## **PROCUREMENT POLICY BOARD**

1151 Punchbowl Street Conference Room 410 Honolulu, Hawaii 96813

> Regular Meeting May 29, 2003 2:00 p.m.

#### AGENDA

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES Meeting of October 31, 2002
- III. NEW BUSINESS

For Information - Act 52 (SB 1262, CD1), Proposed Interim Rules for Chapters 3-122 and 3-126

- A. Section 2 (Subchapter 5, Chapter 3-122 Competitive Sealed Bidding, HAR)
- B. Section 4 (Subchapter 6, Chapter 3-122 Competitive Sealed Proposals, HAR)
- C. Section 5 (Subchapter 7, Chapter 3-122 Procurement of Professional Services, HAR)
- D. Section 6 (Subchapter 13, Chapter 3-122 Responsibility of Bidders and Offerors, HAR)

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- E. Section 7 (Chapter 3-126 Legal and Contractual Remedies, HAR)
- IV. ADMINISTRATOR'S REPORT
- V. ADJOURNMENT

If special needs are required (i.e., sign language interpreter), please call Cheryl at (808) 587-4700 by 4:00 p.m. May 27, 2003

CONFERENCE COMMITTEE REP. NO.

72

Honorable Robert Bunda President of the Senate Twenty-Second State Legislature Regular Session of 2003 State of Hawaii

Honorable Calvin K.Y. Say Speaker, House of Representatives Twenty-Second State Legislature Regular Session of 2003 State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1262, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT, "

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend various provisions of the state procurement code.

Your Committee on Conference met numerous times to discuss the differences between the House and Senate versions of this measure before reaching agreement. Your Committee on Conference used the S.D. 1 version of this measure as a base to prepare the C.D. 1 version, incorporating the amendments discussed below.

Your Committee on Conference amended the pre-bid conference provisions of this measure to require a pre-bid conference for all construction or design-build projects with a total estimated



contract value of \$500,000 or more that are awarded pursuant to competitive sealed bidding, and for all such projects with an estimated value of \$100,000 or more awarded through a request for proposals. Your Committee on Conference also amended the language to clarify that only one pre-bid conference is required.

In addition, your Committee on Conference inserted a provision to require the head of the purchasing agency to invite all potential interested subcontractors and union representatives to attend the pre-bid conference.

Your Committee on Conference also included language from the H.D. 1 version of this measure to authorize nonselected offerors and nonselected professional service providers to request a "debriefing" prior to filing an official protest. Rather than include the language in section 103D-701, Hawaii Revised Statutes (HRS), your Committee on Conference inserted the language directly into sections 103D-303 and 103D-304, HRS. Your Committee on Conference also amended section 103D-701, HRS, to make the protest timeframe consistent.

Your Committee on Conference retained the language from the S.D. 1 version regarding procurement of professional service providers, but added language to give the purchasing agency greater flexibility when awarding professional service contracts for less than \$25,000, and to require the head of the purchasing agency to document the reason if a contract is not successfully negotiated with the first or second ranked person on the list. Your Conference Committee also included language to require electronic posting of every professional service contract awarded for more than \$5,000, rather than \$25,000.

Your Committee on Conference amended the "offeror responsibility" provisions to address constitutionality concerns. As amended, offerors still must demonstrate compliance with Hawaii employment laws, but only once they are awarded a contract. In addition, offerors must be incorporated or organized under the laws of the State of Hawaii or must register a separate branch or division in the State that is capable of fully performing under the contract.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1262, S.D. 1, H.D. 1, as amended herein, and recommends



# Hawaii State Legislature

CCR42

# Record of Votes of a Conference Committee

Bill/Concurrent Resolution No.:DateSB 1262, SD1, HD1Date				Date/Time: 04/25/03 /	30	Pr	n		
The recommendation of the	ne Hous	e and	Senat	e mar	agers is to pass with amendments		1		
The Committee is reconsid	dering it	ts prev	vious	decisi	on.				
The recommendation of the S AGREE to the House amender Measure.					The recommendation of the Hou AGREE to the Senate amendment Measure.				
Senate Managers	A	WR	N	Е	House Managers	A	WR	N	E
KAWAMOTO, Cal (Chair)	V				HIRAKI, Kenneth T. (Co-Chr)				
ADUJA, Melodie Williams	V				MAGAOAY, Michael Y. (Co-Chr)	V			
ESPERO, Willie C.	V				HERKES, Robert N.	$\checkmark$			
SAKAMOTO, Norman				V	MEYER Colleen R.				
WHALEN, Paul									
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								-+	
TOTAL	3			V	TOTAL	3			1
A = Aye	WR = Ay	e with	Reserva	tions	N = Nay	E = Exc	cused		
Senate Recommendation is:					House Recommendation is:				
Adopted	1	Not Ac	lopted		V Adopted	Not	Adop	ted	
"nate Lead Chair's or Designee'	s Signat	ure:			House Lead Chair's or Designee's S	ignati	ire:		
alalan	Je	>			Canete Al				
Distribution: Original -Lead Cha	ur of Orig		g Hous		Blue – Drafting Agency				
Pink – Senate Clerk	s Ome				Yellow – House Clerk's Office				

CONFERENCE COMMITTEE REP. NO. Page 3

that it pass Final Reading in the form attached hereto as S.B. No. 1262, S.D. 1, H.D. 1, C.D. 1.

Respectfully submitted on behalf of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

KENNETH T. HIRAKI, Co-Chair

CAL KAWAMOTO, Chair

ton MAG



CONFERENCE COMMITTEE REP. NO.

92

Honolulu, Hawaii , 2003 RE: S.B. No. 1262 S.D. 1 H.D. 1 C.D. 1

Honorable Robert Bunda President of the Senate Twenty-Second State Legislature Regular Session of 2003 State of Hawaii

Honorable Calvin K.Y. Say Speaker, House of Representatives Twenty-Second State Legislature Regular Session of 2003 State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1262, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT, "

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend various provisions of the state procurement code.

