

# PROCUREMENT POLICY BOARD

Regular Meeting

Tuesday, December 18, 2018, 1:30 pm

Kalanimoku Building ♦ 1151 Punchbowl Street, Conference Room 410 ♦ Honolulu, Hawaii 96813

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## A G E N D A

<b>I.</b>	<b>Call to Order</b> , Public Notice, Quorum
<b>II.</b>	<b>Approval of Minutes</b> – <a href="#">Meeting of March 6, 2018</a>
<b>III.</b>	<a href="#">Act 233, SLH 2015, “Relating to Hawaiian Plants”</a> A. <a href="#">Procurement Directive</a> B. <a href="#">Procurement Circular</a>
<b>IV.</b>	<b>Small Business Registration &amp; Database</b>
<b>V.</b>	<b>Hawaii Administrative Rules Review</b>
<b>VI.</b>	<b>Procurement Review – Emergency Procurement</b>
<b>VII.</b>	<b>Announcements</b>
<b>VIII.</b>	<b>Next Meeting</b>
<b>IX.</b>	<b>Adjournment</b>

- Please allow 2 hours for the meeting.
- Agenda and available agenda items may be viewed at <http://spo.hawaii.gov/procurement-policy-board/>
- Individuals requiring special assistance or services may call (808)587-4701 by Noon on Monday, December 17, 2018, to discuss accommodations.

**PROCUREMENT POLICY BOARD**  
**Meeting Minutes**  
**Tuesday, March 6, 2018, 1 p.m.**  
**Comptroller's Conference Room**  
**Kalanimoku Building, Room 410, 1151 Punchbowl Street**  
**Honolulu, Hawaii 96813**

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**Members Present**

Elizabeth Webb, Vice-Chair  
Kathy Suzuki-Kitagawa, Secretary  
Roderick K. Becker  
Lena Cullison  
Gary Kurokawa  
James Mastin

**Guests**

Shannon Alivado, General Contractors Assn.  
June Burke, Grainger  
Lance Inouye, General Contractors Association  
Shannon Law, AHFI  
Kamaile Maldonado, Office of Hawaiian Affairs  
Timothy Partelow, AHFI

**Staff**

**State Procurement Office**

Sarah Allen, Administrator  
Mara Smith, Assistant Administrator  
Ruth Baker  
Bonnie Kahakui  
Stacy Kauleinamoku  
Shawn Richey  
Kevin Takaesu

Stella Kam, Department of the Attorney General  
Audrey Hidano, Department of Accounting and  
General Services  
Robyn Pfahl, Department of Agriculture

**I. Call to Order, Public Notice, Quorum**

Vice Chair Elizabeth Webb called the Procurement Policy Board (PPB) meeting to order at 1:00 p.m., with a quorum present.

**II. Approval of September 20, 2017, Meeting Minutes**

Gary Kurokawa made a motion to accept the minutes of the September 20, 2017, meeting as presented. Kathy Suzuki-Kitagawa seconded the motion, and the PPB members unanimously approved the minutes.

**III. Election of Officers**

Pursuant to Hawaii Revised Statutes 103D-201(3)(e), the members held an election for the position of chairperson, plus vice-chair and secretary. Lena Cullison made a motion to nominate

- Ms. Webb as Chair
- Ms. Suzuki-Kitagawa as Vice-Chair
- Roderick Becker as Secretary

Mr. Kurokawa seconded the motion, and the PPB members unanimously approved the slate of officers.

**IV. PPB Nominating Committee**

Ruth Baker of the State Procurement Office (SPO) reported that on March 5, 2017, she followed up with the Office of the Governor on the second person to appointed to the PPB Nominating Committee, but has not yet received a name. The initial letter requesting the names of two people was sent to the Governor in April 2017.

**V. Act 233, SLH 2015, "Relating to Hawaiian Plants"**

SPO Administrator Sarah Allen introduced Kevin Takaesu of the SPO and Kamaile Maldonado, Public Policy Advocate of the Office of Hawaiian Affairs (OHA). The SPO had previously presented a draft Procurement Directive and Procurement Circular to the PPB at its January 19, 2017, meeting. The PPB had various questions regarding the substitution and exclusion of plants.

