AGENDA

I. CALL TO ORDER

II. APPROVAL OF MINUTES — Meeting of May 29, 2003

III. NEW BUSINESS

For Action

A. Adoption of Proposed Interim Rules for:

1. Chapter 3-122, HAR.
   a. §3-122-9.01
   b. §3-122-21
   c. §3-122-22
   d. §3-122-23
   e. §3-122-24
   f. §3-122-26
   g. §3-122-46
   h. §3-122-60
   i. §3-122-63
   j. §3-122-67
   k. §3-122-69
   l. §3-122-70
B. Approval of Procurement Directives.
2. Qualification Questionnaire.
C. Election of Officers.

IV. ADMINISTRATOR'S REPORT

V. ADJOURNMENT
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-122 (Interim)
Hawaii Administrative Rules

June 16, 2003

1. Section 3-122-9.01, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-9.01 Disclosure of information. (a) A purchasing agency is not required to disclose identifying the number or the organization or persons that obtained a solicitation; or attended a pre-offeror's conference; or submitted a notice of intent to offer or an offer itself; or an award until:
(1) The purchase order is issued, in the case of small purchase requests for quotations;
(2) The deadline for receipt and opening of bids, in the case of invitations for bids; and
(3) After the contract has been awarded in the case of requests for proposals.
(b) In the case of procurement of professional services, the information specified in section 3-122-63(c) shall be made public after the award."

2. Section 3-122-21, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-21 Preparing an invitation for competitive sealed bid. (a) The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include:
(1) 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 or the time, 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."

Eff 12/15/95; am and comp 7/25/02; am 12/28/06
(Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-328)

3. Section 3-122-22, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-22 Multi-step sealed bidding. (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:

(1) 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] paragraphs (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 pre-bid conference shall be required for construction and design-build projects, pursuant to SLH 2003, Act 52, §2, 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:

(1) 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:

(1) 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; [ex]

(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.

(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." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am ] (Auth: HRS §§103D-202, 103D-302) (Imp: HRS §103D-302)

4. Section 3-122-23, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-23 Bidding time. (a) A minimum of ten calendar 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, a minimum of fifteen calendar days shall be provided between the date of the pre-bid conference and the date set for receipt of bids."
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.

Bidders shall have a reasonable time to prepare their bids. [Eff 12/15/95; comp 11/17/97; am and comp 7/25/02; am ] (Auth: HRS §§103D-202, 103D-302, SLH 2003, Act 52, §2) (Imp: HRS §103D-302, SLH 2003, Act 52, §2)

5. Section 3-122-24, Hawaii Administrative Rules (Interim), is amended to read as follows:

"3-122-24 Public notice. (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:
(1) 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:
(1) 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 paragraph (1) above, the following may be used:
(A) [For statewide] Newspaper publication:
   (i) [A] For statewide publication, a daily or weekly publication of statewide circulation; or
(ii) separate daily or weekly publications whose combined circulation is statewide.

(ii) For countywide publication, a daily or weekly publication in the pertinent county.

(B) Notice by mail or facsimile transmission to persons on any applicable bidders mailing list, if any.

(C) 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.  [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am ] (Auth: HRS §§103D-202, 103D-302) (Imp: HRS §103D-302)

6. Section 3-122-26, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-26 Pre-bid conferences. Pre-bid conferences may be conducted to explain the procurement requirements; provided pre-bid conferences for construction and design-build projects shall be required, pursuant to SLH 2003, Act 52, §2, HRS. 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 sufficiently before bid opening to allow consideration of the summary results to all those prospective bidders known to have received a solicitation, in addition to any addendum issued as a result of the conference. [Eff 12/15/95; am and comp 11/17/97; comp 7/25/02; am (Auth: HRS §103D-202, SLH 2003, Act 52, §2) (Imp: HRS §103D-302, SLH 2003, Act 52, §2)

7. Section 3-122-46, Hawaii Administrative Rules (Interim), is amended to read as follows:

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

(1) 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 calendar 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;

(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 SLH 2003, Act 52, §2, 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." [Eff 12/15/95; am and comp 7/25/02; am ] (Auth: HRS §103D-202, SLH 2003, Act 52, §2) (Imp: HRS §103D-303, SLH 2003, Act 52, §2)

8. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-60 to read as follows:

"§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.

(b) A written request for a debriefing shall be made within three working days after the posting of the award of the contract.

(c) Debriefing shall be held, to the maximum extent practicable, within seven working days; provided the procurement officer may determine whether or not to conduct individual or combined debriefings.

(d) A protest submitted pursuant to section 103D-701, HRS, following a debriefing shall be filed within five working days, as specified in section 103D-303(h), HRS." [Eff ] (Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

9. Section 3-122-63, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-63 General provisions. (a) Professional services shall be procured in accordance with section 103D-302, 103D-303, 103D-304, 103D-305, 103D-306, or 103D-307, HRS; provided that design professional services furnished by licensees under chapter 464, HRS, shall only be procured pursuant to section 103D-304 or 103D-307, 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 section 103D-304(a)(4), HRS.

(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 names of selection committee members, the [screening] selection
committee's criteria for selection established under section 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.

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." [Eff 12/15/95; comp 11/7/97; am and comp 7/25/02; am ] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

10. Section 3-122-67, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-67 Small purchases of professional services. Small purchases of professional services, except small purchase of design professional services furnished by licensees under chapter 464, HRS, may be conducted pursuant to [subsection 103D-304(g),] section 103D-304(i), HRS, or subchapter 8." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am ] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §§103D-304, 103D-305)

11. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-69 to read as follows:

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

(1) 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:

(i) Attesting to having no personal, business, or any other relationship that will influence their decision in the review or selection process;

(ii) Agreeing not to disclose any information on the review or selection process; and

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(iii) Agreeing that their names will become public information upon award of the contract. [Eff HRS §103D-202] (Auth: HRS §103D-304)

12. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-70 to read as follows:

"§3-122-70 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 written request for a debriefing shall be made within three working days after the posting of the award of the contract.

(2) Debriefing shall be held, to the maximum extent practicable, within seven working days; provided the procurement officer may determine whether or not to conduct individual or combined debriefings.

(b) A protest submitted pursuant to section 103D-701, HRS, following a debriefing shall be filed within five working days, as specified in section 103D-303(h), HRS. [Eff HRS §103D-202] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

13. Section 3-122-74, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-74 General provisions. (a) Small purchases shall be subject to section 103D-305, HRS, and do not require public notice or public bid openings.

(b) Small purchase contracts for professional services may be procured pursuant to this subchapter or [subsection 103D-304(g)] section 103D-304(i), HRS; provided that small purchase of design professional services furnished by licensees under chapter 464, HRS, shall be procured in accordance with section 103D-304, HRS.

(c) Unless otherwise exempt, purchasing agencies delegated small purchase authority shall comply with state procurement office price or vendor lists, price schedules, or other chief procurement officer lists and schedules, where applicable.

(d) Purchases shall not be parcelled by dividing the purchase of same, like, or related items of goods,
services, or construction into several purchases of smaller quantities, so as to evade the statutory competitive bidding requirements. For additional details, refer to chapter 3-131.

(e) Preferences pursuant to part X, chapter 103D, HRS, shall not apply to small purchases." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am ] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

14. Section 3-122-75, Hawaii Administrative Rules (Interim), is amended to read as follows:

"§3-122-75 Goods [and] services, and construction. (a) Goods [and] services, and construction subject to section 103D-305, HRS, shall:

(1) Insofar as it is practical be based on the agency's specifications, with adequate and reasonable competition;

(2) Consider all criteria, including but not limited to quality, warranty, and delivery; and

(3) Be awarded to the vendor providing the best value to the State.

(b) The procurement policy board shall by procurement directive establish the procedures to be used for this section." [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; am ] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

15. Section 3-122-76, Hawaii Administrative Rules (Interim), is repealed:

["§3-122-76 Construction. (a) Construction subject to section 103D-305, HRS, shall:

(1) Insofar as it is practical be based on the agency's specifications, with adequate and reasonable competition;

(2) Be awarded to the vendor submitting the lowest quotation.