Your Committee on Conference met numerous times to discuss the differences between the House and Senate versions of this measure before reaching agreement. Your Committee on Conference used the S.D. 1 version of this measure as a base to prepare the C.D. 1 version, incorporating the amendments discussed below.

Your Committee on Conference amended the pre-bid conference provisions of this measure to require a pre-bid conference for all construction or design-build projects with a total estimated



contract value of \$500,000 or more that are awarded pursuant to competitive sealed bidding, and for all such projects with an estimated value of \$100,000 or more awarded through a request for proposals. Your Committee on Conference also amended the language to clarify that only one pre-bid conference is required.

In addition, your Committee on Conference inserted a provision to require the head of the purchasing agency to invite all potential interested subcontractors and union representatives to attend the pre-bid conference.

Your Committee on Conference also included language from the H.D. 1 version of this measure to authorize nonselected offerors and nonselected professional service providers to request a "debriefing" prior to filing an official protest. Rather than include the language in section 103D-701, Hawaii Revised Statutes (HRS), your Committee on Conference inserted the language directly into sections 103D-303 and 103D-304, HRS. Your Committee on Conference also amended section 103D-701, HRS, to make the protest timeframe consistent.

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Your Committee on Conference amended the "offeror responsibility" provisions to address constitutionality concerns. As amended, offerors still must demonstrate compliance with Hawaii employment laws, but only once they are awarded a contract. In addition, offerors must be incorporated or organized under the laws of the State of Hawaii <u>or</u> must register a separate branch or division in the State that is capable of fully performing under the contract.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1262, S.D. 1, H.D. 1, as amended herein, and recommends



# Hawaii State Legislature

CCR92

# Record of Votes of a Conference Committee

Bill/Concurrent Resolution No.: Date/Tim SB 1262, SD1, HD1 $O4/2$				Date/Time: 04/25/03 /	30	) Pr	n		
The recommendation of the House and Senate managers is to pass with amendments (CD).									
The Committee is reconst	idering it	ts prev	vious	decisi	on.				
The recommendation of the AGREE to the House amend Measure.					The recommendation of the Hour AGREE to the Senate amendment Measure.	ise Ma nts ma	anager ade to f	(s) is t the Ho	o ouse
Senate Managers	Α	WR	N	E	House Managers	A	WR	N	E
KAWAMOTO, Cal (Chair)	V				HIRAKI, Kenneth T. (Co-Chr)				
ADUJA, Melodie Williams					MAGAOAY, Michael Y. (Co-Chr)	V			
ESPERO, Willie C.	V				HERKES, Robert N.	V			
SAKAMOTO, Norman				V	MEYER Colleen R.				~
WHALEN, Paul									
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TOTAL	3			V	TOTAL	3			
A = Aye	WR = Ay	e with l	Reserva	tions		E = Exc	cused		
Senate Recommendation is:	<b>1</b>	Not Ad	lopted		House Recommendation is:	Not	Adop	ted	-
ate Lead Chair's or Designee	's Signati	ure:			House Lead Chair's or Designee's S	ignatu	ire:		
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CONFERENCE COMMITTEE REP. NO. Page 3

that it pass Final Reading in the form attached hereto as S.B. No. 1262, S.D. 1, H.D. 1, C.D. 1.

Respectfully submitted on behalf of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

KENNETH T. HIRAKI, Co-Chair

CAL KAWAMOTO, Chair

to MAG



S.B. NO. <sup>1262</sup> S.D. 1 H.D. 1

<u>C.D. 1</u>

# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1	SECT	ION 1. The purpose of this Act is to establish
2	procureme	nt policies and procedures that:
3	(1)	Ensure in-state contractors' ability to win awards of
4		public funds for state contracts;
5	(2)	Promote public confidence in the integrity of the
6		procurement process;
7	(3)	Increase openness in the award of competitive sealed
8		proposals and professional services contracts;
9	(4)	Enhance procurement education in the Pacific by
10		creating a Hawaii procurement institute;
11	(5)	Require a pre-bid conference to be attended by all
12		potential bidders, offerors, subcontractors, and union
13		representatives, that will allow all interested
14		parties to raise their protests prior to bidding, so
15		that any subsequent protests can be resolved quickly
16		and efficiently pursuant to the timeframe established
17		in section 103D-701, Hawaii Revised Statutes; and

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1	(6) Technically correct chapter 103D, Hawaii Revised
2	Statutes.
3	SECTION 2. Part X of chapter 103D, Hawaii Revised
4	Statutes, is amended by adding a new section to be appropriately
5	designated and to read as follows:
6	" <u>§103D- Pre-bid conference. (a) At least fifteen days</u>
7	prior to submission of bids pursuant to section 103D-302 for a
8	construction or design-build project with a total estimated
9	contract value of \$500,000 or more, and at least fifteen days
10	prior to submission of proposals pursuant to section 103D-303
11	for a construction or design-build project with a total
12	estimated contract value of \$100,000 or more, the head of the
13	purchasing agency shall hold a pre-bid conference and shall
14	invite all potential interested bidders, offerors,
15	subcontractors, and union representatives to attend.
16	(b) The procurement policy board shall adopt rules under
17	chapter 91 to effectuate this section."
18	SECTION 3. Section 103D-206, Hawaii Revised Statutes, is
19	amended to read as follows:
20	[+]103D-206[+] Additional duties of the administrator of
21	the procurement office. In addition to the duties referred to
22	in section 103D-205, the administrator shall:

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1	(1)	Perform periodic review of the procurement practices
2		of all governmental bodies;
3	(2)	Assist, advise, and guide governmental bodies in
4		matters relating to procurement;
5	(3)	Develop and administer a statewide procurement
6		orientation and training program;
7	(4)	Develop, distribute, and maintain a procurement manual
8		for all state procurement officials; [and]
9	(5)	Develop, distribute, and maintain a procurement guide
10		for vendors wishing to do business with the State and
11		its counties [-]; and
12	(6)	Establish and maintain a Hawaii procurement institute,
13		in cooperation with the University of Hawaii
14		William S. Richardson school of law and other public
15	8	and private entities and/or persons, to promote and
16		develop a professional acquisition workforce and to
17		improve and enhance the State of Hawaii's contractor
18		industrial base through education and training. The
19		Hawaii procurement institute may:
20		(A) Conduct and participate in procurement education
21		and training for entry level and higher qualified