Mr. Takaesu explained that Ms. Maldonado will explain the Procurement Circular, Procurement Directive and Request for Information (RFI) regarding the implementation, request for information, and exclusions to Act 233, SLH 2015, Relating to Hawaiian Plants. The draft Procurement Directive and Procurement Circular were provided to the PPB for review.

Ms. Maldonado explained that HRS § 103D-408 formerly required the use of Hawaiian plants “wherever and whenever feasible,” and now requires that new and renovated public landscaping include gradually increasing minimum percentages of Hawaiian plants, subject to exclusions. The law is to be implemented January 1, 2019, with a gradual timetable for the incorporation of Hawaiian plants as follows:

- 10% of the total plant footprint for landscaping by 2019
- 25% of the total plant footprint for landscaping by 2025
- 35% of the total plant footprint for landscaping by 2035

This requirement is subject to some exclusions, whereby areas landscaped for certain functions can be excluded from the total plant footprint upon which the minimum percentage of Hawaiian plants is based. Calculation of the total plant footprint and excluded areas are described in greater detail in the draft Procurement Circular.

The draft Procurement Circular states that a purchasing agency may approve a request to exclude a certain area of a project from the requirements of Act 233 (SLH 2015) because of special landscaping needs or environmental conditions. The Procurement Circular would establish and effectuate such guidelines and procedures.

Act 233 (SLH 2015) was signed into law by Governor David Y. Ige on July 13, 2015, and went into effect on June 30, 2016. However, the amendments will not affect landscaping plans or projects that have already been initiated, as Act 233 (SLH 2015) does not apply as to impair any contract existing as of the effective date of June 30, 2016.

Ms. Maldonado stated that following the passage of Act 233 (SLH 2015), OHA immediately began working with SPO staff to develop the procedures, standards, and guidelines to support the Act's exclusion provisions. She added that OHA has contracted to present 12 training sessions to be offered to landscaping professionals and procurement specialists on Hawaiian plants.

Ms. Maldonado reported that the draft Procurement Directive and Procurement Circular were circulated among many landscape industry professionals as well as several representatives of affected state agencies. OHA also presented information about the newly passed legislation at the 2016 Landscape Industry Council of Hawaii (LICH) Conference and received several informal comments during that session. In October 2017, OHA additionally issued a formal RFI requesting comments from landscaping professionals on the drafts of the Procurement Directive and Procurement Circular. OHA received feedback on exclusions based on landscaping needs that cannot be met by Hawaiian plants, and those exclusions were added to the Procurement Circular. There were other agencies and stakeholders who did not respond to the request for feedback on the Procurement Directive and Procurement Circular.

Ms. Allen said that the PPB can add exclusions to the Procurement Circular at any time.

As requested by the PPB members, the SPO will seek feedback on the guidelines and the exclusions to Act 233 (SLH 2015) and the draft Procurement Circular from the Public Works Divisions/Engineering Divisions in the State of Hawaii, and all Chief Procurement Officers.

The matter was tabled to a meeting to be held in April.

#### **VI. Conforming of Rules**

Mr. Takaesu informed the PPB that the SPO must amend its Hawaii Administrative Rules (HAR) due to changes to the HRS, or to provide clarity and eliminate ambiguity in the rules. Pursuant to Hawaii Revised Statutes (HRS) §91-5, compilations shall be supplemented as often as necessary and shall be revised at least once every ten years. The SPO amended HAR 3-120, 3-122, and 3-130, in 2016. Mr. Takaesu stated that the SPO must review/compile approximately five chapters of the HARS, including HAR 3-122 and 3-125. After revising/drafting the rules, the SPO will have other state agencies and stakeholders review the rules. The next steps are having the Legislative Reference Bureau review the rules, then submitting the proposed rules to the PPB for review.

