

PROCUREMENT POLICY BOARD MEETING

November 12, 1997

1:00 p.m.

Comptroller's Conference Room
1151 Punchbowl Street, Room 410
Honolulu, Hawaii 96813

Members Present

Robert Oyama, Chairman
Claire Motoda, Vice Chair
Sam Callejo, Secretary
Bill Gray, Member
Haruo Shigezawa, Member

Others

Lloyd Unebasami, Administrator
Robert Governs, State Procurement Office
Justin Fo, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Doris Lee, State Procurement Office
Taren Taguchi, State Procurement Office
Kay Fujimoto, State Procurement Office
Pat Ohara, Attorney General's Office
Gwen Won, University of Hawaii
Rumiko Okuma, State Auditor's Office
Jack Rosenzweig, Attorney General's Office
Charles Katsuyoshi, Finance Department, City and County of Honolulu

Call to Order

The meeting was called to order at 1:00 p.m. by Chairman Robert Oyama.

Minutes

In reviewing the minutes of October 14, 1997, Mr. Gray suggested that Mr. Oyama's title be corrected to read "Chairman."

Motion

A motion was then made by Mr. Bill Gray, seconded by Mr. Sam Callejo, to approve the minutes of the meeting held on October 14, 1997.

AYES: Mr. Robert Oyama
Ms. Claire Motoda
Mr. Sam Callejo
Mr. Bill Gray
Mr. Haruo Shigezawa

NAYS: None

The minutes were approved as corrected.

New Business

A. For Action

1. Proposed Legislation - AGS-1(98), Relating to Procurement.

Mr. Bob Governs explained the major revisions of the proposed bill:

Section 21, page 18. The present law disallows an individual who has a contract with the State from serving as a member of the Procurement Policy Board. The proposed amendment would permit such an individual to serve as a member of the Procurement Policy Board.

Section 22, page 19. The amendment allows for the establishment of a travel administrator position within the State Procurement Office. This position already exists within the department and the amendment places the position under the Administrator of the State Procurement Office. A proviso is also added to provide the Administrator the authority to establish and fill additional positions as may be necessary to carry out the functions of this chapter.

Sections 26 and 27, pages 23-25. As a result of input from Honolulu County, the proposed amendment clarifies that the annual inventory report submitted to the Administrator of the State Procurement Office and the county councils is an annual inventory report of all nonexpendable state property in the use, custody or possession of the counties.

Questions and comments:

- a. In reference to section 7, page 5, Mr. Bill Gray stated that he recalled the old law contained references to "out-of-state" bidders. Mr. Governs explained that this new section refers to in-state bidders. As an example, in applying the preference, an in-state tax-exempt bidder's price would be increased by the applicable tax rate, depending on the category of the bid.

Mr. Unebasami explained that the adjustment made by applying the applicable tax preference rate to the price offered places the bids on an equal plane for evaluation purposes.

- b. In reference to Mr. Shigezawa's question on the fixed asset system, Mr. Unebasami stated, for the Board's information, that the University of Hawaii (UH) will be submitting an administration bill which proposes to set a higher minimum reporting dollar limit for the annual inventory reporting requirement to the State Procurement Office.

Mr. Shigezawa also asked for the dollar value of nonexpendable inventory items which should be reported. Mr. Unebasami said that it is currently at \$250, although the State Auditor has recommended a higher value of \$500.

- c. Section 17, page 11. Mr. Oyama recommended that the term "supply services" on lines 12 and 14, be changed to "performing services" or "perform services," whichever term may be grammatically correct as it pertains to the context of the sentence. The change is recommended to keep the language consistent throughout this section.
- d. Mr. Governs stated that other housekeeping revisions to form or format may be necessary, if recommended by the Attorney General's Office which is still reviewing the bill. Also, the Board will be notified of any significant changes which may be made to AGS-1(98).

Motion

Mr. Haruo Shigezawa made a motion to approve the proposed legislation, AGS-1(98), as submitted by staff with the minor changes

agreed upon by the Board. The motion was seconded by Mr. Sam Callejo.

AYES: Mr. Robert Oyama
Ms. Claire Motoda
Mr. Sam Callejo
Mr. Bill Gray
Mr. Haruo Shigezawa

NAYS: None.

The motion was carried by a unanimous decision.

