



JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

BONNIE KAHAKUI
ACTING ADMINISTRATOR

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

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4701
Email: procurement.policy.board@hawaii.gov
<http://spo.hawaii.gov>

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

Procurement Policy Board Meeting
Monday, December 4, 2023, 1:30 pm – 3:30 pm HST
Virtual and Physical Location

Virtual Meeting Using Interactive Conference Technology – Zoom

Join Zoom Meeting

<https://zoom.us/j/92197162857?pwd=bDM5YTc4a0xVazZaT2IBNVQvN3NJQT09>

Meeting ID: 921 9716 2857

Passcode: yqKT0E

One tap mobile

+16694449171,,92197162857#,,, *157450# US

+16699006833,,92197162857#,,, *157450# US (San Jose)

Dial by your location

- +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)
- +1 346 248 7799 US (Houston)
- +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
- +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

Meeting ID: 921 9716 2857

Passcode: 157450

Find your local number: <https://zoom.us/j/92197162857?pwd=bDM5YTc4a0xVazZaT2IBNVQvN3NJQT09>

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 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

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.

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, preferably by 4:30 p.m. HST, November 30, 2023. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate formats.

Procurement Policy Board Meeting
Agenda
Monday, December 4, 2023, 1:30 p.m. – 3:30 p.m.

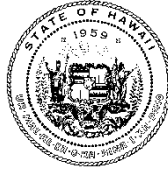
- I. Call to Order, Public Notice**
- II. Public Testimony – Public testimony will be taken on all items as those items occur during the meeting**
- III. Roll Call, Quorum**
- IV. Approval of [Minutes of October 16, 2023](#), Meeting**
- V. Review and Possible Approval of Proposed Past Performance Assessment / Questionnaire, which shall be completed by all state and county procurement officers or agents at the end of a contract.**
- VI. Discussion and Possible Approval of Proposed Amendments to Hawaii Administrative Rules HAR §3-122 - Source Selection and Contract Formation**
 - A. §3-122-1 – Definitions – Addition of “recent,” and “relevant” as definitions.
 - B. §3-122-33 - Bid evaluation and award – Addition of “Bidder’s past performance, if available.”
 - C. New Subchapter 13.5 – Contractor Past Performance Assessment Form – addition of language and procedures pertaining to contractor past performance assessment.
- VII. Explanation of Debarment, Pursuant to [§103D-702, Hawaii Revised Statutes](#), (Information Only)**
- VIII. Announcements**

Next Meeting: Members will be polled on their availability for a meeting in January 2024.
- IX. 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 closed to the public pursuant to Section 92-4, Hawaii Revised Statutes. The executive session will be conducted pursuant to Section 92-5(a)(2), 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.
- X. 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, preferably by 4:30 p.m. HST, November 30, 2023. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate formats.



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

Procurement Policy Board

Minutes of Meeting

Date/Time: Monday, October 16, 2023, 1:30 p.m.

Locations: Comptroller's Conference Room
Kalanimoku Building, Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Virtual Meeting Using Interactive Conference Technology – Zoom

Members Present: Rick Heltzel
Lance Inouye
Lisa Maruyama
Keith Regan

Excused: Diane Nakagawa

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

State Procurement
Office Staff: Bonnie Kahakui, Acting Administrator
Christopher Amandi
Ruth Baker
Jacob Chang
Matthew Chow
Stacey Kauleinamoku
Jittima Laurita
Carey Ann Sasaki
Cynthia Sato
Donn Tsuruda-Kashiwabara
Alan Yeh

Government Staff
State: Christopher Butt, Department of Education
Lois Mow, Department of Education
Eric Nishimoto, Department of Accounting and General Services - Public Works Division
Gordon Wood, Department of Accounting and General Services - Public Works Division
Jolie Yee, Department of Accounting and General Services - Public Works Division

County: Paula Youngling, City & County of Honolulu - Department of Budget and Fiscal Services,
Purchasing Division

Guests: Sarah Love, Building Industry Association (BIA)
Tim Lyons, Subcontractors Association of Hawaii
F. Moore
Ryan Sakuda, General Contractors Association

I. Call to Order, Public Notice

Chair Lisa Maruyama called the Procurement Policy Board (Board) meeting to order at 1:30 p.m. held on Zoom and in-person in Room 410 of 1151 Punchbowl Street. The meeting was recorded.

