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**PROCUREMENT POLICY
BOARD**
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DIANE NAKAGAWA
KEITH REGAN

Procurement Policy Board Meeting
Thursday, February 16, 2023, 1:30 pm – 3:30 pm

Virtual Meeting Using Interactive Conference Technology – Zoom

<https://hawaii-gov.zoom.us/j/93686151800?pwd=dE1tWFdKZzFYaEthbzZFMERaeTlmZz09>

Meeting: 936 8615 1800

Passcode: 992370

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+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

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162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting: 936 8615 1800

Passcode: 992370

Physical Location

Kalanimoku Building, 1151 Punchbowl Street, Room 410, Honolulu, is available to the public and is guaranteed to be connected to the remote virtual meeting.

In the event that audiovisual communication cannot be maintained by all participating board members and quorum is lost, the meeting will automatically be recessed for 30 minutes, during which time an attempt to restore audiovisual communication will be made. If such attempt to restore is unsuccessful within said 30 minutes, all board members, members of the public, staff and other interested individuals shall log on again to the Teams link on this Notice, whereby audio communication will be established for all participants and the meeting will continue. If reconvening the meeting is not possible because audio and visual communication cannot be re-established, the meeting will be terminated.

Written Testimony

Written testimony may be submitted by one of the methods listed below:

- By email to: procurement.policy.board@hawaii.gov
- By United States Postal Mail to: 1151 Punchbowl Street, Room 416, Honolulu, HI 96813
- By facsimile to: (808) 587-4703

Written testimony will only be accepted for the items listed on the meeting agenda. Written public testimony submitted to the Procurement Policy Board will be treated as public record and any information contained therein may be available for public inspection and copying.

Please include the word “Testimony” and the subject matter following the address line.

Copies of the Board Packet will be available on-line for review at
<https://spo.hawaii.gov/procurement-policy-board/procurement-policy-board-meeting-agenda-minutes/>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Procurement Policy Board Meeting
Agenda
Thursday, February 16, 2023, 1:30 pm – 3:30 pm

- I. Call to Order, Public Notice**
- II. Roll Call, Quorum**
- III. Election of Board Officers (Chair, Vice Chair, and Secretary)**
- IV. 2023 Legislation**

A. State Procurement Office Legislation

- i. [House Bill 977](#) / [Senate Bill 1275](#), “RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES,” Abolishes the Community Council on purchase of health and human services.
- ii. [House Bill 978](#) / [Senate Bill 1276](#), “RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES,” Authorizes heads of purchasing agencies to issue requests for statements of qualification and to establish lists of qualified providers for treatment purchase of services. Increases the small purchase threshold for health and human services.

B. Other Legislation that May Affect Hawaii Administrative Rules Related to Chapters 103D and 103F, Hawaii Revised Statutes

- i. [House Bill 536](#), “RELATING TO PROCUREMENT,” Amends the competitive sealed bidding process for construction projects to require joint contractors and subcontractors to submit their bids to a bid depository established under DCCA. Authorizes joint contractors and subcontractors to submit different bids to different general contractors bidding on the project.
- ii. [House Bill 816](#) / [Senate Bill 1441](#), “RELATING TO PUBLIC PROCUREMENT,” Clarifies the deadline for submitting written protests that are based on the content of a solicitation.
- iii. [House Bill 1164](#) / [Senate Bill 1135](#), “RELATING TO PROCUREMENT,” Requires cash or protest bonds to be returned to the initiating parties, minus administrative costs, except in cases where the appeal was frivolous or made in bad faith.
- iv. [House Bill 1184](#) / [Senate Bill 1465](#), “RELATING TO PROCUREMENT,” Allows agencies to rank fewer than three persons for professional services when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

V. Update of State Procurement Office Initiatives

- A. **Procurement Consolidation Working Group Interim Report** (attached), pursuant to Act 282, Session Laws of Hawaii 2022, “A Bill for An Act Relating to Procurement,” establishing a working group to develop a plan for the phased-in consolidation of procurement services and staff within executive branch agencies within a five-year timespan and requiring the working group to make recommendations for attracting high-quality procurement professionals to the State.
- B. **Past Performance Database**, pursuant to Act 188, Session Laws of Hawaii 2021, “A Bill for An Act Relating to Procurement,” defining past performance of contractors, requiring the State Procurement Office to establish and administer a past performance database and adopt rules regarding information and procedures associated with the past performance database, and requiring procurement officers to consider specific factors, including past performance, when available.
- C. **Small Business Initiative**, pursuant to Act 168, Session Laws of Hawaii 2022, “A Bill for An Act Relating to Procurement,” establishing a five-year small business assistance initiative and providing staffing for the implementation of Part IX of the Hawaii Public Procurement Code, relating to assistance to small business.

VI. Announcements

- A. **Next Meeting Date/Time:** Thursday, March 16, 10:30 am (proposed)

VII. Executive Session: Discussion of personnel matters in the recruitment for Administrator, State Procurement Office

The Procurement Policy Board anticipates the need to meet in executive session pursuant to Section 92-5(a)(2) and (4), Hawaii Revised Statutes, to discuss personnel matters and to consult with the Board’s attorney on questions and issues pertaining to the Board’s powers and duties.

VIII. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Ruth Baker at (808) 587-4701 or at ruth.a.baker@hawaii.gov as soon as possible. Requests made as early as possible will allow adequate time to fulfill your request.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

STATE OF HAWAII



**STATE PROCUREMENT OFFICE
PROCUREMENT CONSOLIDATION WORKING GROUP
INTERIM REPORT TO THE LEGISLATURE
As Required by Act 282, Session Laws of Hawaii 2022
December 2022**

This report may also be viewed electronically on the SPO's website at <http://spo.hawaii.gov>
Click on "References" then "Reports."

**SUBMITTED TO
THE THIRTY-SECOND STATE LEGISLATURE**

Hawaii State Procurement Office

Prologue

Procurement Consolidation Working Group Interim Report, Civic Initiatives, LLC

December 28, 2022

Enclosed you will find an interim review and analysis of the options available to the State for procurement consolidation as directed by the Legislature, with initial recommendations and alternative approaches to be researched further by the working group in the coming year toward the submittal of the final report in December 2023.

The State Procurement Office (SPO) expressly states that there has been no redacting or tainting of analysis or recommendations. The SPO desires that this report be considered unbiased, which is why it contracted a third party to conduct interviews with the SPO and all working group members. The SPO reviewed the draft for formatting errors and any content that seemed vague and required more clarification.

This report does not yet seek to provide solutions but instead provides a framework from which to begin researching and building a broad set of recommendations necessary to transform the procurement function of the State, building a best-in-class, strategic central procurement organization within the SPO with a strong professional staff to support the procurement function at agencies.

I am especially pleased with the effort Civic Initiatives made in facilitating the collaboration of the working group to this point and their support in compiling data and drafting this interim report. They collected important data from the working group member agencies necessary to understand the current state of procurement and performed a broad analysis of peer states to assess organizational models, staffing levels, and options available to the State for consolidation.

We thank all the working group members for their time and input during this process and look forward to their ongoing active participation. We also thank the Governor and Legislature for their persevering interest in upgrading the procurement function to a professional level in Hawaii.



Bonnie Kahakui
Acting Administrator
State Procurement Office

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Procurement Consolidation Working Group Interim Report

December 28, 2022

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Executive Summary

Act 282, Session Laws of Hawaii (SLH) 2022 (Senate Bill 3369, SD2, HD2, CD1) ¹ established a procurement services consolidation working group (PCWG) to develop a plan for the phased-in consolidation, under the State Procurement Office (SPO) of all state executive branch procurement services and staff, except those of the Hawaii Health Systems Corporation, University of Hawaii, and Office of Hawaiian Affairs, within five years.

Pursuant to Act 282, SLH 2022, the SPO issued Task Order 003 – Phased Consolidation Plan: Working Group Support under the NASPO ValuePoint Procurement and Acquisition Support Services – #19-19 Contract, to engage a consultant to provide support to the SPO in facilitating the charge of the working group. The SPO selected Civic Initiatives, LLC (Civic) to support this effort, with the project commencing August 2022.

Civic provided support to the SPO to plan and facilitate monthly working group sessions to get direction and input from the PCWG members on various topics related to the working group's charge. Civic held in-person and virtual discovery sessions with a majority of the working group members. The purpose of these discovery sessions was to gain an understanding of the current state of staffing for procurement at PCWG agencies and to gather specific input from each on key factors impacting the procurement practices of the State and considerations to take into account as the working group researched and identified alternative approaches for consolidation of procurement staff.

During this initial phase of work, Civic also performed peer research to gain an understanding of leading practice models for the organization and staffing of the procurement function in other states. The focus of this research was to identify models that reflected a strong, strategic-focused central procurement office and broad professionalism of staff engaged in procurement activities. Civic also developed a survey to be completed by members of the working group to collect detailed information on current staffing for the procurement function at member agencies.

Through this research, Civic identified the following items that establish the framework for the ongoing efforts of the working group for 2023 as it develops a five-year plan for the consolidation of procurement staff in the State of Hawaii:

1. **Establishment of a strong, strategic State Procurement Office** – At the heart of the direction to review methods to consolidate staff is the need for a model of how consolidated staff and a more robust central state procurement office is organized and staffed to provide key procurement functions for executive branch departments and the State as a whole. The organization and functions of a future SPO will dictate staffing needs and roles and responsibilities of departments in the future state procurement model necessary to define an appropriate consolidation plan.
2. **The role of departments in procurement** – Although the SPO will play a more active and strategic role in procurement, it is still important that departments have professional procurement capacity at the department level. These resources must be capable of supporting program staff with specific expertise and bridge to SPO as needed for more formal procurements. Identifying an appropriate organizational model that factors in the current approach to procurement staffing and vacancies will be central to developing a consolidation plan.