(b) The policy board shall by procurement directive establish the procedures to be used for this section."] [Eff 12/15/95; am and comp 11/17/97; am and comp 7/25/02; R ] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)
16. Chapter 3-122, Hawaii Administrative Rules (Interim), is amended by adding a new section 3-122-112 to read as follows:

"§3-122-112 Compliance with all laws governing entities doing business in the State. (a) This section shall be in accordance with section 103D-310(c), HRS, and shall apply to procurements of $25,000 or more.

(b) This section shall not hinder or impede the State in contracting for any projects involving funding from the federal government." [Eff ]


17. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

18. Additions to update source notes to reflect these amendments are not underscored.

19. These amendments to chapter 3-122, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on June 16, 2003, and filed with the Office of the Lieutenant Governor.

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

RUSS K. SAITO
State Comptroller
APPROVED AS TO FORM:

Deputy Attorney General
1. Section 3-124-40, Hawaii Administrative Rules, is repealed:

"§3-124-40 Purpose. (a) The purpose of these rules is to establish the method of determining preference to in-state contractors when awarding a contract for a public works project. The objective is to promote the use of in-state contractors. (b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402)." [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02; R

2. Section 3-124-41, Hawaii Administrative Rules, is repealed:

"§3-124-41 Definitions. The following definitions are also applicable to terms used in this chapter: State agency" means any board, commission, department, bureau, division, agency, or political subdivision of the state government, excluding the counties." [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R

3. Section 3-124-42, Hawaii Administrative Rules, is repealed:

"§3-124-42 Applicability. (a) These rules shall apply to solicitations issued pursuant to sections 103D-302 and 103D-303, HRS, for public works projects. (b) These rules shall not apply: (1) Whenever the application will disqualify any state agency from receiving federal
The in-state contractor preference may not be used in combination with any other preference otherwise available under state or federal law."

Section 3-124-43, Hawaii Administrative Rules, is repealed:

"§3-124-43 Qualification procedure. (a) Any offeror desiring an in-state contractor preference pursuant to chapter 103D, HRS, shall complete an application for a tax clearance and submit it to the state department of taxation for a tax clearance certificate. Upon receipt of the application, the state department of taxation will verify that the applicant has filed all state tax returns, and has paid all amounts owing on such returns for the number of years and for the dollar amounts specified in section 103D-1007, HRS.

(b) The state department of taxation will issue a tax clearance certificate to the applicant upon its determination that the applicant has filed all state tax returns, and has paid all amounts owing on such returns, in accordance with section 103D-1007, HRS."

Section 3-124-44, Hawaii Administrative Rules, is repealed:

"§3-124-44 Bidding procedure. Solicitations for public works projects issued by a state purchasing agency and consistent with section 3-124-41, shall:

(1) State that a price preference will be given to in-state contractors subject to the directions in the solicitation on applicability, qualification procedures, and limitations of the in-state contractor preference;

(2) Provide an appropriate space for the offeror to indicate whether the in-state preference is selected by the offeror,"
§3-124-45

(3) State that if the in-state contractor preference is selected, the price preference percentage, as provided in section 103D-1007, HRS, shall be used for price evaluation, as specified in section 3-124-45;

(4) State that the in-state preference may not be used in combination with any other preference available under state or federal law and that the selection of the in-state contractor preference takes precedence over the selection of any other preference and all other selections will be ignored by the procuring agency; and

(5) Require the offeror requesting an in-state contractor preference to submit with the offer an tax clearance certificate obtained in accordance with section 3-124-43 and shall caution the offeror that failure to submit the tax clearance certificate automatically voids the selection of the in-state contractor preference."

6. Section 3-124-45, Hawaii Administrative Rules, is repealed:

"§3-124-45 Evaluation procedure and contract award. (a) When the in-state contractor preference is not selected by an offeror, the offer shall be evaluated by applying all preferences selected by the offeror which are allowed by statute. Calculations for adjustments shall be based upon the original price offered. Should more than one preference apply, the evaluated price shall be the sum of the original price plus applicable preference adjustments.

(b) Whenever an offeror selects and qualifies for the in-state contractor preference, the prices offered by those not selecting or qualifying for the in-state contractor preference shall be increased by the percentage allowed in section 103D-1007, HRS, for evaluation purposes.

(c) The responsible and responsive offeror submitting the offer with the lowest evaluated price shall be awarded the contract.

(d) For offers submitted pursuant to 103D-302 and after taking into consideration all applicable
preferences, the contract amount shall be the original price offered.

(e) Should the price comparison result in identical evaluated prices, and the tied bidders meet the provisions of section 3-124-43, the procurement officer shall select the winning bid resulting from an invitation for bids, pursuant to section 3-122-34.

(f) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57.

[Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

7. Section 3-124-66, Hawaii Administrative Rules, is amended to read as follows:

"§3-124-66 Partners in employment program. The state procurement office shall:

(1) Maintain and post to the internet a current list of [partners in employment program providers with descriptions for] participants in the partners in employment program and the goods [or] and services [that have been determined by the department to meet that department's criteria and annually distribute the list to all state and county purchasing agencies; they provide; and

(2) Ensure that any good or service available from a qualified community rehabilitation program pursuant to this subchapter is not placed on the Hawaii products list under section 103D-1002, HRS." [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R] (Auth: HRS §§103D-202, 103D-1010) (Imp: HRS §§103D-1010, 103D-1011)"

8. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

9. Additions to update source notes to reflect these amendments are not underscored.

10. These amendments to chapter 3-124, Hawaii Administrative Rules, shall take effect ten days after
filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on June 16, 2003, and filed with the Office of the Lieutenant Governor.

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General
1. Section 3-126-4, Hawaii Administrative Rules, is amended to read as follows:

"3-126-4 Protest of an award. (a) A protest of an 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 section 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 section 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 debriefing pursuant to section 103D-304(k), HRS, shall be submitted in writing within five working days after the debriefing is completed.

1. A protest shall be filed in accordance with subsections section 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; and

(B) A statement that the decision is final and conclusive." [Eff 12/15/95; am and comp 11/25/02; am ] (Auth: HRS §§103D-202,
2. Section 3-126-5, Hawaii Administrative Rules, is amended to read as follows:

"§3-126-5 Stay of procurements during protest. 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 shall be taken 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." [Eff 12/15/95; am and comp 11/25/02; am

(Auth: HRS §§103D-202, 103D-701)

3. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

4. Additions to update source notes to reflect these amendments are not underscored.

5. These amendments to chapter 3-126, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on June 16, 2003, and filed with the Office of the Lieutenant Governor.

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

RUSS K. SAITO
State Comptroller
APPROVED AS TO FORM:

Deputy Attorney General
TO: All Chief Procurement Officers
All Executive Department Heads

FROM: Aaron S. Fujioka, Administrator
State Procurement Office

SUBJECT: Implementation of Act 52, SLH 2003 (SB 1262, CD1)

The purpose of this circular is to summarize the requirements of Act 52 and issue guidelines for its implementation.

Summary of Act 52, SLH 2003:

Section 2. Adds a new section to Chapter 103D on Pre-bid conference
Requires a pre-bid conference for construction or design-build projects under §103D-302 totaling $500,000 or more; and under §103D-303 totaling $100,000 or more.

Section 3. Amends §103D-206, Additional duties of the administrator of the procurement office.
Adds to the responsibility of the Administrator to establish and maintain a procurement institute in cooperation with the William S. Richardson School of Law, to promote and develop procurement education and training.

Section 4. Amends §103D-303, Competitive sealed proposals
Includes a request for debriefing process for non-selected offerors.