II. Roll Call, Quorum

Roll call was taken of the Procurement Policy Board members; there was quorum.

The Deputy Attorney General assigned to DAGS and staff of the State Procurement Office (SPO) were introduced.

III. Approval of Minutes of July 11, 2023, Meeting

The minutes of the July 11, 2023, were reviewed. Eric Nishimoto asked that his statement on page be revised for clarification purposes. Rick Heltzel made a motion and Keith Regan seconded the motion to accept the revised minutes as presented. The members unanimously voted to approve the minutes.

IV. Public Testimony

Public testimony was taken on all items as those items occur during the meeting.

V. Review and Possible Approval of Proposed Past Performance Assessment / Questionnaire, which shall be completed by all state and county procurement officers or agents at the end of a contract

Chair Maruyama reported that the Procurement Board Procurement Board was in receipt of written testimony and took oral testimony on the subject of the proposed Past Performance Assessment / Questionnaire.

Sarah Love, President of BIA Hawaii, stated that they submitted written testimony and acknowledged that the Board and the State Procurement Office has been working hard on the Assessment and questionnaire. She wanted to reiterate that they still have a concern about the revised Assessment and that the appeal process needs to be addressed before the Board approves the Assessment.

Eric Nishimoto of Department of Accounting and General Services (DAGS) - Public Works Division stated that the rating should be poor performing contractors.

Ryan Sakuda of the General Contractors Association of Hawaii stated that they agree with many points presented by the testimony provided by both the Building Industry Association and Anna Oshiro.

Chair Maruyama called upon Bonnie Kahakui, SPO Acting Administrator. Administrator Kahakui explained that the SPO took into account feedback, suggestions, and testimony, then revised the Assessment, deleting some of the questions. She added that while public testimony stated that the Assessment went beyond what specifically stated in statute, she said that a legislator left it up to the SPO to come up with the assessment criteria. She explained that the revised Assessment, which was included in the agenda packet, shows the various changes and explanations, and introduced SPO Purchasing Specialist Stacey Kauleinamoku.

Staff Kauleinamoku explained that the Assessment is an electronic format in the past performance database, which notifies the contractor about the Assessment for comment/rebuttal, captures a contractor's performance information in a structured and uniform way. She explained the changes, reason for each change, and the comments offered by stakeholder, as outlined in the attachment. Any feedback received from this meeting will be provided to the designer of the past performance database so that the database can be developed by December 31, 2023.

Members Comments

Chair Maruyama opened the floor to the PPB members for questions/comments.

Member Lance Inouye thanked the SPO for their efforts on working on the original version of the Assessment. He commented that the Assessment should be kept to what the law requires and be added to after December. He provided the following comments/suggestions and will send the SPO his written revision:

- Keep Section 1. Specify a dollar amount of a contract that would trigger an Assessment. Change "Estimated Start & Completion Dates," to "Contract Start & Completion Dates," to satisfy Section 2 (b)(1)(F) "Whether or not the project was timely completed." Delete "Past Performance Assessment Guidance," but keep that on file for possible future use. He said that the Assessment should follow what is stated in Act 188, SLH 2022.
- Revise Section 1 to read, "Reason(s) for difference Between Contract and Actual Dates, if applicable."
- Delete Section 2.
- Keep Section 3 because it provides for contractor comments. Add language that if the contractor does not respond, the Contractor Performance Assessment Form shall be considered complete. Remove the word "accepted," noting that silence should not be considered an acceptance by the contractor.
- Revise Section 4: "Pursuant to HAR section 3-122-115.02(c)(2)(B), the procurement officer shall update the past performance database system by including any and all timely submitted contractor comments." The rest of the sentence, "The final determination on the contractor's past performance assessment shall be the decision of the head of the purchasing agency or designee shall be final and not subject to any appeal," is not in accordance with the spirit of the procurement law. Delete "taking into consideration" and include any contractor comments. Contractors should be entitled to appeal decision as provided by state law.
- He wants to avoid subjective ratings. He noted that there are so many factors why a contractor will have an unsatisfactory rating. If there is an unsatisfactory rating, comments would have to be entered and there needs to be an appeal process. There needs to be safeguards in place.
- To be sensitive to Building Industry Association's comments, new language proposed to be added to Hawaii Administrative Rules 3-122-33 should be moved to Hawaii Administrative Rules 122-108.