¹ Act 282, SLH 2022, retrieved at: https://www.capitol.hawaii.gov/slh/Years/SLH2022/SLH2022_Act282.pdf

3. **Professionalization of the procurement function** – No matter where the staff may ultimately reside, whether in SPO or in the department, procurement as a function of the State must be professionalized at all levels. “Professional” can mean numerous things, but for this report, it means that staff executing procurements are trained, knowledgeable and capable. This can be done through comprehensive training at the State level and/or through membership and certifications in national professional organizations such as NIGP: The Institute for Public Procurement, the National Association of State Procurement Officials (NASPO), and the National Contract Management Association (NCMA). Defining what it means to be professional and establishing clear expectations of appropriate fiscal and staff resources, roles, required competencies, and associated training will be essential to the consolidation plan’s ultimate success.

Background

Understanding the history of the SPO is critical to understand the current state of procurement staffing and practices at the State. In September of 1993, the Legislature passed S3-93, which became Act 8, Special Session Laws of Hawaii 1993, completely revamping the procurement policy of the State and establishing the SPO, the Procurement Policy Office (name amended to the Procurement Policy Board in 1997 to eliminate confusion), and the multiple Chief Procurement Officers model that exists today. The new code, based on the leading practice of the American Bar Association’s Model Procurement Code, was put into effect July 1994.

According to then-House Finance Committee Chairman Calvin Say, as recorded in the House Journal of the 17th Legislature,

“The purpose of this bill is to establish a new procurement code for our state and county governments. In light of the recent displays of what state purchasing officials must go through to meet the requirements of our current laws, the need and urgency for procurement reform is obvious. Our current procurement laws are based on legislation enacted in 1909, and have since been amended over two hundred times. According to the State Auditor, the current procurement code is old, fragmented, and vague. For instance, there is only one method of source selection. There are inconsistencies in purchasing practices among different agencies, and there are no statewide rules to regulate and guide purchasing policy. The State’s current purchasing laws are open to conflicting interpretation and lead to inefficiency and potential waste.”

In October 1994, the State hired its first SPO Administrator and Executive Branch Chief Procurement Officer, Lloyd Unebasami. Since then, the SPO has had another four (4) Administrators, including the current Acting Administrator, Bonnie Kahakui.

When originally established, the SPO played a strong leadership role in procurement at the State, establishing process guidance, training, and structures to support executive branch department procurement in a consultative fashion. At that time, SPO provided direct facilitation for executive branch department formal, competitive procurements (e.g., Request for Bids and Request for Proposals).

Based on interviews with SPO Administrators over the past decade, at some time in or around 2001, the SPO Administrator determined that it was in the best interest of the SPO to delegate all procurements to the departments. This decision was partly attributed to a reduction in work hours due to budgetary issues and a lagging economy. The decision pushed procurement execution to the departments and reformulated the role of the SPO to a guidance-, training-, and compliance-focused organization.

Because departments in the executive branch had not previously performed these functions and most had no professional procurement staff, they were unprepared to receive these additional responsibilities for procurement. Additionally, over the next decade, many departments were impacted by staffing reductions brought on by attrition and other factors, with administrative staff being hit harder than other areas of the department. As such, most department leadership took the responsibility for procurement and pushed it further down into the organization to the front-line program staff that had not been as greatly impacted. This is where the State of Hawaii remains today – a highly decentralized procurement function, executed by program staff who are not procurement professionals, with an SPO providing guidance, training, and compliance reviews for procurement.

Further exacerbating the situation is the highly complex nature of procurement in the State of Hawaii. While the statutes provide an organization and structure for the execution of procurement that is similar to other states, the additional layers of procurement policy – Hawaii Administrative Rules (HAR), Procurement Circulars, and Procurement Directives – make the ability to reconcile and execute processes in ways that are both compliant and effective extremely challenging without highly professionalized staff. The resources available to perform procurements in the current model do not adequately synthesize the processes in such a way as to make the execution of procurements clear, concise, and repeatable. Of additional note is the fact that the policy-setting entity, the Procurement Policy Board (PPB), which could help to simplify and harmonize these policies, has not met since May 2019 due to a lack of quorum. This has since been addressed with Act 273, SLH 2022, and the PPB's newly appointed members will begin meeting early 2023 to address some of these concerns.

To improve procurement at the State, in March 2015, the SPO executed a procurement (awarded to Civic) to assess the procurement function. The assessment culminated in a Transformation Roadmap provided to the State in May 2015 that identified and described twelve (12) projects recommended to improve and optimize the function of procurement at the State.

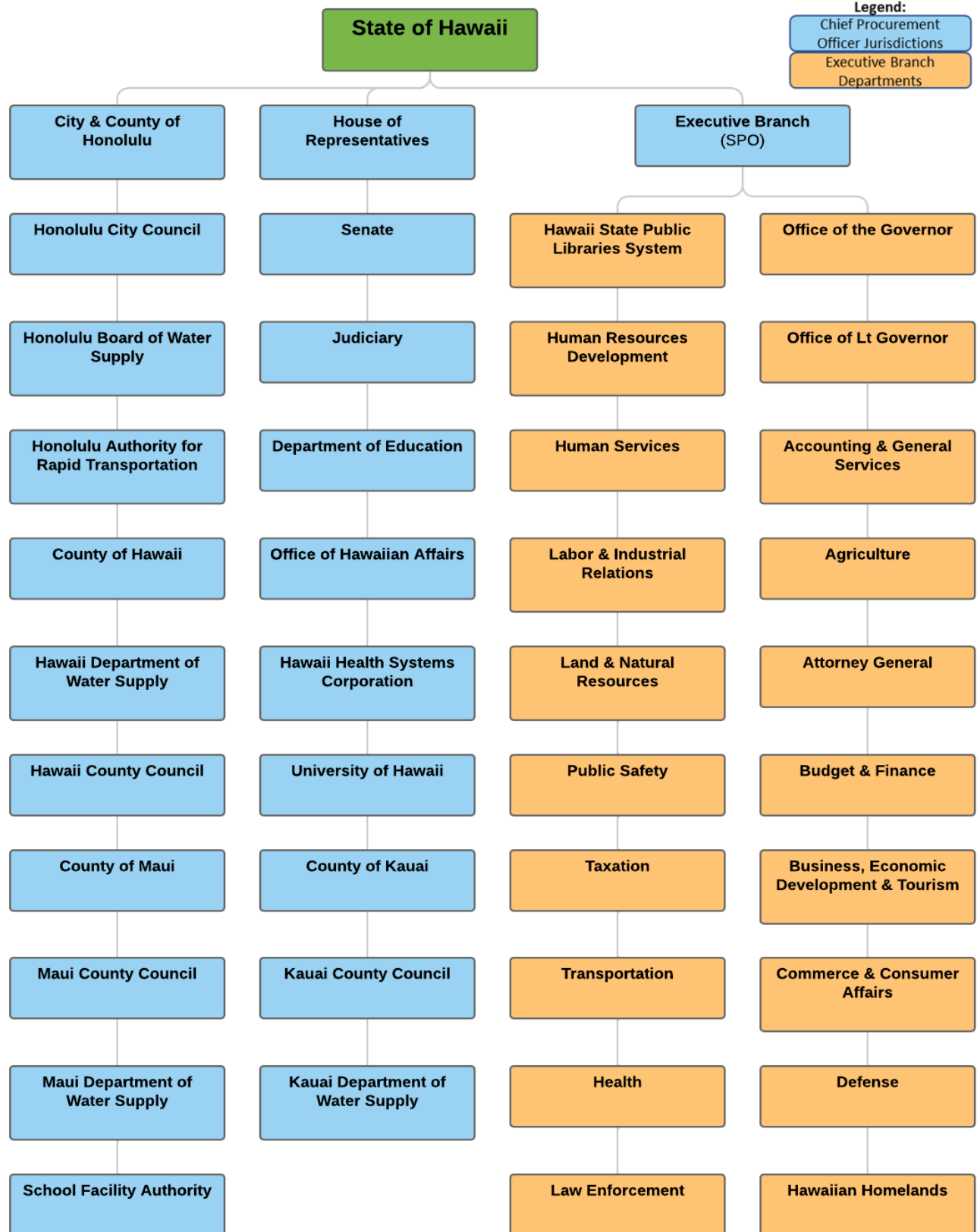
Key projects included recommendations to streamline procurement policies, elevate the role of the SPO to a more strategic organization for the State, and elevate the role of procurement to a more professional standing throughout the State. Although efforts have been made to implement these projects, little has changed in these three key areas, leading to the legislation driving the working group and this report.

Current State

Procurement Practices

Procurement practices in Hawaii are governed under the authority of the PPB and 22 independent, statutorily delegated Chief Procurement Officers (CPO) jurisdictions. The following graphic illustrates the procurement organizational structure in the State.

