



JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

BONNIE KAHAKUI
ADMINISTRATOR

**STATE OF HAWAII'Ī | KA MOKU'ĀINA O HAWAII'Ī
PROCUREMENT POLICY BOARD**

P.O. Box 119
Honolulu, Hawaii 96810-0119
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Email: procurement.policy.board@hawaii.gov
<http://spo.hawaii.gov>

**PROCUREMENT POLICY
BOARD**
RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
KEITH REGAN

**Procurement Policy Board Meeting
Friday, February 28, 2025, 9:30 a.m. (HST)
Virtual and Physical Location**

Virtual Meeting Using Interactive Conference Technology – Zoom

State Procurement Office is inviting you to a scheduled Zoom meeting.

Topic: Procurement Policy Board

Time: Feb 28, 2025 09:30 AM Hawaii

Join Zoom Meeting

<https://zoom.us/j/97467973462?pwd=E1FAqm7EBK17PLhwqdoMv3KENDKDnr.1>

Meeting ID: 974 6797 3462

Passcode: cZ0UMn

One tap mobile

+13462487799,,97467973462#,,,,*045806# US (Houston)

+16694449171,,97467973462#,,,,*045806# US

Dial by your location

- +1 346 248 7799 US (Houston)
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 689 278 1000 US
- +1 929 436 2866 US (New York)
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 646 931 3860 US

Meeting ID: 974 6797 3462

Passcode: 045806

Find your local number: <https://zoom.us/u/abhlm4hWnp>

Physical Location

Bid Room of the State Procurement Office, Kalanimoku Building, 1151 Punchbowl Street, Room 416, Honolulu, is available to the public and is guaranteed to be connected to the remote virtual meeting.

Pursuant to Hawai'i Revised Statutes section 92.3.7, the Procurement Policy Board will meet remotely using interactive conference technology. The public may either attend the meeting in person, at the physical location noted above, or participate remotely by using the Zoom meeting information noted on page 1 of this agenda. If participating remotely, please mute your phone/device, except while testifying. Remote testifiers will be given the option of being on-camera via the Zoom link in this agenda or similar option for remote testimony.

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 successful within said 30 minutes, all board members, members of the public, staff and other interested individuals shall log on again to the Zoom 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.

Contact for Meeting Information/Written Testimony

To request email notification of meetings, email procurement.policy.board@hawaii.gov.

We request that testimony be submitted no later than 72 hours prior to the meeting to ensure time for review by Board members. Testimony received after that time will still be considered by the board but might not be distributed to board members until the start of the meeting. Written testimony may be submitted by one of the methods listed below:

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

In accordance with Hawai'i Revised Statutes, Chapter 92, all testimony, whether written or oral, should be related to an item that is on the 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.

If you need an auxiliary aid/service or other accommodation due to a disability, please contact Ruth Baker at (808) 587-4701 or at ruth.a.baker@hawaii.gov as soon as possible, preferably by 4:30 p.m. HST, February 26, 2025. If a response is received after February 26, 2025, we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled. Upon request, this notice is available in alternate formats such as large print or electronic copy.

**Procurement Policy Board Meeting
 Agenda
 Friday, February 28, 2025, 9:30 a.m. (HST)**

- I. Call to Order, Public Notice
- II. Roll Call, Quorum
- III. Review and Approval of February 14, 2025, Meeting Minutes
- IV. Public Testimony – Public testimony will be taken on all items as those items occur during the meeting
- V. Administrator’s Report on 2025 Legislation Related to Procurement (For Information Only)

The State Procurement Office responds to the Procurement Policy Board’s request for a list of 2025 legislation related to procurement, including the State Procurement Office’s position. Those bills are as follows:

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
<u>House Bill No. 381</u>	<u>Senate Bill No. 254, Senate Draft 1</u>	RELATING TO PROCUREMENT. Increases the procurement thresholds for small purchases.	No hearing		
<u>Senate Bill No. 254, Senate Draft 1</u>	<u>House Bill No. 381</u>	RELATING TO PROCUREMENT. Increases the procurement thresholds for small purchases to \$150K and \$360K & increase the compliance from \$2500 to \$10K Effective 1/1/2525. (SD1)	Oppose	In support Counties Kauai, HNL, SAH, DOT, HPD	
<u>House Bill No. 412</u>	<u>Senate Bill 290</u>	RELATING TO LOBBYING. Establishes certain presumptions regarding testimony when provided by a lobbyist. Makes certain contracts voidable when entered into in violation of the state lobbying law. Expands the definition of "lobbying" in the state lobbying law to include certain communications with high-level government officials regarding procurement decisions	Comment	In support, State Ethics, Natalie Iwasa	

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
<u>Senate Bill No. 290</u>	<u>House Bill No. 412</u>	RELATING TO LOBBYING. Establishes certain presumptions regarding testimony when provided by a lobbyist. Makes certain contracts voidable when entered into in violation of the state lobbying law. Expands the definition of "lobbying" in the state lobbying law to include certain communications with high-level government officials regarding procurement decisions.	Track		Dead
<u>House Bill No. 642, House Draft 1</u>	<u>Senate Bill No. 55</u>	RELATING TO ADMINISTRATIVE RULES. Requires all state agencies proposing, adopting, amending, or repealing a rule to make the full text of the rules of the agency available on the website of the Office of the Lieutenant Governor in a digitally accessible and searchable format. Effective 7/1/3000. (HD1)	Track	In support, LTG, League of Women Voters, Grassroots, Public First Law Center, ACLU	
<u>Senate Bill No. 55, Senate Draft 1</u>	<u>House Bill No. 642, House Draft 1</u>	RELATING TO ADMINISTRATIVE RULES. Beginning 1/1/2027, requires all state agencies to make the full text of their rules available on the website of the Office of the Lieutenant Governor in a digitally accessible and searchable format that meets or exceeds certain federal standards. Effective 1/1/2525. (SD1)	Track	Comments, LTG. In support Grassroots, League of Women Voters, Public First Law Center	
<u>House Bill No. 808</u>		RELATING TO THE PROCUREMENT CODE. Requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State to provide funds for curing construction defects discovered within ten years after the completion of the contract. Authorizes the State to institute an action against the contractor for the total costs of curing those defects.	Comment		Deferred
<u>House Bill No. 812, House Draft 1</u>		RELATING TO AGRICULTURE. Authorizes a contract for the purchase of local produce having a value of more than \$25,000 to be for a term of at least five years, under certain conditions. Effective 7/1/3000. (HD1)	Comment	DOE comment. In Support Hawaii Growers, Hawaii Farmers Union	