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1		State of Hawaii employees and others, including
2		persons not employed by the State of Hawaii;
3	<u>(B)</u>	Conduct and promote research, conferences, and
4		studies to improve the procurement process, laws,
5		policies, methods, regulations, procedures, and
6		forms relating to state and local government
7		procurement;
8	<u>(C)</u>	Report on and make recommendations regarding
9		goals, guidelines, innovations, and evaluation of
10		state and local government procurement
11		initiatives; and
12	<u>(D)</u>	Establish and maintain a procurement library
13		within the State of Hawaii."
14	SECTION 4	. Section 103D-303, Hawaii Revised Statutes, is
15	amended to rea	d as follows:
16	"§103D-30	3 Competitive sealed proposals. (a) Competitive
17	sealed proposa	ls may be utilized to procure goods, services, or
18	construction d	esignated in rules adopted by the procurement
19	policy board a	s goods, services, or construction which are
20	either not pra	cticable or not advantageous to the State to
21	procure by com	petitive sealed bidding. Competitive sealed
22	proposals may	also be utilized when the head of a purchasing

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agency determines in writing that the use of competitive sealed
 bidding is either not practicable or not advantageous to the
 State.

4 (b) Proposals shall be solicited through a request for5 proposals.

6 (c) Notice of the request for proposals shall be given in
7 the same manner as provided in section 103D-302(c).

8 (d) Proposals shall be opened so as to avoid disclosure of 9 contents to competing offerors during the process of 10 negotiation. A register of proposals shall be prepared in 11 accordance with rules adopted by the policy board and shall be 12 open for public inspection after contract award.

13 (e) The request for proposals shall state the relative14 importance of price and other evaluation factors.

15 Discussions may be conducted with responsible offerors (f) who submit proposals determined to be reasonably susceptible of 16 being selected for award for the purpose of clarification to 17 assure full understanding of, and responsiveness to, the 18 solicitation requirements. Offerors shall be accorded fair and 19 equal treatment with respect to any opportunity for discussion 20 and revision of proposals, and revisions may be permitted after 21 submissions and prior to award for the purpose of obtaining best 22

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and final offers. In conducting discussions, there shall be no
 disclosure of any information derived from proposals submitted
 by competing offerors.

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(g) Award shall be made to the responsible offeror whose
proposal is determined in writing to be the most advantageous
taking into consideration price and the evaluation factors set
forth in the request for proposals. No other factors or
criteria shall be used in the evaluation. The contract file
shall contain the basis on which the award is made.

10 (h) In cases of awards made under this section,

11 nonselected offerors may submit a written request for debriefing

12 to the chief procurement officer or designee within three

13 working days after the posting of the award of the contract.

14 Thereafter, the head of the purchasing agency shall provide the

15 requester a prompt debriefing in accordance with rules adopted

16 by the policy board. Any protest by the requester pursuant to

17 section 103D-701 following debriefing shall be filed in writing

18 with the chief procurement officer or designee within five

19 working days after the date that the debriefing is completed."

20 SECTION 5. Section 103D-304, Hawaii Revised Statutes, is
21 amended to read as follows:

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1	"§103D-304 Procurement of professional services. (a)
2	Professional services shall be procured in accordance with
3	sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or
4	this section[+]; provided that design professional services
5	furnished by licensees under chapter 464 shall be procured
6	pursuant to this section or section 103D-307. Contracts for
7	professional services shall be awarded on the basis of
8	demonstrated competence and qualification for the type of
9	services required, and at fair and reasonable prices.
10	(b) At a minimum, before the beginning of each fiscal
11	year, the head of each purchasing agency shall publish a notice
12	inviting persons engaged in providing professional services
13	which the agency anticipates needing in the next fiscal year, to
14	submit current statements of qualifications and expressions of
15	interest to the agency. Additional notices [may] shall be given
16	if:
17	(1) The response to the initial notice is inadequate;
18	(2) The response to the initial notice does not result in
19	adequate representation of available sources; [ <del>or</del> ]
20	(3) [ <del>Previously unanticipated</del> ] <u>New</u> needs for professional
21	services arise[-] <u>; or</u>
.2	(4) Rules adopted by the policy board so specify.

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The chief procurement officer may specify a uniform format for 1 statements of qualifications. Persons may amend these 2 3 statements by filing a new statement prior to the date designated for submission. 4 5 The head of the purchasing agency shall designate a (c)6 review committee consisting of a minimum of three [employees 7 from the agency or from another governmental body, persons with sufficient education, training, and licenses or credentials for 8 9 each type of professional service which may be required. In 10 designating the members of the review committee, the head of the 11 purchasing agency shall ensure the impartiality and independence 12 of committee members. The names of the members of the review 13 committee established under this section shall be placed in the 14 contract file.

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C.D. 1

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15 The committee shall review and evaluate all submissions and 16 other pertinent information, including references and reports, 17 and prepare a list of qualified persons to provide these 18 services. Persons included on the list of qualified persons may 19 amend their statements of qualifications as necessary or 20 appropriate. Persons shall immediately inform the head of the 21 purchasing agency of any change in information furnished which

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would disqualify the person from being considered for a contract
 award.