Member Inouye added that the effort to rate contractors was done over 10 years ago was so subjective and difficult.

Member Heltzel also thanked the work and effort of the SPO and stated that he went through and made notes on the Assessment. He agreed with Member Inouye in striking Section 2, and offered the following comments/suggestions:

- Section 1: For “Contract Start and Completion Dates,” include approved/executed change order because many projects have change orders that extend the completion date. This will provide clarity.
- Section 4: Delete “...taking into consideration” and replace it with “to include any.” Also delete the sentence “(c)(2)(c), The final determination on the contractor’s past performance assessment shall be the decision of the head of the purchasing agency or designee shall be final and not subject to any appeal,” and replace it with “Contractors shall be entitled to appeal decision as provided by state law.”
- While the Assessment form can be simple, how this would be used by procuring agencies can’t be controlled. This opens up to legal issues and possible protests.

Member Keith Regan asked what value would the Database provide if we were to remove all of the important information that would be collected as part of the evaluation of the contractor, from the perspective of the contract manager. He said that at times, keeping it simple is the best way to start on things, and that he is open to considering reducing the amount of information collected in the Assessment for now, with the understanding that the Assessment will be revisited and additional information on past performance can be collected and analyzed, if the PPB deems this as important and critical to bring value to this Past Performance Database. While he somewhat agrees with Members Inouye and Heltzel’s points to a certain extent, he acknowledges that the SPO compiled a good questionnaire for collecting information to help with the assessment process. He also understands the limited resources of state contracting staff and the impact of additional documentation on agencies, such as DAGS, that have a lot of contracts. A cost threshold on contracts may address this. He would like to move forward with the database to meet the spirit of the law.

Oral Testimony from Stakeholders:

Acting Administrator Kahakui acknowledged that Act 188, SLH 2021, did not detail what the Past Performance Assessment should include. However, Rep. Scott Matayoshi stated during a previous PPB meeting that he wanted the SPO to come up with the assessment criteria. Based on data with only the contractor’s name, project start dates, and the budgeted amount agency, an agency would have difficulty in making a determination of responsibility for construction projects, Invitations for Bids, Request for Proposals, and Sole Source procurements.

Jolie Yee of DAGS Public Works Division provided a general comment that consideration should be given to the fact that the proposed changes would reduce the transparency of the procurement process for construction because it introduces inherent subjectivity by requiring procurement personnel to make subjective decisions regarding information that is recent and relevant, especially as related to construction. Deputy Attorney General Kam commented on Ms. Yee’s observation, that subjective information that result in a contractor being struck from consideration of a project may likely result in a protest. She provided clarity that the terms “recent” and “relevant” are not part of Hawaii Administrative Rules 3-122, but are in the HRS for factors to be considered for Past Performance.

Eric Nishimoto of DAGS Public Works Division said that resources should focus should be on the poor performing contractors. The Public Works Division staff document poor performance so they can debar contractors. The Past Performance database can be helpful if it is simple and implementable for all state and county agencies. Having one question on the Assessment, "Was the performance satisfactory or unsatisfactory?" is implementable and provides an easier method for staff to document performance.

Paula Youngling of the City & County of Honolulu Department of Budget and Fiscal Services said that they compiled the responses/feedback from their departments. They suggested that all the sub-categories in Section 2 be removed. They suggest that Section 2 could be similar to the Contractor's Comments section with satisfactory or unsatisfactory. Poor performance would be rated unsatisfactory with a written assessment followed by the contractor's rebuttal.