Section 5. Amends §103D-304, Procurement of professional services
Amends the name of the "screening" committee to the "selection" committee; the requirement for members of the review and selection committees shall consist of a minimum of "three employees from the agency or from another governmental body" is amended to "three persons"; provides that the selection criteria employed by the selection committee shall be in descending order of importance; provides that the selection committee shall determine in writing any additional criteria used in the evaluation process;
provides that the ranking of offerors shall be determined by the selection committee rather than by the head of the purchasing agency; the requirement for all professional service contracts to be posted electronically was amended to require only contracts $5,000 or more; includes a request for debriefing process for non-selected offerors; and provides that design professional services furnished by licensees under chapter 464, HRS, shall only be procured pursuant to §103D-304 (excluding the small purchase process) or §103D-307, HRS.

Note: Design professional services can no longer be procured as a small purchase under §103D-305, HRS. The §103D-304 (f), (g), (h), HRS, selection committee process shall be used. §103D-307, HRS, shall be used for emergency design professional services $25,000 or more.

Section 6. Amends §103D-310, Responsibility of offerors
Add provisions for all offerors, upon award of a contract, to comply with Chapters 237 (general excise tax); 383 (employment security); 386 (workers compensation); 392 (temporary disability insurance); and 393 (pre-paid health care); and shall be incorporated or organized under the laws of the State, or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Section 7. Amends §103D-701, Authority to resolve protested solicitations and awards
Includes the provision for a request for debriefing.

Section 8. Repeals §103D-1007, Preference to bidders on state agency contracts

Implementation of Act 52 (July 1, 2003):

The Procurement Policy Board is in the process of adopting Interim Hawaii Administrative Rules to implement the requirements of Act 52. However, the rules will not be ready for distribution until after July 1, 2003.

In order for all purchasing agencies to be in compliance with the July 1, 2003 effective date of Act 52, the following guidelines are provided:

- Procurements pursuant to §§103D-302 and 103D-303, HRS, solicited (legal advertised date) before July 1, 2003, are exempt from Act 52 requirements.

- Procurements for professional services pursuant to §103D-304, HRS, solicited (legal advertised date), and if persons are determined to be most qualified by a committee before July 1, 2003, are exempt from Act 52 requirements even though the award is subsequent to July 1, 2003. However, if the selection committee evaluates persons on or after the July 1, 2003 effective date of this Act, then the requirements of Act 52 shall apply.

- All §103D-304, HRS, professional service awards for $5,000 or more are to be posted electronically within seven days of the award. This is a change. All §103D-304, HRS, awards previously required posting.
Questions concerning this circular may be directed to:
Justin Fo (586-0577), justin.fo@hawaii.gov;
Ruth Yamaguchi (585-0567), ruth.yamaguchi@hawaii.gov; or
Bob Governs (586-0554), robert.governs@hawaii.gov.

Attach. Act 52, SLH 2003 (SB1262, CD1)
Honolulu, Hawaii
April 25, 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.

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

Record of Votes of a Conference Committee

Bill/Concurrent Resolution No.: SB 1262, SD1, HD1

Date/Time: 04/25/03 1:30 pm

☐ The recommendation of the House and Senate managers is to pass with amendments (CD).

☐ The Committee is reconsidering its previous decision.

☐ The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure.

☐ The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.

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TOTAL 3

A = Aye
WR = Aye with Reservations
N = Nay
E = Excused

Senate Recommendation is: ✓ Adopted
House Recommendation is: ✓ Adopted

Lead Chair’s or Designee’s Signature: [Signature]
House Lead Chair’s or Designee’s Signature: [Signature]

Distribution: Original – Lead Chair of Originating House
Pink – Senate Clerk’s Office
Blue – Drafting Agency
Yellow – House Clerk’s Office
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

KENNETH T. HIRAKI, Co-Chair

MICHAEL Y. MAGDAAY, Co-Chair

ON THE PART OF THE SENATE

CAL KAWAMOTO, Chair
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

SECTION 1. The purpose of this Act is to establish procurement policies and procedures that:

(1) Ensure in-state contractors' ability to win awards of public funds for state contracts;

(2) Promote public confidence in the integrity of the procurement process;

(3) Increase openness in the award of competitive sealed proposals and professional services contracts;

(4) Enhance procurement education in the Pacific by creating a Hawaii procurement institute;

(5) Require a pre-bid conference to be attended by all potential bidders, offerors, subcontractors, and union representatives, that will allow all interested parties to raise their protests prior to bidding, so that any subsequent protests can be resolved quickly and efficiently pursuant to the timeframe established in section 103D-701, Hawaii Revised Statutes; and
(6) Technically correct chapter 103D, Hawaii Revised Statutes.

SECTION 2. Part X of chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"103D— Pre-bid conference. (a) At least fifteen days prior to submission of bids pursuant to section 103D-302 for a construction or design-build project with a total estimated contract value of $500,000 or more, and at least fifteen days prior to submission of proposals pursuant to section 103D-303 for a construction or design-build project with a total estimated contract value of $100,000 or more, the head of the purchasing agency shall hold a pre-bid conference and shall invite all potential interested bidders, offerors, subcontractors, and union representatives to attend.

(b) The procurement policy board shall adopt rules under chapter 91 to effectuate this section."

SECTION 3. Section 103D-206, Hawaii Revised Statutes, is amended to read as follows:

"[4] 103D-206[4] Additional duties of the administrator of the procurement office. In addition to the duties referred to in section 103D-205, the administrator shall:
(1) Perform periodic review of the procurement practices of all governmental bodies;

(2) Assist, advise, and guide governmental bodies in matters relating to procurement;

(3) Develop and administer a statewide procurement orientation and training program;

(4) Develop, distribute, and maintain a procurement manual for all state procurement officials; [and]

(5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties[; and]

(6) Establish and maintain a Hawaii procurement institute, in cooperation with the University of Hawaii William S. Richardson school of law and other public and private entities and/or persons, to promote and develop a professional acquisition workforce and to improve and enhance the State of Hawaii's contractor industrial base through education and training. The Hawaii procurement institute may:

(A) Conduct and participate in procurement education and training for entry level and higher qualified
State of Hawaii employees and others, including persons not employed by the State of Hawaii;

(B) Conduct and promote research, conferences, and studies to improve the procurement process, laws, policies, methods, regulations, procedures, and forms relating to state and local government procurement;

(C) Report on and make recommendations regarding goals, guidelines, innovations, and evaluation of state and local government procurement initiatives; and

(D) Establish and maintain a procurement library within the State of Hawaii."

SECTION 4. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

"§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be utilized to procure goods, services, or construction designated in rules adopted by the procurement policy board as goods, services, or construction which are either not practicable or not advantageous to the State to procure by competitive sealed bidding. Competitive sealed proposals may also be utilized when the head of a purchasing
agency determines in writing that the use of competitive sealed
bidding is either not practicable or not advantageous to the
State.

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

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

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

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

(f) Discussions may be conducted with responsible offerors
who submit proposals determined to be reasonably susceptible of
being selected for award for the purpose of clarification to
assure full understanding of, and responsiveness to, the
solicitation requirements. Offerors shall be accorded fair and
equal treatment with respect to any opportunity for discussion
and revision of proposals, and revisions may be permitted after
submissions and prior to award for the purpose of obtaining best
and final offers. In conducting discussions, there shall be no
disclosure of any information derived from proposals submitted
by competing offerors.

(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.

(h) In cases of awards made under this section,
nonselected offerors may submit a written request for debriefing
to the chief procurement officer or designee within three
working days after the posting of the award of the contract.
Thereafter, the head of the purchasing agency shall provide the
requester a prompt debriefing in accordance with rules adopted
by the policy board. Any protest by the requester pursuant to
section 103D-701 following debriefing shall be filed in writing
with the chief procurement officer or designee within five
working days after the date that the debriefing is completed."