3 (d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the 4 purchasing agency shall designate a [screening] selection 5 committee to evaluate the statements of qualification and 6 performance data of those persons on the list prepared pursuant 7 to subsection (c) along with any other pertinent information, 8 including references and reports. The [screening] selection 9 committee shall be comprised of a minimum of three [employees of 10 the purchasing agency] persons with sufficient education, 11 training, and licenses or credentials in the area of the 12 services required. [If the purchasing agency and using agency 13 14 are different, the committee shall include at least one qualified employee from the using agency. When the committee 15 includes an employee from a using agency, the employee shall be 16 appointed by the head of the using agency. If qualified 17 employees-are not-available-from these agencies, the officers 18 may designate employees of other governmental bodies.] 19 In designating the members of the selection committee, the head of 20 21 the purchasing agency shall ensure the impartiality and

2 independence of committee members. The names of the members of

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1	<u>a selectio</u>	on committee established under this section shall be
2	placed in	the contract file.
3	<u>(e)</u>	The [ <del>primary</del> ] selection criteria employed [ <del>by the</del>
4	screening	committee] in descending order of importance shall
5	[ <del>include ]</del>	out-not] be [limited to]:
6	(1)	Experience and professional qualifications [ <del>of the</del>
7		<pre>staff to be assigned] relevant to the project[;</pre>
8	(2)	Past performance on projects of similar scope for
9		public agencies or private industry[ <del>; and</del> ] <u>, including</u>
10		corrective actions and other responses to notices of
11		<u>deficiencies;</u>
12	(3)	Capacity to accomplish the work in the required
13		time[-] <u>; and</u>
14	(4)	Any additional criteria determined in writing by the
15		selection committee to be relevant to the purchasing
16		agency's needs or necessary and appropriate to ensure
17		full, open, and fair competition for professional
18		services contracts.
19	<u>(f)</u>	The [screening] selection committee shall evaluate the
20	submissio	ns of persons on the list prepared pursuant to
21	subsection	n (c) and any other pertinent information which may be
22	available	to the agency, against the selection criteria. The

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committee may conduct confidential discussions with any person 1 who is included on the list prepared pursuant to subsection (c) 2 regarding the services which are required and the services they 3 are able to provide. In conducting discussions, there shall be 4 no disclosure of any information derived from [proposals 5 submitted-by-competing-offerors. -The-committee-shall-provide 6 the head of the purchasing agency with the names of a minimum of 7 three persons who the committee concludes are the most qualified 8 to provide the services required, with a summary of each of 9 their qualifications.] the competing professional service 10 11 offerors. (g) The selection committee shall rank a minimum of three 12 persons based on the selection criteria and send the ranking to 13 14 the head of the purchasing agency. The contract file shall contain a copy of [the criteria established for the selection 15 and] the [committee's] summary of qualifications for the ranking 16 of each of the persons provided to the head of the purchasing 17 agency [by the committee.] for contract negotiations. If more 18 than one person holds the same qualifications under this 19 section, the selection committee shall rank the persons in a 20 manner that ensures equal distribution of contracts among the 21 22 persons holding the same qualifications.

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1 [ (c) - The head of the purchasing agency shall evaluate the summary of qualifications for each of the persons provided by 2 the screening committee and may conduct additional discussions 3 with any of them. The head of the purchasing agency shall then 4 5 rank-the persons based on the selection criteria.] 6 (h) The head of the purchasing agency or designee shall 7 negotiate a contract with the first ranked person, including a 8 rate of compensation which is fair and reasonable, established 9 in writing, and based upon the estimated value, scope, 10 complexity, and nature of the services to be rendered. If a 11 satisfactory contract cannot be negotiated with the first ranked 12 person, negotiations with that person shall be formally 13 terminated and negotiations with the second ranked person on the 14 list shall commence. The contract file shall include 15 documentation from the head of the purchasing agency, or 16 designee, to support selection of other than the first ranked or 17 next ranked person. Failing accord with the second ranked 18 person, negotiations with the next ranked person on the list 19 shall commence. If a contract at a fair and reasonable price 20 cannot be negotiated, the [screening] selection committee may be 21 asked to submit a minimum of three additional persons for the 22 head of the purchasing agency to [rank, and] resume negotiations

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in the same manner provided in this subsection. Negotiations
 shall be conducted confidentially.

3 [(f)] (i) Contracts awarded under this section for \$5,000
4 or more shall be posted electronically within seven days of the
5 contract award by the chief procurement officer or designee and
6 shall remain posted for at least one year. Information to be
7 posted shall include [+], but not be limited to:

- 8 (1) The names of the [top five] persons submitted under
  9 subsection [(d), or, if the list submitted under
  10 subsection (d) is less than five, all of the persons
  11 submitted] (g);
- 12 (2) The name of the person or organization receiving the
  13 award;
- 14 (3) The dollar amount of the contract;

15 (4) The <u>name of the head of the purchasing agency or</u>
 16 <u>designee</u> [head] making the selection; and

17 (5) Any relationship of the principals to the official18 making the award.

19 [(g)] (j) Contracts for professional services of less than
20 [\$25,000] the limits in section 103D-305, may be negotiated by
21 the head of the purchasing agency, or designee, with at least
22 any two persons [who-appear] on the list of qualified persons

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1	established pursuant to subsection (c). Negotiations shall be
2	conducted in the manner set forth in subsection $[-(e), but$
3	without establishing any order of preference.] (h), with ranking
4	based on the selection criteria of subsection (e) as determined
5	by the head of the agency.
6	(k) In cases of awards made under this section,
7	nonselected professional service providers may submit a written
8	request for debriefing to the chief procurement officer or
9	designee within three working days after the posting of the
10	award of the contract. Thereafter, the head of the purchasing
11	agency shall provide the requester a prompt debriefing in
12	accordance with rules adopted by the policy board. Any protest
13	by the requester pursuant to section 103D-701 following
14	debriefing shall be filed in writing with the chief procurement
15	officer or designee within five working days after the date that
16	the debriefing is completed."
17	SECTION 6. Section 103D-310, Hawaii Revised Statutes, is
18	amended to read as follows:
19	<b>"§103D-310 Responsibility of offerors.</b> (a) Unless the
20	policy board, by rules, specifies otherwise, before submitting
21	an offer, a prospective offeror, not less than ten calendar days
22	prior to the day designated for opening offers, shall give

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written notice of the intention to submit an offer to the 1 procurement officer responsible for that particular procurement. 2 Whether or not an intention to bid is required, the 3 (b) procurement officer shall determine whether the prospective 4 offeror has the financial ability, resources, skills, 5 capability, and business integrity necessary to perform the 6 work. For this purpose, the officer, in the officer's 7 discretion, may require any prospective offeror to submit 8 answers, under oath, to questions contained in a standard form 9 of questionnaire to be prepared by the policy board. Whenever 10 11 it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to 12 13 perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the 14 15 purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to 16 promptly supply information in connection with an inquiry with 17 respect to responsibility may be grounds for a determination of 18 19 nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the 20 offeror applies for administrative review pursuant to section 21 2 103D-709.