Chair Maruyama asked if the question addresses the concerns about debarment as shared by industry representatives. Ms. Love responded that the concerns shared are regarding insertion of the language into Hawaii Administrative Rules 3-122-33, and that comments on the form would not have an appeal process. Anyone deemed unsatisfactory would be precluded from bidding again. Ms. Love suggested moving that language under the responsibility factor, which already takes into account an appeals process.

Tim Lyons of the Subcontractors' Association of Hawaii appreciates the discussion on limiting the Assessment to center on satisfactory and unsatisfactory performance. This brings up the question of details regarding an unsatisfactory performance as a result of a bad subcontractor. With a shortened timeline/process, does the agency have the resources to investigate unsatisfactory performance for a job handled by up to 18 different subcontractors under one general contractor.

Acting Administrator Kahakui answered various questions and offered comments:

- The process and framework for the Past Performance Database is already in place.
- She understands the points offered by PPB members, staff, and other stakeholders, but commented that without having at least one question, the questionnaire is not an assessment and has no value. She would like to have at least one question (Was the performance satisfactory or unsatisfactory? Was the performance acceptable or not?), and build on the Assessment form after December 31, 2023, if the PPB wishes.
- In answer to questions regarding adding/removing questions to the Assessment, after December 31, 2023, older assessments will be missing information and will be different from those that are completed with new questions.
- Assessments should be done for both satisfactory and unsatisfactory performances for review by the agencies.
- Adding a dollar threshold for the Assessment would help the agencies.

Chair Maruyama asked the PPB members on their thoughts for the Assessment: Keep Section 1 of the Assessment, not have question if the performance satisfactory or unsatisfactory, and instead focus on the debarment law. In the Assessment, the project manager can list concerns without any rating and contractors have the ability for rebuttal, thereby helping the procuring agencies in building a case against a potentially chronic poor performer.

Member Regan stated that he likes Deputy Attorney General Kam's recommendation of having comments, noting that the comments can be associated with criteria (H) of Act 188, SLH 2021 ("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;"). The only area where there is room for

explanation/comment would be on whether or not the project was timely completed, criteria (F), comments by the project manager and rebuttal from the contractor. Criteria (F) and (H) can have a satisfactory and unsatisfactory. He added that there absolutely has to be an appeal process. Remove the language about not being able to appeal, ensure that contractors can appeal, and explain the appeal process to avoid possible lawsuits.

Mr. Nishimoto of DAGS Public Works Division commented that without a satisfactory and unsatisfactory rating makes the Assessment meaningless. Their division completes a form for consultants, and if there is an unsatisfactory rating, comment on the reason for that rating. A letter sent to the consultants provides an opportunity to meet and have a dialogue to explain the reason. The Public Works Construction Management Branch has a mandatory form to be completed at the end of each project. There is no process to disqualify poor performers, who are still allowed to bid.

Chair Maruyama offered an idea for the Assessment in order to make the December 31, 2023, deadline to implement the Past Performance Database. To meet the requirement of Act 188, SLH 2021, add the following to Section 1 of the Assessment:

- Comment box for criteria (F), which says "Whether or not the project was timely completed." Deputy Attorney General Kam said that this can be a can be "yes" or "no" question. She commented that because procuring entity didn't issue a rating of satisfactory or unsatisfactory, the next procuring entity can determine if that Assessment is relevant for their purposes. She confirmed that the rebuttal entered into the Past Performance Database for others to consider for their project.
- Comment box for criteria (H), which says "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;"). Deputy Attorney General Kam said that since this allows for a contractor to respond, there is no need for an appeal. The appeal is needed only if there is a rating of satisfactory or unsatisfactory.

Following the deadline, the Chair asked that the PPB makes a commitment to look at the SPO's Assessment and come up with one that is simple for procurement staff to complete and yet provides documentation for unsatisfactory performance.

Ms. Yee of DAGS Public Works Division shared their concern that there will be subjectivity and an increase in protests. She asked if a better mechanism is to improve the suspension and debarment process to address poor performers. Chair Maruyama is in favor of adding suspension/debarment to the next meeting agenda.

Motion:

Member Regan made a motion to approve the Assessment form based on the proposed changes: to limit the Assessment to what is contained in 103D-329, Hawaii Revised Statutes; to not include a satisfactory or unsatisfactory rating, however, to include a comment on whether or not project was timely completed; and to include a comment on "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."

