

## **SPO 100 Part 2 – Competitive Sealed Bidding**

Good afternoon, this is Kevin Takaesu from State Procurement Office and this is part 2 of the competitive sealed bidding workshop 100. Before I get started I do want to mention that this webinar is being recorded.

We left off at publicizing your IFB. You publicize your IFB via public notice. That's releasing your IFB to the public and basically this is just letting the public know via the internet or if you're going to use the newspaper what services or commodities the state is seeking. Public notice is done to promote as much competition as possible and be as transparent as possible.

Now for the executive branch, the procurement notices must be posted on the state procurement website. Another name we call it is PNS or the Procurement Notice System. As I mentioned earlier that you can post at the newspaper site but it is optional. The information posted is a description of the goods, services, and constructions and if applicable, any federal grant information and where and also when the solicitation is available.

Continuing on from there, number 4 is contract information, what is a closing date of the solicitation if there is a notice in intent that is applicable as well as pre-bid conference; things that we talked about in part 1. Is the request for interest in selecting the provider under subchapter 4.5 which I covered and the last here, number 9 is multi-step IFB which I covered in subchapter 6.5.

Okay an important note here: it is required to have a copy of the public legal notice printed from the website any complete attestation form which is the SPO form 20 that needs to be filled out and kept in the contract file. Also on the bottom there, if there is a change in deadline, it needs to be changed on the PNS.

Alright, here is a snapshot of our website on a procurement notice for solicitations this is where you go to post your procurement notice. From the main page, you can click on procurement notice and then click on procurement notice for solicitation. When you get to the bottom of that screen you click on log in and then you enter your password but for more information, you need to visit the PANS circular or posting information and review procurement circular 2010-01. I'm not going to go over that procedure. Those of you who do need to post please read that circular and I believe there's also a class on that. This slide also gives you a snapshot of the previous procurement notices that are able to be reviewed by the public. You can go to the SPO website and then click on procurement notices which is under the quick links and then you click on procurement notices for solicitations. If you're interested in viewing the legal ad then if you look on the side there you can click on more information and you can actually see the notice itself.

This is an example of a public notice for electric vehicles IFB. You can see the information that needs to be posted as I mentioned earlier. To view the IFB click on the IFB document and the final draft would pop out on the screen. So when you log in on the screen, it will prompt you for the following information as what you see here. You need to post the publication date, the due date of the solicitation, solicitation number, description, and the rest of the fields.

This is the bottom part of the procurement notice. Make sure you print this document for file. When you print it out after you post it. It shows the submission date and proof that the notice was published on such date. So this goes in your file. Because if you're audited, they will see that it was actually posted.

## **SPO 100 Part 2 – Competitive Sealed Bidding**

Along with that because want to make sure that the posting was done. This is the SPO form 20 that the several slides ago mentioned that needs to be filled out. So this is the attestation that the procurement notice was posted on the PANS system these need to be filled in and signed and kept in a contract file along with the copy of the notice itself. So I mentioned make sure you make a copy or take the copy as the legend on the bottom of the procurement notice and that will indicate when the notice was posted.

Solicitation notice to vendors. In addition to putting out public notice, the agencies can create a list of businesses names that are potential bidders. You want to make sure that the potential offerors is aware of your solicitation. You don't want them to overlook what's posted. So create a list of businesses potential bidders. You may want this information so that you're aware of who's interest in the solicitation that you can e-mail them you can fax them let them know that your IFB is out. Now if you fax them email or call them and they failed to respond then they can be taken off the list.

So next slide is an example of offer notice to those potential bidders that we've used in the past. I do want to mention that the State Procurement Office no longer do competitive sealed bids or IFBs through paper form. We use the electronic procurement system called HiePRO. And that's what I mentioned on Part 1. I will cover that again later in this session.

This is an example I spoke of. It's the SPO form notice to the prospective bidders. This gives them pertinent information about the bid to register for this IFB so that they can be sent information or addendums. With that we've created a vendor log that we kept track of what documents have sent out and to whom it was sent to. You see on the top right you can track different addendums that was issued for this IFB. On the bottom you can identify IFB number and a date. It looks split because I wanted to capture it on this slide here. So I took out the middle because the middle was redundant. It's several of the vendor information. But it gives you the gist of creating a form such as this.