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1	(c) All offerors, upon award of contract, shall comply
2	with all laws governing entities doing business in the State,
3	including chapters 237, 383, 386, 392, and 393, and shall:
4	(1) Be incorporated or organized under the laws of the
5	State; or
6	(2) Be registered to do business in the State as a
7	separate branch or division that is capable of fully
8	performing under the contract.
9	Offerors shall produce documents to the procuring officer to
10	demonstrate compliance with this subsection. Any offeror making
11	a false affirmation or certification under this subsection shall
12	be suspended from further offerings or awards pursuant to
13	section 103D-702.
14	[ <del>(c)</del> ] <u>(d)</u> Information furnished by an offeror pursuant to
15	this section shall not be disclosed to any person except to law
16	enforcement agencies as provided by chapter 92F."
17	SECTION 7. Section 103D-701, Hawaii Revised Statutes, is
18	amended by amending subsection (a) to read as follows:
19	"(a) Any actual or prospective bidder, offeror, or
20	contractor who is aggrieved in connection with the solicitation
21	or award of a contract may protest to the chief procurement
22	officer or a designee as specified in the solicitation. $[A]$
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1	Except as provided in sections 103D-303 and 103D-304, a protest
2	shall be submitted in writing within five working days after the
3	aggrieved person knows or should have known of the facts giving
4	rise thereto; provided that a protest of an award or proposed
5	award shall in any event be submitted in writing within five
6	working days after the posting of award of the contract [either]
7	under section 103D-302 or 103D-303, <u>if no request for debriefing</u>
8	has been made, as applicable; provided further that no protest
9	based upon the content of the solicitation shall be considered
10	unless it is submitted in writing prior to the date set for the
11	receipt of offers."
12	SECTION 8. Section 103D-1007, Hawaii Revised Statutes, is
13	repealed.
14	[" <del>\$103D-1007Preference-to bidders on state agency</del>
15	contracts. (a) The requirements in this section are in
16	addition to any other applicable requirements provided in this
17	<del>chapter.</del>
18	(b) The preference in this section may not be used in
19	combination with any other preference otherwise available to a
20	bidder-under state or federal-law.
21	(c) In any section 103D 302 or 103D 303 contract for a

2 public works project, a state agency shall award the contract to

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1	an offeror who has filed all state-tax returns due to the State
2	and paid-all-amounts owing on such returns for two-successive
3	years-prior to submitting the offer; provided that the amount of
4	that offer is not more than seven per cent higher than the
5	amount-offered by any competing contractor who has not filed or
6	paid-all applicable state taxes, and the amount of the offer by
7	the-state-tax paying offeror is \$5,000,000 or less.
8	(d) In any section 103D 302 or 103D-303 contract for a
9	public-works-project, a state agency shall-award-the contract to
10	an-offeror who has filed all state tax returns due to the State
11	and paid all amounts owing on such returns for four successive
12	years prior to submitting the offer; provided that the amount of
13	that offer is not more than seven per cent higher than the
14	amount offered by any competing contractor who has not filed or
15	paid all applicable state taxes, and the amount of the offer by
16	the state tax paying offeror is more than \$5,000,000.
17	(e) If two or more contractors who have paid state and
18	county-taxes-or were required to submit a filing regarding state
19	and county-taxes-are bidding on a public-works contract, and
20	those-contractors-meet-the criteria outlined in-subsection (c)
21	or (d), the state agency shall award the contract to the
22	contractor-among them who has submitted the lowest bid.

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1	(f) If any federal statute or regulation precludes the
2	granting of federal assistance or reduces the amount of that
3	assistance for a particular public works project because of
4	preference-awarded by this section, this section shall not apply
5	insofar as its application would preclude or reduce federal
6	assistance-for-that-work."]
7	SECTION 9. If any provision of this Act, or the
8	application thereof to any person or circumstance is held
9	invalid, the invalidity does not affect other provisions or
10	applications of this Act which can be given effect without the
11	invalid provision or application, and to that extent the
12	provisions of this Act are severable.
13	SECTION 10. Statutory material to be repealed is bracketed
14	and stricken. New statutory material is underscored.
15	SECTION 11. This Act shall take effect on July 1, 2003.

Report Title: Procurement; Offeror Compliance With State Employment Laws; Pre-bid Conference; Procurement Institute; Professional Service Providers

SBREE CPI

#### Description:

Requires that all offerors awarded state contracts be incorporated or organized under the laws of the State or create an in-state division and comply with all applicable state employment laws. Requires a pre-bid conference to be held at least fifteen days prior to submission of bids pursuant to section 103D-302 for construction or design-build projects with a total contract value of \$500,000 or greater, or proposals pursuant to section 103D-303 for projects over \$100,000. Establishes a Procurement Institute to improve and enhance the efficiency, integrity and transparency of the State procurement process. Provides that design professional services may only be procured under section 103D-304, Hawaii Revised Statutes, or pursuant to emergency procurement procedures. Requires that an independent selection committee rank the applying professional service providers according to relevant criteria. Requires the awarding procurement official to negotiate award of the contract with the providers in the rank order set by the committee. Requires equal distribution of contract awards where providers hold the same qualifications or ranking. Repeals state taxpayer procurement preference. (CD1)



# Section 2: Ref: Chapter 3-122, Subchapter 5, Competitive Sealed Bids.

§3-122-21 <u>Preparing an invitation for competitive sealed</u> <u>bid.</u> (a) The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include:

- Instructions and information to bidders concerning the bid submission requirements, including:
  - (A) The time and date set for receipt of bids;
  - (B) The address of the office to which bids are to be delivered;
  - (C) The maximum time for bid acceptance by the procurement officer issuing the bid; and
  - (D) Any other special information, such as any requirement of intention to bid <u>or the time</u>,

### date and location of the pre-bid conference.

The time, date, and location of the receipt of bids and the bid opening shall be the same.