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
<u>House Bill No. 894</u>		RELATING TO GOVERNMENT. Prohibits state contractors, prospective state contractors, holders of procurement prequalification certificates, or principals of these groups from making contributions to, or soliciting contributions from their employees or from subcontractors or principals of subcontractors on behalf of, certain candidate committees, noncandidate committees, and political party committees. Requires the Procurement Policy Board to adopt rules to issue prequalification certificates to prospective contractors for public buildings or other public works.	Comment		Deferred
<u>House Bill No. 987</u>	<u>Senate Bill No. 1306, Senate Draft 1</u>	RELATING TO PROCUREMENT. Establishes a procurement automation system special fund. Adds the Executive Director of the School Facilities Authority as a chief procurement officer. Effective 7/1/3000. (HD1)	Support	In support, DAGS	
<u>Senate Bill No. 1306, Senate Draft 1</u>	<u>House Bill No. 987</u>	RELATING TO PROCUREMENT. Establishes a Procurement Automation System Special Fund. Designates the Executive Director of the School Facilities Authority as the Chief Procurement Officer for the School Facilities Authority. Effective 1/1/2491. (SD1)	Support	In support, DAGS	
<u>House Bill No. 988</u>	<u>Senate Bill No. 1307</u> <u>Similar Bill: Senate Bill No. 382</u>	RELATING TO PROCUREMENT. Prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror. Authorizes the disclosure of a competing offeror's proposal or evaluation score after a protest is resolved and the contract is executed.	Support	no hearing	

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
<u>Senate Bill No. 1307</u>	<u>House Bill No. 988</u> <u>Similar Bill: Senate Bill No. 382</u>	RELATING TO PROCUREMENT. Prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror. Authorizes the disclosure of a competing offeror's proposal or evaluation score after a protest is resolved and the contract is executed.	Support	no hearing	Dead
<u>Senate Bill No. 382</u>	<u>Similar Bills: House Bill No. 988 Senate Bill No. 1307</u>	RELATING TO PROCUREMENT. Prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation score, except the summary of scores, during a debriefing requested by a non-selected offeror. Authorizes the disclosure of a competing offeror's proposal or evaluation score after any protest is resolved and the contract is executed.	Support	In support, DOT	
<u>House Bill No. 1155</u>	<u>Senate Bill No. 1474</u>	RELATING TO PROCUREMENT. Exempts from the Hawaii Public Procurement Code contracts by government bodies to procure certain construction projects.	Comment	no hearing	
<u>Senate Bill No. 1474</u>	<u>House Bill No. 1155</u>	RELATING TO PROCUREMENT. Exempts from the Hawai'i Public Procurement Code contracts by government bodies to procure certain construction projects.	Comment	no hearing	Dead
<u>House Bill No. 1297</u>		RELATING TO PROCUREMENT. Sets time limit for submitting bid protests. Makes 75 day limit for written decision on protest apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Caps the protest bond amount. Deletes the requirement of an administrative hearing office finding that an appeal is frivolous or in bad faith before the protest bond is forfeited to the State by the non-prevailing party.	Support	no hearing	

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
<u>House Bill No. 1414</u>		RELATING TO PROCUREMENT. For procurements conducted by competitive sealed bidding, authorizes the head of a procurement agency to award a contract to a bidder who is not the lowest responsible and responsive bidder if the head of the procuring agency determines that the award is most beneficial to taxpayers or otherwise in the best interests of the State.	Comment	no hearing	
<u>Senate Bill No. 383, Senate Draft 1</u>		RELATING TO SMALL PURCHASES. Increases the minimum amount for purchases constituting small purchase procurements from \$25,000 to \$50,000. Requires a report to the Legislature. Effective 1/1/2525. (SD1)	Oppose	Support, LIB, HPF, County of HNL	
<u>Senate Bill No. 418, Senate Draft 1</u>		RELATING TO REGULATORY SUNSET REVIEW IN HAWAII. Establishes a regulatory review program overseen by the Department of the Attorney General to evaluate all Hawaii Administrative Rules adopted by state agencies and identify any rules that should be retained, modified or repealed. Requires each state agency to review 20 per cent of their rules every year and submit a report to the Department of the Attorney General. Requires the Department of the Attorney General to notify the Governor and Legislature of any noncompliance by a state agency, adopt rules, and submit annual reports to the Legislature and Governor. Appropriates funds. Effective 1/1/2525. (SD1)	Oppose	Opposed, AG, DLIR,DCCA, DLNR Maui Chamber. In support,Grassroots	
<u>Senate Bill No. 615</u>		RELATING TO PROCUREMENT. Requires that any procurement change order that increases the contract cost by more than fifty per cent or substantially increases the scope of work be considered a new contract for procurement purposes.	Comment		Deferred

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
<u>Senate Bill No. 462, Senate Draft 1</u>		RELATING TO PROCUREMENT CONTRACTS. Requires all performance incentive contracts to specify a pricing basis, performance goals, and a formula in calculating the contractor's profit, fees, or price decrease if the specified performance goals are exceeded or not met. Effective 1/1/2525. (SD1)	Comment	Comments, DOE	
<u>Senate Bill No. 809, Senate Draft 1</u>		RELATING TO CAMPAIGN CONTRIBUTIONS. Prohibits state or county grantees, officers and immediate family members of state or county contractors, and officers and immediate family members of state or county grantees, from contributing to candidate committees and noncandidate committees for the duration of the contract. Requires disclosures of the names of any owners, officers and immediate family members of a state or county contractor or grantee for contracts exceeding a certain amount. (SD1)	Comment	Support: Campaign Spending, League of Women Voters, Democratic Party of Hawaii, Our Hawaii, plus lots of individuals	
<u>Senate Bill No. 1057, Senate Draft 1</u>		RELATING TO PROCUREMENT. Clarifies that the bid incentive given to bidders for public works construction projects who are parties to an apprenticeship agreement is based on apprenticeable trades utilized, rather than employed, to construct the public works. Effective 7/1/2050. (SD1)	Comment	Support: DAGS, IBEW, Goodfellow. Oppose - GCA	
<u>Senate Bill No. 1255, Senate Draft 1</u>		RELATING TO GOVERNMENT RECORDS. Amends the Uniform Information Practices Act to require each contract to perform a government function to expressly require the contractor to retain records in accordance with the retention schedule of the agency and provide the agency with access to all records subject to the Uniform Information Practices Act; define "government function" and "trade secret"; clarify that "government record" includes information that is created, received, maintained, or used by a private person in performance of a government function contract; and	Comment	Oppose, DCR. Comments OIP, Public First. Support, League of Women Voters, Grassroots	