Deputy Attorney General Kam said that the motion can direct that the SPO revise the questionnaire to limit it to criteria (A) through (H), with the opportunity for comment in (F) and (H) to follow Act 188, SLH 2021, precisely. Member Regan is happy to make that motion. He expressed his concern about being able to meet the database implementation deadline of December 31, 2023, per statute.

Deputy Attorney General Kam offered a motion that would capture the modifications to the Assessment. Since Section 1 describes what is necessary, the SPO can include a comment box for the "Actual Start & Completion Dates." There is already a comment box for "Reason(s) for Change in Cost, if applicable." Sections 1 and 3 allows the contractor to rebut. Section 4 is unnecessary and would create a problem by stating that this is a final determination of the agency.

Member Inouye asked the PPB to consider that the Assessment form be considered complete and not accepted because of silence.

Acting Administrator Kahakui asked if 20 working days is adequate for contractors to input their comments. Deputy Attorney General commented that this is ok, and this will be in the Hawaii Administrative Rules, and that most of the contractors are interested in the number of days they have to rebut.

Chair Maruyama said that her priority is to look at rule changes related to debarment and other issues. Member Regan made a motion to approve the revised Assessment, in which Section 1 has a comment section for criteria (H), Section 1 will read, "Reason(s) for difference Between Contract and Actual Dates, if applicable," and for Section 3, if the contractor does not respond, the Contractor Past Performance Assessment form shall be considered complete. Member Inouye second the motion.

The PPB members unanimously voted to approve the revised Assessment.

SPO staff will work to make those modifications,

VI. Discussion and Possible approval of Proposed Amendments to Hawaii Administrative Rules HAR §3-122 - Source Selection and Contract Formation

The members voted to defer this agenda item was deferred to December 4, 2023.

VII. Announcements

The next Procurement Policy Board meeting will be held on Monday, December 4, 2023, at 1:30 p.m. This meeting will be hybrid on Zoom and in person at the physical location of Room 410 in 1151 Punchbowl Street.

There were no additional announcements.

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

Keith Regan made a motion and Lance Inouye seconded the motion to go into Executive Session. The members unanimously voted to go into Executive Session, which is closed to the public pursuant to Section 92-4, Hawaii Revised Statutes. The executive session was conducted pursuant to Section 92-5(a)(2), 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.

The members went into executive session at 3:57 p.m. and returned to the public meeting at 4:01 p.m. Chair Maruyama reported that the members were provided a status of the hiring process for the permanent State Procurement Office Administrator and that interviews will commence in the next two weeks.

IX. Adjournment

Since there was no new business, Member Heltzel moved to adjourn the meeting; Member Inouye seconded the motion. All members voted to adjourn the meeting. The meeting adjourned at 4:02 p.m.

Respectfully submitted,

Lisa Maruyama
Chair, Procurement Policy Board

[Return to Agenda](#)



CONTRACTOR PAST PERFORMANCE **FORM**

Commented [KSL1]: Renamed title to Contractor Past Performance Form

Section 1. GENERAL INFORMATION - To be completed by each Procuring Agency.

Please complete form, by providing the information requested below, for each contract under which whom the Contractor has provided or is currently providing products goods, services and/or construction specified herein.

PROCURING AGENCY INFORMATION	
Procuring Agency Department:	
Procuring Agency Division	Procuring Agency Jurisdiction
Procuring Agency Contact Name:	Procuring Agency Contact Title:
Procuring Agency Postal Address:	Procuring Agency Contact Phone:
Procuring Agency Contact Email:	Procuring Agency Contact Fax:
Procurement Officer Name:	
Procurement Officer Email:	
CONTRACTOR INFORMATION	
Contractor/Business Name:	Contractor Contact Name:
Contractor Contact Phone:	Contractor Contact Email:
Business Address:	
License Requirement(s), if applicable (e.g., A, B, C13, etc.):	
Name(s) of Responsible Managing Employees for Project:	
SOLICITATION/PROJECT INFORMATION	
Solicitation Title:	Term of Contract/Project Date(s), including all supplemental periods, if applicable:
Method of Procurement: <input type="checkbox"/> Competitive Sealed Bidding <input type="checkbox"/> Competitive Sealed Proposals <input type="checkbox"/> Sole Source	
Solicitation/Contract No.:	Original Awarded Amount (Size of the Project):
Brief Description of the Project:	