Figure 1: State of Hawaii CPO Jurisdictions



*The Department of Law Enforcement will be established on July 1, 2023, pursuant to Act 278, SLH 2022.
 The Department of Public Safety will be renamed as the Department of Corrections and Rehabilitation in 2024.*

The five-member PPB (as of July 2022) adopts, amends, or repeals, administrative rules to carry out and effectuate the purpose and provisions of HRS Chapter 103D governing the procurement, management, control, and disposal of all goods, services, and construction, and HRS Chapter 103F, for the purchase of health and human services. The PPB considers and decides on matters of policy, including those referred to the PPB by a chief procurement officer, and audits and monitors the implementation of PPB rules and the requirements of its statutes.

The SPO Administrator, also the CPO for twenty (20) departments within the Executive Branch, implements and ensures compliance with the Hawaii Public Procurement Code (HRS Chapter 103D) and Purchases of Health and Human Services (HRS Chapter 103F). SPO directs high-level procurement policy and guidance and manages state inventory and surplus programs. While Hawaii public entities follow these statutes, each independent CPO has the authority to direct practices and processes to implement policies for their jurisdiction.

The following references and documents establish the legal authority, general policy, and minimum standards for soliciting, awarding, processing, executing/overseeing contracts, and managing contract compliance for Executive Branch departments:

- HRS Chapter 103D – Hawaii Public Procurement Code
 - https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0103D/
- HRS Chapter 103F – Purchases of Health and Human Services
 - https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0103F/
- HAR Chapter 3-120 to 3-132 – Purchases of Goods, Services and Construction
 - <https://spo.hawaii.gov/references/har/goods/>
- HAR Chapters 3-140 to 3-149 – Purchases of Health and Human Services
 - <https://spo.hawaii.gov/references/har/hhs/>
- Procurement Circulars (122 active) – Issued by the Administrator of the SPO to transmit policies, procedures, directions, and instructions
 - <https://spo.hawaii.gov/references/procurement-circulars/>
- State of Hawaii Procurement Wizard
 - <https://spo.hawaii.gov/procurement-wizard/>

The SPO is established by statute to purchase all goods, services, construction and health and human services for Executive Branch departments. Departments are provided delegated authority by the Chief Procurement Officer (Administrator of SPO for Executive Branch entities) to procure, complying with all state policies and processes developed by the PPB and SPO. Key stakeholders involved in the procurement process include:

- **Office of the Governor** – Entity that in certain procurement processes provides review and funding approval.
- **Department of Budget and Finance** – Entity that provides review and funding approval for procurements.

- **PPB** – A five-member board responsible for developing and issuing rules and procedures related to the procurement activities for the State, pursuant to HRS Section 103D-201, as revised by Act 173, SLH 2022.
- **SPO** – Entity administratively attached to the Department of Accounting and General Services authorized to establish rules, policies, and procedures for procurement activities for the State and with direct jurisdiction over Executive Branch Agency procurements.
- **Executive Branch Departments** – Entities delegated procurement authority. Deputy Attorneys General assigned to the executive branch departments may also review solicitations and contracts for legal compliance.
- **Department of Accounting and General Services (DAGS)** – Entity responsible for reviewing and approving fund encumbrance and expenditures and issues payments to vendors.

The Role of SPO

The mission of SPO today is that the SPO acts as a strategic partner to foster public confidence by promoting procurement life-cycle excellence, program success, and government accountability. Their vision is to create transformative leadership for public procurement excellence. The SPO is an attached agency to DAGS with a total of 18 filled positions and 13 vacancies pending recruitment, establishment, authorization, and funding) across eight (8) sections:

1. **Administration and Staff Support Services** – The SPO Administrator, Assistant Administrator, General Professional, plus four (4) supporting staff necessary to administer the day-to-day operations of the SPO;
2. **Purchasing Services** – Five (5) purchasers providing support for the purchase of goods, services and construction under HRS 103D to state departments. The team also plans, develops, executes, and manages statewide strategic contracts available for use by all state entities;
3. **Health and Human Services** – One (1) purchaser providing support for the purchase of health and human services under HRS 103F to state departments;
4. **Policy and Compliance Services** – Five (5) purchasers performing reviews of purchases executed by departments to ensure compliance with policy. The team also supports the drafting and communication of policy updates to departments.
5. **Electronic Procurement and Specialized Services** – Five (5) staff (including two (2) pending Governor's approval) providing support and training for procurement automation solutions utilized by department procurement staff;
6. **Property Inventory Management Services** – Two (2) staff providing inventory reporting and ensuring compliance with policies and procedures on the management and recording of State property;
7. **Surplus Property Management** – Five (5) staff providing program management for the receipt, storage, and sale or disposal of State surplus property. Local government agencies, schools, hospitals, museums, qualified nonprofit tax-exempt organizations, and homeless and impoverished groups can procure and re-utilize both Federal and State excess property through this program, driving sustainability and cost savings; and,
8. **Small Business Office** – One (1) Small Business Coordinator carrying out the intent of the Small Business Initiative, pursuant to Act 168, SLH 2022 (funding pending Governor's approval).

Although the SPO is the state's central procurement office for executive branch departments, it has limited staff [currently seven (7) filled positions] from Purchasing Services and Policy and Compliance Services focused on performing or supporting procurement activities of departments under its jurisdiction, in accordance with its primary mission. The mission of SPO is to act as a strategic partner to foster public confidence by promoting procurement life-cycle excellence, program success, and government accountability. The staff and focus of the SPO are primarily centered around compliance and auditing of the procurement practices of departments.

With procurement highly decentralized and not broadly professionalized at the State, departments regularly lean on the SPO for guidance and direction for executing procurements. However, the team is not large enough to adequately support the departments in this role, as noted in interviews, where departments expressed inconsistent guidance and a general need for a more consultative organization to support them.

The Role of Departments

The department is where most of the work in procurement is executed. Although this is the case, departments, across the board, are not adequately organized or staffed to properly execute the procurement functions expected of them. Very few departments have dedicated procurement sections, and even fewer have staff dedicated to facilitating procurement processes for the department.

For this report, members of the PCWG were asked to complete surveys providing detailed information for staff performing procurement functions in their respective departments. For the purpose of answering the surveys, Procurement was defined as the act of fulfilling some or all the following key functions in the procurement lifecycle process:

- Developing a solicitation document (not only the scope, but also the market research used to develop the scope);
- Posting a solicitation document [Posting to the Hawaii eProcurement system (HlePRO) or the Hawaii Awards & Notices Data System (HANDS)];
- Managing the solicitation (e.g., Pre-Proposal Conference, Q&A, Addenda, Cost/Price Analysis, Debrief, and Protest);
- Receiving bids/proposals from the vendors in response to the solicitation;
- Performing administrative review of bids/proposals to make sure a vendor is responsive;
- Evaluating bids to determine intended awardee;
- Facilitating the evaluation process with an evaluation team for a competitive proposal (not the evaluators, but the person coordinating the evaluation process);
- Drafting documents/forms in support of the procurement (e.g., Intent to Award, Letters to Vendors, Contracts, and Contract Administration Plan);
- Posting updates to HlePRO or HANDS for the procurement (e.g., award, status, and if applicable, cancellation); or
- Otherwise routinely performing core purchasing responsibilities, including creating purchase orders, directing the use of a pCard, or placing orders for goods and services from price and vendor lists.

From the data collected to date, it is clear to see that the procurement function is highly decentralized, pushing procurement activities down to the program level of departments in most instances. In addition, the sheer number of staff executing procurement activities at the State is immense. For the departments surveyed, 2,142 staff were identified as performing one or more of the tasks outlined in the definition provided. Few departments have dedicated procurement staff, and in most cases, 95% of procurement activities performed comprised less than 50% of expected work duties performed by staff, as outlined in the following tables. The data shows that of all staff surveyed, the average time spent on procurement was just 18%.

Table 1: Staff Performing Procurement Functions

Staff Performing Procurement Functions	Number	Percent
Staff Dedicated to Performing Procurement Functions	101	4.7%
Staff Performing Procurement Functions 50% or more of the time	81	3.8%
Staff Performing Procurement Functions less than 50% of the time	1960	91.5%

Table 2: Percent of Time Performing Procurement Functions

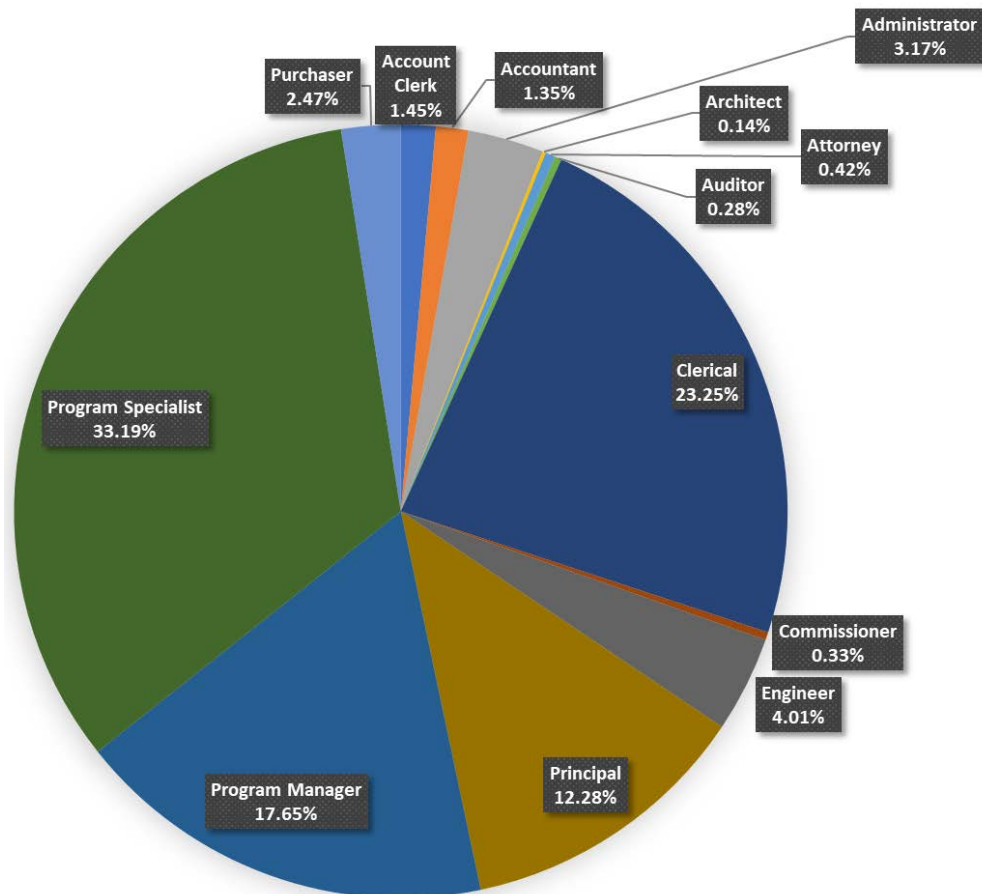
Time Performing Procurement Functions	Percent
Average Time Performing Procurement Functions (All Staff)	18.0%
Average Time Spent Performing Procurement Functions (Non-Dedicated Staff)	14.4%
Average Time Spent Performing Procurement Functions (Dedicated Staff)	91.2%