2. Proposed Legislation - AGS-2(98), Relating to Legal and Contractual Remedies of Part VII, Chapter 103D.

Mr. Governs stated that there were no significant changes made to the proposal since the staff's last presentation to the Board. The proposal is still being reviewed by the Attorney General's Office. Ms. Ohara reported that the AG's staff who reviewed the proposal have recommended some revisions and the draft is now awaiting the AG's signature.

Page 1, line 13. Mr. Oyama asked for an explanation on how a notice of award is publicized. Mr. Governs explained that letters are sent to the winning and losing offerors. The administrative rules call for a notice of award document.

Mr. Gray suggested that in the future the Board should address the issues surrounding "notice of award", "award" and "notice to proceed" to avoid any misunderstandings in this area.

Mr. Gray recommended that the following corrections be made:

- a. Page 2, line 6. Delete "of either officer" and insert "or" between "agency" and "designee." Subsection (c) should read:

"(c) If the protest is not resolved by mutual agreement, the head of a purchasing agency or designee shall promptly issue a decision in writing. The decision shall:"

- b. Page 9, line 5. The word "proposed" should be changed to "proposal." Subsection (c) should read:

"(c) That the rejection of any proposal or bid is in violation of law, then the rejection shall be set aside and the proposal or bid re-evaluated, together with any others, consistent with the law."

- c. Page 9, line 9. The word "officers" should be changed to "officer." Subsection (f) should read:

"(f) The hearings officer shall decide whether the determinations of the chief procurement officer or the head of the purchasing agency, or their respective designees were in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation or contract, and shall order such relief as may be appropriate in accordance with the provisions of this chapter."

Motion

Ms. Claire Motoda moved, seconded by Mr. Bill Gray, to defer action on item 2, Proposed Legislation - AGS-2(98), Relating to Legal and Contractual Remedies of Part VII, Chapter 103D, until the Attorney General's Office completes its review.

AYES: Mr. Robert Oyama
Ms. Claire Motoda
Mr. Sam Callejo
Mr. Bill Gray
Mr. Haruo Shigezawa

NAYS: None

The motion was passed by a unanimous decision.

3. Proposed Amendments to Bond Forms.

Mr. Governs explained that the materials provided to the Board contain comments from the public which are listed as Attachments 1 and 2. Amendments are being proposed for the bond forms which are listed as Exhibits A, B, and D. Any amendments adopted for these forms will also be made to the other bond forms, as applicable. Upon the Board's approval, the revised bond forms will be issued by a procurement directive. Ms. Doris Lee explained the amendments:

Exhibit A. The amendments for the Surety Bid Bond, Exhibit A, are mainly word changes; e.g., "bidder" changed to "offeror." The changes are necessary to be in conformance with the other bond forms.

Exhibit B. The amendments for the Performance Bond, Exhibit B, are primarily due to changes in the law. In the case of a default by a principal, there will be three courses of action, instead of two: (1) remedy the default; (2) take over the work to be performed and complete the work; and (3) pay monies to the obligee in satisfaction of the surety's performance obligation on this bond.

Exhibit D. The amendments for the Labor and Material Payment Bond, Exhibit D, are primarily due to changes in the law. The Hawaii Surety Association made recommendations which have been incorporated in the amendments. However, one recommendation to delete a sentence was not accepted because that particular statement is part of the law.

Motion

Mr. Haruo Shigezawa moved to approve the amendments proposed for the Bond Forms which include Exhibits A through J, including two of which are supplemental bond forms; and that the bond forms are hereinafter issued by a procurement directive. Mr. Sam Callejo seconded the motion.

AYES: Mr. Robert Oyama
 Ms. Claire Motoda
 Mr. Sam Callejo
 Mr. Bill Gray
 Mr. Haruo Shigezawa

NAYS: None

The motion was passed by a unanimous decision.

B. For Information

1. Chapter 3-126, Hawaii Administrative Rules, Legal and Contractual Remedies.

Mr. Governs explained that this chapter is one which was not considered for revisions until experience was gained on its effectiveness. This past summer, selective departments and the

various counties were asked for comments and recommendations for changes. The DAGS working group, of which Mr. Jack Rosenzweig is a member, has provided some valuable input for changes to this chapter. As an initial effort, only the recommendations offered by the DAGS working group have been incorporated in the revised draft.

Mr. Unebasami further explained that the draft is a "baseline document" and would welcome any comments from the Board. Also, the various chief procurement officers will be asked for their input.

The Chairman asked that the Board be given only the highlights of the draft, including any comments and recommendations received from the various parties.

Ms. Ruth Yamaguchi led the discussion:

Subchapter 1, page 4, Authority to Resolve Protested Solicitations and Awards.