Contract Start & Completion Dates (including approved change orders):		From:		To:	
Actual Start & Completion Dates:		From:		To:	
Reason(s) for Difference Between Contract and Actual Dates, if applicable: (For construction, Start & Completion Dates shall be based on onsite work):					
Project's Authorized Budget:			Project's Final Cost:		
Positive or Negative Difference, if applicable:					
Reason(s) for Change in Cost, if applicable:					

Commented [KSL3]: 10/16/23 - Lance I.'s suggested change

Commented [KSL2]: 10/16/23 - Rick H.'s suggested change from federal experience.

11/8/23 - Updated verbiage as per Lance Inouye's feedback from Stella Kam.

Commented [KSL4]: 11/8/23 - Updated verbiage as per Lance Inouye's feedback from Stella Kam.

Commented [BK5R4]: Double check the addition of 'onsite' language.

Section 2. CONTRACTOR COMMENTS - To be completed by the Contractor

Contractor Name:

Procuring Agency Name:

Comments, Rebuttals, or Additional Information by Contractor reviewed in Section 1.

Commented [KSL6]: Renamed to Section 2 as original Section 2 was deleted in its entirety by PPB on 10/16/2023.

Commented [KSL7]: Removed the word "assessed" and changed to "reviewed."

Commented [KSL8]: Section 2 was removed in its entirety, by PPB on 10/16/2023, so Contractor Comments will only pertain to Section 1. General Information.

Commented [KSL9]: Removed the word "assessment" throughout form.

Comments, Rebuttals, or Additional Information from the Contractor

Please cite specific ~~assessment~~ criteria you are providing comments, rebuttals, or additional information to.

Pursuant to HAR section 3-122-115.01(b)(1)(B), Contractor shall review the Contractor past performance ~~assessment~~ form within 20 working days, from the date of notification of the contractor past performance ~~assessment~~ form, and submit comments, rebutting statements, or additional information. If the Contractor does not respond, the contractor past performance ~~assessment~~ form shall be considered complete. ~~accepted by the contractor.~~

Commented [KSL10]: 10/16/23 - Lance I. suggested changes; remove "accepted."

11/8/23 - As per Lance Inouye's feedback from Stella Kam, "An otherwise responsible contractor may decline to provide written comments for fear of retaliation. Silence should not be considered acceptance by contractor (echoing GCA Comments)."

Return to Agenda

Section 3. PROCUREMENT OFFICER DETERMINATION - To be completed by the Procuring Agency

Keep a copy of this **assessment form** in your agency's procurement/contract file.

Validation of Referenced Project Data **assessed herein provided.**

Commented [KSL11]: Renamed to Section 3 as original Section 2 was deleted in its entirety by PPB on 10/16/2023.

Commented [KSL12]: Replaced the word "assessment" with "form" throughout this section of the form.

Commented [KSL13]: Removed the word "assessed herein" and changed to "provided."

Comments from Procuring Agency

As a Buyer/Contract Administrator/Project Manager, etc. of the Procuring Agency listed above, I approve the responses to the statements **and ratings** about the performance of the Company/Contractor listed above on the project identified in Section 1 of this Contractor Past Performance **Assessment Form**.

Name:

Title:

Pursuant to HAR sections 3-122-115.02(b)(2)(B), the procurement officer shall **complete** the past performance database system **to include any** contractor comments; (b)(2)(C), **Contractors shall be entitled to appeal decisions as provided by state law**.

Commented [KBA14]: There are no rating so should delete.

Commented [KSL15]: Section 2 was removed in its entirety, by PPB on 10/16/2023, so Contractor Comments will only pertain to Section 1. General Information.

Commented [KSL16]: 10/16/2023 - Lance I. stated to take out last sentence.

Added in Rick H.'s suggested language to last sentence.