IFB deadlines for IFB submittals. Because you've issued it, you need to close it in order to evaluate. IFB need to be on the internet for the certain amount of time. The minimum time period between the first date of the public notice and the date that the bid will be open there's times this where you hear the bid opening date. That's when the bid actually closes and now you can open a bid. Okay there's some people say the bid opening date. Some people mention that same day as the bid closing. So it basically means the same thing. But anyway it's 10 calendar days between the public notice, that's when you issued it and the closing date so when you count 10 days in between. So basically it needs to be on the internet for no less than 12 days. So what SPO normally does is we usually keep it up for at least 2 weeks. That would suffice or you can leave it out for longer. For multi-step IFB there's seven days for phase one and I mentioned what multi-step IFB is. It's a combination of the IFB and RFP where the first phase is qualifying the vendor. So the first phase is 17 days and then for the second phase it's 12 days and for construction it is 15 days between the pre-bid conference and the opening date of the IFB. If you notice your IFB that's on the street is less than the time required, you can issue an addendum and extend the opening date. Please make sure you do that. If you don't then it could be a procurement violation for not meeting the minimum days that it's out on the internet.

Okay what do you do if there's changes needed in your IFB? If you're going to do changes then it's through the addendum form. So if you need to make any changes to the wording of your IFB and addendums are a way to making those changes before the opening date and time. So addendums need to be issued before the IFB closes. For IFBs, you can only make changes via addendum before the opening day as I mentioned. If you're requiring that the offer submit an intent to offer you may require

## **SPO 100 Part 2 – Competitive Sealed Bidding**

the offeror to acknowledge that they received addendums issued. Lastly, if addendums are sent out to all prospective offers known to have received a solicitation or notice of intent. Whenever SPO issues a solicitation, we try to gather as much vendors as possible and put them on the list. The next slide is an example of an IFB addendum.

Here's an example of an addendum. It has the opening date and the changes and the opening date should be listed first. Then following the section changes in sequence. I wouldn't skip around. I would put the opening date first if there's changes because that's what you want them to see. It's very critical that they know that the opening date has changed. So they can get their bid in on time.

Here's another addendum even though this is for an RFP, the principles are the same. For RFP, you do make addendums as well for changes. The reason I put this here is because it's one of the most recent addendums I've put out. Addendums for identifying the changes make sure you give clear instructions on where to go in the solicitations. That's very important. Make sure you keep the signed copy in your file.

Modifications to your IFBs or withdrawals of offers. There are times when offerors submit their bids early then they realize that they need to make a change. So in order for them to make the change they need to request in writing prior to bid opening. The offeror can make changes or withdraw the bids. So remember, you need to get it in writing and if it's sent via email or fax then within two working days the original needs to arrive at the office. It's covered under 3-122. A lot of times these come in from neighbor islands and the faxes and the emails.

Late offers withdrawal or modifications. Bids and withdrawals and modifications after the closing date will not be accepted. There are exceptions. If an error by the agency contributed to the lateness. For example, maybe the purchasing specialist inadvertently told the vendor the wrong opening date. Let's say they just told them that or maybe the office is closed during that opening date because of an emergency such as a fire alarm that went off. Then these considerations can be taken into an account as far as late submittals. And you can check out 3-122 16-08 as far as that.

Continue on with late withdrawals. If the offeror wants to his/her bids but it's after the bid opening date and time then it will not be accepted unless it's due to an obvious mistake such as arithmetic error or typographic error. So long as it doesn't affect the pricing quality, quantity, delivery, or contractual conditions. But the request needs to be in writing for this withdrawal.

Now we come to the point of deadline for bid submittal. Receipt of bids - all bids must be time stamped and stored in a secure space or place. Bids are to be open publicly with witnesses in the designated area at the correct date and time indicated in the IFB or it was changed through an addendum and it also had the names of each bidder and price and other information shall be read aloud. I was asked this question in one of the live sessions. What if the agency doesn't have one of those time stamps? I would suggest to get a time stamp because it's accurate and you would probably use it in many other ways but I guess you could purchase one of those ink stamps where you could stamp the envelope, the delivery date, delivery time, and witnessed by and having an official clock next to the drop off. But I can't imagine any agencies not having a time date stamp.

Here's an example of a stamped envelope. On the top right, you can see the date and the time stamped. On this slide here, as soon as the opening date and time passes, the bid becomes public information and

## **SPO 100 Part 2 – Competitive Sealed Bidding**

company names and representative present at the opening must be recorded. Later, I will have a slide of what we have as far as form recording that. At SPO, in order for us to save time, if we thought there would be a big turnout at the bid opening we inserted special provisions. I think I mentioned that in part 1 that we ask for copies to be furnished and the reason is to save time. So we could just distribute out the line item and the price. I haven't experienced this recently but apparently it happens periodically but if the vendor feels that the information contained in the bid is confidential what do you do? Well procurement officer or designee can make a determination. If the vendor doesn't agree with the disclosure of that information then the attorney general or corporate council has to make a call and in all the vendors present at the bid opening would be contacted in writing and if so, do you choose to get a copy of information? So if the AG or corporate council makes the ruling that hey this is not confidential or proprietary then it can be released provided unless the vendor again, disagree and file the protest then everything stops. But I do want to mention that prices, makes and model numbers and catalogue numbers those are not confidential.