#### **VII. 2018 Legislature**

Ms. Allen reported that the SPO began the 2018 Legislative Session tracking 44 House Bills and 59 Senate Bills. The SPO continues to track or testify on 20 House Bills and 26 Senate Bills that are still alive after First Decking on March. Some of the bills are as follows:

- [HB 1963 HD1](#) – Directs the PPB to adopt rules that establish procedures for joint offers and contract awards to joint offerors. SPO already allows for this, and testified that this bill is not necessary.
- [HB 2055 HD1](#) – Appropriates funds to the SPO for two full-time construction procurement specialists to support the SPO. SPO supports this bill.
- [HB 2581 HD2](#) – Establishes the Office of Public-Private Partnership (P3) Office and allows P3s to exist in the state. While there are several bills regarding P3s, HB 2581 HD2 brings P3s into the Procurement Code. The Governor's version of the bill has P3s outside of the Procurement Code.
- [SB 2601 SD2](#) – Requires periodic past performance. Ms. Allen will talk about this bill in the agenda item regarding "Past Performance."
- [SB 2602 SD1](#) – Requires the PPB to conduct annual compliance examinations of procurement contracts that are more than \$50,000 of at least two departments, divisions, or agencies. A prior bill required the PPB to conduct audits. While SB 2602 SD1 changed the audits to reviews, the implication of this bill is that the reviews will be made public.
- [SB 2831 SD2](#) and [HB2404](#) – Reinstates the UH President as CPO of UH's construction projects. SPO supports this bill.
- [SB 2913 SD1](#) – Requires training and periodic review training. SPO supports this bill.
- [SB 2996 SD3](#) – Establishes the Hawaii Airports Corporation, which separates the airports from the DOT and exempts the Corporation from the Procurement Code. SPO suggests that the Corporation have its own CPO jurisdiction within the Procurement Code.

#### **VIII. Small Business**

Ms. Allen provided background on the small business. There is a small business set-aside in the HRS since 2007, but it has not been implemented. She also reported that the SPO created a Small Business Advisory Group consisting of different stakeholders. Although the SPO is awaiting release of funds appropriated by pursuant to Act 42 (SLH 2017), it is looking at implementing a database in which small business can register.

#### **IX. eProcurement**

Ms. Allen reported that the SPO is conducting pre-work with the hope of the implementation of an eProcurement System, which will be a "cradle-to-grave" system that will handle various modules such as contract management, data analytics, vendor management, cataloging, and source selection. Until the SPO can obtain funding for an eProcurement system, it is working with a company that is providing a free business case evaluation on potential cost savings. It is also pulling metrics on gap analysis that was already conducted to see what procurement processes need to be fixed with each department.

#### **X. Hawaii Awards & Notices Data System (HANDS)**

HANDS launched on November 20, 2017, an upgrade from the Procurement & Awards Notices (PANS). HANDS incorporates the posting of solicitation and award notices and requests for CPO approvals into one application, with a single login and password. Users can post an award notice directly from a solicitation notice or CPO approval request, or create a solicitation on HlePRO or check compliance. The departments can assign roles and approval paths, and create a notification to all their

department users for both HANDS and HlePRO. Users have their own dashboard to keep track of their solicitations with a calendar and due dates.

After SPO signed the statement of work for the project in August 2016, users were kept updated about the project through procurement circulars and periodic email blasts. In Fall 2017, SPO conducted four training sessions for 76 administrators and 240 users, and posted a video guide, user manuals and webinar recordings on the SPO website.

The SPO continues to work with the developers to improve and enhance HANDS, which was to be a "one-stop shop" in which vendors can view all procurement notices across the state and a few other jurisdictions. The SPO also continues to work with the remaining jurisdictions on being interfacing with HANDS.

**XI. Training**

Ms. Allen reported that the SPO is working on updating and improving its training webinar, and starting a certification program. The challenge with implementing a certification program is finding one that is affordable for the state. She reiterated that [SB 2913 SD1](#), which requires training, continues to move through the 2018 Legislative Session.

**XII. Past Performance**

Ms. Allen stated that the PPB last discussed Past Performance during its meeting on October 30, 2014. The PPB asked to table the discussion on Past Performance until after it gets direction from the State Legislature. The issue is brought up in [SB 2601 SD2](#), which will require a review of past performance in accordance with rules adopted by the PPB. The SPO will continue to track this bill. If the bill passes, the PPB can take up the discussion on Past Performance.