Further, procurement is primarily executed at the program level in the department, and the staff performing the procurement functions are not procurement professionals. The following table and chart demonstrate that for departments surveyed, less than three percent (3%) had the role of a Purchaser. The other 97% generally reflected roles of staff administering or executing programs of the department. This both shows the absence of a dedicated professional procurement staff at the State and the difficulty the State will face when trying to consolidate the procurement staff to the SPO.

Table 3: Procurement Staff by Role

Staff Role	Number of Staff Performing Procurement Functions
Program Specialist	711
Clerical	498
Program Manager	378
Principal	263
Administrator	68
Engineer	86
Purchaser	53
Account Clerk	31
Accountant	29
Attorney	9
Commissioner	7
Auditor	6
Architect	3
TOTAL	2,142

Figure 2: Staff Roles Performing Procurement Functions



In addition, the data collected showed that amongst the departments, over 200 vacancies existed in staff roles supporting procurement activities.

Peer and Leading Practices

To better define a future state vision for the State of Hawaii, Civic reviewed its extensive library of peer research and performed targeted reviews of peer and leading practices. The focus was on understanding the role of the central procurement organization and how peers sought to professionalize the function of procurement.

In addition, Civic reviewed documentation and met briefly with the State of Alaska, Office of Procurement and Property Management, Chief Procurement Officer, Thor Vue, and past Chief Procurement Officer, Jason Soza, to gain insights into their efforts to consolidate procurement staff and functions. Conducting further research on Alaska and other similarly situated peers, especially those that have undergone or are contemplating consolidation, will be ongoing. This research will provide a primary benchmark for determining the most appropriate consolidation plan to present to the Legislature in the final report to be submitted in December 2023.

The following sections provide an overview of key takeaways from peer and leading practice research performed in the focus areas referenced.

Role of Central Procurement Organizations

An important aspect of consolidation is clearly defining the roles, responsibilities, and stakeholders in the procurement process and the level of consolidation required to create the desired impact. Since the intent of the Act is to consolidate staff and functions to the SPO, it is essential to identify a clear definition of the role and function of the SPO in state procurement.

Toward that end, Civic evaluated state central procurement organizations to identify key factors that must be performed to be a strategic asset to the State. The following are the eight (8) roles that leading practice central procurement organizations are consistently performing.

1. **Provide direct support for non-delegated procurements** – Most central procurement organizations' staff provide some level of procurement support to departments. Most facilitate the procurement process for non-delegated department formal procurements, and many review and approve lower dollar purchases prior to issuing a purchase order to ensure compliance with procurement policies. Non-delegated procurements are those that the central procurement office has not formally delegated to the department, and thus are required to be executed by and through the central procurement office.
2. **Provide consulting to customers** – To be effective, a central procurement office must be adequately staffed to execute procurements. The staff must be thoroughly knowledgeable of the state's procurement policies, processes, and supporting technologies. Customers look to the central procurement office staff as experts, often engaging them to obtain answers to questions or to receive guidance on appropriate actions. As such, the central procurement office must have staff that can work with their customers and navigate them through the procurement process to ensure an effective, efficient, and compliant outcome.
3. **Provide clear, concise policy** – Although every public entity has a guiding policy, not all entities have clear and concise policies that make it easy for staff to execute procurements in an effective, efficient, and compliant manner. Like Hawaii, many have multiple layers of policies, sometimes conflicting, that make it difficult to navigate the process, generally extending the procurement lead time. Leading organizations consistently had statutes or a code based on the American Bar Association (ABA) Model Procurement Code, and a single set of rules supporting the baseline

policies. In addition, most of these organizations also delegate drafting of procurement statutes to the central procurement office and left the specifics of the process to be incorporated into the rules to allow for flexibility and the ability to adapt to change in a nimble fashion. Another key aspect of these organizations was the assignment of dedicated staff to actively manage policy and associated process guidance.

4. **Publish clear guidance on the process** – Policy tells state staff what they can and cannot do, and how to remain compliant and avoid issues; however, policy generally does not do a good job of telling staff how to accomplish the task. Central procurement offices that were leading peers in the execution of procurement had published comprehensive, lifecycle-based guidance providing roles, responsibilities, expectations, and processes to ensure an effective, efficient, and compliant procurement activity. By publishing this guidance, the central procurement office had developed a foundational body of knowledge for the procurement function at the state that served as a guidebook for department staff on procurement practices, and as the groundwork for developing a training program for the state.
5. **Develop and deliver a roles-based training program** – Effective central procurement offices typically provided a robust training program for procurement. Many peers utilize a merit-based delegation model for procurement, delegating specified purchases to staff based on their procurement training and knowledge. To be effective, they had to develop a roles-based training program to train staff on procurement practices. Staff at the central procurement office identified roles in the procurement process and competencies required of the role, and then developed and delivered training to staff based on their role. Training delivery was typically found to be a hybrid of in-person training and asynchronous online training. In addition, the central procurement office was staffed to manage the training program for the state, including tracking of training courses and delegation.
6. **Provide direct procurement support to smaller state entities** – Although not as prevalent, some central procurement offices recognize that smaller state entities neither have sufficient staff nor a sufficient volume of procurements to require dedicated staff to attempt to navigate the process. To address this need, they have established service bureaus or shared services teams that act as the procurement staff for the smaller entities. These teams often handle the more transactional purchasing processes (such as review and transition of requisitions to purchase orders) of the central procurement office.
7. **Establish a strong statewide contract portfolio** – To be effective, a central procurement organization must do that which only it can do. In most cases, central procurement offices are the only state entities delegated the ability to execute strategic statewide contracts for use by all state entities. In addition, they are also generally the only entity that can facilitate multi-party contracts and establish cooperative agreements for use by the state. High-performing peers often had extensive statewide price agreements and master contract portfolios that enabled them to manage significant spending, expedite purchasing of broadly procured items, and allowed the agency to focus on more strategic functions.
8. **Implement procurement automation** – In today's world, especially since the COVID pandemic, leading central procurement organizations are seeking to implement procurement automation solutions. Through the implementation of procurement automation, leading peers have been able to establish efficient processes, that easily navigate governance reviews and required approval workflows, and ensure compliance with state policy.

Professionalism of the Procurement Function

The absence of a dedicated professional procurement staff is unfortunately a common concern at many public entities nationwide. Unlike finance, accounting, and human resources, procurement is often not performed by trained, knowledgeable professionals. Where leading entities have established a culture of professionalism, they have generally done so by utilizing one of the following two methods:

- **Training and Certification Program** – The vast majority of peer entities that seek to have dedicated procurement professionals execute procurements have done so by establishing a rigorous training and certification program. Through this program, central procurement and dedicated department staff take required training courses necessary to build specific procurement competencies and gain varying levels of certification. In some peers, certification is received with the completion of coursework, while in others certification requires the taking and passing of an exam. In some cases, peers have promoted nationally recognized certifications to drive professionalism, but in most cases are still required to supplement the training to ensure staff are trained and knowledgeable of entity-specific practices.
- **Hire and Embed** – Some peers, such as Alaska (see below), have turned to a model of hiring professional staff internally to the central procurement office and embedding them in departments. In this model, staff are typically trained by the central procurement office, typically in a program like the one outlined above, prior to being embedded. A key benefit of this model is that staff can start by providing support to departments for simple tactical purchasing functions as they take more training and learn more advanced procurement methods.

One common attribute of peers, where procurement is professionalized, is the establishment of a division(s) or dedicated staff to facilitate procurement.