- (2) The purchase description or specifications, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements as are not included in the purchase description.
- (3) The contract terms and conditions, including but not limited to the following, as applicable:
  - (A) Tax clearance requirements pursuant to section 103D-328, HRS;
  - (B) Warranty requirement;
  - (C) Bonding or other security requirements pursuant to

subchapter 24;

- (D) Contract extension provisions; and
- (E) Statement that bid samples or
  - descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the invitation for bids.
- (4) A bid form which shall include space for, but not limited to, the following:
  - (A) Bid price;
  - (B) Brand name and model number and packaging for goods; and
  - (C) Information on applicable preferences.
- (5) A requirement that the bidder shall sign the bid form in ink and submit the bid form with the original signature included in the offer.
- (6) Documents by reference, provided that the invitation for bids specifies where the documents can be obtained.
- (7) A statement that bidders shall designate those portions of their offer that contain trade secrets or other proprietary data that are to remain confidential, subject to section 3-122-30(c) and (d); and that the material designated as confidential shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid.

- (8) For construction projects the bidder shall provide:
  - (A) The name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract; and
  - (B) The nature and scope of the work to be performed by each.

Construction bids that do not comply with the above requirements may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount.

(b) The terms, requirements and conditions set out in an invitation for bids, including the specifications appended or incorporated by reference therein, may be altered only by a written addendum issued by the procurement officer. The invitation for bids may require the acknowledgment of the receipt of all amendments issued. Any amendment issued shall be in the form of an addendum pursuant to section 3-122-27.

§3-122-22 <u>Multi-step sealed bidding.</u> (a) Multi-step sealed bidding is designed to obtain the benefits of competitive sealed bidding by award to the lowest responsive, responsible bidder, and at the same time obtaining the benefits of the competitive sealed proposals procedure through the solicitation of unpriced technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

(b) Multi-step sealed bidding is a two-phase process consisting of:

- (1) A technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State based on criteria set forth in the first phase of the invitation for bids; and
- (2) A second phase in which those bidders whose unpriced technical offers are determined to be acceptable based on criteria set forth in the first phase have their priced bids considered and award is made to the lowest responsive, responsible bidder.

(c) The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price and it is desirable:

- To invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirement;
- (2) To conduct discussions for the purposes of facilitating understanding of the unpriced technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;
- (3) To accomplish subparagraphs (1) and (2) prior to soliciting priced bids; and
- (4) To award to the lowest responsive, responsible bidder in accordance with the competitive sealed bidding procedures.

(d) A pre-bid conference as contemplated by section 3-122-26 may be conducted by the procurement officer, provided a prebid conference shall be required for construction and designbuild projects, pursuant to section 103D-, HRS.

(e) Prior to the preparation of phase one a determination shall be made by the procurement officer that the procurement officer or an evaluation committee selected in writing by the procurement officer shall evaluate the phase one proposals. A copy of the document identifying any committee members and any subsequent changes thereto shall be placed in the contract file.

(f) Phase one of multi-step sealed bidding shall be initiated by the issuance of an invitation for bids in the form required by section 3-122-21, except as hereinafter provided, and in addition shall state:

- (1) That unpriced technical offers are requested;
- (2) Whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, the priced bids shall be submitted in a separately sealed envelope;
- (3) That it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
- (4) That the State, to the extent the procurement officer finds necessary, may conduct confidential oral or written discussions of the unpriced technical offers the contents of which shall not be publicly disclosed until the contract is signed by all parties; and

(5) That the item being procured shall be furnished generally in accordance with the bidder's unpriced technical offer as found to be finally acceptable and shall meet the requirements of the invitation for bids.

(g) Addenda to the invitation for bids may, after receipt of unpriced technical offers, be issued and distributed only to bidders who submitted unpriced technical offers.

- (1) Those bidders may respond to the amendments in the form of new unpriced technical offers or amendments to the offers submitted.
- (2) If, in the opinion of the procurement officer, a contemplated addendum will significantly change the nature of the procurement, the invitation for bids shall be cancelled in accordance with subchapter 11, and a new invitation for bids issued.
- (h) The unpriced technical offers shall:
- Not be opened publicly but shall be opened in front of two or more procurement officials;
- (2) Be subject to nondisclosure of trade secrets and other proprietary data to unauthorized persons, as requested by bidders, in writing.

(i) The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids. The unpriced technical offers shall be categorized as:

- (1) Acceptable;
- (2) Potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(3) Unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(j) The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the invitation for bids or engage in technical discussions set forth in subsection (k).

(k) The procurement officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable unpriced technical offer, subject to the following rules:

- (1) During the course of the discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder.
- (2) Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the procurement officer. The submission may be made:
  - (A) At the request of the procurement officer, or

(B) Upon the bidder's own initiative.

(1) Upon completion of phase one, the procurement officer shall:
- If priced bids were required to be submitted in phase one, open the priced bids from bidders whose unpriced technical offers were found to be acceptable; or
- (2) If technical discussions have been held, or if material modifications to the procurement item, project or procedure have been made after the original submission of priced bids, return the sealed priced bids to bidders and provide them reasonable opportunity to submit a modified priced bid; or
- (3) If priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

(m) Phase two shall be conducted as any other competitive sealed bid procurement except as specifically set forth in this subsection:

- (1) No public notice need be given to phase two, submission of priced bids, because the notice was previously given;
- (2) After the contract is signed by all parties, the unpriced technical offers of all bidders shall be open for public inspection and disclosed as follows:
  - (A) The procurement officer shall examine written request of confidentiality for trade secrets and proprietary data in the technical offer of the bidder to determine the validity of the requests.
  - (B) If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portions of the unpriced technical offer will be disclosed and that, unless

the bidder protests under chapter 3-126, the offer will be so disclosed.

