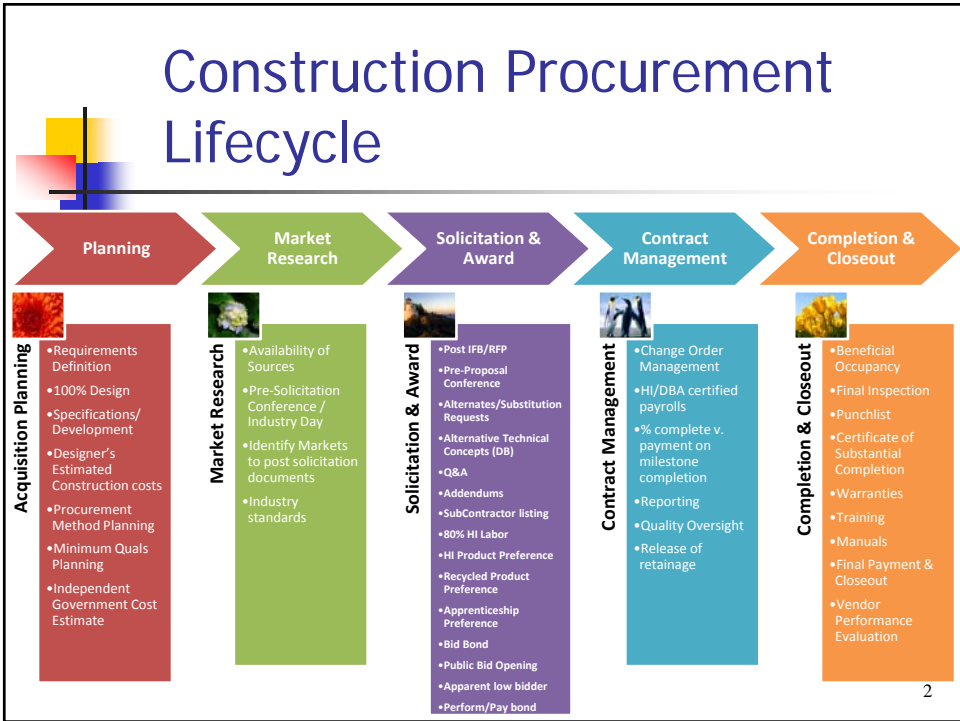



STATE PROCUREMENT OFFICE CONSTRUCTION PROCUREMENT WORKSHOP NO. 130

Part 1 Solicitation Planning to Contract Execution

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CONSTRUCTION PROCUREMENT METHODS

- **COMPETITIVE SEALED BIDS - Invitation for Bid/Low Bid (HRS 103D- 302, HAR 3-122 Subchapter 5)**
- **Multi-Step Bid (HRS 103D-302, HAR 3-122 Subchapter 6.5)**
- **Competitive Sealed Proposal - Request for Proposals, Design-Build (HRS 103D-303, HAR 3-122 Subchapter 6) - HRS 103D(i):**
 - (i) . . . , construction projects may be solicited through a request for proposals to use the design-build method; provided that:
 - (1) A request for proposals is issued to prequalify offerors to select a short list of no more than three responsible offerors, prior to the submittal of proposals; provided that the number of offerors to be selected for the short list shall be stated in the request for proposals and prompt notice is given to all offerors as to which offerors have been short-listed;
 - (2) A conceptual design fee may be paid to non-selected offerors that submit a technically responsive proposal; provided that the cost of the entire project is greater than \$1,000,000; and
 - (3) The criteria for pre-qualification of offerors, design requirements, development documents, proposal evaluation criteria, terms of the payment of a conceptual design fee, or any other pertinent information shall be stated in the request for proposals.