SECTION 5. Section 103D-304, Hawaii Revised Statutes, is
amended to read as follows:
§103D-304 Procurement of professional services.  (a) Professional services shall be procured in accordance with sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or this section[—]; provided that design professional services furnished by licensees under chapter 464 shall be procured pursuant to this section or section 103D-307. Contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the head of each purchasing agency shall publish a notice inviting persons engaged in providing professional services which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. Additional notices [may] shall be given if:

(1) The response to the initial notice is inadequate;

(2) The response to the initial notice does not result in adequate representation of available sources; [ex]

(3) [Previously unanticipated] New needs for professional services arise[—]; or

(4) Rules adopted by the policy board so specify.
The chief procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements by filing a new statement prior to the date designated for submission.

(c) The head of the purchasing agency shall designate a review committee consisting of a minimum of three employees from the agency or from another governmental body, persons with sufficient education, training, and licenses or credentials for each type of professional service which may be required. In designating the members of the review committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of the review committee established under this section shall be placed in the contract file.

The committee shall review and evaluate all submissions and other pertinent information, including references and reports, and prepare a list of qualified persons to provide these services. Persons included on the list of qualified persons may amend their statements of qualifications as necessary or appropriate. Persons shall immediately inform the head of the purchasing agency of any change in information furnished which
would disqualify the person from being considered for a contract award.

(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a [screening] selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (c) along with any other pertinent information, including references and reports. The [screening] selection committee shall be comprised of a minimum of three [employees of the purchasing agency] persons with sufficient education, training, and licenses or credentials in the area of the services required. [If the purchasing agency and using agency are different, the committee shall include at least one qualified employee from the using agency. When the committee includes an employee from a using agency, the employee shall be appointed by the head of the using agency. If qualified employees are not available from these agencies, the officers may designate employees of other governmental bodies.] In designating the members of the selection committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of
a selection committee established under this section shall be placed in the contract file.

(e) The [primary] selection criteria employed [by the screening committee] in descending order of importance shall [include but not be limited to]:

1. Experience and professional qualifications of the staff to be assigned relevant to the project type.
2. Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies.
3. Capacity to accomplish the work in the required time; and
4. Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

(f) The [screening] selection committee shall evaluate the submissions of persons on the list prepared pursuant to subsection (c) and any other pertinent information which may be available to the agency, against the selection criteria. The
committee may conduct confidential discussions with any person who is included on the list prepared pursuant to subsection (c) regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from [proposals submitted by competing offerors. The committee shall provide the head of the purchasing agency with the names of a minimum of three persons who the committee concludes are the most qualified to provide the services required, with a summary of each of their qualifications.] the competing professional service offerors.

(q) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of [the criteria established for the selection and] the [committee's] summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency [by the committee:] for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications.
(e) The head of the purchasing agency shall evaluate the summary of qualifications for each of the persons provided by the screening committee and may conduct additional discussions with any of them. The head of the purchasing agency shall then rank the persons based on the selection criteria.]

(h) The head of the purchasing agency or designee shall negotiate a contract with the first ranked person, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the first ranked person, negotiations with that person shall be formally terminated and negotiations with the second ranked person on the list shall commence. The contract file shall include documentation from the head of the purchasing agency, or designee, to support selection of other than the first ranked or next ranked person. Failing accord with the second ranked person, negotiations with the next ranked person on the list shall commence. If a contract at a fair and reasonable price cannot be negotiated, the [screening] selection committee may be asked to submit a minimum of three additional persons for the head of the purchasing agency to [rank, and] resume negotiations...
in the same manner provided in this subsection. Negotiations shall be conducted confidentially.

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

(1) The names of the [top-five] persons submitted under subsection [(d)], or, if the list submitted under subsection (d) is less than five, all of the persons submitted [g];

(2) The name of the person or organization receiving the award;

(3) The dollar amount of the contract;

(4) The name of the head of the purchasing agency or designee [head] making the selection; and

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

[(+–)] (i) Contracts for professional services of less than $25,000 the limits in section 103D-305, may be negotiated by the head of the purchasing agency, or designee, with at least any two persons [who appear] on the list of qualified persons.
established pursuant to subsection (c). Negotiations shall be conducted in the manner set forth in subsection [(c), but without establishing any order of preference.] (h), with ranking based on the selection criteria of subsection (e) as determined by the head of the agency.

(k) In cases of awards made under this section, nonselected professional service providers may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed."

SECTION 6. Section 103D-310, Hawaii Revised Statutes, is amended to read as follows:

"§103D-310 Responsibility of offerors. (a) Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days prior to the day designated for opening offers, shall give
written notice of the intention to submit an offer to the
procurement officer responsible for that particular procurement.

(b) Whether or not an intention to bid is required, the
procurement officer shall determine whether the prospective
offeror has the financial ability, resources, skills,
capability, and business integrity necessary to perform the
work. For this purpose, the officer, in the officer's
discretion, may require any prospective offeror to submit
answers, under oath, to questions contained in a standard form
of questionnaire to be prepared by the policy board. Whenever
it appears from answers to the questionnaire or otherwise, that
the prospective offeror is not fully qualified and able to
perform the intended work, a written determination of
nonresponsibility of an offeror shall be made by the head of the
purchasing agency, in accordance with rules adopted by the
policy board. The unreasonable failure of an offeror to
promptly supply information in connection with an inquiry with
respect to responsibility may be grounds for a determination of
nonresponsibility with respect to such offeror. The decision of
the head of the purchasing agency shall be final unless the
offeror applies for administrative review pursuant to section
103D-709.
(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, and shall:

1. Be incorporated or organized under the laws of the State; or

2. Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702.

[(d) Information furnished by an offeror pursuant to this section shall not be disclosed to any person except to law enforcement agencies as provided by chapter 92F.]

SECTION 7. Section 103D-701, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation. [A]"
Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the posting of award of the contract [either] under section 103D-302 or 103D-303, if no request for debriefing has been made, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers."

SECTION 8. Section 103D-1007, Hawaii Revised Statutes, is repealed.

("§103D-1007—Preference to bidders on state agency contracts. (a) The requirements in this section are in addition to any other applicable requirements provided in this chapter.

(b) The preference in this section may not be used in combination with any other preference otherwise available to a bidder under state or federal law.

(c) In any section 103D-302 or 103D-303 contract for a public works project, a state agency shall award the contract to
an offerer who has filed all state tax returns due to the State
and paid all amounts owing on such returns for two successive
years prior to submitting the offer, provided that the amount of
that offer is not more than seven per cent higher than the
amount offered by any competing contractor who has not filed or
paid all applicable state taxes, and the amount of the offer by
the state tax paying offerer is $5,000,000 or less.

(d) In any section 103D 302 or 103D 303 contract for a
public works project, a state agency shall award the contract to
an offerer who has filed all state tax returns due to the State
and paid all amounts owing on such returns for four successive
years prior to submitting the offer, provided that the amount of
that offer is not more than seven per cent higher than the
amount offered by any competing contractor who has not filed or
paid all applicable state taxes, and the amount of the offer by
the state tax paying offerer is more than $5,000,000.

(e) If two or more contractors who have paid state and
county taxes or were required to submit a filing regarding state
and county taxes are bidding on a public works contract, and
these contractors meet the criteria outlined in subsection (c)
or (d), the state agency shall award the contract to the
contractor among them who has submitted the lowest bid.
(f) If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public works project because of preference awarded by this section, this section shall not apply insofar as its application would preclude or reduce federal assistance for that work."

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

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)
Procurement Directive - Implementation
Guidance for Act 52, SLH 2003

To Be Presented at the Meeting
June 16, 2003

PROCUREMENT DIRECTIVE NO. 2003-01

TO: All Chief Procurement Officers  
    All Executive Departments

FROM: Aaron S. Fujioka, Administrator  
       State Procurement Office

SUBJECT: Qualification Questionnaire, SPO Form-21

The purpose of this directive is to:


2) Reissue the qualification questionnaire required by section 3-122-108(b), HAR, pursuant to section 103D-310(b).

Pursuant to §103D-310, HRS, and §3-122-108, HAR, a determination of responsibility or nonresponsibility of an offeror or prospective offeror to perform the work called for in the solicitation shall be made by the procurement officer on the basis of available information.