(C) If the parties agree to the disclosure, the unpriced technical offers shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

(n) Mistakes may be corrected or bids may be withdrawn at any time during phase one, provided, during phase two, mistakes may be corrected or withdrawal permitted only in accordance with sections 3-122-28, 3-122-29, and 3-122-31.

§3-122-23 <u>Bidding time.</u> (a) A minimum of ten [<del>calendar</del>] days shall be provided between the date of the last public notice of the solicitation and the date set for receipt of bids.

(b) For construction and design-build projects, pursuant to section 103D- , HRS, a minimum of fifteen days shall be provided between the date of the pre-bid conference and the date set for receipt of bids.

[(b)] (c) For the technical first phase of a multi-step sealed bid a minimum of fifteen [calendar] days shall be allowed between the date of the last public notice of the solicitation and the date set for receipt of unpriced technical offers, unless the procurement officer makes a written determination that a shorter time will provide for adequate competition.

[(a)] (d) Bidders shall have a reasonable time to prepare their bids.

§3-122-24 <u>Public notice.</u> (a) Public notice of the solicitation shall be made for the purpose of securing competition.

(b) The public notice of the solicitation shall include the following information:

- A brief description of the good, service, or construction desired;
- (2) Where and when the solicitation will be available;
- (3) How long the solicitation will be available, i.e., the deadline for the responses to the solicitation;
- (4) Other appropriate information, e.g., a notice of intention to offer pursuant to section 3-122-108 or the time, date and location of the pre-bid conference
  pursuant to section 3-122-26; and
- (5) For a multi-step sealed bid, a general statement that the bid is multi-step and the due date(s) of the technical offer and price offer.

(c) The public notice of availability of the solicitation shall be publicized as follows:

- At a minimum, statewide and countywide public notices shall be publicized on a purchasing agency or provider internet site.
- (2) Optionally, and in addition to (1) above, the following may be used:
  - (A) For statewide publication:
    - (i) A daily or weekly publication of statewide circulation; or

- (ii) Separate daily or weekly publications whose combined circulation is statewide[+ and].
- (B) For countywide publication, a daily or weekly publication in the pertinent county.
- (C) Notice by mail or facsimile transmission to persons on any applicable bidders mailing list, if any; or
- (D) Any other method the procurement officer deems effective for publicizing the solicitation.

(d) A copy of the solicitation shall be made available for public inspection at the office of the procurement officer issuing the solicitation.

§3-122-26 <u>Pre-bid conferences.</u> Pre-bid conferences may be conducted to explain the procurement requirements; provided prebid conferences for construction and design-build projects shall <u>be required, pursuant to section 103D-\_\_\_\_\_, HRS</u>. The purchasing agency may, for offers that have special or unusual requirements, e.g., requiring physical inspection, make attendance at a pre-bid conference a condition for submitting a bid. The condition must be stated prominently in the bid solicitation or in the written notice of a pre-bid meeting.

(1) Pre-bid conferences shall be announced to all prospective bidders in the solicitation or if decision to hold a pre-bid conference is made after the issuance of the solicitation, the conference shall be announced in an addendum.

- (2) The conference should be held long enough after the solicitation has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids.
- (3) Nothing stated at the pre-bid conference shall change the solicitation unless a change is made by written addendum as provided in section 3-122-27.
- (4) A summary of the conference shall be supplied to all those prospective bidders known to have received a solicitation, in addition to any addendum issued as a result of the conference.

## Ref: Chapter 3-122, Subchapter 6, Competitive Sealed Proposals

§3-122-46 <u>Preparing a request for proposals</u>. (a) The request for proposals is used to initiate a competitive sealed proposal procurement and shall include:

- The specifications for the goods, services, or construction items to be procured, including a description of the performance or benefit required;
- (2) All contractual terms and conditions applicable to the procurement;
- (3) A statement as to when and in what manner prices are to be submitted;
- (4) A statement concerning whether the proposal shall be accompanied by a proposal security pursuant to subchapter 24 or other evidence of financial responsibility;

- (5) The term of the contract and conditions of renewal or extension, if any;
- (6) Instructions and information to offerors, including pre-proposal conferences, the location where proposals are to be received, and the date, time and place where proposals are to be received and reviewed;
- (7) Proposal preparation time set to provide offerors a reasonable time to prepare their proposals. A minimum of thirty calendar days between the date of last legal advertisement of the solicitation and the time and date set for receipt of proposals, unless a shorter time is deemed appropriate for a particular procurement that will allow for adequate competition as determined in writing by the procurement officer; provided a minimum of fifteen days shall be provided between the date of the pre-proposal conference and the date set for the receipt of proposals for construction and design-build projects, pursuant to section 103D- , HRS;
- (8) The relative importance of price and other evaluation criteria; and specific evaluation criteria to be used in evaluation of proposals which may include but is not limited to:
  - (A) Technical capability and approach for meeting performance requirements;
  - (B) Competitiveness and reasonableness of price;
  - (C) Managerial capabilities; and
  - (D) Best value factors.

- (9) A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without discussions; and
- (10) A statement that offerors shall designate in writing those portions of the unpriced proposal that contain trade secrets or other proprietary data that are to remain confidential, subject to section 3-122-58; that the material designated as confidential shall be readily separable from the proposal in order to facilitate inspection of the nonconfidential portion of the proposal.

(b) Public notice for goods, non-professional services, and construction shall be given by a purchasing agency with delegated procurement authority by distributing the request for proposals in the same manner provided for distributing an invitation for bids under section 3-122-24. Public notices for professional services shall be in accordance with section 3-122-64.

(c) Pre-proposal conferences may be conducted in accordance with section 3-122-26; provided a pre-proposal conference shall be required for construction and design-build projects, pursuant to section 103D-\_\_\_, HRS.

(d) Prior to the public notice for a request for proposals, a determination shall be made by the procurement officer that the procurement officer or an evaluation committee selected in writing by the procurement officer shall evaluate the proposals pursuant to section 3-122-52.