Commented [KSL17]: 10/16/23 - Suggested changes from Rick H.

As a Procurement Officer of the Procuring Agency listed above, I approve the responses to the statements **and ratings** about the performance of the Company/Contractor listed above on the project identified in Section 1 of this Contractor Past Performance **Assessment Form**.

Name:

Title:

Thank you for providing this valuable feedback. Please keep a copy of this **assessment form** in your agency's procurement/contract file.

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

Interim
Hawaii Administrative Rules

December 4, 2023

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

"§3-122-1 Definitions. Definitions for terms used in this chapter are in section 103D-104, HRS. The following definitions are also applicable to terms used in this chapter:

"Alternative procurement method" means a procurement method used due to a waiver from the competitive sealed bids or proposals process when one or no responsive, responsible offer is received.

"Award" means the written notification of the State's acceptance of a bid or proposal, or the presentation of a contract to the selected offeror.

"Best value" means the most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves the State is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the vendor, quality of goods, services, or construction, delivery, and proposed technical performance.

"Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

"Brand name or equal specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification

limited to one or more items by manufacturers' names or catalogue numbers, commonly referred to as a restrictive specification.

"Capability" means capability at the time of award of contract.

"Chief financial officer" means, depending upon the purchasing agency, either the comptroller, a county's director of finance, or the respective chief financial officers of the University of Hawaii, the department of education, the judiciary, or the legislative branches of the State or county.

"Contract administrator" means the person designated to manage the various facets of contracts to ensure the contractor's total performance is in accordance with the contractual commitments and obligations to the purchasing agency are fulfilled.

"Contract price" means the amount designated on the face of the contract for the performance of the work including allowances for extras, if any.

"Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item which enables the State to consider whether the item meets its needs.

"Design specifications" means the dimensional and other physical requirements of the item being purchased, how a product is to be fabricated or constructed.

"Discussion" means an exchange of information to promote understanding of a state agency's requirements and offeror's proposal and to facilitate arriving at a contract that will be the best value to the State. Discussions are not permissible in competitive sealed bidding, except to the extent permissible in the first phase of multi-step sealed bidding to determine the acceptability of technical offers.

"Opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

"Performance specifications" means the functional or performance requirements of the item, what a

product does and how well it performs.

"Practicable" and "Advantageous" shall be given ordinary dictionary meanings. "Practicable" means what may be accomplished or put into practical application. "Advantageous" means a judgmental assessment of what is in the State's best interest. The use of competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest.

"Qualified products list" means an approved list of goods, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirement.

"Quotation" means a statement of price, terms of sale, and description of goods, services, or construction offered by a prospective seller to a prospective purchaser, usually for purchases pursuant to section 103D-305, HRS.

"Recent" means performance information in which the performance has occurred within 5 years or as determined by the procurement officer that is closely connected and appropriate to consider for the type of requirement being solicited or evaluated.

"Relevant" means performance information that is similar in size, scope, and complexity to the requirement being solicited or evaluated.

"Request for information" means a request soliciting information to obtain recommendations from suppliers for a procurement that cannot be described in sufficient detail to prepare a solicitation.

"Standard commercial product" means a product or material, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor, or dealer for the marketing of the product." [Eff 12/15/95; am and comp 11/17/97; am and comp 3/21/08; am]
(Auth: HRS §103D-202) (Imp: HRS §§103D-104, 103D-202)

Justification:

Pursuant to Act 188, SLH 2021, section 103D-104, HRS, was amended to add the new the new definition Past Performance, 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)." Therefore, "recent" and "relevant" from the definition of "past performance" was added to new HAR section 3-122-115.01. As a result, the following changes are recommended:

- (1) Adds new definition of "Recent" as time periods for consideration may be different according to the type of requirements and is added to mean performance information in which performance occurred within five year or as determined by the procurement officer that is closely connected and appropriate to consider for the type of requirement being solicited or evaluated.
- (2) Adds new definition of "Relevant" to mean performance information that is similar in size, scope, and complexity to the requirements being solicited or evaluated.

Changes after PC2023-07's Feedback: No additional changes made. Definitions are as per PPB's suggested changes to "Recent" on 5/18/2023 PPB meeting.