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
		prohibit agencies from denying a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information. Effective 1/1/2491. (SD1)			
<u>Senate Bill No. 1543, Senate Draft 1</u>		RELATING TO GOVERNMENT ACCOUNTABILITY. Requires each purchasing agency to provide justification for hiring external consultants. Caps the amount each agency can spend on external consultants. Requires each agency to seek approval from the Legislature for consulting contracts exceeding a certain dollar amount. Requires each agency to disclose all contracts with external consultants. Requires annual reports to the Legislature. Requires the Compliance Audit Unit to conduct regular audits of agency consultant contracts to assess cost-effectiveness and compliance. Requires each chief procurement officer to ensure that inherent government functions are not delegated to a contractor. Effective 1/1/2491. (SD1)	Comment	Comments: B&F,DOE, HPLS, UH, DAGS, ERS, HHSC, ACEC, AIA Oppose: DCR	
<u>Senate Bill No. 1548</u>	<u>House Bill No. 1293</u>	RELATING TO DEPARTMENT OF EDUCATION. Exempts Department of Education purchases of local edible produce and packaged food products less than a certain amount from the electronic procurement system requirement. Requires at least three written quotes for Department of Education purchases of local edible produce and packaged food products between certain amounts. Requires at least two written quotes for Department of Education purchases of local edible produce and packaged food products between certain amounts for certain schools in rural communities	Comment		Deferred - SB1548 in favor of HB1293

Bill Number	Companion Bill Number	Title and Description	SPO Position	Other Positions	Bill Status 2/21/25
<u>Senate Bill No. 1556</u>		RELATING TO TRUSTED PUBLIC REPRESENTATIVES. Establishes a Trusted Public Representative Program within the Office of Information Practices under which the Office assigns a volunteer Trusted Public Representative trained in the requirements of the Sunshine Law and observes public agency meetings closed to the public. Allows the Office of Information Practices to conduct background checks of current and prospective Trusted Public Representatives. Requires annual reports to the Legislature.	Track		Dead
<u>Senate Bill No. 1587, Senate Draft</u>		RELATING TO RETAINAGE. Allows procurement officers to withhold a retainage fee from the total budget from contractors to ensure satisfactory project completion. Requires the retainage fee to be paid to contractors within a certain number of days of project completion. Applies to public contracts executed on or after 1/1/2026. Effective 1/1/2491. (SD1)	Comment	Comments: DAGS. Support: SAH	
<u>Senate Bill No. 1651, Senate Draft</u> <u>1</u>		RELATING TO PUBLIC MEETINGS. Requires board packets to be posted three no later than 7:45 am on the third business day before a public meeting. Requires boards to provide notice to persons requesting notification of meetings at the time the board packet is made available for public inspection. Effective 1/1/2491. (SD1)	Track	Comments: OIP, HPHA, DHS, LGBTQ Commission, HI-EUF Support: HS-COF, Public First	

VI. Discussion and Possible Approval of Proposed Amendments to Hawaii Administrative Rules, Chapter 3-122 – Source Selection and Contract Formation

The proposed rules summarized below are included in this board packet.

As provided in section 91-2.6, Hawaii Revised Statutes, the proposed rules may be viewed as follows:

- In person at 1151 Punchbowl Street, Room 416, Honolulu, HI 96813
- Online at this direct link:
https://spo.hawaii.gov/wp-content/uploads/2025/02/RAM-HAR-3-122-parts-of-Subchapters-2-and-4_am_022825.pdf
- Online through the SPO website at <https://spo.hawaii.gov>: click on [Procurement Policy Board](#) > [Procurement Policy Board](#) > [Proposed Amendments to Hawaii Administrative Rules Chapter 3-122, Parts of Subchapter 2, and Subchapters 4 and 4.5](#)

1. Subchapter 2 – General Provisions

- §3-122-9(c)(2)(E) – Add “including pages” and remove “an original” to clarify that all pages of the offer, including pages with signatures shall be submitted and that electronically submitted offers with electronic signatures are accepted.
- §3-122-9 (c)(2)(F) is revised by removing the extra “and” for grammar.

Note: The proposed amendments to §3-122-9(c)(2)(E) and §3-122-9(c)(2)(F) were discussed by the Procurement Policy Board on February 14, 2025; there were no objections to the aforementioned amendments.

The Procurement Policy Board will resume discussion on the proposed amendments listed below:

- §3-122-9.01 – Disclosure of information. Amend subsections (a) and (b).
 - a. Replace “The purchase order is issued or the purchasing card order is placed” with “After the time and date set for receipt for quotes” in subsection (a)(1).
 - b. Change “name of members of an evaluation committee” to names of evaluation committee members” to fix a grammatical error in subsection (b). Also, replace “posting of the award pursuant to section 3-122-57(a)” with “contract execution” regarding parameters of when to disclose the names of evaluation committee members.

2. Subchapter 4 – Methods of Source Selection and General Guidance

- §3-122-16 – Methods of source selection – Addition of missing source selection methods: “Subchapter 5 – Competitive Sealed Bidding” and “Subchapter 6.5 – Multi-Step Competitive Sealed Bidding”
- §3-122-16.03 – Public notice – Amend subsections (b), (c), and (d).
 - a. Addition of “if any” to subsection (b)(4) and additional of new subsection (b)(7) “A copy of the solicitation may be made available electronically and may be picked up at the respective issuing office.”
 - b. Addition of “include the requested professional class or category and shall” to subsection (c).

- c. Remove “or provider” in subsection (d)(1).
 - §3-122-16.05 – Pre-bid or pre-proposal conference– Amend subsections (a), (b), and (f)
 - a. Amended subsection (a) for clarity, consistency, and style to reflect that pre-offer conferences are optional.
 - b. Removing subsection (b) in its entirety as it has been invalidated by the Department of Commerce and Consumer Affairs (DCCA), Office of Administrative Hearings (OAH), in *Greenleaf Distribution Services, Inc. v. City and County of Honolulu; PCH-2004-7, September 2, 2004.*
 - c. Addition of “including questions and answers” to subsection (f) which will now be read as subsection (e).
 - §3-122-16.06 – Amendment and clarification to solicitation – Remove subsections (c) and (d) in their entirety so there is no confusion and ambiguity on the distribution requirements of an addendum. Also, add “or electronic means” to new subsection (c)(1), previously subsection (e)(1).
 - §3-122-16.07 – Pre-opening modification or withdrawal of offer - Amended for clarity, consistency, and style to reflect that an offeror’s modification may be submitted electronically
 - §3-122-16.08 – Late offer, late withdrawal, and late modification – Amend subsections (a) and (b) for clarity, consistency, and style to remove hard to read language that results in confusion.
- 3. Subchapter 4.5 – Source Selection for Federal Grants**
- §3-122-16.30 - Purpose and §3-122-16.31 – Exception; request for interest – Amended to replace “providers” with “contractors” for clarity, consistency, and style to reflect that providers selected for federal grants are contractors
 - §3-122-16.30 – Purpose – Remove “the appropriate source selection methods” to reference the whole section 3-122-16 for clarity in subsection (b).
 - §3-122-16.31 – Exception; request for interest – Addition of “when applying or after receipt of a grant” in subsection (a).