Anyway, the next slide is the bid opening log we list the IFBs and the purchasing specialist that is in charge of conducting bid opening. We record the date and time and we also record who is the witness. We also record the vendors that submitted the bid and company representatives at the bid opening.

This is again, part of an IFB process because there are times when your IFB needs to be cancelled. These are some of the reasons why it can be cancelled. Hopefully not because a lot of effort and a lot of work has been done so far and once you have drafted and issued it and got an evaluation going and then you decide to cancel, that's a lot of work that went through.

So some of the reasons for cancellations agencies no longer needs the goods, services, or constructions. Maybe they have lack of funding or there are too much amendments that it is needed to clean up the IFB. Then it's better to cancel and put out another IFB with needed changes. Because there's times when the IFB the amendments if there's a lot of amendments or addendums per se then it can tell you that the specification that was drawn is somewhat flawed. There's too much confusion. So best interest of state that it is cancelled. The last one is if the CPO or designee decide that it's for the best of public interest to cancel.

Continuing on, cancellation after opening but prior to award. Again, if the services are no longer needed again the specification is flawed. It could be the solicitation scope or work poorly thought out or thought through and simply the prices were too high and it would not make sense to bring down the quantities needed. Continuing on with cancellations. All offerors' prices are way too expensive. Agencies may need to clarify with the vendors. Why the prices are so high? Maybe the agency needs to alter the scope or maybe there's possible collusion. I know it happens. I was in the food industry prior to coming to the state. I have heard of instances of where some groups agreed that hey if you bid on this contract, then I will not bid. We can share the awards. It happens the collusion happens. It could happen. It could be where the CPO or designee makes the call that's in the best interest to cancel. But I do want to caution. Cancellation is something that should be done with careful consideration. The reason is the offerors went through a lot of trouble, time and money to submit the bid, bid prices were exposed so often the vendors wouldn't be happy with cancellations perception of integrity of the procurement process could be tainted. What happens if the vendors start talking that maybe there's a reason that the agency cancelled the IFB. Is it because they did not like the lowest offer? The vendor or contractor did not bid or

## **SPO 100 Part 2 – Competitive Sealed Bidding**

missed the due date so they want to make the time for their vendor to submit. Therefore, careful considerations should be taken. And then I guess that's why CPO or designee makes the determination.

Moving on. If the decision is made to cancel then you need to put out a cancellation notice and it shall be sent to all participating vendors with an explanation for a cancellation and if it's going to be re-solicited in the future.

Here's an example of a notice of cancellation you can see here it's pretty short. You should make it clear what the reasons for the cancellation are and cite the statute or rule. For example, here's a HRS 103D-308 and HARS 3-122-96. Also mention if applicable, if it will be re-solicited. So take a look at the HARS and again, keep it simple here. This needs to be sent out to all participating vendors as well as keeping your file your procurement file.

Okay now we come to the point where there's no cancellation. The solicitation or the IFB has been opened. So now you start the bid evaluation. You need to award to the lowest responsive and responsible offer. So we're at this section of the IFB process. So during the bid evaluation, we determine if the offers are non-responsive or there are mistakes in their bids and if everything is in order we then can award to the lowest responsive and responsible offer if all specifications are met. Remember you cannot make an award if not all the specifications of the IFB are met.

Rejection of offers. Definition - if you're rejecting an offer it would be based on two things the bidder is non-responsible and/or non-responsive. For a non-responsible if the procurement officer requires additional information to determine if the bidder is responsible he or she can question the bidder's financial ability to deliver the goods, performance, or work require he or she can question the material, equipment, facility, and personal resources can question the references for determining the satisfactory of the work or record of performance. He/she can question legal qualifications to contract with the state and any additional information necessary in determining responsibility. Keep in mind if bidder is non-responsive but not conforming to the all material aspects of the IFB. For example, they may not be meeting the minimum of specifications. Not having liability insurance. Not signing the correct offer form page and that's non-responsive. Non-responsive meaning they didn't submit references, they did not submit their licenses, what was required to be submitted with that bid package. If they failed to do that then they're non-responsive. If they've failed to meet any of this non-responsible and non-responsive then their offer will be rejected.