Effective immediately, if the procurement officer requires additional information, the offeror or prospective offeror may be requested to answer questions contained in the attached sample questionnaire prepared by the procurement policy board.

Should there be any questions, please contact me at (808) 587-4700 or your staff may contact Justin Fo at (808) 586-0577.

c: Administrative Services Office (DAGS)

Attachment
SAMPLE

STATE OF HAWAII

STANDARD

QUALIFICATION QUESTIONNAIRE

FOR

PROSPECTIVE BIDDERS

ON

PUBLIC WORKS CONTRACTS

issued by the

PROCUREMENT POLICY BOARD

STATE OF HAWAII

June 16, 2003

To be filed with the officer calling for bids

in accordance with Section 103D-310, HRS, as amended.

Submitted By ________________________________

Address _______________________________________

Date ___________________________________________

SPO Form-21
STANDARD QUALIFICATION QUESTIONNAIRE

COVERING EXPERIENCE, EQUIPMENT AND FINANCIAL STATEMENT OF PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS. THE OFFICER CALLING FOR BIDS MAY REQUIRE THE PROSPECTIVE BIDDER TO FURNISH ANY ADDITIONAL INFORMATION NOT SPECIFICALLY COVERED HEREIN. ALL ITEMS MUST BE ANSWERED AND OMISSIONS MAY BE CONSIDERED GOOD CAUSE FOR UNFAVORABLE CONSIDERATION.

GENERAL INFORMATION

1. The statements contained in this Questionnaire are being furnished for consideration in submitting a bid for the following project:

   (a) Project Title ____________________________________________________________

   (b) Location ________________________________________________________________

   (c) Bid Opening Date ________________________________________________________

2. The Questionnaire is being submitted in behalf of:

   (a) Name of Bidder ___________________________________________________________

   (b) Address _________________________________________________________________

   (c) Telephone No. ___________________________________________________________

   (d) Date Submitted _________________________________________________________

3. If the bid is submitted by a joint venture, composed of two or more individual firms, then each member firm comprising the joint venture must submit all information listed on pages 3 through 16, inclusive, of the Questionnaire and, in addition, answer the following:

   (a) Members of joint Venture _________________________________________________

   (b) Date of Joint Venture Agreement __________________________________________

   (c) Is agreement between members comprising the joint venture joint and several liability? ________

       If not, state the terms of agreement in this respect:

       _______________________________________________________________________

       _______________________________________________________________________

       _______________________________________________________________________
EXPERIENCE QUESTIONNAIRE

Submitted by ________________________________

Principal Office ________________________________

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

1. How many years has your organization been in business as a general contractor under your present business name?

2. How many years experience in ________ construction work has your organization had: (A) as a general Contractor ________; (B) as a Sub-Contractor ________

3. Show what construction projects your organization has completed in the past five (5) years in the following tabulation:

<table>
<thead>
<tr>
<th>Contract Amt.</th>
<th>Class of Work</th>
<th>When Completed</th>
<th>Name and Address of Owner</th>
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</tbody>
</table>

4. Have you ever failed to complete any work awarded to you? ___________________________ If so, state when, where and why?

______________________________________________________________________________

______________________________________________________________________________
5. Has any officer or partner of your organization in the past five (5) years been an officer or partner of some other organization that failed to complete a construction contract? If so, state name of individual, other organization and reason therefore ____________________________________________

6. Has any officer or partner of your organization in the past five (5) years failed to complete a construction contract handled in his own name? If so, state name of individual, name of Owner and reason therefore. ____________________________________________

7. In what other lines of business are you financially interested? ____________________________________________

8. For what corporations or individuals in the past five (5) years have you performed work, and to whom do you refer? ____________________________________________

9. For what counties within the State of Hawaii have you performed work and to whom do you refer? ____________________________________________

10. For what Bureaus or Departments of the State government have you performed work and to whom do you refer? ____________________________________________

11. Have you performed work for the U. S. Government? If so, when and to whom do you refer? ____________________________________________

12. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? If so, when and to whom do you refer? ____________________________________________
13. What is the construction experience of the principal individuals of your organization?

<table>
<thead>
<tr>
<th>Individual's Name</th>
<th>Present Position or Office</th>
<th>Years of Construction Experience</th>
<th>Magnitude and Type of Work</th>
<th>In What Capacity?</th>
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</thead>
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</table>
EQUIPMENT QUESTIONNAIRE

Submitted by ____________________________

Principal Office _______________________

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

1. In what manner have you inspected this proposed work? Explain in detail.

__________________________________________________________________________

2. Explain your plan or layout for performing the proposed work.

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

3. The work, if awarded to you, will have the personal supervision of whom?

__________________________________________________________________________

4. Do you intend to do the hauling on the proposed work with your own force? _________ If so, give amount and type of equipment to be used.

__________________________________________________________________________

__________________________________________________________________________

5. If you intend to sublet the hauling or perform it through an agent, state amount of sub-contract or agent’s contract, and, if known, the name and address of sub-contractor or agent, amount and type of his equipment and financial responsibility

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

6. Do you intend to do grading on the proposed work with your own forces? ___________ If so, give type of equipment to be used

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________
7. If you intend to sublet the grading or perform it through an agent, state amount of sub-contract or agent's contract, and, if known, the name and address of sub-contractor or agent, amount and type of his equipment and financial responsibility

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

8. Do you intend to sublet any other portions of the work? ____________ If so, state amount of sub-contract, and, if known, the name and address of the sub-contractor, amount and type of his equipment and financial responsibility

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

9. From which sub-contractors or agents do you expect to require a bond?

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

10. What equipment do you own that is available for the proposed work?

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Item</th>
<th>Description, Size, Capacity, Etc.</th>
<th>Condition</th>
<th>Years of Service</th>
<th>Present Location</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>
11. What equipment do you intend to purchase for use on the proposed work, should the contract be awarded to you?

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Item</th>
<th>Description, Size, Capacity, Etc.</th>
<th>Approximate Cost</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

12. How and when will you pay for the equipment to be purchased?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

13. Do you propose to rent any equipment for this work? ________________ If so, state type, quantity and reasons for renting

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
# FINANCIAL STATEMENT

Submitted by _____________________________________________

Principal Office __________________________________________

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

## BALANCE SHEET

As of ________________________, 20____

### Assets

<table>
<thead>
<tr>
<th>Assets</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Current assets:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cash and cash equivalents (1)</td>
<td>$ _____________</td>
</tr>
<tr>
<td></td>
<td>Short-term investments (2)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Accounts receivable, net (3)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Inventories (4)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Costs and estimated earnings in excess of billings on uncompleted contracts (5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prepaid expenses and other (6)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sub-Total Current Assets</td>
<td>_____________</td>
</tr>
<tr>
<td></td>
<td>Property and equipment:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Land (7)</td>
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<td></td>
<td>Buildings (8)</td>
<td></td>
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<tr>
<td></td>
<td>Vehicles, machinery and equipment (9)</td>
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<tr>
<td></td>
<td>Furniture and fixtures (10)</td>
<td></td>
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<td></td>
<td>Less accumulated depreciation</td>
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<tr>
<td></td>
<td>Sub-Total Net Property and Equipment</td>
<td>_____________</td>
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<tr>
<td></td>
<td>Other assets:</td>
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<tr>
<td></td>
<td>Cash surrender value of life insurance policies (11)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Deposits and other (12)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sub-Total Other Assets</td>
<td>_____________</td>
</tr>
</tbody>
</table>

Total Assets: $ ____________________
# BALANCE SHEET (Continued)

## Liabilities and Stockholder’s Equity

Current liabilities:
- Current portion of long-term debt (1)  
- Accounts payable (2)  
- Billings in excess of costs and estimated earnings on uncompleted contracts (3)  
- Accrued liabilities and other (4)  
  Sub-Total Current Liabilities