VII. Announcements

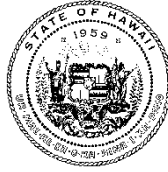
1. Introduction of Small Business Procurement Coordinator

2. Future meeting dates for the Procurement Policy Board, subject to change:

- Friday, March 28, 2025, 9:30 a.m. (HST)
- Friday, April 11, 2025, 9:30 a.m. (HST)
- Friday, April 25, 2025, 9:30 a.m. (HST)
- Friday, May 16, 2025, 9:30 a.m. (HST)

These meetings will be hybrid, on Zoom and in-person in a physical location at 1151 Punchbowl Street, Room 416.

VIII. Adjournment



JOSH GREEN, M.D.
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PROCUREMENT POLICY BOARD

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Honolulu, Hawaii 96810-0119
Tel: (808) 587-4701

Email: procurement.policy.board@hawaii.gov
<http://spo.hawaii.gov>

Procurement Policy Board

Minutes of Meeting

Date/Time: Friday, February 14, 2025, 9:30 a.m.

Locations: State Procurement Office Bid Room
Kalanimoku Building, Room 416
1151 Punchbowl Street
Honolulu, Hawaii 96813

Virtual Meeting Using Interactive Conference Technology – Zoom

Members Present: Rick Heltzel
Lance Inouye
Lisa Maruyama
Keith Regan

Department of the Attorney General: Stella Kam, Deputy Attorney General

State Procurement Office: Bonnie Kahakui, Administrator
Christopher Amandi
Ruth Baker (in public location)
Jacob Chang
Matthew Chow
Mary Grace Dobbins
Fai Goya
Stacey Kauleinamoku
Jittima Laurita

Chan Lee
Kelli Nekomoto
Carey Ann Sasaki
Cynthia Sato
Keari Shibuya
Donn Tsuruda-Kashiwabara
Alan Yeh

Department of Accounting and General Services
Division of Public Works Staff: Jolie Yee

City & County of Honolulu: Paula Youngling

Guests: Brian Lee – Hawaii LECET
Tim Lyons
Jeff Masatsugu
Pane Meatoga III
Frank Rogozienski
Ryan Sakuda

I. Call to Order, Public Notice

Chair Lisa Maruyama called the Procurement Policy Board (PPB) meeting to order at 9:32 a.m. held on Zoom and in-person at the physical location. The meeting was recorded.

II. Roll Call, Quorum

Roll call was taken of the Procurement Policy Board members; there was quorum. Staff of the State Procurement Office (SPO) were introduced.

III. Consideration and Approval of Minutes of January 31, 2024, Meeting

The minutes of the January 31, 2024, were reviewed and revised for clarity. Member Rick Heltzel made a motion to approve the revised minutes and Member Lance Inouye seconded the motion. The members voted to approve the minutes.

Comptroller Keith Regan requested clarification on whether or not a member who was not present at a meeting can make a motion to approve the minutes of that meeting.

Member Inouye asked to confirm if the minutes of the June 27, 2024, meeting were corrected. SPO staff responded that the minutes as revised and approved will be posted on the Procurement Policy Board webpage.

IV. Public Testimony

Chair Maruyama announced that public testimony will be taken on all items as those items occur during the meeting, and that remote testifiers will be given the option of being on-camera via the Zoom link in this agenda or similar option for remote testimony.

V. Administrator's Presentation on 2025 Legislation Related to Procurement (For Information Only)

At the January 31, 2025, meeting, the Procurement Policy Board requested a full list of legislation that the State Procurement Office is tracking on which it is presenting testimony. That list was included in the Board Packet for the February 14, 2025, in accordance with the Sunshine Law. Administrator Bonnie Kahakui provided an overview and update on bills (as of January 31, 2025) on the bills specifically relevant to procurement.

- House Bill 381 - Small purchase threshold. Status: No hearing scheduled as of this date.
- House Bill 723 - Prioritizes purchasing from local vendors. Status: No hearing scheduled as of this date.
- House Bill 808 - Requires contractors to obtain insurance for latent defects. Status: Deferred.
- House Bill 809 - Gives bidders an additional 24 hours to clarify or correct technical information in their proposals, and requires the Procurement Policy Board to adopt rules. Status: Deferred.
- House Bill 894 – Requires the Procurement Policy Board to adopt rules to issue prequalification certificates to prospective contractors for public buildings or public works. Status: Deferred.
- House Bill 987 HD1 / Senate Bill 1306 SD1 (Gov/Admin, companion bills) – Establishes a special fund for the State Procurement Office eProcurement system. Status: Moving forward.
- House Bill 988 / Senate Bill 1307 (Gov/Admin, companion bills) – Clarifies what and when information can be disclosed during a debriefing. Status: No hearing scheduled.
- House Bill 1155 / Senate Bill 1474 (companion bills) - Exempts construction contracts from the Procurement Code with approval from the Chief Procurement Officer. House Bill 1155 Status: No hearing scheduled. Senate Bill 1474: Moving forward.
- House Bill 1187 HD1 – Restricts state departments and attached agencies from purchasing imported flowers and lei. Status: Moving forward.
- House Bill 1297 – Removes language about frivolous protests. Status: No hearing scheduled.

- House Bill 1414 – Allows agencies to award a contract to a bidder if it is the most beneficial to the state. Status: No hearing scheduled.
- Senate Bill 131 – Requires the Procurement Policy Board to adopt rules to impose mandatory fines or provide for termination of a contract for default. Status: Deferred.
- Senate Bill 254 SD1 – Increases the small purchase threshold. Status: Moving forward/
- Senate Bill 382 – Clarifies disclosure of information. Status: No hearing scheduled.
- Senate Bill 383 – Increases the small purchase threshold. Status: Moving forward
- Senate Bill 462 SD1 – Requires all performance incentive contracts to specify a pricing basis, performance goals, and a formula in calculating the contractor's profit, fees, or price decrease if the specified performance goals are exceeded or not met. Status: Moving forward.
- Senate Bill 615 – Requires agencies to consider a new contract for any change orders that increase a contract by more than 50 percent. Status: Deferred.
- Senate Bill 858 – Bid preferences. Status: No hearing.
- Senate Bill 1057 SD1 – Clarifies bid incentive for apprenticeship. Status: Moving forward.
- Senate Bill 1121 – Establishes a preference for bidders who offer higher proportion of all-electric construction vehicles for construction projects. Status: Deferred.
- Senate Bill 1175 SD1 - Adds criteria to contractor's performance assessment to be included in the past performance database and will require the Procurement Policy Board to adopt rules. Status: Moving forward.
- Senate Bill 1543 – Government accountability, requires justification of the use of external consultants. Status: Moving forward.
- Senate Bill 1587 – Allows procurement officers to hold retainage fee of 1% of total budget until completion. Status: Moving forward.