Now if the bidder is non-responsible, they shall be informed in writing and the decision and the decision is final unless they ask for an administrative hearing this can be covered under 103D-310 on responsibility of an offer so pursuant to 103D-310b it says there that procurement officer shall determine whether the prospective offer has the financial ability, resources of skills, capability, business integrity necessary to perform the work now determined if the vendor has the resources capabilities, the agencies can require the vendor to submit SPO form 21 and that's the standard qualification questionnaire for offers to be required. So you can find that SPO form 21 on the State Procurement website. Now if the bidder is rejected or IFB is cancelled after it's been open the opening bids are to be held in the procurement file. If IFB is cancelled before its opening date, the unopen bids are to be returned to the offerors or disposed of if they do not want it back and if the vendor they don't qualify then they shall be sent a letter of why it was not accepted. If they don't agree with it then they have the option to file an administrative hearing with the DCCA or they file a protest actually and then if it's not resolved with the procurement officer then they can file with the DCCA.

## **SPO 100 Part 2 – Competitive Sealed Bidding**

Here's an example of a rejection letter. Normally we don't call it rejection letter. It doesn't sound pleasant. So we just mention that we can't accept your bid and we state the reasons and the section of the IFB that it applies to. It's very important that you cite the section so they can refer back to it and understand why their bid was rejected. Here's an actual example.

Okay, this is the area we talk about mistakes in bids because bids could be rejected here. Often you can find the mistakes in the bids. I've seen several of them throughout reviewing them. In obvious one is correcting. If the product's name is misspelled and if it's an obvious mistake or if they extended the price wrong which is another common mistake you would think that they would get it right sending it in but often times, the extension is wrong. But the mistake cannot affect the price quality delivery or contractual conditions so please remember that bidder they made a mistake in the unit price this cannot be corrected the bids are already opened so if the bid is opened, they make mistakes in the extension, it can be common. That can be corrected if they start misspelling the type of product, that's an obvious mistake. They can show you the evidence of that. But the bid price, if they make a mistake then that's not changeable because earlier mentions it shall not affect the price, quality, and quantity. Now what happens if the price is let's say \$7.90 and whoever post printed it in and put in \$78 well basically the decimal point is off. Then the appeal can make the determination because that is a mistake. If they can prove that's a mistake. Then that can be looked at as making a change because it's an obvious mistake. It has to do with the decimal point.

As I mentioned earlier, next page here mistakes covered after the deadline for receipt of bids but prior to award may be corrected or waived. So as I mentioned prior page, arithmetic errors can be corrected. As long as it doesn't affect the price, quantity, quality, or contractual conditions but if they failed to sign the offer form page or it is not in original ink then the bid can't be accepted unless there's an another document with an original signature that indicates that the company has the intent to be bound. For example, they have a couple of resolutions that explains that they have offices here that have the authority to sign. They signed that they have the signatures there. Then that's fine. 3-122-31c says the PO may correct or waive mistake if it is not allowed under subparagraph a & b which is about obvious arithmetic mistakes any minor informality such as typographical errors but it's an obvious mistake that if allowed to be corrected or waived is in the best interest with purchasing agencies and it's fair to other bidders. That's what I was mentioning about the decimal point. If it's an obvious mistake; arithmetic, typographic errors.

Continuing on with mistakes discovered with the bids. The overview of the slide here is that the offeror can withdraw his bid if the mistake was due to an obvious error which will affect the price quantity quality conditions provided that they show documentations and prove that the mistake was made. And if the mistake is not approved by the PO then it needs to be responded in writing.

Mistakes discovered after the awards that may be corrected or withdrawn by only chief procurement officer or HOPA, Head of the Purchasing Agency. I would think this would be rare. Something very important which it requires CPO and HOPA to address one might ask the question: How would correcting of the mistake also affect the outcome of the bid? Very important if it's found after again if after the bid is awarded and you find the mistakes then to be corrected or withdrawn, the CPO or the HOPA has to make a written determination.

Continue on with bid evaluation and award. For IFBs the award is based on lowest responsive and responsible price offered which meets the criteria of the solicitation. Now to make sure of this, the

## **SPO 100 Part 2 – Competitive Sealed Bidding**

winning bidder may have to submit samples, literature, or other materials to verify the product's acceptability. Also, inspecting or testing the characteristic of the product may be required to ensure quality workmanship appearance taste feel to be verified. It reminds me when SPO did a bid for such things like grocery items, canned goods. There were occasions that the sample of items were be displayed so that the staff could taste the product, check the quality before it would be an acceptable item. I think I mentioned that as far as brand name or equal brand name where the product needs to be accepted by the agency and that was mentioned in phase 1 you can inspect it and verify the quality per item.