**XIII. Disaster Preparedness**

Ms. Allen said that the SPO will be participating in a disaster preparedness exercise. The SPO and the Hawaii Emergency Management Agency are reviewing the Federal Emergency Management Agency's (FEMA) terms and conditions to ensure that State and Counties have language in our contracts so we are not required to reimburse FEMA for purchases made during emergency situations. Ms. Allen is heading a task force with the National Association of State Procurement Officials to come up with terms and conditions for disaster procurement that can be consistently be applied to NASPO statewide contracts so they can withstand a FEMA audit.

**XIV. Announcements**

Robyn Pfahl of the Hawaii Department of Agriculture reported that the department is launching an initiative with the SPO on communications/outreach on how locally grown products can be used by state agencies through the Hawaii Product Preference.

**XV. Next Meeting**

The next PPB meeting will take place in April 2018. SPO staff will take a poll on the availability of members for the next meeting.

**XVI. Adjournment**

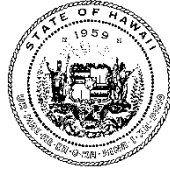
The meeting was adjourned at 2:40 p.m.

Respectfully submitted,

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Roderick K. Becker  
Secretary, Procurement Policy Board

DAVID Y. IGE  
GOVERNOR



PROCUREMENT POLICY BOARD  
RODERICK K. BECKER  
ELIZABETH WEBB  
LENA MOBIN CULLISON  
GARY KUROKAWA  
JAMES MASTIN  
KATHY SUZUKI-KITAGAWA

SARAH ALLEN  
ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 587-4700  
email: [state.procurement.office@hawaii.gov](mailto:state.procurement.office@hawaii.gov)  
<http://spo.hawaii.gov>  
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

December 11, 2018

PROCUREMENT DIRECTIVE NO. 2019-01

TO: Chief Procurement Officers (CPOs):  
Department of Education, Superintendent  
University of Hawaii, President  
Office of Hawaiian Affairs, Chairperson of the Board  
Hawaii Health Systems Corporation, President and Chief Executive Officer  
Judiciary, Administrative Director of the Courts  
Senate, President  
House of Representatives, Speaker

Counties of Hawaii, Kauai, Maui, and City & County of Honolulu  
Executive Branch, Finance Director  
Legislative Branch, Chairperson of the County Council  
Board/Departments of Water Supply, Manager/Chief Engineer  
Honolulu Authority for Rapid Transportation, Executive Director

FROM: Sarah Allen, Administrator

SUBJECT: Act 233 SLH 2015 (HB 206 HD2, SD1, CD1): SECTION 2  
Hawaiian Plants; use in public landscaping

House Bill No. 206 HD2, SD1, CD1 was signed by Governor on July 13, 2015, with the effective date of June 30, 2016. The purpose of this Act is to amend HRS §103D-408 to require that all publicly funded landscaping projects include a minimum percent of Hawaiian plants, in order to contribute to a Hawaiian sense of place, to reduce the use of non-native invasive plant species, and to support the preservation of Hawaii's cultural and ecological heritage.

SECTION 2 amends HRS §103D-408 in the following major ways:

- Renames HRS § 103D-408 as "Hawaiian plants; used in public landscaping."
- Defines Hawaiian plants.

- Subject to exceptions, requires all plans, designs, and specifications for new or renovated landscaping of State-developed buildings, complexes, facilities, or housing to incorporate minimum percentages of Hawaiian plants.
- Sets a timetable for the incorporation of Hawaiian plants into the plans, designs, and specifications of State Buildings as follows:
  - By January 1, 2019, ten percent of the total plant footprint.
  - By January 1, 2025, twenty percent of the total plant footprint.
  - By January 1, 2030, thirty five percent of the total plant footprint.
- States that the purchasing agency may exclude from the total plant footprint calculations those areas where available Hawaiian plant species are not appropriate for the particular landscaping needs or environmental conditions of such areas. Exclusion procedures shall be established by the procurement policy board (PPB).