Subsection 1, Definitions. The DAGS working group suggested a new definition for "affected bidder." This recommendation would clarify who could file a protest and gives the affected bidder certain participatory rights in the bid procedure. Mr. Rosenzweig explained that the bidder, who may be getting an award, would be affected by a protest and their rights impacted, so it is only fair to bring them formally into the process.

Subsection 2, Complaint to procurement officer. Ms. Yamaguchi stated that this revision clarifies when a protest may be filed. Mr. Rosenzweig explained that this revision makes it very clear that before a lawsuit is filed, resolution of the complaint must first go through the administrative appeal process.

Mr. Charles Katsuyoshi asked if there is any language in the rules which stops the solicitation if a protest is filed before the bid opening. Ms. Ohara replied that the language is in the statutes which states that everything stops if a protest is filed before bid opening or before an award is made. If there is a question of the legitimacy of the protest, the chief procurement officer has to make a determination to proceed. Ms. Ohara stated at this point that it is difficult to discuss this chapter before reviewing the AG's recommendations which would be forthcoming shortly.

Subsection 3. Filing of protest. Ms. Yamaguchi stated that this subsection clarifies the time period in which a protest may be filed.

Mr. Gray expressed concerns with the following language, "knows or should have known" which are found in this subsection.

Mr. Unebasami stated that in the bid solicitations prepared by his staff, specific deadlines are included for inquiries regarding the bid specifications. However, if the Board wishes to amend this practice, Mr. Unebasami asked for some direction as to what might be fair to the vendors and that the policy should be made a part of the administrative rules.

In light of the fact that AGS-2 was under revision, the Board deferred the discussion on the rules.

As there were no other questions or comments from the Board, Mr. Unebasami stated that as soon as AGS-2(98) is received from the Attorney General's Office, copies will be sent to each Board member.

Administrator's Report

Mr. Unebasami reported that he recently conducted a series of training sessions on the Small Purchase Process for the Executive Branch personnel. The sessions were conducted to explain the proposed changes to the rules for small purchases and to ensure that the personnel involved in the procurement process were aware of the new \$25,000 threshold for small purchases. Four sessions were held and a total of over 300 employees from the various departments attended. All participants were asked to complete a survey which asked for the employee's position title, the procurement process the individual is involved in, the percentage of time spent on procurement, etc. A compilation of the survey results will be shared with the Board in the future.

The Chairman inquired about the career ladder for procurement specialists. Mr. Unebasami said that according to the Department of Human Resources Development this initiative is not its responsibility and should come from the State Procurement Office. Mr. Unebasami will follow up on this matter.

For the Purchase of Services area, a series of informational meetings are scheduled in the months of November and December. The Board members are invited to attend. One meeting was held recently for the POST (Purchase of Service Team) group which is comprised of State agency coordinators in the purchase of service process; approximately 40 participants attended.

Mr. Governs stated that he and his staff are conducting the second series of contract administration classes for State employees. Also, a vendor seminar will be held on December 9, 1997; the Board members are invited to attend. The seminar will be open to the public and the topic is "Marketing Goods + Services to the State and Counties."

Ms. Motoda suggested that training sessions be conducted for each department and be customized to the respective department's rules and regulations. Mr. Unebasami responded that the offer has been extended to the various departments and thus far only the Department of Public Safety has responded.

The Chairman requested that the Board be kept abreast of ongoing activities and any concerns which they need to be involved in. He asked if a chart of activities could be developed which shows time lines, statutory references, etc.

Mr. Callejo asked if Mr. Unebasami received the report from the state Economic Revitalization Task Force, which references procurement. Mr. Unebasami replied in the negative but said that he is aware that the task force is recommending "more flexibility in procurement, with more accountability." Mr. Unebasami will request a copy of the report and follow up on this matter.

Motion

Mr. Gray made a motion for the Board to meet in Executive Session to discuss personnel matters. The motion was seconded by Mr. Shigezawa.

AYES: Mr. Robert Oyama
 Ms. Claire Motoda
 Mr. Sam Callejo
 Mr. Bill Gray
 Mr. Haruo Shigezawa

NAYS: None

The motion was unanimously carried.

Recess

Before going into Executive Session, Chairman Oyama called for a 10 minute recess at 2:22 p.m.

Executive Session

The Board convened in Executive Session at 2:32 p.m.

Reconvened

The meeting reconvened at 4:00 p.m.

Next Meeting


The next meeting will be scheduled at the call of the Chairman.