Member Heltzel asked if the Procurement Policy Board is allowed to submit testimony on any of the bills. Deputy Attorney General Stella Kam relayed guidance from the Office of Information Practices, which said that Boards wishing to submit testimony need to vote to designate a representative who will submit and present oral testimony on behalf of the Board. Additionally, the Board must vote on its position on a bill as an agenda item on a Board meeting, which will be before the bill's committee hearing. The Office of Information Practices recognizes that bills may be amended throughout the legislative session. As such, the Board's designated representative should fully understand the Board's position and be authorized to draft testimony for review/approval by the Board prior to submission.

Member Heltzel asked if the Procurement Policy Board would like to consider adding to a future agenda a discussion on submitting testimony on Senate Bill 1175, which relates to the Contractor Past Performance Database. He noted that in 2023, the Board dedicated significant time and effort, including soliciting testimony and collecting public feedback, on this issue.

Chair Maruyama asked for additional information about Senate Bill 1175. Administrator Kahakui provided the legislative timeline on Senate Bill 1175; the State Procurement Office submitted testimony in support of the bill's language to address the government's ability to identify the lowest "responsible bidder" on all projects by considering a contractor's past performance, beyond just basic information, in the procurement process. Administrator Kahakui said that the bill adds information to be included in the Past Performance Database: quality of work; schedule and timeliness of performance; cost and financial management; management, personnel, and labor; safety and security; and general comments. The State Procurement Office testified in support of the additional criteria in the Database.

Chair Maruyama asked the Board members how they felt about this issue. Member Inouye expressed his concern about the additional requirements in Senate Bill 1175, and recalled how the Procurement Policy Board examined and deliberated on the information to be included in the Past Performance assessment form. He added that he and Member Heltzel are members of the General Contractors Association, which may submit testimony on this bill.

Chair Maruyama said that in the January 31, 2025, Procurement Policy Board meeting, the members discussed the Past Performance Database and noted that as January 30, 2025, 56 past

performance forms were submitted. The Chair asked the State Procurement Office if there was a deficit of information, based on the forms that were submitted, that prevented the ability to ensure appropriate procurement, such that you would want to have additional information on the form. Administrator Kahakui said that the Legislature passed a bill that required agencies to consider past performance when making awards. Legislature then passed another bill to establish the past performance database to include the name of the contractor, the date, size, brief description, responsible persons, budget, and budget difference, and it allows for comments from the contractor. For agencies, this information does not say how a contractor performed and is not enough for an agency to make a determination of responsibility. Administrator Kahakui recalled how Representative Matayoshi explained that the intent of the bill was to allow the State Procurement Office to come up with performance criteria for the database. Senate Bill 1175 specifies the past performance criteria for agencies in considering contractors. While the contracting agency can contact other agencies on a contractor's performance, this information requires extra work, is difficult to obtain, and is not documented.

Chair Maruyama agreed that the Procurement Policy Board thoroughly explored this issue and asked what role the Board should play on this legislation. Deputy Attorney General Kam explained that the Legislature determines the scope of the Procurement Policy Board's administrative rulemaking, and reminds the Board that the Legislature creates the parameters for the Board to promulgate the administrative rules. She added that the Legislature can require the Board to add to the past performance criteria in the administrative rules, even though it is contrary to previous Board discussion. She also stated that the Board can submit testimony to the Legislature to explain the difficulties encountered during its deliberations on what the performance assessment form should include.

Chair Maruyama asked Comptroller Regan for his thoughts on this measure. He said that the State Department of Transportation's testimony on this measure provides insight into how departments feel about the past performance database in its current state. According to their testimony, the database is not as useful as a tool for determining past performance and questioned the benefit of the past performance database. Recognizing the different perspective on this issue, Comptroller Regan emphasized the need for discussion and debate among all stakeholders, and further suggested that the most efficient and expeditious approach would be for Board members to submit testimony through their respective organizations, independent of the Procurement Policy Board.

The Chair said that the remarks by Comptroller Regan and the testimony of the Department of Transportation on Senate Bill 1175 provided insight whether the lack of information on the past performance database was hindering decisions for government. Based on the Comptroller's remarks and the Department of Transportation's testimony, and due to logistical time constraints, Chair Maruyama said she is not comfortable with submitting testimony on behalf of the Procurement Policy Board. Members can express their opinions individually.

Member Heltzel appreciated knowing what the rules of engagement were on this issue. He asked if information and past performance testimony is public record, and can that information be used in testimony by members of the public. He noted that the draft past performance assessment forms contained comments from stakeholders and members of the public that would be useful information for the Legislature. The Chair reiterated that Board deliberations and minutes are public information.

Administrator Kahakui noted that currently, the database is not available for viewing by the general public; the database information on the contractor is accessible only to government agencies and that contractor. This information is subject to the Uniform Information Practices Act.

The staff provided clarification on the Legislative calendar and the measures that are similar in language. To help the Board understand the environment and perspectives, the Chair requested that the State Procurement Office's position is noted for each bill on the list of procurement bills provided to the Board. Comptroller Regan agreed, and added that it is important to also consider the positions of other departments – whether in support or opposition – on each measure. Departments provide valuable insights into challenges and other key considerations, and serve as a barometer to proposed changes to the procurement code. Additionally public testimony also reflects broader

sentiments on the issue, contributing to a more comprehensive understanding of the potential impact of legislative proposals.

The Chair commented on the usefulness of the list of bills being tracked by the State Procurement Office, and recommended that the Board consider meeting more frequently prior to the start of and during the Legislative session if the Board wishes to weigh in on legislation.

Administrator Kahakui said that the State Procurement Office will provide an update list of bills with its position on each bill. Since the information presented is as of the date of the agenda's posting, she will provide a verbal comments/updates at the next meeting.

There were no additional questions or comments. There were no written or oral testimonies submitted.

VI. Review and Possible Approval of Proposed Amendments to Hawaii Administrative Rules Chapter 3-122 – Source Selection and Contract Formation

State Procurement Office Purchasing Specialist Carey Ann Sasaki introduced the proposed amendments to Hawaii Administrative Rules (HAR), Chapter 3-122, parts of subchapter 2, and subchapters 4 and 4.5, that relate to the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes (HRS). She added that the proposed rule amendments are to implement the Hawaii Public Procurement Code, HRS Chapter 103D, which will be referred to as 'the Code.' The purpose of the Code is to promote economy, efficiency, effectiveness, and consistency in all procurements by the State and counties. She stated that the proposed rules were included in the board packet and may also be viewed in person at the State Procurement Office at 1151 Punchbowl Street in Room 416, and online at the SPO website.