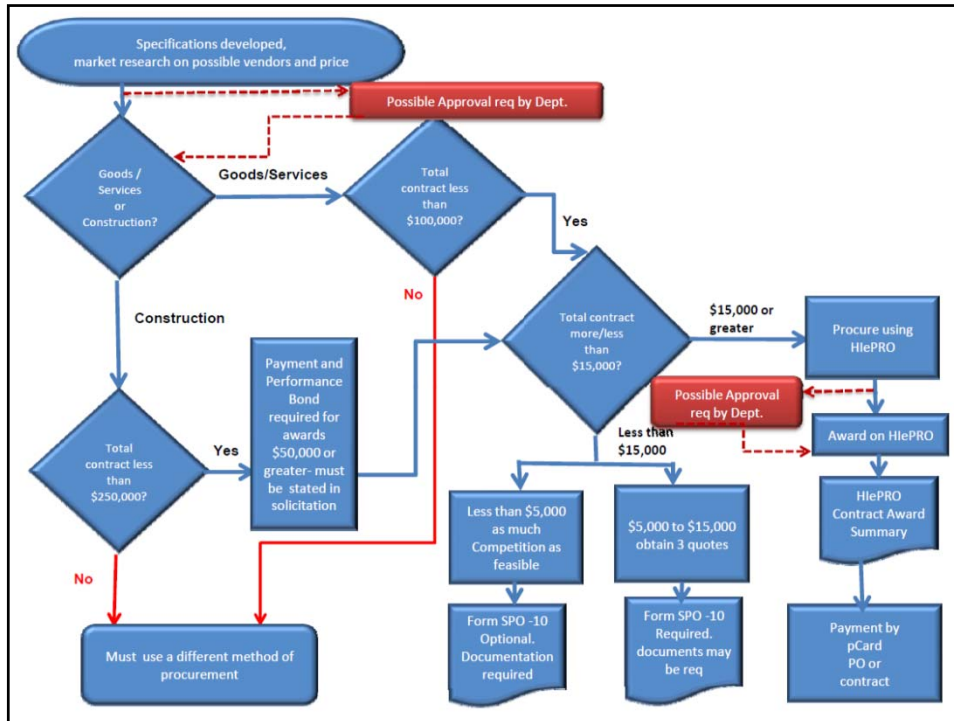
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CONSTRUCTION PROCUREMENT METHODS

- **SMALL PURCHASE (HRS 103D-305, HAR 3-122 Subchapter 8)**
- **Sole Source (HRS 103D-306, HAR 3-122 Subchapter 9)**
- **Emergency (HRS 103D-307, HAR 3-122 Subchapter 10)**

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COMPETITIVE SEALED BIDS (IFB/LOW BID) PROCESS:

- PRIOR TO ADVERTISING SOLICITATION
- BID PERIOD
- PUBLIC NOTICE
- ADDENDUM INSTRUCTIONS AND DEADLINES
- PRE-BID MEETNGS
- OTHER REQUIREMENTS AND DEADLINES
- BID OPEN
- BID EVALUATION AND AWARD
- PROTEST PERIOD
- CONTRACT EXECUTION



PRIOR TO ADVERTISING SOLICITATION

- **Construction procurement starts at the beginning of the planning/design phases.**
 - **Scope**
 - **Budget**
 - **Schedule**
- **Scope, budget and schedule checked throughout all project phases.**

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PRIOR TO ADVERTISING SOLICITATION – Procurement Method

- **Method of procurement determined**
 - **Competitive Sealed Bidding (Invitation for Bid/Low Bid) used the majority of the time by DAGS-PWD.**
 - **Usually aligns with the Design-Bid-Build construction delivery model**
 - **100% bid-ready design drawings and specifications**
 - **Requirements are clear and unambiguous**
 - **Lowest priced responsive, responsible bidder wins**
 - **Predominately aligns with a firm-fixed price contract type**

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PRIOR TO ADVERTISING SOLICITATION – Contract Type

- **Type of contract determined**
 - **HAR 3-122-135 allows for 10 different types of contracts with variations in combinations.**
 - **Fixed-Price Contract most common used for construction**
 - **Key factor to consider = Project Risk**

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PRIOR TO ADVERTISING SOLICITATION CONTRACT TYPE RISK CONTINUUM

Time and Materials (T&M)

Cost-Plus-Fixed-Fee (CPFF)

Cost-Plus-Award-Fee (CPAF)

Cost-Plus-Incentive-Fee (CPIF)

Fixed-Price-Incentive (FPI)

FFP Econ Price Adj (FFP-EPA)

Firm-Fixed-Price (FFP)

Greatest Risk on Government

Greatest Risk on Contractor

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PRIOR TO ADVERTISING SOLICITATION – Alternates, LDs, Small Business

- **Consideration of bid alternates**
 - Additive bid alternates
 - Deductive bid alternates
- **Liquidated damages determined (HAR 3-125-20)**
- **Applicability of Small Business Set-Aside or Subcontracting Plan (HRS 103D-906)**
 - Feb. 24, 2011, Interim HAR 3-124, Subchapter 9 expired. Therefore, there are no rules to implement HRS 103D-906 at this time.
 - Federal Funds? Seek guidance from your grants administrator.