Adjournment

There being no further business, the meeting was adjourned at 4:01 p.m.

Respectfully submitted,

11/25/97
Date


SAM CALLEJO, Secretary
Procurement Policy Board



Revised: November 26, 1997

_____. B. NO. _____

Date: September 24, 1997

A BILL FOR AN ACT

RELATING TO REMEDIES OF PART VII, CHAPTER 103D.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 103D-701, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§103D-701 Authority to resolve protested solicitations**
4 **and awards.** (a) Any [actual or prospective bidder,]
5 offeror[,] or [contractor] other person who is aggrieved in
6 connection with the solicitation or award of a contract may
7 protest to the [chief procurement officer or the] head of a
8 purchasing agency. The protest shall be submitted in writing
9 within five working days after the aggrieved person knows or
10 should have known of the facts giving rise thereto. Provided
11 that a protest of an award or proposed award shall be submitted
12 in writing within five working days after the posting of award
13 of the contract either under section 103D-302 or section 103D-
14 303, as applicable. Provided further that no protest based
15 upon the content of the solicitation shall be considered unless
16 it is submitted prior to the date set for the receipt of
17 offers.

1 (b) The [chief procurement officer, the] head of a
2 purchasing agency, or a designee [of either officer], prior to
3 the commencement of an administrative proceeding under section
4 103D-709 or an action in court [concerning the controversy,]
5 pursuant to section 103D-710, may settle and resolve a protest
6 [of an aggrieved bidder, offeror, or contractor, actual or
7 prospective,] concerning the solicitation or award of a
8 contract. This authority shall be exercised in accordance with
9 rules adopted by the policy board.

10 (c) If the protest is not resolved by mutual agreement,
11 [the chief procurement officer,] the head of a purchasing
12 agency, or designee [of either officer] shall promptly issue a
13 decision in writing[.] to uphold or deny the protest or to
14 modify the solicitation or award. The decision shall:

15 (1) State the reasons for the action taken; and

16 (2) Inform the protestor of the protestor's right to an
17 administrative hearing or other review as provided in
18 this part.

19 (d) A copy of the decision under subsection (c) shall be
20 mailed or otherwise furnished immediately to the protestor and
21 any other party intervening.

22 (e) A decision under subsection (c) shall be final and
23 conclusive, unless [fraudulent, or] any person adversely
24 affected by the decision commences an administrative proceeding

1 under section 103D-709.

2 (f) In the event of a timely protest under subsection
3 (a), no further action shall be taken on the solicitation or
4 the award of the contract until [the chief procurement officer,
5 after consultation with the head of the using agency, or] the
6 head of the purchasing agency, makes a written determination
7 that the award of the contract without delay is necessary to
8 protect substantial interests of the State[.], and the chief
9 procurement officer approves the written determination.

10 (g) In addition to any other relief, when a protest is
11 sustained and the [protesting bidder or offeror] protestor
12 should have been awarded the contract under the solicitation
13 but is not, then the [protesting bidder or offeror] protestor
14 shall be entitled to the [reasonable] actual costs reasonably
15 incurred in connection with the solicitation, including bid or
16 proposal preparation costs [other than] but not attorney's
17 fees."

18 SECTION 2. Section 103D-702, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§103D-702 Authority to debar or suspend.** (a) After
21 reasonable notice to the person involved and reasonable
22 opportunity for that person to be heard, the chief procurement
23 officer [or the head of the purchasing agency], after
24 consultation with the [using agency and the department of]

1 attorney general or corporation counsel, may debar a person for
2 cause from consideration for award of all public contracts[.]
3 and from performance on any public contract. The debarment
4 shall not be for a period of more than three years. The same
5 officer, after consultation with the using agency and the
6 department of the attorney general or corporation counsel, may
7 suspend a person from consideration for award of [all public
8 contracts] or performance on any public contract if there is
9 probable cause for debarment. The suspension period shall not
10 [be for a period exceeding] exceed three months. The authority
11 to debar or suspend shall be exercised in accordance with the
12 procedures prescribed by the policy board.