Long-term debt, net of current portion (5)  
  Sub-Total Liabilities & Long-term Debt:  

Stockholder’s equity:
- Capital stock (6)  
- Additional paid-in capital (7)  
- Retained earnings  
- Treasury stock (8)  
  Sub-Total Stockholder’s Equity

Total Liabilities and Stockholder’s Equity

<table>
<thead>
<tr>
<th>Liability Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current portion of long-term debt</td>
<td>$______________</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$______________</td>
</tr>
<tr>
<td>Billings in excess of costs and estimated</td>
<td>$______________</td>
</tr>
<tr>
<td>earnings on uncompleted contracts</td>
<td>$______________</td>
</tr>
<tr>
<td>Accrued liabilities and other</td>
<td>$______________</td>
</tr>
<tr>
<td>Sub-Total Current Liabilities</td>
<td>$______________</td>
</tr>
<tr>
<td>Long-term debt, net of current portion</td>
<td>$______________</td>
</tr>
<tr>
<td>Sub-Total Liabilities &amp; Long-term Debt</td>
<td>$______________</td>
</tr>
<tr>
<td>Capital stock</td>
<td>$______________</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>$______________</td>
</tr>
<tr>
<td>Retained earnings</td>
<td>$______________</td>
</tr>
<tr>
<td>Treasury stock</td>
<td>$(______________)</td>
</tr>
<tr>
<td>Sub-Total Stockholder’s Equity</td>
<td>$______________</td>
</tr>
<tr>
<td>Total Liabilities and Stockholder’s Equity</td>
<td>$______________</td>
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</tbody>
</table>
### Details Relative to Assets

1. **Cash and cash equivalents:**

<table>
<thead>
<tr>
<th>Financial Institution</th>
<th>Type of Account</th>
<th>Amount</th>
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2. **Short-term investments:**

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<thead>
<tr>
<th>Type of Security</th>
<th>Cost</th>
<th>Unrealized Gains</th>
<th>Unrealized Losses</th>
<th>Estimated Fair Value</th>
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3. **Accounts receivable (list major debtors):**

   - **Completed contracts**
     | Name | Description | Completion Date | Contract Amount | Amount Receivable |
     |------|-------------|-----------------|-----------------|------------------|
     |      |             |                 |                 |                  |
     |      |             |                 |                 |                  |
     |      |             |                 |                 |                  |
   - **Other than completed contracts**
     | Name | Description | Due Date | Amount Receivable |
     |------|-------------|---------|------------------|
     |      |             |         |                  |
     |      |             |         |                  |

   Less allowance for doubtful accounts

   $ (_______)

4. **Inventories**

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<tr>
<th>Description</th>
<th>Cost</th>
<th>Market Value</th>
<th>Lower of Cost or Market Value</th>
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11
### Costs and estimated earnings in excess of billings on uncompleted contracts

<table>
<thead>
<tr>
<th>Name</th>
<th>Description</th>
<th>Completion Date</th>
<th>Contract Amount</th>
<th>Costs and Estimated Earnings to Date</th>
<th>Billings to Date</th>
<th>Costs and Estimated Earnings Excess of Billings</th>
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### Prepaid expenses and other

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### Land

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### Buildings

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<th>Description</th>
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### Vehicles, machinery and equipment

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### Furniture and fixtures

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<th>Description</th>
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</tbody>
</table>
DETAILS RELATIVE TO ASSETS (Continued)

(11) Cash surrender value of life insurance policies

<table>
<thead>
<tr>
<th>Key Employee</th>
<th>Insurance Company</th>
<th>Policy Amount</th>
<th>Paid-Up Additional Insurance Amount</th>
<th>CSV Amount</th>
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Less loans payable

$_____  $_____  ($_____)

(12) Deposits and other

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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</table>
# DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY

1. Current portion of long-term debt (maturing within 12 months)

<table>
<thead>
<tr>
<th>Lender</th>
<th>Description</th>
<th>Security</th>
<th>Pledged</th>
<th>Due Date</th>
<th>Amount</th>
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2. Accounts payable (list major creditors)

<table>
<thead>
<tr>
<th>Name</th>
<th>Past Due Amount</th>
<th>Amount</th>
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</table>

3. Billings in excess of costs and estimated earnings on uncompleted contracts

<table>
<thead>
<tr>
<th>Name</th>
<th>Description</th>
<th>Completion Date</th>
<th>Contract Amount</th>
<th>Costs and Estimated Earnings to Date</th>
<th>Billings to Date</th>
<th>Billings in excess of costs and estimated earnings</th>
</tr>
</thead>
<tbody>
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4. Accrued liabilities and other

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<tr>
<th>Description</th>
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5. Long-term debt, net of current portion

<table>
<thead>
<tr>
<th>Lender</th>
<th>Description</th>
<th>Security</th>
<th>Pledged</th>
<th>Due Date</th>
<th>Amount</th>
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14
DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY (Continued)

(6) Capital stock

<table>
<thead>
<tr>
<th>Type of Stock</th>
<th>Class</th>
<th>No. of Shares Authorized</th>
<th>No. of Shares Issued and Outstanding</th>
<th>Par Value</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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(7) Additional paid-in capital

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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</tbody>
</table>

(8) Treasury stock

<table>
<thead>
<tr>
<th>Type of Stock</th>
<th>Class</th>
<th>No. of Shares</th>
<th>Cost</th>
</tr>
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<tbody>
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</tbody>
</table>
STATEMENTS OF INCOME AND RETAINED EARNINGS

For the Years Ended _____________________, 20___ and 20 ___

<table>
<thead>
<tr>
<th></th>
<th>20___</th>
<th>20___</th>
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<tbody>
<tr>
<td>Contract revenues</td>
<td></td>
<td></td>
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<tr>
<td>Costs of contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross income from contracts</td>
<td></td>
<td></td>
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<tr>
<td>General and administrative expenses</td>
<td></td>
<td></td>
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<tr>
<td>Income from operations</td>
<td></td>
<td></td>
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<tr>
<td>Other income (expense)</td>
<td></td>
<td></td>
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<tr>
<td>Income before income taxes</td>
<td></td>
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</tr>
<tr>
<td>Income taxes</td>
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<td></td>
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<tr>
<td>Net income</td>
<td></td>
<td></td>
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<tr>
<td>Retained earnings, beginning of the year</td>
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<tr>
<td>Retained earnings, end of the year</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>
If a corporation, answer this:
| Capital paid in cash, $ | __________________________ |
| When Incorporated | __________________________ |
| In what State | __________________________ |
| Date registered in Hawaii | __________________________ |
| President’s name | __________________________ |
| Vice-President’s name | __________________________ |
| Secretary’s name | __________________________ |
| Treasurer’s name | __________________________ |

If a partnership, answer this:
| Date of organization | __________________________ |
| Date registered in Hawaii | __________________________ |
| State whether partnership is general or limited | __________________________ |
| Name and address of partners: | __________________________ |

The undersigned hereby declares: that the foregoing is a true statement of the financial condition of the individual, partnership or corporation herein first named, as of the date herein first given; that this statement is for the express purpose of inducing the party to whom it is submitted to award the submitter a contract; and that any depository, vendor or other agency herein named is hereby authorized to supply such party with any information necessary to verify this statement.

NOTE: A partnership must give firm name and signatures of all partners. A corporation must give full corporate name, signature of officer, and affix corporate seal.