Insights from Alaska

Alaska initiated a statewide effort to consolidate procurement staff in February 2019 based on a Governor's Administrative Order. After reviewing documents and meeting with the current and past Chief Procurement Officers for the state, the following comprise lessons learned and considerations for Hawaii as it seeks to follow in consolidation efforts:

- Alaska had a strong central procurement organization fulfilling many of the roles seen in peer-leading organizations prior to the consolidation.
- Alaska had established a training and certification program model, led by the central procurement office that trained and certified staff as Procurement Officers of Record (POR) at three (3) levels. Each level required a certain level of training and upon completion, provided a defined level of procurement delegation authority that followed the staff member with them wherever they went in the state.
- The staff performing procurement functions in departments were trained professionals (POR), dedicated to the function of procurement.
- Although they are consolidating the staff to be employees of the central procurement office reporting to the Commission of the Department of Administration, they are remaining at their respective agencies as embedded procurement staff. Based on a recent report, at current the estimated count of staff consolidated and embedded is 185.
- Only executive branch agency procurement staff were consolidated.

- Consolidation focused on non-construction procurement. Construction procurement remained delegated to specified agencies and staff performing construction procurement for those agencies remained as employees of the agency.
- A task force was established to implement the consolidation effort and an implementation plan was developed to drive consolidation efforts.

As this model is most relevant to the State of Hawaii in its efforts to consolidate, further research is still being performed to understand more details of this consolidation effort, including size, scope, funding, impact of labor unions in the consolidation, and other related items to help properly frame an appropriate approach and estimated budget for the Legislature.

Future State Vision for Procurement

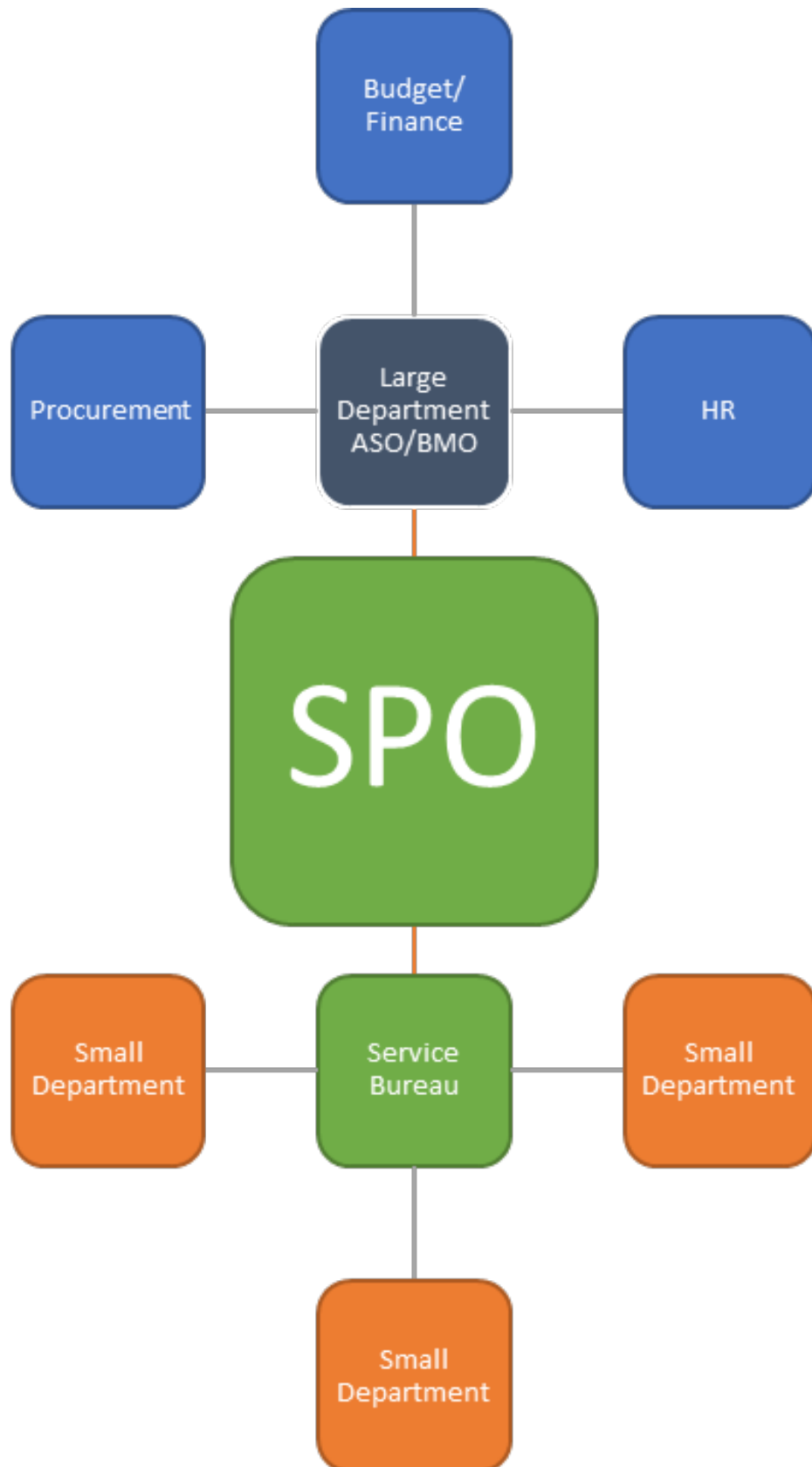
Based on the direction of Act 282, SLH 2022, and information gathered in the peer and leading practice research, the following provides the Legislature with insights into a vision for the future of procurement at the State. The following sections identify structures that are essential for the SPO to be a strategic asset to the State. The working group identified that the overall procurement function needs to be effective, efficient, and responsive to department needs. This vision will be the “North Star,” driving research and planning efforts of the working group to draft a consolidation plan over the coming year.

Professionalization of Procurement

Procurement should be treated like all other administrative “back office” functions of a department (e.g., Finance, Accounting, Budget, and Human Resources.), where professionals fill critical roles to ensure administrative functions are completed efficiently, effectively, and in compliance with guidelines of the profession.

Departments should be encouraged to have professional, trained procurement staff to support divisions in the development of specifications/scope of work, facilitate the delegated procurements and facilitate relations and activities with the SPO when procurements must route to them for action. Whether these staff should remain employees of the department, consolidated into a dedicated procurement division under the Administrative Services Office (ASO) or consolidated to the SPO and embedded in the department is still being researched.

Figure 3: Future State Procurement Organization Model



In certain cases, a department may be too small to maintain a dedicated professional procurement division or staff. For those, a Service Bureau within SPO should be developed to be their dedicated procurement staff for all procurement activities.

Although this is easy to state as a concept, several key factors challenge the State in achieving this goal. The external trend that affects procurement is a general lack of dedicated procurement professionals and the existence of a highly competitive labor market, further magnified by Hawaii's high cost of living. During SPO's recruitment to fill vacancies, several candidates declined interviews when informed about starting salaries. Some candidates go through the entire interview process then decline the job offer to take another position that pays a higher salary, offers better career growth, or has greater potential for future promotions.

In addition, because the State salaries are not competitive with the private sector, staff resign for higher-paying salaries and/or promotions, negatively impacting staff retention. The loss of valuable knowledge and experience impacts the State.

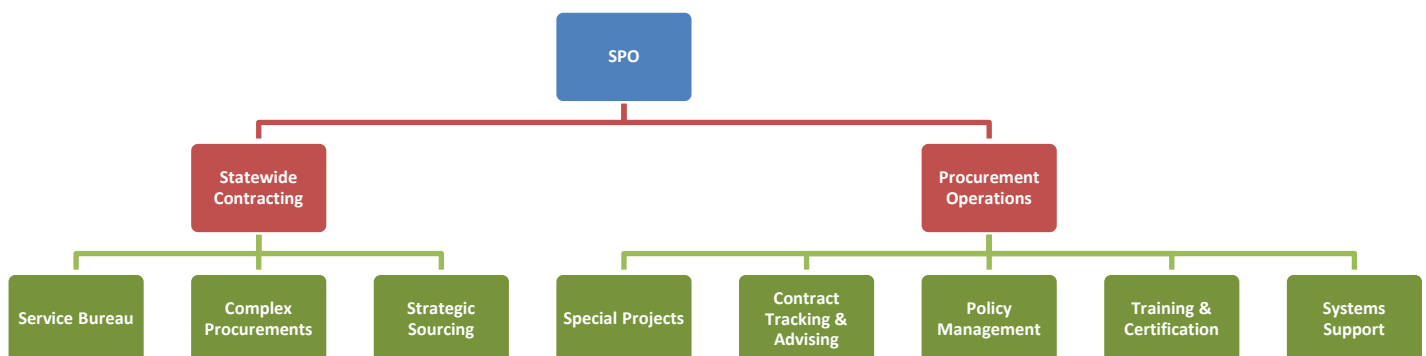
Finally, state labor unions will need to be factored into the ability to consolidate staff. It is not as simple as identifying appropriate staff and consolidating and reallocating them to SPO, especially as that movement alone means many would be forced to change bargaining units.

The working group will continue to research these key factors to provide the Legislature with recommendations on how to achieve the intended outcome of consolidation, while taking all factors into consideration.

SPO as a Strategic Asset

To determine how this vision for the future works organizationally and functionally, we first need to consider the role of the SPO and departments in this future state model. The key for the State is that the SPO plays a more robust role as a strategic partner, specifically for executive branch departments under its jurisdiction. Toward that end, the following figure provides a leading practice organizational model for the SPO. The organizational model presented identifies a general structure and highlights the key roles the SPO must fulfill at a minimum in the future model. The sections following the figure provide details of the key roles identified in the model.

Figure 4: SPO Future State Organizational Model



1. Service Bureau

The Service Bureau team would be staffed to provide direct support to smaller departments unable to dedicate a staff person to the execution of procurements for the department.

2. Complex Procurements

The Complex Procurement team would facilitate non-delegated procurements for departments. This typically would include the facilitation of all formal procurements, and review and support for sole sources and other procurement exceptions.