Sealed Proposals.

§3-122-60 Debriefing. (a) The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award.

- (1) A request for a debriefing shall be made within three working days after the posting of the award of the contract.
- (2) Debriefing shall be scheduled within [seven] working days; provided the procurement officer may determine whether to conduct a single or several debriefings.

(b) A protest submitted pursuant to section 103D-701, HRS, following a debriefing shall be filed within the time period specified in section 103D-303(h), HRS.

## Section 5: Ref: Chapter 3-122, Subchapter 7, Procurement of Professional Services.

§3-122-63 <u>General provisions.</u> (a) Professional services shall be in accordance with section 103D-304, HRS.

(b) Professional service offerors shall be informed in writing prior to their submission of statements of qualifications of any additional criteria as allowed under paragraph 103D-304(e), (4), HRS.

[(b)](c) After the contract is awarded, the following information shall be open to public inspection, including but not limited to the contract, the list of qualified persons, the [screening] selection committee's criteria for selection established under subsection 103D-304(d), HRS, and the statements of qualifications and related information submitted by the qualified persons, except those portions for which a written request for confidentiality has been made subject to section 3-122-58.

[(a)] (d) Amendment to a professional services contract shall require prior approval of the head of the purchasing agency when the increase is at least \$25,000 and ten per cent or more of the initial contract price.

§3-122-67 <u>Small purchases of professional services</u>. Small purchases of professional services may be conducted pursuant to subsection 103D-304 [<del>(g)</del>] <u>(j)</u>, HRS, or subchapter 8, provided that the small purchase of design professional services furnished by

<u>licensees under chapter 464 shall only be conducted pursuant to</u> <u>subsections 103D-304(f), (g), and (h), HRS</u>.

<u>§3-122-69 Review and selection committees.</u> Persons who serve on the review or selection committee who are not employees of the purchasing agency shall:

- (1) Demonstrate they have sufficient knowledge to serve on the review or selection committee;
- (2) Serve without compensation, unless justified and determined in writing by the head of the purchasing agency that compensation is justified; and
- (3) Sign an affidavit attesting that they have no personal, business, or any other relationship that will influence their decision in the review or selection process, and agreeing to not disclose any information prior to award.

<u>\$3-122-70</u> Debriefing. (a) The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award.

- (1) A request for a debriefing shall be made within three working days after the posting of the award of the contract.
- (2) Debriefing shall be scheduled within [seven] working <u>days; provided the procurement officer may determine</u> 17

whether to conduct a single or several debriefings. (b) A protest submitted pursuant to section 103D-701, HRS, following a debriefing shall be filed within the time period specified in section 103D-303 (h), HRS. Section 6: Ref: Chapter 3-122, Subchapter 13, Responsibility of Bidders and Offerors.

<u>\$3-122-112</u> Compliance with all laws governing entities doing business in the State. (a) This section shall be in accordance with subsection 103D-310(c), HRS, and applies to procurements [\$5,000 or more].

(b) Unless a different deadline is imposed by the solicitation, offeror shall furnish prior to the award and by the deadline imposed by the procurement officer, the following documentation as proof of compliance with the requirements of subsection 103D-310(c), HRS:

- (1) A certificate of good standing issued by the business registration division of the department of commerce and consumer affairs, [current within thirty days of issuance date].
- (2) A tax clearance certificate from the department of taxation and the Internal Revenue Service, subject to subsections 103D-328(a) and (e), HRS, [current within six months of issuance date].
- (3) [Verbiage pending receipt of information from DLIR on required documentation for chapter 383, Hawaii Employment Security Law];
- (4) [Verbiage pending receipt of information from DLIR on required documentation for chapter 386, Workers' Compensation Law];

- (5) [Verbiage pending receipt of information from DLIR on required documentation for chapter 392, Temporary Disability Insurance]; and
- (6) [Verbiage pending receipt of information from DLIR on required documentation for chapter 393, Prepaid Health Care Act].

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## Section 7: Ref: Chapter 3-126, Subchapter 1, Authority to Resolve Protested Solicitations and Awards.

§3-126-4 Protest of an award. (a) A protest of a award shall be submitted in writing to the chief procurement officer or as otherwise specified in the solicitation, within five working days after the posting of the notice of award for solicitations pursuant to section 103D-302 or 103D-303, HRS; provided a protest following a debriefing pursuant to section 103D-303(h), HRS, shall be submitted in writing within five working days after the debriefing is completed. The provisions of subsections 3-126-3(c) and (d) to file a protest shall be complied with. Heads of purchasing agencies shall not proceed with the award upon receipt of a timely protest, and shall comply with section 3-126-5.

(b) Protest of an award pursuant to sections 103D-304, 103D-305, or 103D-306 shall be submitted in writing by the protestor to the procurement officer, within five working days of knowledge giving rise to the protest; provided a protest following a <u>debriefing pursuant to section 103D-304(k), HRS, shall be</u> <u>submitted in writing within five working days after the</u> <u>debriefing is completed</u>.

- A protest shall be filed in accordance with subsections
  3-126-3(c) and (d), with supporting exhibits, evidence, or documents to substantiate the protest;
- (2) A decision shall be made by the procurement officer as expeditiously as possible after

reviewing all relevant information, and shall be final. A decision issued in resolution of a protest shall contain the following:

- (A) A statement of the action to be taken or resolution to the protest;
- (B) Statement that the decision is final and conclusive.

§3-126-5 <u>Stay of procurements during protest.</u> When a protest has been filed pursuant to section 3-126-3 or 3-126-4, [the chief procurement officer or designee shall take] no further action <u>shall be taken</u> until the protest has been settled, unless the chief procurement officer [or designee] makes a written determination, after consulting with the head of the purchasing agency, that the award of the contract is necessary to protect the substantial interests of the State.

Section 3: Ref: Chapter 3-121, Procurement Organization.

§103D-206 Additonal duties of the administrator of the procurement office.

Information on the Hawaii Procurement Institute will be discussed under the Administrator's Report.