She provided an explanation of the proposed amendments to the rules.

1. Subchapter 2 – General Provisions

- §3-122-9 (c)(2)(E) is amended to clarify that electronically submitted offers do not have to have an original signature because electronic signatures are acceptable. Therefore, "an original" regarding "original signature" is removed. The State Procurement Office also clarified that all pages of the offer, including pages with a signature, should be submitted.
- §3-122-9 (c)(2)(F) is revised by removing the extra "and" to correct the grammar and sentence structure.
- §3-122-9.01 Disclosure of information, subsection (a)(1), is amended to allow agencies to disclose information sooner rather than later. This revised subsection will state that for small purchases, a purchasing agency is not required to disclose any information until after the time and date set for receipt of quotes instead of after a purchase order is issued or a purchasing card order is placed. Pricing or information submitted electronically may be available immediately after the deadline for receipt of quotes, so there is no valid reason why quotes or information about them can only be made available after a purchase order or purchasing card order is completed.
- §3-122-9.01 (b) is amended to fix a grammatical error and changes "name of members of an evaluation committee" to "names of evaluation committee members". Also, to preserve the integrity of the procurement, the purchasing agency should not disclose the names of the evaluation committee members prior to the execution of the contract if there may be a protest and a possible ruling that offers shall be re-evaluated. There should be no undue influence on the committee members during any evaluation process. Therefore, this subsection is amended by replacing "posting of the award pursuant to section 3-122-57 (a)" with "contract execution".

Discussion: The Procurement Policy Board members, Deputy Attorney General Kam, Paula Youngling of the City & County of Honolulu, and staff of the State Procurement Office entered into a discussion on the proposed amendments Hawaii Administrative Rules §3-122.9.01 and unintended consequences.

The Chair asked that the discussion on the proposed amendments Hawaii Administrative Rules §3-122.9.01 continue and is added to the agenda for the next meeting, and asked that the State Procurement Office, Deputy Attorney General, City & County Purchasing Division, and the City Corporation Counsel meet and collaborate on this issue prior to the next Procurement Policy Board meeting.

2. Subchapter 4 – Methods of Source Selection and General Guidance

State Procurement Office Purchasing Specialist Stacey Kauleinamoku presented the proposed amendments to Chapter 3-122 Subchapter 4, Methods of Source Selection and General Guidance, that corrected grammar and were non-substantive in nature.

- §3-122-16 – Methods of source selection – Addition of missing source selection methods: “Subchapter 5 – Competitive Sealed Bidding” and “Subchapter 6.5 – Multi-Step Competitive Sealed Bidding”
- §3-122-16.03 – Public notice – Amend subsections (b), (c), and (d).
 - a. Addition of “if any” to subsection (b)(4) and additional of new subsection (b)(7) “A copy of the solicitation may be made available electronically and may be picked up at the respective issuing office.”

Recommendation: The Board recommended that (a) be revised to read “A copy of the solicitation shall be made available electronically and/or may be picked up at the respective issuing office.”

In the interest of time, discussion will on the proposed amendments to the Hawaii Administrative Rules will continue at the next Procurement Policy Board meeting.

There were no written or oral testimony submitted.

VII. Announcements

Chair Maruyama announced the dates of future meetings of the Procurement Policy Board:

- Friday, February 28, 2025, at 9:30 a.m.
- Friday, March 28, 2025, at 9:30 a.m.
- Friday, April 11, 2025, at 9:30 a.m.

VIII. Adjournment

Since there was no new business, Comptroller Regan moved to adjourn the meeting and Member Heltzel seconded the motion. All members voted to adjourn the meeting. The meeting adjourned at 12:03 p.m.

Respectfully submitted,

Lisa Maruyama, Chair
Procurement Policy Board

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
Amendments to Chapter 3-122

Interim
Hawaii Administrative Rules

February 28, 2025

Historical Note: This amendment of Chapter 3-122, Hawaii Administrative Rules:

1. Replaces rules effective 03/21/2008 (file no. 2802) which compiled Chapter 122.
2. Replaces rules effective 08/21/2016 (file no. 3193) which amended section 3-122-14; and repealed section 3-122-66.

1. §3-122-9, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-9 Use of [facsimile machines, electronic mail, or electronic procurement systems] electronic communication. (a) Copies of documents transmitted by vendors via [~~facsimile machine, electronic mail, or an electronic procurement system~~] electronic communication may include the notice of intent to offer; the offer with required documentation for evaluation purposes; and modifications or withdrawal of offers and contract documents, pursuant to subsections (b) and (c).

(b) Notices of intent to submit an offer and modifications or withdrawal of an offer may be submitted [~~by facsimile machine, electronic mail, or an electronic procurement system~~] electronically pursuant to sections 3-122-111 and 3-122-16.07, respectively.

(c) An offer transmitted [~~via facsimile machine, electronic mail, or through an electronic procurement system~~] electronically shall be acceptable only when specifically allowed in the [~~invitation for bids or request for proposals~~] solicitation, provided:

- (1) The [~~facsimile or the~~] electronically submitted offer is received at the designated office by the time and date set for receipt of offers; and
- (2) The [~~facsimile or the~~] electronically submitted offer contains:
 - (A) The identification number of the [~~invitation for bids or request for proposals~~] solicitation;
 - (B) The item;
 - (C) The quantity;
 - (D) The price for the offer;
 - (E) All pages of the offer, including pages requiring [~~an original~~] a signature;
 - (F) The bid bond, if required; [~~and~~]
 - (G) A signed statement that the offeror agrees to all the terms, conditions, and provisions of the [~~invitation for bids or request for proposals~~] solicitation; and
 - (H) Any other requirement in the solicitation.

(d) Unless otherwise specified in the solicitation, if the [~~facsimile or~~] electronically submitted offer is the lowest responsive bid, or is the proposal determined in writing to provide the best value to the State, the offeror must submit the [~~complete original offer, with the~~] original bid bond, if required, so that it is received within five working days from the notification of intent to award. If the offeror fails to comply with this requirement, the procurement officer has the option to reject the [~~facsimile or~~] electronically submitted offer." [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp 03/21/08; am and comp]
(Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-310)
(Imp: HRS §§103D-302, 103D-303, 103D-310)

2. §3-122-9.01, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-9.01 Disclosure of information. (a) A purchasing agency is not required to disclose information identifying the number or the names of organizations or persons that obtained a solicitation, attended a pre-offeror's conference, or submitted a notice of intent to offer; or an offer until:

- (1) [~~The purchase order is issued or the purchasing card order is placed~~] After the time and date set for receipt for quotes, in the case of a small purchase request for quotations pursuant to subchapter 8;
- (2) After the time and date set for receipt of priced bids, in the case of invitation for bids pursuant to subchapters 5 and 6.5; and
- (3) The posting of the award in the case of a request for proposals pursuant to subchapter 6.