3. Strategic Sourcing

The Strategic Sourcing team would be staffed with a data analyst and procurement professionals trained to research, identify, prioritize, and execute strategic contracting opportunities for the State and build a robust strategic contract portfolio.

4. Special Projects

The Special Projects team would lead special projects related to procurement to drive continuous improvement at SPO and statewide.

5. Contract Tracking & Advising

The Contracts Tracking & Advising team would be a center of excellence for contract management in the State. The team would publish and manage guidance on contract management best practices and would track and monitor an identified portfolio of high-risk contracts at the State, conducting performance checks with program project managers at established intervals.

6. Policy Management

The Policy Management team would manage the procurement policy of the State. The team would track legislation impacting procurement and identify and promote the implementation of needed policy changes. It would also be responsible for publishing and maintaining guidance on procurement practices and associated procurement resources. A key role for this team would be to initiate early on a full evaluation of current policy and make recommendations to restructure and simplify the current policy framework.

7. Training & Certification

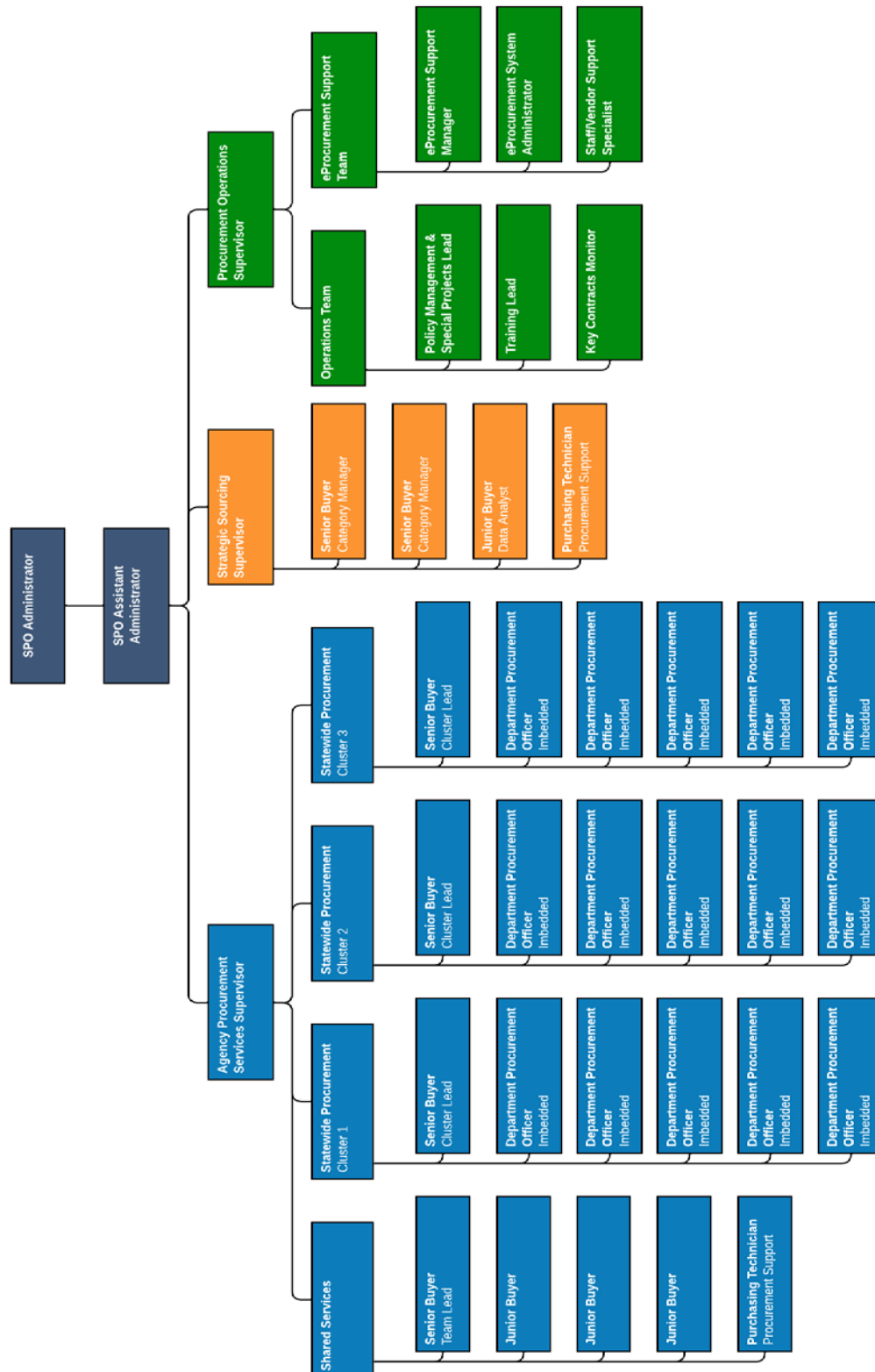
The Training & Certification team would be responsible for the development and delivery of a roles-based training model necessary for dedicated procurement staff to execute their job functions.

8. Systems Support

The Systems Support team would provide support and training to staff and vendors for automation solutions supporting procurement functions.

Based on these eight (8) key roles, the following is an example of a future State SPO organization chart that assumes consolidation and embedding of staff back into agencies aligned with the Alaska model.

Figure 5: Sample SPO Future State Organizational Chart



Note: The numbers of staff are representative at this point and not exact as further research on workloads will be required to determine the appropriate size of the organization and the number of embedded staff necessary to properly support departments.

Procurement Organization

Throughout the working group meetings and individual department interviews, staff expressed a clear vision of the future that provided them with the ability to maintain a departmental level of control over certain aspects of the procurement function. Primarily, the departments wanted:

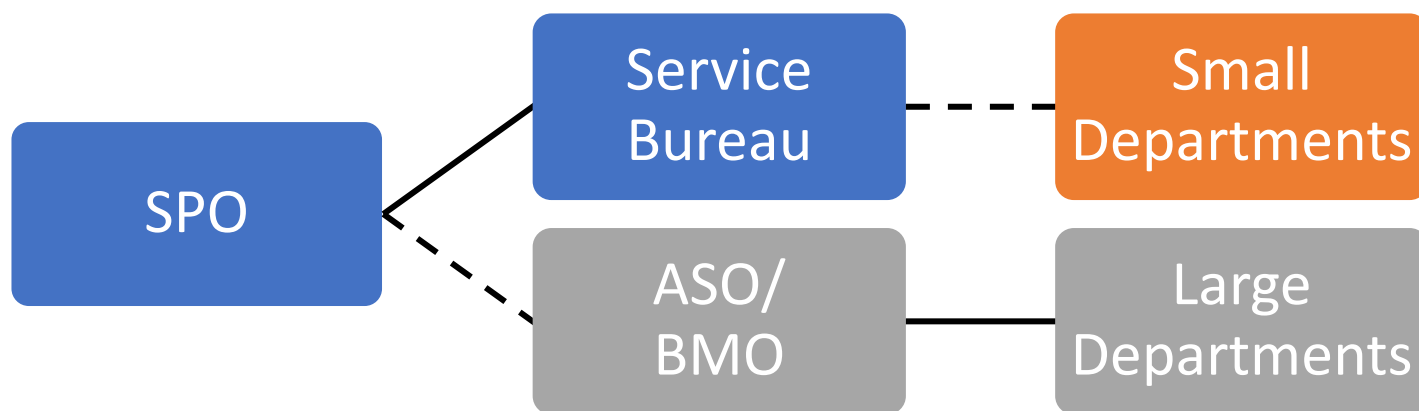
- full latitude to develop the specifications or scope of work;
- the ability to have procurement staff that understood their department's mission and values; and,
- procurement staff that were dedicated and responsive to the department's needs.

To meet the request of the Legislature and the needs of the departments, the eventual model of procurement organization must place the procurement staff in the department, while retaining a direct connection with the SPO. Based on research of peer and leading practices and considering the current state of staffing for the procurement function at the State, the following are models for consolidation to be researched further in the coming year to identify a model that works best for the State of Hawaii.

Associated Model: Dedicated Procurement Staff at the Department

In this model, the department procurement staff are employees of the Department and housed under the department Administrative Services Office and engage with the SPO on non-delegated procurements (see Figure 6).

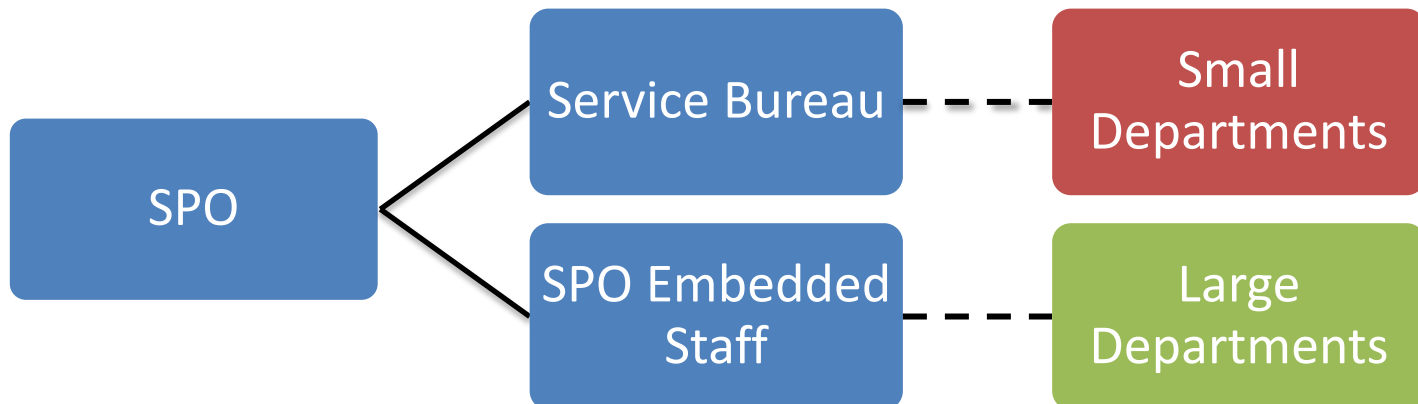
Figure 6: Department Procurement-Associated Model



Embedded Model: SPO Embedded Staff at the Department

In this model, the department procurement staff are employees of the SPO and are embedded in each department (see Figure 7).