13 (b) The causes for debarment or suspension include the
14 following:

- 15 (1) Conviction for commission of a criminal offense as an
16 incident to obtaining or attempting to obtain a
17 public or private contract or subcontract, or in the
18 performance of the contract or subcontract;
- 19 (2) Conviction under state or federal statutes relating
20 to embezzlement, theft, forgery, bribery,
21 falsification or destruction of records, receiving
22 stolen property, or any other offense indicating a
23 lack of business integrity or business honesty which
24 currently, seriously, and directly affects

responsibility as a contractor;

(3) Conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the chief procurement officer [or the head of a purchasing agency] to be so serious as to justify debarment action:

(A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) Any other cause the chief procurement officer [or the head of a purchasing agency] determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy office; and

1 (6) Violation of the ethical standards set forth in
2 chapter 84 and its implementing rules, or the
3 charters and ordinances of the several counties and
4 their implementing rules.

5 (c) The chief procurement officer [or the head of a
6 purchasing agency] shall issue a written decision to debar or
7 suspend. The decision shall:

8 (1) State the reasons for the action taken; and

9 (2) Inform the debarred or suspended person involved of
10 its rights to review as provided in this part.

11 (d) A copy of the decision under subsection (c) shall be
12 mailed or otherwise furnished immediately to the debarred or
13 suspended person and any other party intervening.

14 (e) The chief procurement officer shall transmit a copy
15 of the decision to debar or suspend a contractor to the state
16 procurement office which shall distribute a list to all
17 governmental bodies containing the names of persons debarred or
18 suspended [from consideration for award of all public contracts
19 by the State.]

20 (f) Upon written notification under subsection (e), the
21 chief procurement officer shall make a written determination to
22 continue any existing contracts awarded prior to the effective
23 date of the debarment.

24 [(f)] (g) A decision under subsection (c) shall be final

1 and conclusive, unless [fraudulent, or] the debarred or
2 suspended person commences an administrative proceeding under
3 section 103D-709."

4 SECTION 3. Section 103D-703, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§103D-703 Authority to resolve contract and breach of
7 contract controversies. (a) This section applies to
8 controversies between a governmental body and a contractor
9 which arise under, or by virtue of, a contract between them,
10 including, without limitation, controversies based upon breach
11 of contract, mistake, misrepresentation, or other cause for
12 contract modification or rescission.

13 (b) The [chief procurement officer, the] head of a.
14 purchasing agency[,] or a designee [of either officer] is
15 authorized, prior to commencement of an action in a court
16 [concerning the controversy,] brought pursuant to section 103D-
17 711, to settle and resolve a controversy described in
18 subsection (a). This authority shall be exercised in
19 accordance with rules adopted by the policy board.

20 (c) If such a controversy is not resolved by mutual
21 agreement, [the chief procurement officer,] the head of a
22 purchasing agency[,] or [the] a designee [of either officer]
23 shall promptly issue a decision in writing. The decision
24 shall:

1 (1) State the reasons for the action taken; and

2 (2) Inform the contractor of its right to initiate a
3 judicial action as provided in this part.

4 (d) A copy of the decision under subsection (c) shall be
5 mailed or otherwise furnished immediately to the contractor.

6 (e) The decision under subsection (c) shall be final and
7 conclusive unless [fraudulent, or] the contractor commences a
8 judicial action in accordance with section 103D-711.

9 (f) If [the chief procurement officer,] the head of the
10 purchasing agency[,] or [the] a designee [of either officer]
11 does not issue the written decision required under subsection
12 (c) within ninety days after written request for a final
13 decision, or within such longer period as may be agreed upon by
14 the parties, then the contractor may proceed as if an adverse
15 decision had been received."

16 SECTION 4. Section 103D-705, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§103D-705 Solicitations or awards in violation of law.
19 The provisions of section 103D-706 and section 103D-707 apply
20 where it is determined [administratively] by the head of a
21 purchasing agency, or a designee under sections 103D-701[,] or
22 103D-703 [and] or where it is determined administratively under
23 section 103D-709, or upon judicial review [or action] under
24 [sections] section 103D-710 [and] or judicial action under

1 section 103D-711, that a solicitation or award of a contract is
2 in violation of the law.

3 SECTION 5. Section 103D-706, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§103D-706 Remedies prior to an award. If prior to an
6 award it is determined:

7 (1) That [a solicitation or proposed award of a contract]
8 a competitive sealed bid or proposal is in violation
9 of law, then the solicitation [or proposed award]
10 shall be [: (1) Canceled] canceled; or

11 (2) [Revised to comply with the law] That a proposed
12 award of a contract is in violation of law, then the
13 proposed award shall be set aside; or .

14 (3) That the rejection of any competitive sealed bid or
15 proposal is in violation of law, then the rejection
16 shall be set aside and the solicitation re-evaluated,
17 together with any others, consistent with the law.