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PRIOR TO ADVERTISING SOLICITATION - Specifications

- **Specifications, HRS 103D-401 to 405, HAR 3-122 Subchapter 3 (i.e. Plans & Specifications)**
 - Shall seek to promote overall competition, shall not be unduly restrictive, and provide a fair and equal opportunity.
 - Unique requirements limiting competition should be the exception when justified and not the norm.

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PRIOR TO ADVERTISING SOLICITATION - Specifications

- **Plans & Specifications Types**
(HRS 103D-401 to 405, HAR 3-122 Subchapter 3)
 - Design specifications
 - Performance specifications
 - Brand name or equal
 - Qualified or pre-approved products
 - “Restrictive specification” - Brand name with no equal, :
Only one brand name meets the State’s requirements, but
may be multiple sources of supply.
 - CPO approval required **prior to** bid solicitation.
 - SPO Form 014

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PRIOR TO ADVERTISING SOLICITATION – Subcontractor Listing and bid acceptance period

- **Requirements to be Included in Preparing the Bid Documents**
- Refer to HAR 3-122-21 - Preparing a Competitive Sealed Bid.
 - Maximum time for bid acceptance.
 - Depends on the complexity and magnitude of the requirement
 - *Typically DAGS-PWD specifies 60 days from the time of bid opening to award.*
 - Joint Contractor or Subcontractor Listing - HRS 103D-302(b) and HAR 3-122-21(8)
 - Bid documents shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work.
 - HRS Chapter 444 – Contractors
 - HAR Title 16, Chapter 77 – Contractors

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PRIOR TO ADVERTISING SOLICITATION - Preferences

- **Requirements to be Included in Preparing the Bid Documents**
 - **Recycled Product Preferences, if applicable**
HRS 103D-1005 and HAR 3-124 Subchapter 4
 - **Hawaii Product Preferences,**
HRS 103D-1002 and HAR 3-124 Subchapter 1
 - New rules adopted, effective December 13, 2010.
 - New rules follows guidance provided by Procurement Circular No. 2009-13.
 - **Determine applicability Apprenticeship Agreement Preference, HRS 103-55.6**
 - Applicable to public works contracts having an estimated value of \$250,000 or more
 - Comptroller's Memorandum 2011-25 provides the latest guidance for implementation

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PRIOR TO ADVERTISING SOLICITATION – Other Requirements

- **Requirements to be Included in Preparing the Bid Documents**
 - **Campaign Contribution Clause (In the solicitation and contract), Procurement Circular 2006-02, HRS 11-355 (formerly under HRS 11-205.5)**
 - **Independent Price Determination, HAR 3-122-192 (Anti-collusion Certification)**
 - Bidder certifies the price was independently arrived at without collusion.
 - **Certification for Safety and Health Programs for Bids in Excess of \$100,000, HRS 396-18**
 - **Compliance with §103D-310 HRS**
 - Bidder shall be incorporated or organized under the laws of the State or registered to do business in the State that is capable of performing under the contract.

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PRIOR TO ADVERTISING SOLICITATION – State Residents Employment

- Requirements to be Included in Preparing the Bid Documents
 - Employment of State Residents on Construction Procurement Contracts – HRS 103B
 - Any construction procurement under HRS 103D awarded a contract shall ensure that Hawaii residents compose not less than 80% of the employed to perform the contract.
 - Comptroller's Memo No. 2011-18 provides the latest guidance for provisions to be included in the bid documents and implementation.
 - Does not apply to professional services (103D-304) and small purchase procurements (103D-305).
 - **FEDERAL FUNDING?** Check with your program administrator re: whether allowable.

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PRIOR TO ADVERTISING SOLICITATION – Labor and Wages

- Requirements to be Included in Preparing the Bid Documents
 - Labor and Wage Rates, Chapter 104 HRS for Project in Excess of \$2,000
 - See §104-2 HRS for applicability.
 - See §104-2.5 HRS Public work requirements; private construction contracts.
 - Hawaii Prevailing Wage Rate Schedules can found at: <http://labor.hawaii.gov/rs/home/wages/72-2/wages-on-public-works>
 - Federally Funded Projects
 - Davis Bacon and Chapter 104 HRS applies.
 - Davis Bacon Wage Rate Schedules can be found at: <http://www.wdol.gov/dba.aspx>

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PRIOR TO ADVERTISING SOLICITATION – Bid Bonds

- Requirements to be Included in Preparing the Bid Documents
 - Bid Security/Bond - §103D-323 HRS
 - Bid bond required when bid/proposal offer is greater than **\$25,000**
 - Applies to HRS 103D-302 and 303 procurement
 - Bid bond shall be at least 5% of the base bid and additive alternate bid amounts or as required by terms of federal funding.