**Affidavit for Individual**

STATE OF HAWAII  
COUNTY OF __________________________

being duly sworn, deposes and says that the foregoing financial statement, taken from his books, is a true and accurate statement of his financial condition as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this __________________________ day of __________________________ 20________________

(Applicant must also sign here)

Notary Public

**Affidavit for Partnership**

STATE OF HAWAII  
COUNTY OF __________________________

being duly sworn, deposes and says that he is a member of the firm of __________________________ with the books of the said firm showing its financial condition; that the foregoing financial statement, taken from the books of the said firm, is a true and accurate statement of the financial condition of the said firm as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this __________________________ day of __________________________ 20________________

(Members of firm must also sign here)

Notary Public

**Affidavit for Corporation**

STATE OF HAWAII  
COUNTY OF __________________________

being duly sworn, deposes and says that he is of the corporation described in and which executed the foregoing statement; that he is familiar with the books of the said corporation showing its financial condition; that the foregoing financial statement, taken from the books of the said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this __________________________ day of __________________________ 20________________

(Oficer must also sign here)

Notary Public
New Business

Mr. Aaron Fujioka informed the Board that a statewide public hearing via video conferencing was held on October 16, 2002 on Chapters 3-123, 3-124, 3-128 and 3-131. He also thanked Mr. Gregory King for his assistance and attendance. It was requested that the Board adopt these 4 chapters.

A. For Action

Chapter 3-123

Mr. Bob Governs explained the only addition to the rules previously approved by the Board is the language providing the historical notes of the interim rules being rescinded.

Mr. Gordon Ing made a motion to adopt the rules and Mr. Myron Tong, seconded. The rules were adopted.

Chapter 3-124

Mr. Bob Governs explained the changes done, were the same as in Chapter 3-123.

Mr. Myron Tong made a motion to adopt the rules and Mr. Gregory King, seconded. The rules were adopted.

Chapter 3-128

Mr. Bob Governs explained the changes done, were the same as in Chapter 3-123.

Ms. Winnie Odo made a motion to adopt the rules and Mr. Gordon Ing, seconded. The rules were adopted.

Chapter 3-131

Mr. Bob Governs explained the changes done, were the same as in Chapter 3-123.

Ms. Claire Motoda made a motion to adopt the rules and Mr. Myron Tong, seconded. The rules were adopted.

Rules for Chapter 3-126

Ms. Ruth Yamaguchi said the last time these rules were discussed was on July 12, 2002. There were changes made in conference with the Attorney General's Office. The first change was adding a definition for person. In section 7 amended to make it consistent with 103D-712, HRS to state 7 calendar days, instead of 5 working days. Section 12 added the word designee for consistency. Under subsection (1) changed the language to shall not exceed three months to
conform to the statutes. The last change made is in Section 42 to state seven calendar days, again to be consistent with 103D-712, HRS.

Mr. Gordon Ing moved to adopt Chapter 3-126 as interim rules and Mr. Myron Tong, seconded. The rules were adopted as interim rules.

Procurement Directive 2002-03, Procurement Policy Board

Mr. Aaron Fujioka explained that this Procurement Directive would delegate authority to the Administrator of the State Procurement Office to sign and distribute information on the Board’s actions and decisions. After discussion on the order and accepted language for the directive, Mr. Myron Tong made a motion to approve the directive, as amended and Ms. Winnie Odo, seconded. The directive was approved as amended.

Procurement Directive 2002-04, Guidelines for Small Purchase Procurements

Mr. Justin Fo explained that because the Chapter 122 interim rules deleted the small purchase levels and other procedures from the rules, the purpose of the directive is to notify agencies of the threshold and procedures as they were in the rules. During the course of the discussion on this directive, it was noted awards for goods & services may be made by best value whereas awards for construction must be made by lowest quotation. Ms. Ruth Yamaguchi stated the existing rules in Chapter 3-122 state that awards for construction must be made to the lowest quotation. Mr. Governs explained the rules would have to be amended before a change by procurement directive can be made. It was agreed that the board would consider amending the rules to address this issue. After further discussion and with the exception to some grammatical revisions, the board agreed to issue the directive as is, at this time.

Mr. Myron Tong made a motion to approve the directive and Mr. Gordon Ing, seconded. The directive was approved.

Procurement Directive 2002-05, Qualification Questionnaire for Prospective Bidders on Public Works Contracts

Mr. Robert Governs stated this directive is to reissue the same information. Mr. Governs also informed the Board that Audit Division is updating the questionnaire, but no time frame has been set. The Board had considerable questions regarding the issuance of the questionnaire. It was decided to defer this directive for the next board meeting and to have Public Works Division give the Board an informational briefing on this and if possible, find out from Audit Division a completion date for the updated questionnaire.

B. For Information:

Mr. Aaron Fujioka provided the Board with a summary of audit reports from the Office of the Auditor on Procurement and Contracting. Mr. Fujioka explained that this list is a compilation of audit summaries that focus on procurement and contracting. If an audit focused
on another issue and only touched upon procurement, it would be listed in another category and would not be included on this list.

**Administrator's Report**

Mr. Aaron Fujioka informed the Board that there are no new updates on legislation at this time.

For the eprocurement initiative, the evaluation committee has been meeting regularly to complete the process.

On the procurement card, UPW’s concurrence has been obtained. We are finalizing the agreement with First Hawaiian Bank and hope to issue the charge cards sometime in early December. The pilot will likely involve DAGS’ Central Services Division and Automotive Management Division, Honolulu Board of Water Supply, Department of Labor & Industrial Relations and the Honolulu City Council.

Plans are also being finalized for the 3rd Conference on Purchases of Health and Human Services, to be held next January at the Hawaii Convention Center. Approximately 500 attendees are expected. Invitations will be sent to the Board members.

**Next Meeting**

The next meeting will be at the call of the Chair.

**Adjournment**

There being no further business, the meeting was adjourned at 3:15 p.m.

Respectfully submitted,

Mary Alice Evans, Secretary
Procurement Policy Board
(1) Perform periodic review of the procurement practices of all governmental bodies;
(2) Assist, advise, and guide governmental bodies in matters relating to procurement;
(3) Develop and administer a statewide procurement orientation and training program;
(4) Develop, distribute, and maintain a procurement manual for all state procurement officials; [and]
(5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties[.]; and
(6) Establish and maintain a Hawaii procurement institute, in cooperation with the University of Hawaii William S. Richardson school of law and other public and private entities and/or persons, to promote and develop a professional acquisition workforce and to improve and enhance the State of Hawaii's contractor industrial base through education and training. The Hawaii procurement institute may:
(A) Conduct and participate in procurement education and training for entry level and higher qualified
State of Hawaii employees and others, including persons not employed by the State of Hawaii;

(B) Conduct and promote research, conferences, and studies to improve the procurement process, laws, policies, methods, regulations, procedures, and forms relating to state and local government procurement;

(C) Report on and make recommendations regarding goals, guidelines, innovations, and evaluation of state and local government procurement initiatives; and

(D) Establish and maintain a procurement library within the State of Hawaii."

SECTION 4. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

"§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be utilized to procure goods, services, or construction designated in rules adopted by the procurement policy board as goods, services, or construction which are either not practicable or not advantageous to the State to procure by competitive sealed bidding. Competitive sealed proposals may also be utilized when the head of a purchasing
agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State.

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

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

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

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

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best
and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(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.

(h) In cases of awards made under this section, nonselected offerors may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed."

SECTION 5. Section 103D-304, Hawaii Revised Statutes, is amended to read as follows:
§103D-304  Procurement of professional services.  

(a) Professional services shall be procured in accordance with sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or this section[–], provided that design professional services furnished by licensees under chapter 464 shall be procured pursuant to this section or section 103D-307. Contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the head of each purchasing agency shall publish a notice inviting persons engaged in providing professional services which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. Additional notices [may] shall be given if:

(1) The response to the initial notice is inadequate;

(2) The response to the initial notice does not result in adequate representation of available sources; [ex]

(3) [Previously unanticipated] New needs for professional services arise[–]; or

(4) Rules adopted by the policy board so specify.
The chief procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements by filing a new statement prior to the date designated for submission.

(c) The head of the purchasing agency shall designate a review committee consisting of a minimum of three [employees from the agency or from another governmental body,] persons with sufficient education, training, and licenses or credentials for each type of professional service which may be required. In designating the members of the review committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of the review committee established under this section shall be placed in the contract file.