Procurement Circular No. 2019-03 provides guidelines and procedures for purchasing agencies to make determinations on request for exclusions from HRS §103D-408(c), and to provide additional information to support the implementation of Act 233.

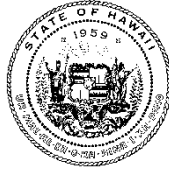
NOTE: The amendments to HRS § 103D-408 shall not affect landscaping plans or projects that have already been initiated as Act 233 does not apply so as to impair any contract existing as of the effective date of June 30, 2016 pursuant to SECTION 3 of the Act.<sup>1</sup>

A complete listing of all current Procurement Directives is available at: <http://spo.hawaii.gov>, click on *References*, and then click on *Procurement Directives*.

If your staff has questions on the procedures for requesting an exclusion, they may contact Stacey Kauleinamoku at 586-0571 or e-mail [stacey.l.kauleinamoku@hawaii.gov](mailto:stacey.l.kauleinamoku@hawaii.gov), or you may call me at 587-4700.

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<sup>1</sup> Section 3 of Act 233 provides that “[t]his Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawai‘i State Constitution or article I, section 10, of the United States Constitution.”



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 587-4700  
email: [state.procurement.office@hawaii.gov](mailto:state.procurement.office@hawaii.gov)  
<http://spo.hawaii.gov>  
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

December 11, 2018

PROCUREMENT CIRCULAR NO. 2019-03

TO: Office of the Governor, Chief of Staff  
Office of the Lieutenant Governor, Chief of Staff  
Executive Department Heads  
Hawaii State Public Library System, State Librarian

Chief Procurement Officers (CPOs):  
Department of Education, Superintendent  
University of Hawai'i, President  
Office of Hawaiian Affairs, Chairperson of the Board  
Hawaii Health Systems Corporation, President and Chief Executive Officer  
Judiciary, Administrative Director of the Courts  
Senate, President  
House of Representatives, Speaker

Counties of Hawaii, Kauai, Maui, and City & County of Honolulu  
Executive Branch, Finance Director  
Legislative Branch, Chairperson of the County Council  
Board/Departments of Water Supply, Manager/Chief Engineer  
Honolulu Authority for Rapid Transportation, Executive Director

FROM: Sarah Allen, Administrator

SUBJECT: Act 233 SLH 2015 (HB 206 HD2, SD1, CD1): SECTION 2  
Hawaiian Plants; use in public landscaping

This Procurement Circular is intended to provide notice and explanation of recent statutory amendments to HRS § 103D-408, pursuant to Act 233 (2015), regarding the use of Hawaiian plants in new or renovated landscaping for state projects using public moneys. The information provided below is intended to assist with implementation of Act 233 (2015). Additional information may be provided in the future in the form of Procurement Policy Board Guidelines and Procurement Circulars.



## **I. Overview of Statutory Changes**

In 2015, the State Legislature amended HRS § 103D-408 to set clear mandates for the use of Hawaiian (native and Polynesian-introduced) plants in public landscaping, in furtherance of the preservation of Hawai'i's cultural and ecological heritage, among other purposes. See Preamble, Act 233 (Reg. Sess. 2015). Act 233 amended HRS § 103D-408 by removing the "wherever and whenever feasible" qualification for the use of native plants in public landscaping, and instead requiring new and renovated public landscaping projects to include gradually increasing minimum percentages of Hawaiian plants, subject to exclusions, as discussed below.

Act 233 was signed by Governor Ige on July 13, 2015, and became effective on June 30, 2016. The amendments made by the Act should not affect landscaping plans or projects that had already been solicited or contracted as of its effective date of June 30, 2016.<sup>1</sup>

This guidance material is intended to provide guidelines for purchasing agencies to evaluate possible exclusions from HRS § 103D-408(c), and to provide additional information to support the implementation of Act 233.

## **II. Act 233 Requirements**

HRS § 103D-408 defines Hawaiian plants as endemic or indigenous plant species as well as those brought to Hawai'i by Polynesians before European contact, such as kukui, kalo, wauke, niu, noni, and kamani. The law intends to set clear mandates for the use of Hawaiian plants in public landscaping.