Figure 7: Department Procurement-Embedded Model



In either case, associated or embedded, agencies would be asked to consolidate procurement activities to the center of their organization, typically under an ASO. Also, it should be noted that while a member of the consolidation working group, the recommendations for consolidation do not seek to challenge or change the current CPO jurisdictions, and thus do not recommend singling out the Department of Education CPO jurisdiction for inclusion in future consolidation efforts of the executive branch departments.

Next Steps

As required by Act 282, SLH 2022, this report has been provided as is an interim report capturing research performed as of December 14, 2022, providing initial models and concepts for future consideration and research, and establishing a roadmap for developing a five- (5-) year consolidation plan and the final report for the 2024 Legislature.

Toward that end, the following are the steps the working group and Civic Initiatives will perform in the coming year to meet the requirements of the Act:

1. Research State of Hawaii human resource items, including vacancies identified in this report, staff consolidation processes, impacts to staff, and associated State labor unions on the ability to consolidate staff.
2. Research procurement workloads as compared to baseline peers to establish a recommended staffing model and organization chart for SPO to deliver identified core services.
3. Training and certification models necessary to support a consolidated model, including fiscal and human resource requirements to deliver the necessary model.
4. Research the alternative models presented for consolidation and organization to determine the most appropriate model for the consolidation of procurement in the State of Hawaii. The working group will also research other models as they present themselves in our continued research.
5. Research ability to address the general lack of procurement professionals in the State, and associated procurement salaries and retention.
6. Research the State of Alaska procurement consolidation, and other similarly situated peers such as Washington, DC, Puerto Rico, and others identified in ongoing research to gain a detailed understanding of the approaches, costs, and lessons learned from their efforts.
7. Engage the Legislature to discuss and validate consolidation approaches to ensure alignment with the intent of Act 282, SLH 2022.

Attachment: [Act 282, Session Laws of Hawaii 2022](#)

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ATTACHMENT



GOV. MSG. NO. 1411

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 12, 2022, the following bill was signed into law:

SB3369 SD2 HD2 CD1

RELATING TO PROCUREMENT.
ACT 282

Sincerely,

A handwritten signature in black ink, reading "David Y. Ige".

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUL 12 2022

THE SENATE
THIRTY-FIRST LEGISLATURE, 2022
STATE OF HAWAII

ACT 282
S.B. NO. 3369
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that procurement
2 activities throughout the State may not be consistently
3 compliant with chapters 103D (the Hawaii Public Procurement
4 Code) and 103F (relating to purchases of health and human
5 services), Hawaii Revised Statutes, and the administrative rules
6 adopted pursuant to those chapters. Many purchasers conduct
7 procurement activities as part of their "other duties as
8 assigned" and have minimal training and experience in public
9 procurement. This can lead to mistakes resulting in increased
10 costs to the government. The legislature finds that this is
11 particularly true for the department of education, given the
12 fact that many administrators at the school level are tasked
13 with using the Hawaii express procurement system for repair and
14 maintenance in addition to their primary duties, straining their
15 already limited time and resources.

16 Accordingly, the purpose of this Act is to:

17 (1) Establish a working group to develop a plan for the
18 phased in consolidation of procurement services and



1 staff within executive branch agencies within a five-
2 year timespan, excluding the Hawaii health systems
3 corporation, University of Hawaii, and office of
4 Hawaiian affairs;

5 (2) Require the working group to make recommendations for
6 attracting high-quality procurement professionals to
7 the State; and

8 (3) Appropriate funds to the state procurement office to
9 support the activities of the working group.

10 SECTION 2. (a) There is established a procurement
11 services consolidation working group, that shall:

12 (1) Develop a plan for a five-year phased in
13 consolidation, under the state procurement office, of
14 all state executive branch procurement services and
15 staff, except the Hawaii health systems corporation,
16 University of Hawaii, and office of Hawaiian affairs.

17 The plan shall include:

18 (A) An identification of the specific positions and
19 functions to be transferred from each department
20 to the state procurement office;



- 1 (B) Proposed dates of transfer for each position and
2 function;
- 3 (C) Proposed procurement facility, personnel, and
4 operational infrastructure needs of the
5 consolidated procurement agency, with projections
6 on future integration needs as additional
7 agencies' procurement staff and services are
8 added;
- 9 (D) Recommendations to enable the state procurement
10 office to provide expert support to the
11 procurement activities of all state agencies to
12 meet the needs of the agencies and the public;
13 and
- 14 (E) Recommendations to ensure that agency services
15 are not interrupted during the consolidation; and
- 16 (2) Make recommendations to attract high-quality
17 procurement professionals to the State, including the
18 use of internships and the feasibility of exempting
19 certain positions from the requirements of chapters 76
20 and 89, Hawaii Revised Statutes.
- 21 (b) Members of the working group shall include:



1 (1) The administrator of the state procurement office, who
2 shall serve as chairperson;

3 (2) The director or chairperson of each principal
4 executive branch department, or designee, excepting
5 the Hawaii health systems corporation, University of
6 Hawaii, and office of Hawaiian affairs; and

7 (3) Any other person that the administrator of the state
8 procurement office wishes to invite to serve on the
9 working group.

10 (c) The working group shall be administratively attached
11 to the department of accounting and general services. The state
12 procurement office shall provide administrative support to the
13 working group.

14 (d) The working group shall submit an interim report to
15 the legislature, no later than twenty days prior to the
16 convening of the regular session of 2023, and a final report of
17 its findings and recommendations no later than twenty days prior
18 to the convening of the regular session of 2024. The reports
19 shall include:

20 (1) The plan for the phased in consolidation of state
21 procurement services developed pursuant to subsection



- 1 (a)(1), including a detailed five-year phased in
2 schedule;
- 3 (2) Recommendations to attract high-quality procurement
4 professionals to the State;
- 5 (3) Plans for the development and implementation of a
6 multi-tiered certified training program to ensure that
7 all procurement staff take necessary training to
8 conduct procurement correctly;
- 9 (4) Plans for the implementation of an integrated
10 accounting and procurement automation system; and
- 11 (5) Any proposed legislation.
- 12 (e) The working group shall dissolve on June 30, 2024.

13 SECTION 3. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$250,000 or so much
15 thereof as may be necessary for fiscal year 2022-2023 for the
16 state procurement office to support the activities of the
17 procurement services consolidation working group.

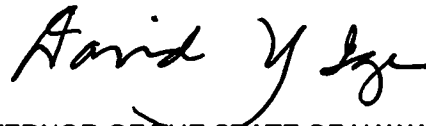
18 The sum appropriated shall be expended by the state
19 procurement office for the purposes of this Act.

20 SECTION 4. This Act shall take effect on July 1, 2022.



S.B. NO. 3369
S.D. 2
H.D. 2
C.D. 1

APPROVED this 12th day of July, 2022

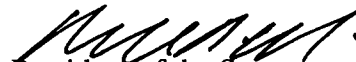
A handwritten signature in black ink, appearing to read "David Ige". The signature is fluid and cursive, with a large, sweeping "D" and a stylized "Ige".


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2022.


President of the Senate


Clerk of the Senate

SB No. 3369, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

ACT 188

H.B. NO. 526

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State's procurement process requires clear legislative direction to award contracts to responsible bidders or offerors to increase accountability, enhance performance, and utilize taxpayer dollars more efficiently. Currently, some public contracts may be awarded to the lowest bidder or offeror without regard to that bidder's or offeror's poor past performance. Specifically, these bidders or offerors may be considered qualified

despite their poor past performance on public contracts, which may result in repeated inefficiencies and substandard work.

The legislature further finds that considering a contractor's past performance in the procurement process and creating and maintaining a past performance database, which routinely captures contractor performance information in a structured and uniform way and is accessed and utilized when future procurements need to determine a contractor's responsibility, will help to address issues of repeated inefficiencies and substandard work.

Accordingly, the purpose of this Act is to:

- (1) Define past performance of contractors;
- (2) Require the state procurement office to establish and administer a past performance database and adopt rules regarding information and procedures associated with the past performance database; and
- (3) Require procurement officers to consider specific factors, including past performance, when available.

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§103D- Past performance database. (a) No later than December 31, 2023, the state procurement office shall implement and administer a past performance database with regard to state contractors.