The committee shall review and evaluate all submissions and other pertinent information, including references and reports, and prepare a list of qualified persons to provide these services. Persons included on the list of qualified persons may amend their statements of qualifications as necessary or appropriate. Persons shall immediately inform the head of the purchasing agency of any change in information furnished which
would disqualify the person from being considered for a contract award.

(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a [screening] selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (c) along with any other pertinent information, including references and reports. The [screening] selection committee shall be comprised of a minimum of three [employees of the purchasing agency] persons with sufficient education, training, and licenses or credentials in the area of the services required. [If the purchasing agency and using agency are different, the committee shall include at least one qualified employee from the using agency. When the committee includes an employee from a using agency, the employee shall be appointed by the head of the using agency. If qualified employees are not available from those agencies, the officers may designate employees of other governmental bodies.] In designating the members of the selection committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of
a selection committee established under this section shall be placed in the contract file.

(e) The [primary] selection criteria employed [by the screening committee] in descending order of importance shall [include but not be limited to]:

1. Experience and professional qualifications [of the staff to be assigned] relevant to the project[—] type;
2. Past performance on projects of similar scope for public agencies or private industry[—] and, including corrective actions and other responses to notices of deficiencies;
3. Capacity to accomplish the work in the required time[—]; and
4. Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

(f) The [screening] selection committee shall evaluate the submissions of persons on the list prepared pursuant to subsection (c) and any other pertinent information which may be available to the agency, against the selection criteria. The
committee may conduct confidential discussions with any person who is included on the list prepared pursuant to subsection (c) regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The committee shall provide the head of the purchasing agency with the names of a minimum of three persons who the committee concludes are the most qualified to provide the services required, with a summary of each of their qualifications: the competing professional service offerors.

(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of [the criteria established for the selection and] the [committee's] summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency [by the committee] for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications.
[(c) The head of the purchasing agency shall evaluate the summary of qualifications for each of the persons provided by the screening committee and may conduct additional discussions with any of them. The head of the purchasing agency shall then rank the persons based on the selection criteria.]

[(h) The head of the purchasing agency or designee shall negotiate a contract with the first ranked person, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the first ranked person, negotiations with that person shall be formally terminated and negotiations with the second ranked person on the list shall commence. The contract file shall include documentation from the head of the purchasing agency, or designee, to support selection of other than the first ranked or next ranked person. Failing accord with the second ranked person, negotiations with the next ranked person on the list shall commence. If a contract at a fair and reasonable price cannot be negotiated, the [screening] selection committee may be asked to submit a minimum of three additional persons for the head of the purchasing agency to [rank and] resume negotiations]
in the same manner provided in this subsection. Negotiations shall be conducted confidentially.

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

1. The names of the [top five] persons submitted under subsection [(d), or, if the list submitted under subsection (d) is less than five, all of the persons submitted] [(g)];

2. The name of the person or organization receiving the award;

3. The dollar amount of the contract;

4. The name of the head of the purchasing agency or designee [head] making the selection; and

5. Any relationship of the principals to the official making the award.

[(g)] Contracts for professional services of less than [$25,000] the limits in section 103D-305, may be negotiated by the head of the purchasing agency, or designee, with at least any two persons [who appear] on the list of qualified persons
established pursuant to subsection (c). Negotiations shall be conducted in the manner set forth in subsection (c), but without establishing any order of preference. (h), with ranking based on the selection criteria of subsection (e) as determined by the head of the agency.

(k) In cases of awards made under this section, nonselected professional service providers may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed."

SECTION 6. Section 103D-310, Hawaii Revised Statutes, is amended to read as follows:

"§103D-310 Responsibility of offerors. (a) Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days prior to the day designated for opening offers, shall give
written notice of the intention to submit an offer to the
procurement officer responsible for that particular procurement.

(b) Whether or not an intention to bid is required, the
procurement officer shall determine whether the prospective
offeror has the financial ability, resources, skills,
capability, and business integrity necessary to perform the
work. For this purpose, the officer, in the officer's
discretion, may require any prospective offeror to submit
answers, under oath, to questions contained in a standard form
of questionnaire to be prepared by the policy board. Whenever
it appears from answers to the questionnaire or otherwise, that
the prospective offeror is not fully qualified and able to
perform the intended work, a written determination of
nonresponsibility of an offeror shall be made by the head of the
purchasing agency, in accordance with rules adopted by the
policy board. The unreasonable failure of an offeror to
promptly supply information in connection with an inquiry with
respect to responsibility may be grounds for a determination of
nonresponsibility with respect to such offeror. The decision of
the head of the purchasing agency shall be final unless the
offeror applies for administrative review pursuant to section
103D-709.
(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, and shall:

1. Be incorporated or organized under the laws of the State; or
2. Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702.

(d) Information furnished by an offeror pursuant to this section shall not be disclosed to any person except to law enforcement agencies as provided by chapter 92F.

SECTION 7. Section 103D-701, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation."
Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the posting of award of the contract \[either\] under section 103D-302 or 103D-303, \[if no request for debriefing has been made,\] as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers."

SECTION 8. Section 103D-1007, Hawaii Revised Statutes, is repealed.

["§103D-1007 Preference to bidders on state agency contracts.\(a\) The requirements in this section are in addition to any other applicable requirements provided in this chapter.

\(b\) The preference in this section may not be used in combination with any other preference otherwise available to a bidder under state or federal law.

\(c\) In any section 103D-302 or 103D-303 contract for a public works project, a state agency shall award the contract to
an offeror who has filed all state tax returns due to the State and paid all amounts owing on such returns for two successive years prior to submitting the offer; provided that the amount of that offer is not more than seven per cent higher than the amount offered by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the offer by the state tax paying offeror is $5,000,000 or less.

(d) In any section 103D 302 or 103D 303 contract for a public works project, a state agency shall award the contract to an offeror who has filed all state tax returns due to the State and paid all amounts owing on such returns for four successive years prior to submitting the offer; provided that the amount of that offer is not more than seven per cent higher than the amount offered by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the offer by the state tax paying offeror is more than $5,000,000.

(e) If two or more contractors who have paid state and county taxes or were required to submit a filing regarding state and county taxes are bidding on a public works contract, and those contractors meet the criteria outlined in subsection (c) or (d), the state agency shall award the contract to the contractor among them who has submitted the lowest bid.
(f) If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public works project because of preference awarded by this section, this section shall not apply insofar as its application would preclude or reduce federal assistance for that work."

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

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

(1) 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 or the time, 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 Multi-step sealed bidding. (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:

(1) 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 pre-bid conference shall be required for construction and design-build 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:

(1) 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:
(1) 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 Bidding time. (a) A minimum of ten [calendar] 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.

[4b)] (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.

[4e)] (d) Bidders shall have a reasonable time to prepare their bids.
§3-122-24  **Public notice.**  (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:

1. 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:

1. 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 Pre-bid conferences. Pre-bid conferences may be conducted to explain the procurement requirements; provided pre-bid conferences for construction and design-build projects shall be required, pursuant to section 103D-. HRS. 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 Preparing a request for proposals. (a) The request for proposals is used to initiate a competitive sealed proposal procurement and shall include:

(1) 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.
Section 4: Ref: Chapter 3-122, Subchapter 6, Competitive 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 General provisions. (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.

[(c)](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 Small purchases of professional services. Small purchases of professional services may be conducted pursuant to subsection 103D-304[(g)](i), HRS, or subchapter 8, provided that the small purchase of design professional services furnished by
licensees under chapter 464 shall only be conducted pursuant to subsections 103D-304(f), (g), and (h), HRS.

§3-122-69 Review and selection committees. 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.

§3-122-70 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 6: Ref: Chapter 3-122, Subchapter 13, Responsibility of Bidders and Offerors.

§3-122-112 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].
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 debriefing pursuant to section 103D-304(k), HRS, shall be submitted in writing within five working days after the debriefing is completed.

(1) 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 Stay of procurements during protest. 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 shall be taken 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 Additional duties of the administrator of the procurement office.

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