This law applies to all plans, designs, and specifications for construction of new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, or housing developed by the State with public moneys.

**All plans, designs, and specifications for all State-developed, publicly-funded landscaping approved or solicited after the dates described below, must include the minimum Hawaiian plant footprints required by each date, subject further to the conditions and exceptions found in HRS 103D-408(a) and (d).**

HRS § 103D-408 continues to require that:

1. Cultivated plants can be used to fulfill Hawaiian plant requirements so long as they do not jeopardize wild plants in their natural habitat;
2. Wherever and whenever possible, the Hawaiian plants used to fulfill these requirements should be sourced from the island and ahupua'a in which they were found or known to occur prior to European contact;
3. Each Hawaiian plant or group of plants used to fulfill these requirements shall be clearly identified with signs for the edification of the general public.

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<sup>1</sup> Section 3 of Act 233 provides that "[t]his Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawai'i State Constitution or article I, section 10, of the United States Constitution."

Whereas HRS § 103D-408 formerly required the use of Hawaiian plants “wherever and whenever feasible,” the statute now requires a gradually increasing minimum percentage of public landscaping projects to be composed of Hawaiian plants. Currently, HRS § 103D-408 requires that, subject to exclusions, Hawaiian plants shall compose:

- a. 10% of the total plant footprint for landscaping by 2019;
- b. 25% of the total plant footprint for landscaping by 2025; and
- c. 35% of the total plant footprint for landscaping by 2030.

As noted, this requirement is subject to some exclusions, whereby areas landscaped for certain functions can be excluded from the total plant footprint upon which the minimum percentage of Hawaiian plants is based. Calculation of the total plant footprint and excluded areas are described in greater detail below.

### **III. Definition of Hawaiian Plants**

“**Hawaiian plants**” are endemic, indigenous, and Polynesian introduced plants. Specifically, Hawaiian plants are defined in Act 233 (2015) as “any endemic or indigenous plant species, including land, freshwater, and marine plant species, growing or living in Hawai‘i without having been brought to Hawai‘i by humans; or any plant species, including land, freshwater, and marine plant species, brought to Hawai‘i by Polynesians before European contact, such as kukui, kalo, niu, noni, and kamani.” HRS § 103D-408e.

### **IV. Procedures for Exclusion from Total Plant Footprint**

In a written memo for record for the contract file, the purchasing agency for any new or renovated landscaping may exclude from total footprint calculations those areas where Hawaiian plant species are not appropriate for the particular landscaping needs or environmental conditions of the plan or subject site.

At the sole discretion of the head of the purchasing agency (“HOPA”), an exclusion may be applied only to the footprint area necessary to serve the project functions for which there is no Hawaiian plant alternative including, but not limited to:

- 1) Areas of turf grass necessary for functional lawn space needed and intended for gatherings, events, recreation, roadway shoulders used for pedestrian access, etc.;
- 2) Landscaping for extreme environmental conditions (e.g.- where severe erosion threats require a level of control Hawaiian plants cannot provide);
- 3) The canopy footprints of trees designated as exceptional trees under chapter 58, and street trees; and
- 4) Landscaping associated with the following types of properties or uses:
  - a) A “historic property” under HRS § 6E-2 designated as “significant” under HAR § 13-275-6;
  - b) Property listed in the National Register of Historic Places;
  - c) Property listed in the Hawai‘i Register of Historic Places;
  - d) Research sites;
  - e) Food or medicinal production plots; and
  - f) Cultural heritage gardens.

### **Contact Information**

If your staff has questions on the procedures for requesting an exclusion, they may contact Stacey Kauleinamoku at 586-0571 or e-mail [stacey.l.kauleinamoku@hawaii.gov](mailto:stacey.l.kauleinamoku@hawaii.gov) or you may call me at 587-4700.

For information on invasive species, the Hawaii-Pacific Weed Risk Assessment and Plant Pono, contact the Coordinating Group on Alien Pest Species (CGAPS): [www.cgaps.org](http://www.cgaps.org); (808) 722-0095.

DRAFT