18 SECTION 6. Section 103D-707, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§103D-707 Remedies after an award. If after an award it
21 is determined that a solicitation or award of a contract is in
22 violation of law, then:

23 (1) If the person awarded the contract has not acted
24 fraudulently or in bad faith:

1 (A) The contract may be ratified and affirmed, or
2 modified, provided it is determined that doing
3 so is in the best interests of the State; or

4 (B) The contract may be terminated and the person
5 awarded the contract shall be compensated for
6 the actual expenses reasonably incurred under
7 the contract, but not attorney's fees, plus a
8 reasonable profit, [prior to the] with such
9 expenses and profit calculated not for the
10 entire term of the contract but only to the
11 point of termination;

12 (2) If the person awarded the contract has acted
13 fraudulently or in bad faith:

14 (A) The contract may be declared null and void; or

15 (B) The contract may be ratified and affirmed, or
16 modified, if the action is in the best interests
17 of the State, without prejudice to the State's
18 rights to such damages as may be appropriate."

19 SECTION 7. Section 103D-708, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "103D-708 Interest. Interest on amounts ultimately
22 determined to be due to a contractor or the [State] agency
23 shall be payable at the statutory rate applicable to judgments
24 against the State under chapter 662 from the date the agency

1 receives notice of the written claim [arose] through the date
2 of decision or judgment, whichever is later[.], provided, that
3 if an action is initiated in circuit court pursuant to section
4 103D-711, interest under this section shall only be calculated
5 until the time such action is initiated."

6 SECTION 8. Section 103D-709, Hawaii Revised Statutes, is
7 amended by amending subsections (c) and (f) to read as follows:

8 "(c) Only parties to the protest raised below pursuant to
9 section 103D-701 may initiate a proceeding under this section.

10 The party initiating the proceeding shall have the burden of
11 proof, including the burden of producing evidence as well as
12 the burden of persuasion. The degrees or quantum or proof
13 shall be a preponderance of the evidence. All parties to the
14 proceeding shall be afforded an opportunity to present oral or
15 documentary evidence, conduct cross-examination as may be
16 required, and argument on all issues involved. The rules of
17 evidence shall be [strictly adhered to.] apply.

18 (f) [Hearings officers] The hearings officer shall decide
19 whether the determinations of the chief procurement officer or
20 the head of the purchasing agency, or their respective
21 designees were in accordance with the constitution, statutes,
22 regulations, and the terms and conditions of the solicitation
23 or contract, and shall order such relief as may be appropriate
24 in accordance with the provisions of this chapter."

1 SECTION 9. Section 103D-710, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) [Any person or governmental body] Only parties to
4 proceedings under section 103D-709 who are aggrieved by a final
5 decision of a hearings officer under that section [103D-709]
6 may apply for judicial review of that decision. The
7 proceedings for review shall be instituted in the supreme
8 court."

9 SECTION 10. Section 103D-711, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§103D-711 Judicial action.** (a) [A person] Only parties
12 to the contract aggrieved by a decision issued pursuant to
13 section 103D-703 by a [state chief procurement officer or] head
14 of a state purchasing agency may initiate an action under
15 section 661-1.

16 (b) A person aggrieved by a decision issued pursuant to
17 section 103D-703 by a [county chief procurement officer or]
18 head of a county purchasing agency may initiate an action
19 under, or by virtue of, the contract in controversy in the
20 circuit court.

21 (c) A governmental body aggrieved by a decision issued
22 pursuant to section 103D-703 by a [state or county chief
23 procurement officer or] head of a state or county purchasing
24 agency may initiate an action under, or by virtue of, the

1 contract in controversy in the circuit court.

2 (d) To the extent the remedies provided in this part,
3 including provisions for interest, differ from the remedies
4 available against the State under chapter 661, the remedies
5 shall be as provided in this part. Only the attorney general
6 may settle and resolve a matter filed in the courts against the
7 State pursuant to this section."

8 SECTION 11. Section 103D-712, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§103D-712 Time limitation on actions. (a) Requests for
11 administrative review under section 103D-709 shall be made
12 directly to the office of administrative hearing of the
13 department of commerce and consumer affairs within seven
14 calendar days of the issuance of a written determination under
15 section 103D-310, 103D-701, or 103D-702.

16 SECTION 12. Statutory material to be repealed is
17 bracketed. New statutory material is underscored.

18 SECTION 13. This Act shall take effect on July 1, 1998.

INTRODUCED BY: _____



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1 life-cycle cost data.