(b) The state procurement office shall adopt rules no later than December 31, 2023, pursuant to chapter 91 to establish:

- (1) Information required to be included in the past performance database; provided that the information shall include:
 - (A) The name of the state contractor;
 - (B) The date of the project;
 - (C) The size of the project;
 - (D) A brief description of the project;
 - (E) The responsible managing employees for the project;
 - (F) Whether or not the project was timely completed;
 - (G) The project's authorized budget; and
 - (H) The positive or negative difference between the final cost of the project and the project's authorized budget, including the reasons for the difference, if any;
- (2) Procedures to inform a contractor of the information contained in the past performance database about that contractor; and
- (3) Procedures for a contractor to correct or respond to the information contained in the past performance database about that contractor.”

SECTION 3. Section 103D-104, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read: ““Past performance” means available recent and relevant performance of a contractor, including positive, negative, or lack of previous experience, on contracts that shall be considered in a responsibility determination within the relevance of the current solicitation, including the considerations of section 103D-702(b).”

2. By amending the definition of “responsible bidder or offeror” to read:

““Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and

reliability ~~[which]~~ that will assure good faith performance~~[-]~~, pursuant to the responsibility determination standards adopted by the policy board.”

SECTION 4. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be as objectively measurable[-] as possible, such as discounts, transportation costs, ~~[and]~~ total or life cycle costs~~[-]~~, and the bidder’s past performance, if available. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.”

SECTION 5. Section 103D-303, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

“(e) The request for proposals shall include as an evaluation factor, past performance on projects of similar scope for public agencies or private industry, and shall state the relative importance of price, past performance, and other evaluation factors.”

2. By amending subsection (i) to read:

“(i) In addition to any other provisions of this section, construction projects may be solicited through a request for proposals to use the design-build method; provided that:

- (1) A request for proposals is issued to prequalify offerors to select a short list of no more than three responsible offerors, prior to the submittal of proposals; provided that the number of offerors to be selected for the short list shall be stated in the request for proposals and prompt notice is given to all offerors as to which offerors have been short-listed;
- (2) A conceptual design fee may be paid to non-selected offerors that submit a technically responsive proposal; provided that the cost of the entire project is greater than \$1,000,000; ~~[and]~~
- (3) The criteria for pre-qualification of offerors, design requirements, development documents, proposal evaluation criteria, terms of the payment of a conceptual design fee, or any other pertinent information shall be stated in the request for proposals~~[-]~~; and
- (4) Past performance on projects of similar scope for public agencies or private industries shall be an evaluation factor for the prequalification of offerors.”

SECTION 6. Section 103D-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A contract may be awarded for goods, services, or construction without competition when the head of a purchasing agency determines in writing that there is only one source for the required good, service, or construction, the determination is reviewed and approved by the chief procurement officer, the written determination is posted in the manner described in rules adopted by the policy board, a review of past performance, if available, has been conducted, and no objection is outstanding. The written determination, any objection, past performance evaluations relied upon, and a written summary of the disposition of any objection shall be included in the contract file.”

SECTION 7. Section 103D-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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] the purpose[, the] of making a responsibility determination, the procurement officer shall possess or obtain available information, including past performance, sufficient to be satisfied that a prospective offeror meets the applicable standards. 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.”

SECTION 8. Section 103D-320, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-320]]~~ **Retention of procurement records**~~[-]; evaluations.~~ All procurement records shall be retained and disposed of in accordance with chapter 94 and records retention guidelines and schedules approved by the comptroller. Written past performance evaluations for all procurements over the small purchase threshold shall be maintained in the processing department’s procurement files and in the statewide past performance database.”

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved July 6, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 168

H.B. NO. 1974

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that small businesses are the lifeblood of the State's economy. Act 50, Session Laws of Hawaii 2005, was enacted to promote the growth and development of small businesses in Hawaii through the establishment of a small business preference program as part of the procurement process. Additionally, Act 213, Session Laws of Hawaii 2007, approved the funding for a full-time position in the state procurement office with the purpose of implementing part IX of the Hawaii public procurement code, relating to assistance to small businesses. Unfortunately, due to funding and staffing cuts in 2008, this position was never filled and was eliminated from the state procurement office. Although section 3-124-73, Hawaii Administrative Rules, and related interim small business preference rules went into effect in 2007, there was no dedicated position to carry out those rules. Unfortunately, in the absence of this dedicated position or a small business office, these interim rules failed to help the small business community and expired in 2011. Act 42, Session Laws of Hawaii 2017, created a small business initiative; however, the initiative did not receive funding and the enabling legislation sunset in 2020.

The legislature also finds that small businesses owned by veterans, Native Hawaiians, and women are the most vulnerable and disadvantaged businesses within the State. The legislature further finds that an initiative is needed to identify, quantify, and address the needs of these small businesses and measure and track their present participation in state small business contracts.

The legislature additionally finds that the State must create, develop, and implement strategies to ensure that small businesses, including businesses owned by veterans, Native Hawaiians, and women, are able to effectively participate in small business contracting opportunities within the State.

The legislature notes that previously developed administrative rules with respect to the development of small business contracts with the State were not effective because of a lack of available appropriate business metrics and data to provide relevant information necessary for the creation of those rules.

The legislature further finds that any solution to address small business concerns in the State must be attempted incrementally. The legislature also notes that the state procurement office is now ready to address part IX of the Hawaii public procurement code and assist self-identified small businesses in obtaining state contracts. The legislature intends to facilitate this process by creating a small business assistance initiative to collect and develop relevant data and information necessary for small businesses to compete for and obtain small business contracts and identify and resolve issues that must be addressed to develop an effective small business state contracting program within the state procurement process.

The purpose of this Act is to establish a five-year small business assistance initiative and provide staffing for the implementation of part IX of the Hawaii public procurement code, relating to assistance to small businesses.

SECTION 2. Section 103D-902, Hawaii Revised Statutes, is amended to read as follows:

“§103D-902 Small business assistance. (a) The policy board shall adopt rules to assist small businesses in learning how to do business with the State.

(b) The state procurement office shall establish a small business initiative program consistent with this chapter to ensure that small businesses, including businesses owned by veterans, Native Hawaiians, and women, are able to effectively participate in small business contracting opportunities in the State.”

SECTION 3. (a) There is established within the state procurement office a small business assistance initiative to facilitate the collection and development of relevant data and information to assist small businesses. The term of the initiative shall be five years from the enactment of this Act.

(b) The small business assistance initiative shall consist of a small business procurement coordinator and small business office.

(c) There is established the position of small business procurement coordinator within the state procurement office, which shall be exempt from chapter 76. The small business procurement coordinator, with the assistance of the small business office, shall be responsible for the collection and maintenance of data from the state small business database, the provision of this data and metrics to the administrator of the state procurement office, and the daily operations of the small business assistance initiative established in subsection (a). The small business procurement coordinator shall also be responsible for implementing programs and procedures to carry out the intent of this section to assist small businesses, including:

- (1) Establishing and maintaining a statewide small business database;
- (2) Establishing and managing a small business registration, certification, and identification process;
- (3) Drafting policies and rules to assist in the implementation of this section;
- (4) Producing, publishing, and disseminating training materials designed to inform procurement staff and self-identified small business vendors of all small business programs and opportunities;
- (5) Conducting surveys of, and collecting feedback from, procurement staff and self-identified small business vendors to be presented to the administrator of the state procurement office; and
- (6) Producing an annual report of small business participation data and metrics to be submitted to the administrator of the state procurement office.

(d) There is established, as part of the initiative under subsection (a) and within the state procurement office, a small business office. A contract to hire a firm to perform the operations and maintenance of the small business office for the initiative shall be executed. The contract shall be awarded to an existing Hawaii-based small business advocacy group with experience in helping small businesses obtain federal and state contracts. The awardee shall be a small business owned by a veteran, Native Hawaiian, or female, and shall have an understanding of the small business community to be able to meet the requirements of the small business initiative. The small business office shall be responsible for:

- (1) Providing timely training and reports relating to key developments in the small business community;
- (2) Establishing communications with self-identified vendors that may include developing and implementing a newsletter and electronic mail campaign to keep vendors informed of current small business events;
- (3) Producing and publicizing outreach campaigns related to the small business initiative and other small business programs and opportunities as may be developed or discovered;
- (4) Creating, developing, advertising, and encouraging vendor participation in workshops, seminars, and training designed to promote and enhance small business participation in state contracts;
- (5) Establishing mechanisms and implementing procedures for conducting audits, handling disputes, and investigating allegations of fraud and other misappropriations of the small business initiative and its benefits to small businesses;
- (6) Aggregating all small business resources and materials from around the State and presenting them in an easily accessible and understandable online format for potential vendor participants;
- (7) Coordinating with small business advocates in the public and private sectors to create a small business network that can be easily accessed by all small businesses;
- (8) Answering small business vendors' electronic mail and questions about the State's existing small business programs; and
- (9) Collecting data on existing and future small business vendor disputes, problems, difficulties, successes, recommendations, and any other metrics deemed important to the initiative by the state procurement office or legislature.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$366,000 or so much thereof as may be necessary for fiscal year 2022-2023 for the small business assistance initiative established pursuant to this Act; provided that the sum appropriated shall be allocated as follows:

- (1) \$115,000 to complete the state small business database as provided by Act 42, Session Laws of Hawaii 2017, prior to its repeal;
- (2) \$126,000 for the establishment of one permanent full-time equivalent (1.00 FTE) small business procurement coordinator position exempt from chapter 76, Hawaii Revised Statutes, in the state procurement office; and
- (3) \$125,000 for the hiring of a local small business to operate and maintain the small business office established by this Act and for marketing of and outreach for the full five-year term of the small business assistance initiative.

The sum appropriated shall be expended by the state procurement office for the purposes of this Act.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 2022.

(Approved June 27, 2022.)