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PRIOR TO ADVERTISING SOLICITATION – Performance & Payment Bonds

- Requirements to be Included in Preparing the Bid Documents
 - **Small Purchase:** Payment and performance bonds required for construction contracts greater than **\$50,000**, for small purchases under HRS 103D-305.
 - **HRS 103D-302 & 303:** Payment and performance bonds required for construction contracts greater than **\$25,000**, for procurements under HRS 103D-302 and 303.
 - Bond amounts shall be for 100% of contract amount for each bond or as required by term of federal funding.
 - Reduction of bond amounts limited to not less than 50% of the contract amount with approval of CPO or HOPA, §3-122-225 HAR

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PRIOR TO ADVERTISING SOLICITATION – General Conditions

- **Requirements to be Included in Preparing the Bid Documents**
 - **General Conditions**
 - ***Interim General Conditions (IGC), 1999 Edition for DAGS-PWD is included by reference***
 - *Available in PWD Room 422; or*
 - *May be downloaded from the DAGS-PWD website.*


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PRIOR TO ADVERTISING SOLICITATION

- **PUT IT ALL TOGETHER!**
 - **Consultant A-E submits final plans & specifications/bid documents.**
 - **Project Engineer makes final checks, sets bid due date, and determines contractor's licenses required for bidding**
 - **Procurement personnel – PUBLICLY Advertise/post the solicitation on State/County Procurement Notices System website**


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BID PERIOD

- **Minimum times allowed:**
 - IFB/Low Bid: Ten (10) cal. days between first Public Notice date and bid open date.
 - Note: If pre-bid meeting required, must be longer.
 - See HAR 3-122-16.02 for other methods.
- ***Typically 4 weeks from date of advertisement/public notice of solicitation unless project requires more or less time.***


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PUBLIC NOTICE (HAR 3-122-16.03)

- **ADVERTISEMENT**
 - Project is advertised/posted on the State/County Procurement Notices website at: <http://hawaii.gov/spo/general/procurement-notices-for-solicitations>
 - Brief or general description of the work
 - Where or how solicitation documents can be obtained
 - Pre-bid Conference: Date, Time, & Location
 - Bid Due Date, Time, & Location
 - Some agencies also provide other information in the advertisement:
 - A range of the estimated construction cost. Example: Between \$500,000 and \$1,000,000
 - Specifies the Contractor's license to be eligible to bid


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PUBLIC NOTICE

- **AVAILABILITY OF BID DOCUMENTS**
 - Bid documents available on the DAGS-PWD website at <http://www.hawaii.gov/pwd> or CDs available at Public Works Division, Room 422.
 - Also available at Neighbor Island District Offices when project is within that District/County.
 - Online registration required if you want to download bid documents and receive addendums and/or bid clarification notifications by email.

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PRE-BID MEETINGS (HAR 3-122-16.05)

- Pre-Bid Meeting required at least 15 prior to the bid open date for projects with estimated contract value of \$500,000 or more. (HRS 103D-303.5)
 - Note: \$100,000 for RFP - Design-Build projects
- Shall be announced in the Public Notice or by addendum if decision made after initial solicitation.

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PRE-BID MEETINGS

- Purpose is to explain the project and procurement requirements. Also to allow potential offerors to ask questions.
- Unless a change is made by **written addendum**, nothing stated at the pre-bid or pre-proposal meeting shall change the solicitation or be binding.
 - **CAUTION:** Recommend **NOT** including meeting minutes as part of the addendum.
 - Issue necessary clarifications and/or revisions by addendum.
 - Take care when issuing conference slides with addendum.
- Attendance is not mandatory!