2 (c) The purchaser shall consider purchasing via the life-
3 cycle costing method those classes of items for which
4 nationally recognized energy efficiency data have been
5 developed. These items shall include but not be limited to
6 automobiles and air conditioning systems. The watt-saving
7 variety of common-sized fluorescent lamps shall be purchased
8 except where standard wattage of such lamps is specifically
9 required by the using agency."

10 SECTION 6. Chapter 103D, Hawaii Revised Statutes, is
11 amended by adding to part V a new section to be appropriately
12 designated and to read as follows:

13 "§103D- Value engineering clauses. The State and
14 each of the respective counties shall insert clauses providing
15 for value engineering incentives in all public works contracts
16 for amounts in excess of \$250,000. The clauses shall provide:

17 (1) That cost reduction proposals submitted by
18 contractors:

19 (A) Must require, in order to be applied to the
20 contract, a change order thereto; and

21 (B) Must result in savings to the State or county,
22 as the case may be, by providing less costly
23 items than those specified in the contract
24 without impairing any of their essential

1 functions and characteristics such as service
2 life, reliability, substitutability, economy of
3 operation, ease of maintenance, and necessary
4 standardized features.

5 (2) That accepted cost reduction proposals shall result
6 in an equitable adjustment of the contract price so
7 that the contractor will share a portion of the
8 realized cost reduction."

9 SECTION 7. Chapter 103D, Hawaii Revised Statutes, is
10 amended by adding to part X a new section to be appropriately
11 designated and to read as follows:

12 "§103D- Tax payer preference. For evaluation
13 purposes the offeror's tax-exempt price shall be increased by
14 the applicable retail rate of general excise tax and the
15 applicable use tax. For competitive sealed bids, the lowest
16 responsive, responsible bidder, taking into consideration the
17 above increase, shall be awarded the contract, and for
18 competitive sealed proposals when a numerical rating system is
19 used and cost is an evaluation factor, the price offered
20 adjusted by the above increase shall be used to determine the
21 rating for cost, but the contract amount of any contract
22 awarded shall be the amount of the price offered and shall not
23 include the amount of the increase."

24 SECTION 8. Chapter 103D, Hawaii Revised Statutes, is

1 amended by adding to part X a new section to be appropriately
2 designated and to read as follows:

3 "§103D- Preference for qualified community
4 rehabilitation programs. When a governmental agency contracts
5 for purchases of goods, services, or construction, a five per
6 cent preference shall be given to goods, services, or
7 construction to be provided by nonprofit corporations or public
8 agencies operating qualified community rehabilitation programs
9 in conformance with criteria established by the department of
10 labor and industrial relations pursuant to chapter 91; provided
11 that contracts awarded under this section shall be exempt from
12 the wages provision of section 103-55. The policy board shall
13 adopt rules under chapter 91 to establish the preference for
14 nonprofit corporations or public agencies operating qualified
15 community rehabilitation programs consistent with this
16 section."

17 SECTION 9. Chapter 103D, Hawaii Revised Statutes, is
18 amended by adding to part X a new section to be appropriately
19 designated and to read as follows:

20 "§103D- Purchases from qualified community
21 rehabilitation programs. (a) Any public agency, without
22 advertising or calling for bids, may purchase goods, services,
23 or construction provided by qualified community rehabilitation
24 programs serving persons with disabilities that have indicated

1 an interest in supplying the goods, services, or construction
2 and on an equitable basis may apportion the business among the
3 interested programs; provided that the goods and services meet
4 the specifications and needs of the purchasing agency and are
5 purchased at a fair market price as determined by the
6 appropriate public agency; and provided further that the
7 programs comply with the following:

8 (1) Meet all of the requirements of a qualified community
9 rehabilitation program under section 103D-1001; and

10 (2) Maintain a disabled to non-disabled employee ratio
11 equal to or in excess of three-to-one for work hours
12 of direct labor at all times on the work contracted.

13 (b) The purchasing agency shall:

14 (1) Receive and review proposals submitted by qualified
15 community rehabilitation programs to provide goods,
16 services, or construction and determine if they are
17 suitable for purchase by the agency;

18 (2) Negotiate the conditions and terms for the purchase,
19 including the price of the offer, between the agency
20 and the qualified community rehabilitation program;
21 provided that the price of the offer shall not exceed
22 the fair market price and there is assurance that the
23 qualified community rehabilitation program proposal
24 is in compliance with all administrative rules

1 related to purchasing; and

2 (3) Ensure that any product or service purchased from a
3 qualified community rehabilitation program shall not
4 be placed on the Hawaii products list under section
5 103D-1002."