Here, not meeting the requirements set in the product or service specifications or taking acceptations to the special provisions shall be cause for rejection. If they take exceptions to the special provisions they do not need the requirements for the product specifications they shall be cause for a rejection. We need to be fair. The award shall be posted on the procurement reporting system within 7 calendar days of award and the posting of award of the PRS or procurement reporting system actually can start the clock for protest. It's not always but that's one indicator when the vendor actually knows when the award was made. There's a procurement circular 2010-01 on posting of the awards. I believe it's a PANS circular. Please make sure you look at that, indicated in red. So after you make the selection and you want to award to them and you made the decision the award can be posted on the PRS system within 7 calendar days of the award.

Now what happens if all the bids exceed available funds? Well here in 103D-302 paragraph h, that's the competitive sealed bid it mentions that if all the bids exceed available funds then as certified by the appropriate fiscal officer, it has to be certified the appropriate fiscal officer, the HOPA can reduce the scope to negotiate an adjustment in price with the low responsible and responsive bidder. Have it documented by the fiscal officer, make sure it's documented, and kept in the file or you could, if everyone overshot the budget amount, you could cancel the IFB and adjust the scope and do a re-bid.

Now what do we do with tie bids? Periodically that happens. Tie bids can be resolved in various ways you could break the tie by awarding the contract to the business that their products are produced in Hawaii or maintains a business in the state. Now what if all the businesses are within the state? You can award to the incumbent contractor and you could award by drawing slots. SPO there were times where the State Procurement Office came to such a situation. In my understandings, we drew cards with the vendors. And vendor with the higher card got the awarded contract.

Now once, the bid is open doing evaluation what you need to do is you can create an abstract of the various line items that they bid on. The next slide will show that, but once you finish evaluation, create an abstract. You record an IFB number description of the good, services, or construction and the price each bidder submitted.

Here's that example. You can see the IFB number, the description, the opening, and the closing date of the IFB, the person who created the abstract and the prices submitted by each vendor. This often happens.

What if there's a single offer? So if you do only have one offer that is responsive or responsible you can award to them provided that the procurement officer determines that the price is fair and reasonable and that others or other offerors had reasonable opportunity to respond or there's not enough time to re-bid. A written determination of this should be kept in the file. Well if you are not sure how to do this

## **SPO 100 Part 2 – Competitive Sealed Bidding**

determination. Appeal to make a determination to make the price fair and reasonable. You can do research on the internet what the prices are for the same or comparable items you can visit retail stores or the club stores let's say. But you need to do research to see if the prices are fair and reasonable. Now the third bullet point: you can conduct an alternative procurement method held with the sole bidder first if that fails, then any contractor or vendor can enter into an alternate procurement but just keep in mind that alternative procurement method needs to be approved, needs to be authorized and approved.

Here's an example of a form we use to justify a sole offer. It is the first part of the page. The prices here are fair that's what the determination states here. The average increase is 3.3 percent higher than the prior year and often due to increase production cost so this is our determination that our solicitation put out that the prices that were submitted and this is for our prices every so many years when the price come back and this is sole offer, we do this determination. We check what was the price prior and in this case it was 3.3 percent higher and taking consideration, the production costs then it's fair and reasonable.

Alright I will cover this next. This is the second part. Second half of the file form you can use this as an example. This is not an official SPO form but you can copy it and use an example as far as how the procurement office would justify why that sole offer solicitation is fair and reasonable. This solicitation was also done on HePS where ample competition was available and also there is an order deadline so it wouldn't be adequate to re-solicit because we needed the products by a certain time.

Alright why don't I stop here and we will cover no bids received for IFB. Okay I believe I was here on no bids received and what happens when no bids are received and no bidders qualify in this case alternate procurement method may be conducted when it's not practical or advantageous to re solicit due to a tight time table to make an award or there are very few if any competition or cost to re solicit is very costly. Sometimes I used to feel bummed out I didn't get any offers. Basically I knew that in order to do an alternate procurement method, it would take much more time and effort in making an award.

When you do an alternate procurement method we make sure the followings are done. We record the reason for the selection and the contract period, we get prior approval of the CPO and the document becomes the part of the contract file. In the past we did alternate procurements and so what we did was we renamed the IFB. We added the alternate procurement title to our original IFB. We kept the offer form pages intact and if it was needed, we made changes to the specifications we also listed the special provisions as same requirements as the original IFB number and then we made sure we contacted the vendors to let them know that we are basically conducting alternative procurement method for the same IFB and we sent it to the vendors and we gave them a time and date to respond by.