(b) A purchasing agency shall not disclose the [~~name~~]names of [~~members of an~~]the evaluation committee members established by section 3-122-45.01 prior to the [~~posting of the award pursuant to section 3-122-57(a)~~]contract execution for multi-step bids and competitive sealed proposals.

(c) In the case of procurement of professional services, a purchasing agency is not required to disclose the information specified in section 3-122-63(b) until after the contract is awarded." [Eff and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

3. §3-122-16, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16 Methods of source selection. Unless authorized by law, all contracts shall be awarded by [~~competitive sealed bidding pursuant to subchapters 5 and 6.5, except as provided in~~] the following methods:

- (1) Subchapter 4.5 - Source selection for

- federal grants;
- (2) Subchapter 5 - Competitive Sealed Bidding;
- ~~[(2)]~~ (3) Subchapter 6 - Competitive sealed proposals;
- (4) Subchapter 6.5 - Multi-step Competitive Sealed Bidding;
- ~~[(3)]~~ (5) Subchapter 7 - Professional services procurement;
- ~~[(4)]~~ (6) Subchapter 8 - Small purchases;
- ~~[(5)]~~ (7) Subchapter 9 - Sole source procurements; and
- ~~[(6)]~~ (8) Subchapter 10 - Emergency procurements." [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-301)

4. §3-122-16.03, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.03 Public notice. (a) Public notice of the solicitation pursuant to subchapter 4.5, 5, 6, 6.5, or 7 shall be made for the purpose of securing competition.

(b) The public notice of the solicitation pursuant to subchapters 4.5, 5, 6, and 6.5 shall include the following information:

- (1) A brief description of the good, service, or construction desired; or for solicitations seeking providers for federal grant contracts, the title of the grant application or funding source and a brief description of the services being sought;
- (2) Where and when the solicitation will be available ~~[and a phone number or e-mail address where interested parties may request a copy];~~
- (3) ~~[How long the solicitation will be available, i.e., the]~~ The deadline for the responses to the solicitation;
- (4) Other appropriate information, e.g., [a

~~notice of intention to offer pursuant to section 3-122-111 or~~ contact information, the time, date, and location of the pre-bid or pre-proposal conference, if any;

- (5) For request for interest pursuant to section 3-122-16.31, a statement that the purpose of the request is to select a provider or providers for federal grants; and
- (6) For a multi-step invitation for bids pursuant to subchapter 6.5, a general statement that the bid is multi-step and the due date(s) of the unpriced technical offer and priced offer.
- (7) A copy of the solicitation [~~shall~~] may be made available [~~for public inspection and pick-up~~] electronically and may be picked up at the respective issuing office [~~of the procurement officer issuing the solicitation~~].

(c) Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 shall include the requested professional class or category and shall invite persons to submit statements of qualifications that [~~may include but not be limited to~~] includes:

- (1) The name of the firm or person, the principal place of business, and location of all of its offices;
- (2) The age of the firm and its average number of employees over the past years;
- (3) The education, training, and qualifications of key members of the firm;
- (4) The names and phone numbers of up to five clients who may be contacted, including at least two for whom services were rendered during the preceding year; and
- (5) Any promotional or descriptive literature which the firm desires to submit.

Firms or persons may amend statements of qualifications at any time by filing a new statement and shall immediately inform the head of the purchasing agency of any change in their submission

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

(d) The public notice under subsections (b) and (c) 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), the following may be used:
 - (A) Newspaper publication:
 - (i) For statewide publication, a daily or weekly publication of statewide circulation; or 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 [~~, electronic mail, or facsimile transmission~~] or electronically to persons on any applicable bidders mailing list, if any; and
 - (C) Any other method the procurement officer deems effective for publicizing the solicitation." [Eff and comp 03/21/08; am and comp]
(Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-304) (Imp: HRS §§103D-302, 103D-303, 103D-304)

5. §3-122-16.05, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.05 Pre-bid or pre-proposal conference. (a) The purpose of a pre-bid or pre-proposal conference is to explain the procurement requirements and allow potential offerors to ask questions.

- (1) An agency may hold a pre-bid or pre-proposal

~~conference [and require or not require attendance by all prospective bidders as a condition for submitting an offer for solicitations that have special or unusual requirements, e.g., requiring physical inspection].~~

- (2) For construction, including design-build projects, pursuant to section 103D-303.5, HRS, an agency ~~[shall]~~ may hold a pre-bid or pre-proposal conference and invite all interested parties to attend.

~~[(b) If conference attendance is mandatory for submission of an offer, the requirement:~~

- ~~—— (1) Shall be stated in the public notice issued pursuant to section 3-122-16.03; and~~
~~—— (2) Prominently in the solicitation or if the decision to hold a mandatory pre-bid or pre-proposal conference is made after the issuance of the solicitation, the mandatory requirement shall be announced in an addendum.]~~

~~[(e)]~~ (b) A pre-bid or pre-proposal conference shall be announced ~~[to all prospective offerors]~~ in the public notice issued pursuant to section 3-122-16.03 and in the solicitation, or if the decision to hold a pre-bid or pre-proposal conference is made after the issuance of the solicitation, the conference shall be announced in an addendum.

~~[(d)]~~ (c) The conference should be held long enough after the solicitation has been issued to allow offerors to become familiar with the solicitation, but sufficiently before the deadline for receipt of offers to allow consideration of the conference results in preparing their offers.

~~[(e)]~~ (d) Unless a change is made by written addendum as provided in section 3-122-16.06, nothing stated at the pre-bid or pre-proposal conference shall change the solicitation.

~~[(f)]~~ (e) A summary of the conference, including questions and answers, in addition to any changes to the solicitation, ~~[shall]~~ may be issued by addendum ~~[and shall be supplied sufficiently]~~ before the

deadline for receipt of offers [~~to allow consideration of the summary results and changes to all those prospective offerors known to have received a solicitation~~].” [Eff and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-303.5) (Imp: HRS §§103D-302, 103D-303.5)

6. §3-122-16.06, Hawaii Administrative Rules, is amended to read as follows:

“§3-122-16.06 Amendment and clarification to solicitation. (a) An addendum shall be issued for amendments and clarifications to a solicitation prior to submission of offers, except as provided in subsection ~~[(f)]~~ (d).