6 SECTION 10. Chapter 103D, Hawaii Revised Statutes, is
7 amended by adding to part X a new section to be appropriately
8 designated and to read as follows:

9 "§103D- Qualified community rehabilitation program;
10 proposal to provide goods, services, or construction. A
11 qualified community rehabilitation program interested in
12 selling goods, services, or construction to a public agency
13 shall submit a proposal to the agency containing the following
14 information:

15 (1) A description of the good, service, or construction;
16 (2) The price of the good, service, or construction; and
17 (3) Documents and information necessary to qualify as a
18 qualified community rehabilitation program under
19 section 103D-1001."

20 SECTION 11. Chapter 103, Hawaii Revised Statutes, is
21 amended by amending the title to read as follows:

22 **"CHAPTER 103**

23 **EXPENDITURE OF PUBLIC MONEY [AND PUBLIC CONTRACTS]"**

24 SECTION 12. Section 103-32.1, Hawaii Revised Statutes, is

1 amended to read as follows:

2 **"§103-32.1 Contract provision for retainage.** Any public
3 contract [issued under this chapter] may include a provision
4 for the retainage of a portion of the amount due under the
5 contract to the contractor to insure the proper performance of
6 the contract; provided that the sum withheld by the
7 [contracting] procurement officer from the contractor shall not
8 exceed five per cent of the amount due the contractor and that
9 after fifty per cent of the contract is completed and progress
10 is satisfactory, no additional sum shall be withheld; provided
11 further that if progress is not satisfactory, the [contracting]
12 procurement officer may continue to withhold as retainage, sums
13 not exceeding five per cent of the amount due the
14 contractor[.]; provided that the retainage shall not include
15 sums deducted as liquidated damages from moneys due or that may
16 become due the contractor under the contract."

17 SECTION 13. Section 103-32.2, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§103-32.2 Substitution of retainage.** Any other law to
20 the contrary notwithstanding, any public contract [issued under
21 this chapter] may provide that the [contracting] procurement
22 officer may enter into an agreement with the contractor which
23 will allow the contractor to withdraw from time to time the
24 whole or any portion of the sum retained under section 103-32.1

1 upon depositing with the [contracting] procurement officer any
2 general obligation bond of the State or its political
3 subdivisions with a market value not less than the sum to be
4 withdrawn; provided that the [contracting] procurement officer
5 may require that the total market value of such bond be greater
6 than the sum to be withdrawn."

7 SECTION 14. Section 103-39.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "([[§103-39.5]]) **Construction, renovation or repair of**
10 **school facilities; county permit exemption.** Any [contracts
11 under this chapter] public contract for the construction,
12 renovation, or repair of public school facilities shall be
13 exempt from any requirement [of a county that related] to
14 provide off-site improvements [be made by the contracting
15 government agency] as a condition to the issuance of any
16 permit[.] or approval."

17 SECTION 15. Section 103-50, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Notwithstanding any other law to the contrary, all
20 plans and specifications for the construction of public
21 buildings and facilities by the State or any county, or on
22 behalf of the State or any county [subject to this chapter,]
23 shall be prepared so the buildings and facilities are
24 accessible to and usable by persons with disabilities. The

1 buildings and facilities shall conform to the Americans with
2 Disabilities Act Accessibility Guidelines, 36 C.F.R. Pt. 1191,
3 as adopted and amended by the architectural access committee."

4 SECTION 16. Section 103-50.5, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The committee shall have the authority to vary
7 specific requirements of section 103-50 when the variance will
8 ensure an alternate design that provides [equal] reasonable
9 access for persons with disabilities; and to establish
10 guidelines for design specifications not covered in the
11 Americans with Disabilities Act Accessibility Guidelines, 36
12 C.F.R. Pt. 1191, as adopted and amended by the architectural
13 access committee."

14 SECTION 17. Section 103-55, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "\$103-55 Wages, hours, and working conditions of
17 employees of contractors [supplying] performing services. (a)
18 Before any [prospective bidder is entitled to submit any bid
19 for the performance of any] offeror enters into a contract to
20 [supply] perform services in excess of [\$5,000] \$25,000 to any
21 governmental agency, the [bidder] offeror shall certify that
22 the services to be performed will be performed under the
23 following conditions:

24 Wages. The services to be rendered shall be performed by