Here's an example of a request form for alternative procurement method. This is to indicate here that only one responsive offer submitted. And if so, there are no time to re-solicit. Or if the re-solicitation is conducted it would have the same result. This is just an example just wanted to let you know this is a second page but this SPO form 15 has been updated. This is the older version. Since then I don't think we had any procurement alternate request.

Okay, protest under HRS 103D-701 now that we have done with the evaluation process what happens when the vendor wants to file a protest? So any bidder offer or contractor not happy about the solicitation or award may file for protest. Protest may be submitted in writing within 5 working days



## **SPO 100 Part 2 – Competitive Sealed Bidding**

after the posting of the award on the PRS. For the executive branch, our administrator has delegated authority to the HOPA to resolve protests. This is covered in procurement delegation 2010-01 and if a bidder or offeror or contractor actually the bidder offeror or contractor cannot protest the specifications of the bid the general condition and special condition of the bid after it closes. It must be done before and I guess is the reason here is the vendor and agency should resolve the matter before the closing of the bid. So if they're protesting the offerors protesting the specifications of the bid that has to be done before the closing of the bid. That's what I covered. I actually went one slide fast.

Okay here's the protest continued if there is a protest we would prefer it to be handled and resolve at the department level. If you can't then the protestor can file for an administrative hearing with the DCCA, the Department of Commerce and Consumer Affairs. So what this slide basically revealing here is that prior to the administrative proceeding, or action in court the CPO, chief procurement officer or designee may resolve the protest. CPO or designee shall issue a decision in writing to either uphold or deny the protest.

Continuing on with the protest. When the chief procurement officer or designee makes a decision a letter must be stated. The letter must state the reason for uphold or denial of protest and inform them of their right to an administrative proceeding. The letter should be immediately sent to the protestor and to their attorneys if they have one.

Next slide, here's an example of the protest letter. The letter refers to section that applies to the protest and states the reason for the protest denial or uphold. Also the letter informs them of their right to the administrative proceeding. So this is like a template. You would fill in the areas that's appropriate.

Continuing on with protest here. What this is saying is that even if the protest is denied by the procurement officer they still can file for administrative proceeding conducted by a DCCA. Act 173 SLH 2012 and I believe it was in 2013 it was also actually I take that back act 17 changes. There are several things here one, the hearing officer need to make a written decision no later than 45 days from the receipt of the request. Two, we will receive protest matter that is greater than \$10,000 or contracts less than \$1,000,000. We will review the poultrice matters that is 10 percent with contracts greater than \$1,000,000 protest bonds where the need to pay the DCCA a \$1,000 contracts of less than \$5000 to \$2,000,000 and above and that no later than 30 days from the filing of the application for judicial review decision is made. That is pursuant to 103D-710. What the second paragraph is saying is that on a timely protest, all action stops with a protest. All process is stayed until it is resolved unless the CPO makes a decision and need to be consultation with the procuring agency in order to lift the stay. So the CPO can lift the stay providing it's in order to protect the interest of the State.

Continuing on with protest: when a protest is sustained and the protestor should have been the winner of the bid but was not then they're entitled to the actual cost and connection with the bid within reason except for attorney fees. Again, this is saying that no action is to take place on solicitation for award of a contract while the proceeding is pending until the CPO makes a written determination that the award of the contract without the delay is necessary to protect the interests of the State. And if the protestor doesn't agree with the CPO or designee they can request for an administrative review by the DCCA hearings officer. The hearings officer will make a determination if the CPO were in accordance with constitution the statue, rules or terms and conditions of the solicitation an order such a relief as may be appropriate in accordance with 103D.

## **SPO 100 Part 2 – Competitive Sealed Bidding**

Here as far as with the protest, time limitations I mentioned earlier about Act 173 SLH 2012, these are changes made. So if the offeror or protestor after receiving denial letter from the CPO or designee they have up to 7 days to request administrative review with the DCCA. Now the act here requires that the hearings officer to conduct hearings or issue a written decisions no later than 45 days of receipt of request. It also sets the dollar thresholds. When you read this the math doesn't add up. It doesn't really makes sense. Now if the contract is worth less than \$1,000,000.00 and the protest concern is less than \$10,000 but let's say the contract is more than \$1,000,000.00, maybe \$1.2 million let's say. And the protest concerns are equal to or greater than 10 percent. Then that 1 million contract with a 10 percent of the estimated value can be \$100,000. So just by going up a little over the 1 million contract the protest concerns of being less than \$100,000 the DCCA would not review the file. So if you look, the math really doesn't add up there but I guess that's the way to help the decrease the number of filings. Also want to mention that after the decision of the hearings officer the protestor can still file within the Supreme Court to have a judicial review provided they file within the 10 day period.