- (1) Amendments include any material changes to the solicitation as in quantity, purchase descriptions, delivery schedules, scope of work, and opening dates. The addendum shall reference the portions of the solicitation it amends and detail the amendments;
- (2) Clarifications include pre-bid or pre-proposal communications other than amendments.
- (b) Addenda shall be used to:
 - (1) Correct minor defects or ambiguities;
 - (2) Furnish to other offerors information given to one offeror if the information will assist the other offerors in submitting offers or if the lack of the information would prejudice the other offerors; and
 - (3) Provide any other information or clarification to the solicitation that will result in fair competition.

~~[(c) Addenda may require that offerors acknowledge receipt of the addendum issued.~~

~~—(d) Addenda shall be issued to all prospective offerors known to have received a solicitation, or if issued after the deadline for submission of notice of intention to offer, to those persons who have submitted such notice.]~~

~~[-(e)]~~ (c) Addenda for:

- (1) Amendments shall be ~~[distributed]~~ published within a reasonable time to allow prospective offerors to consider them in preparing their offers; however, if the time and date set for receipt of bids will not permit adequate time for preparation, the time shall be increased to the extent possible in the addendum or, if necessary, by facsimile or telephone or electronic means and confirmed in the addendum;
- (2) Clarifications may be issued any time up to the scheduled deadline for receipt of offers.

~~[-(f)]~~ (d) After submission of proposals, amendments may be made by addenda for solicitations pursuant to subchapters 6 and 6.5, subject to sections 3-122-53(d) and (e) and 3-122-54(b).” [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

7. §3-122-16.07, Hawaii Administrative Rules, is amended to read as follows:

“§3-122-16.07 Pre-opening modification or withdrawal of offer. (a) ~~[Bids or proposals]~~ Offers submitted pursuant to subchapters 5, 6, and 6.5 may be modified or withdrawn prior to the established due date by submitting the following ~~[documents]~~:

- (1) ~~[Modification]~~ For modification of ~~[bids or proposals]~~ the offer:
 - (A) A written notice accompanying the ~~[actual]~~ offeror’s modification received in the office designated in the solicitation, stating that a modification to the ~~[bid or proposal]~~ offer is submitted; or
 - (B) ~~[A facsimile or]~~ An electronic notice accompanying the ~~[actual]~~ offeror’s modification submitted ~~[either by facsimile machine, electronic mail, or~~

~~an electronic procurement system]~~
electronically pursuant to section 3-122-9 to the office designated in the solicitation; provided if other than through an electronic system, offeror submits the actual written notice and modification within two working days of receipt of the facsimile or the electronic transmittal.

- (2) Withdrawal of bids or proposals:
- (A) A written notice received in the office designated in the solicitation; or
 - (B) A notice ~~[by facsimile machine or other electronic]~~ submitted ~~[electronic]~~ electronically ~~[method]~~ pursuant to section 3-122-9 ~~[, to the office designated in the solicitation]~~.

For the purposes of this section and section 3-122-16.08, the established due date for proposals pursuant to subchapter 6 or 6.5 is either the time and date announced for receipt of proposals or as amended ~~[receipt of modifications to proposals]~~, if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only priority listed offerors may submit best and final offers.

(b) The documents shall be made a part of the ~~[appropriate]~~ procurement file." [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

8. §3-122-16.08, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.08 Late offer, late withdrawal, and late modification. (a) Any ~~[notice of withdrawal, notice of modification of a bid or proposal with the actual modification, or any bid or proposal is late when received at the place designated for receipt and opening of an offer after the established due date, additionally defined in section 3-122-16.06(a),]~~

offer, withdrawal and modification submitted by hand delivery, mail, or electronically after the established due date, shall not be accepted, except when received before contract award and would have been timely but for the action or inaction of personnel, and supported by a written determination by the head of the purchasing agency [~~within the procurement activity~~].

(b) A late bid or proposal or late modification will not be considered for award and shall be returned to the offeror unopened as soon as practicable, accompanied by a letter from the [~~procurement activity~~] purchasing agency stating the reason for its return.

(c) A late withdrawal request except as provided for in section 3-122-31, shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

(d) Records of each late offer, late modification, or late withdrawal and any related correspondence shall be made a part of the appropriate procurement file, except for the late offer or late modification itself which shall be disposed of in accordance with subsection (b).” [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

9. §3-122-16.30, Hawaii Administrative Rules, is amended to read as follows:

“§3-122-16.30 Purpose. (a) The purpose of this subchapter is to provide rules for the selection of [~~providers~~] contractors for federal grants.

(b) The selection of [~~providers~~] contractors for federal grants shall be in accordance with [~~the appropriate source selection methods in~~] section 3-122-16.” [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-301)

10. §3-122-16.31, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.31 Exception; request for interest for federal grants. (a) "Request for interest" as used in this subchapter means all documents utilized for soliciting interest in providing goods, services, or construction under a federal grant, when applying or after receipt of a grant.

(b) Where time or economic situations preclude the use of other source selection methods in section 3-122-16, purchasing agencies may, with the approval of the head of purchasing agency, issue a request for interest to select a [~~provider or providers~~] contractor(s) for a federal grant.

(c) A public notice shall be publicized pursuant to section 3-122-16.03(d) and shall include but not be limited to the information in section 3-122-16.03(b).

(d) The request for interest may include but not be limited to the following:

- (1) Identification and purpose of the federal funding;
- (2) The target population [~~or clients~~] to be served;
- (3) A description of the good, service, or construction;
- (4) The evaluation criteria and their relative weights for selecting a [~~provider or providers~~] contractor(s);
- (5) The format, if any, and procedure for submitting responses to the request;
- (6) The deadline for submittal of written responses to the request which shall be a minimum of five working days from the date of public notice;
- (7) A statement that the purchasing agency reserves the right to incorporate or not incorporate in the State's application for federal grants any recommendations presented in response to the request; and
- (8) A statement that neither the purchasing agency nor the interested [~~provider~~]

contractor has any obligation under the request.

(e) The selection of a [~~provider or providers~~] contractor(s) shall be based on the criteria established in the request for interest.

(f) A notice of the selected [~~provider or providers~~] contractor(s) shall be posted to a state governmental website [~~or~~] and all respondents shall be notified in writing.

(g) Nothing in this section shall be construed to disqualify a purchasing agency from receiving federal funds." [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

11. Material, except source notes, to be repealed is bracketed. New material is underscored.

12. Additions to update source notes to reflect these amendments and compilation are not underscored.

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

I certify that the forgoing 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 on February 28, 2025, by the Procurement Policy Board and filed with the Office of the Lieutenant Governor.

LISA MARUYAMA
Chairperson
Procurement Policy Board

KEITH REGAN
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General