum fair and open competition whenever practicable.

(d) Chief procurement officers may request that additional exemptions be added to Exhibit A.

(e) The procurement policy board shall review Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [~~07/17/08~~] 03/17/11, located at the

end of this chapter, annually or more frequently as needed for amendments.

(f) Purchasing agencies making procurements which are exempt from chapter 103D, HRS, are nevertheless encouraged to adopt and use provisions of the chapter and its implementing rules as appropriate; provided that the use of one or more provisions shall not terminate the exemption and subject the procurement of the purchasing agency to any other provision of the chapter.

(g) Purchasing agencies shall cite on the purchase order or on the contract, the authority waiver as "Exempt From Chapter 103D, HRS, pursuant to section 3-120-4(b) (cite exemption number from Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [~~07/17/08~~] 03/17/11, located at the end of this chapter), Hawaii Administrative Rules". [Eff 12/15/95; am and comp 11/17/97; am and comp 6/19/99; am and comp 6/9/01; am and comp 11/15/01; am and comp 11/8/02; am and comp 8/24/2009; am] (Auth: HRS §§103D-102, 103D-202) (Imp: HRS §103D-102)

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

3. Additions to updates source notes to reflect these amendments are not underscored.

4. These amendments to chapter 3-120, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor; provided further, pursuant to section 103D-202, HRS, these interim rules shall be issued by Procurement Directive and be effective for not more than eighteen months.