As far as protests, SPO has put out a circular 2012-03 and it basically states that departments got a protest. They must keep records of the protest and to submit the SPO form 43 and that is for our office to keep statistics on the particular protest. First of all, please read the circular. There's a contact the person to provide the information to. Here's a second page of the circular and you could provide that to us and we need to by statute keep records of the protest.

This is the slide that I put in here. It tells you the responsibility of the offeror and why we created also the Hawaiian Compliance Express but here you can read as far as 103D - 310 and that the awarded the offeror that's awarded the contract is required to be compliant to all the laws governing or entities doing business with the State and they need to be compliant with the various chapters listed there. That's the general excise tax law the Hawaiian employment security law, the workers compensation law, TDI, temporary disability insurance and prepaid health care act and so with that requirement we've created the Hawaii Compliance Express this is a website to the HCE where the vendors register. It's faster and easier than the traditional way where the vendor would have to stand in line to the various agencies in order to get their compliances. It makes sense. The vendor for an annual fee of \$12, they wouldn't have to stay in line they would actually get reminders to re-register or to get their files updated.

Here's the contract template we will use the AG-03. We recommend that you use the attorney general boiler template for contracts goods and services and if you have supplement or extensions to your contracts you would use AG-005 and both forms are available on the web site. You can find them on our website. Actually I've seen them on the file central if you google file central you choose the AG forms these forms should be available. I'm not going to go over each form but there are instructions here you read them carefully. They're really self-explanatory. These are the instructions.

Now that you're ready. Let's say there's no protest, you did your evaluation, the vendor is HCE compliant or they're compliant with 103D-310c, then it is time to make an award Here's an example of a noticeable award basically telling the lucky vendor or awarded vendor that they will be awarded a contract. It is recommended you also send out the letters at this time to other vendors that were not chosen to at this time. We did that with SPO because rather than getting a whole bunch of whole calls on who was awarded we find that it's easier. It's not required by law or by a rule but we did as a practice.

## **SPO 100 Part 2 – Competitive Sealed Bidding**

The notice of award or the posting of award needs to be done on the procurement reporting system and so when you send out this letter you also need to post it on the procurement reporting system because it can start the clock for protest. So when we send this letter out basically giving them so many days to return it making sure that they'd also submit their proof of insurance along with that filled out AG-003 form. So they would be signing that form. So once you do receive the AG-003 form with their signature agreeing to the contract we make sure that actually if this is a contract that needs to be encumbered we go to the process of submitting an encumbrance form. I believe it's C 41 to the pre-audit office. Make sure that they have encumbered funds in order for this contract to be valid, there needs to be funds available. But once we get that back, a certification form from our pre-audit office then we could issue a notice to proceed. And here's an example of a notice to proceed. This is done when all the signatures that are required are obtained and we have certification of funds and therefore we send out this letters to vendors telling them when they can start to work on the contract or order the goods.

That's it for the IFB portion as far as the process that you would go through some of the considerations. Here I'll take a little time on preferences because there are several preferences that apply to IFBs and let me go through them quickly here. These are the preferences there are nine. You can't make up your own preference. The preferences have to exist via the law. The law mandates it. We have nine here actually one of them; the last one is really not a preference but it's a set a side and I'll cover that later individually.

The first preference, the Hawaii product preference. And it applies to both competitive sealed bids and also proposals. This can be found on HRS 103D-1002. It is also found on your HARS 3-124 subchapter one. So as far as Hawaii products, here you would the actually on our State Procurement website we have this preference Hawaii products where it would display construction items, food items other items that actually are produced in the state. There's actually quite a few categories but this mainly if you look at constructions items. In your solicitation it's required that if you're using certain products that are Hawaiian products, you need to identify where it's listed can be found and also designate in your IFB what are those items. Actually the best thing to do to is view those items on our websites if you have questions give me a call or Stan Mato a call. This also is covered in the construction procurement given by Eric Nishimoto as well. So there's a lot of information on Hawaii products and this is to favor or actually give a preference for products made in Hawaii. Either they would have a preference of 10 percent or a 15 percent depending on the class. So if it's class one it's 10 percent. If it's class two it's 15 percent. And to qualify for 15 percent those products need to be agricultural product, floricultural product, or aquacultural product that's grown in the State. If you actually go to a preference, it will spell it out.

Let me move on to the next. This preference is for printing binding and stationary work. If your IFB is for this type of work, you will require the vendor to indicate in all their work in the printing process to be identified as either conducted in Hawaii and if it's conducted out of the state. So if that portion of the business or the printing is conducted in the state you would increase the price or the portion that is done in the state. So when you design the offer form page, you should take a look into your account that breakdown of work to be done to complete the job. So in here it says evaluation procedure the amount of the bid perform out of state shall be increase by 15 percent. That's the key. You would increase the out of state portion of the bid by 15 percent and then you can evaluate from there.