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OTHER REQUIREMENTS AND DEADLINES

- **Qualifications Questionnaire**
(HRS 103D-310, HAR 3-122-108 & 109)
 - **Optional Requirement**
 - *DAGS-PWD requires questionnaire to be submitted or on file and must be current within one year of bid open date. If they do not have a current questionnaire on file, they must submit one within five (5) calendar days of our request.*
 - SPO Form 21 – Standard Qualification Questionnaire for Offerors
- **Intention to Bid required no later than 10 cal. days prior to bid open (HRS 103D-310, HAR 3-122-111)**
 - **Optional requirement**
- *Clarification requests no later than 14 cal. days prior to bid open.*

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PUBLIC BID OPENING: HAR 3-122-30

Receipt, Opening & Recording Bids

- Upon receipt, each bid and modification shall be time stamped but not opened and stored in a secure place by the procurement officer until the time and date set for bid opening.
- Sealed bids **publicly opened** in presence of one or more witnesses and read aloud.
 - Name of each bidder, the bid price, and any other pertinent information shall be read aloud or otherwise made available.
 - Names and address of witnesses shall be recorded at the bid opening.
 - Opened bids shall be made available for public inspection to the extent permitted.
- **Mistakes in Bids (HAR 3-122-31)**
 - An obvious mistake in the bid may be corrected or withdrawn, or waived by the bidder to the extent it is not contrary to the best interest of the procuring agency or to the fair treatment of other bidders.
 - See HAR 3-122-31 for conditions.

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BID EVALUATION AND AWARD

(HAR 3-122-33)

- Apparent Low Bidder
- Only objectively measured criteria shall be applied.
 - Preferences: Hawaii Products, Apprenticeship
 - Additive or Deductive Bid Alternates
- Procuring agency responsible to verify whether or not a company is suspended or debarred under provisions of Chapters 103D, 104 or 444.
 - If using Federal funds and if applicable, need to check Federal debarment list on the SAM site (System for Award Management) at www.sam.gov.
- Award is made to the lowest responsive and responsible bidder based on the criteria set forth in the bid documents.
- Posting of awards on the Procurement Notice System is required within 7 days of the notice of award. (See Procurement Circular 2010-01)

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BID EVALUATION AND AWARD (HAR 3-122-33)

- Typically specified that award will be made within 60 calendar days, subject to availability of funding.
- If the contract is not awarded within the 60 cal. days, DAGS may request the successful bidder to extend the time for acceptance of its bid.
- Bidder may reject request to extend w/out penalty and in such case, DAGS may make similar offer to the next lowest responsive and responsible bidder and so on.
 - Note: These conditions are stated in our Interim General Conditions which are a part of the solicitation documents.


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BID EVALUATION AND AWARD

- Award letter/transmittal sent with Performance Bond and Labor and Material Payment Bond forms for execution.


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PROTEST PERIOD

- HRS 103D-701
 - Bidder, or prospective bidder, can protest the solicitation or award.
 - Protests must be submitted
 - In writing (DCCA OAH – check with your AG/COR)
 - Within 5 **working days** after the aggrieved party:
 - Knows or should have known of the facts giving rise to the protest
 - Posting of contract award (IAW HRS 103D-302)
 - Within 5 working days from debriefing
 - Cannot protest the contents of a solicitation after the solicitation due date/time


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PROCUREMENT PROTEST STATISTICS

- Act 173, SLH 2012, Section 1: requires reporting on all protest received using form SPO-43.
- The form shall be submitted to SPO via e-mail to state.procurement.office@hawaii.gov within ten (10) days after the outcome of the Procurement Officer's protest response.
- Refer to Procurement Circular No. 2012-03, Amendment 1.


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CONTRACT EXECUTION

- **Contractor submits:**
 - Performance Bond
 - Labor & Material Payment Bond (HRS 103D-324, HAR 3-122 Subchapter 24)
 - Proof of Compliance at the Time of Award:
 - Buyers use the Hawaii Compliance Express for proof of compliance, website at: <https://vendors.ehawaii.gov/hce/splash/welcome.html>
 - Tax Clearance (State & Federal)
 - DLIR Certificate of Compliance
 - DCCA Certificate of Good Standing
 - Must also use the Hawaii Compliance Express for contracts of \$2,500 or more for awards pursuant to HRS 103D-305 (Small Purchases). See Procurement Circular No. 2011-02


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CONTRACT EXECUTION

- **After receipt of bonds and compliance certificates, Procurement Officer signs the contract and funds are encumbered into the contract to become a fully executed contract.**

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PROCUREMENT OF CONSTRUCTION SERVICES

Mahalo!

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808-586-0554

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