## **SPO 100 Part 2 – Competitive Sealed Bidding**

Here's a reciprocal preference. It's rarely done. This reciprocal preference if you apply basically if you have a preference that is not covered. Let's say you have a higher tax preference. Let's say another state has another preference higher tax other than our 4 percent. You would basically charge the difference. You would increase the out of state offer the difference between theirs and ours. Think that might be the easiest way I can explain it. This reciprocal one is a little tricky there. I can explain further but I really don't want to dwell too much on this because I do have others to cover as far as the preferences and also HlePRO, the electronic procurement.

Here is the recycled product preference. This is covered in HRS 103D-1005. It's involved as far as recycled products that are included to paper, paper products, glass, glass by products, mulch and soil amendments. The standards and specifications for recycled products if you could validate shall be reduced shall not reduce the quality standards for high way and road constructions. There is a form to use when you're doing a solicitation. It's a SPO form 8 you would need to include that on your IFB. You would have your vendor fill that out. And submit with your bid and other information to support the recycled content of the products.

Here is another software development preference. Now these preferences if they don't apply to what you're actually procuring; don't put them in. It just wouldn't apply and therefore you would leave that out. But if you are procuring for software development business, there is a preference. You need to include a SPO form 9. It's a certificate of eligibility and basically it's saying that the company can request for preference if the work that they're doing for software where at least 80 percent of the employees working under proposed software resides in Hawaii.

Here's a tax preference basically here the rule says that solicitations IFBs shall contain a notice stating that tax preference would be given to tax paying bidders for the state. And this is to counter the vendors that are bidding that are out of state and are not paying the state tax.

This another a preference. It's for qualifying community rehabilitation program. It's called partners in employments program, PEP. It is located on our State Procurement website under the price list and basically this is a partnership between the state and the community rehab programs. And that is to provide jobs such as janitorial services or food service or grounds keeping or industrial sewing, laundry services and it's a run by actually goodwill industries of Hawaii. They're the PEP coordinator. But anyway if you need more information on that, it's provided on our State Procurement website on our price list number is 02-45.

This is a preference for biofuel there is no biofuel preference as far as HARs that's submitted but I just want to mention that there is a preference and if 5 cents per gallon of 100% bio diesel.

Let me move on here. Set aside for small business. This is not a preference. It's actually a set aside where if let me get to the point here and that is there is a statute the HARs that were in existence. They are expired and therefore, there is no way of implementing this statute until further HARs is created. That's all I want to say on this because it's really not applicable. Until that's developed.

Okay competitive sealed bids. This is the last portion and it's covering the HePS or HlePRO for the last year or so SPO has been working on upgrading the e-procurement system now over the next few months the state agencies have been transitioning from current e-procurement system or HePS to the new Hawaii State e-procurement application which is HlePRO. And it's pronounced HI PRO. Okay so

## **SPO 100 Part 2 – Competitive Sealed Bidding**

what you need to do is you can click on the HlePRO for vendors contractors to learn more about the transition and HIEPRO. Just want to mention the agencies that have been using HePS. The system for HePS will be shutting down sometime in February. Okay so don't start any new HePS purchasing after December because you may not be able to award by the closedown.

What I do want to mention here is that the HePS system or HIEPRO system is for issuing solicitations and for receiving responses. And issuing notices award and keeping tracking of the procurement. It has features here that are basis of it. You need to have vendor registration. You would have electronic solicitation submitted, you have e-mail notifications to the vendors when bids are available or solicitations are up. Submissions are done through electronically so there's no paper form submitted and basically we've done electronically. Advantages here over paper conducting procurement that it's searchable you can actually search for procurements done in the past that would basically be similar to what you're trying to procure.

Here you have HlePRO. What's the purpose of HlePRO or HePS? That is to be open and transparent to our stakeholders which is all the taxpayers, all the residents in Hawaii. And must be fair to all qualified vendors and that we're all accountable. It does leave an audit trail. There is procedures consistent with the statues and rules and it is under the ABA as far as model procurement code. It's fulfilled there.

Alright so here you can read as far as the HlePRO where we embarking in HlePRO in February this is where the vendors can register it is also the site where SPO training is available you can click on the home page and click on training and you will see that there are various HlePRO trainings. You can register for the HlePRO 301 that is for I believe putting solicitations for quotes and there's also a class you can take for 311 and that is for putting out IFBs under HlePRO and this class is required in order to put out bids through HlePRO.