Changes after Feedback from PPB meeting on 10/16/2023:

- (1) Removed SPO's footnote (i) in its entirety.

2. §3-122-33, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-33 Bid evaluation and award. (a) The award shall be made to the lowest responsive, responsible bidder and shall be based on the criteria set forth in the invitation for bids.

(b) Only objectively measurable criteria which are set forth in the invitation for bids shall be applied and may include but not be limited to:

- (1) Discounts;
- (2) Transportation costs; ~~[and]~~
- (3) Total or life cycle costs~~[.]~~; and
- (4) Bidder's past performance, if available.

(c) Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall:

- (1) Be reasonable estimates based upon information the government jurisdiction has available concerning future use; and
- (2) Treat all bids equitably.

(d) The invitation for bids shall set forth any evaluation criterion to be used in determining product acceptability:

- (1) The solicitation may require the submission of samples, descriptive literature, technical data, or other material to verify product acceptability;
- (2) The solicitation may also provide for accomplishing any of the following prior to award:
 - (A) Inspection or testing of a product for characteristics as quality or workmanship;
 - (B) Examination of elements as appearance, finish, taste, or feel; or
 - (C) Other examinations to determine whether product conforms to any other purchase description requirements;
- (3) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only

to determine that a bidder's offer is acceptable as set forth in the invitation for bids;

[5] (4) Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive.

(e) The award shall be issued to the lowest responsive, responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids and posted pursuant to section 103D-701, HRS, for five working days.

(f) In the event all bids exceed available funds, the provisions of section 1030-302(h), HRS, shall apply." [Eff 12/15/95; am and comp 11/17/97; am and comp 3/21/2008; am] (Auth: HRS §1030-202) (Imp: HRS §1030-302)

Justification:

- (1) *Change is made to remind State employees that past performance, if available, shall be taken into consideration when making an award to the lowest responsive, responsible bidder pursuant to section, 103D-302(f), HRS, Competitive Sealed Bidding which states, "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, 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."*
- (2) *Change is made to correct numerical error in*

subsection (d).

Changes after PC2023-07's Feedback:

- (1) Removed SPO's added suggested language in subsection (a): "...as determined by the procurement officer pursuant to Subchapter 13.5, Contractor's Past Performance Assessment..." as additional language presents ambiguity.
- (2) Added City and County of Honolulu's Department of Facilities and Maintenance's suggested language to modify HAR 3-122-33(b) to reflect alternative language amended in HRS 103D-302 subsection (f).

Changes after Feedback from PPB meeting on 10/16/2023:

No additional changes made.

3. Subchapter 13.5, Hawaii Administrative Rules, is added to read as follows:

"SUBCHAPTER 13.5

Contractor Past Performance Database

§ 3-122-115.01 Contractor past performance database.ⁱ (a) For any contract entered into pursuant to sections 103D-302, 103D-303, and 103D-306, HRS or as directed by the chief procurement officer, all state and county procurement officers or agents shall complete a contractor past performance form approved by the procurement policy board that includes available recent and relevant performance of the contractor.

(b) The contractor past performance database process shall include the following:

(1) Procurement officer, or designee, shall complete the form in the electronic past performance database at the end of the contract, or more frequently as designated by the chief procurement officer or designee:

(A) Agency reviews of contractor past performance shall be provided to the contractor as soon as practicable after completion of the form. The contractor shall receive a notification when a form is ready for review and/or comment;

(B) Contractor shall review the contractor past performance form within 20 working days, from the date of notification of the contractor past performance form and submit comments, rebutting statements, or additional information. If the contractor does not respond, the

ⁱ *It is recommended that the IFB, RFP, and Sole Source state the past performance process in the solicitation.*

- contractor past performance form shall be considered complete;
- (C) The final form shall be posted electronically in the past performance database system within 20 working days of receipt;
- (D) A copy of the form shall be kept in the agency's contract file.
- (2) Contractor's past performance form dispute process:
 - (A) Contractor shall submit a written request with documentation to the procurement officer for reconsideration within 10 working days from the date of notification of the past performance form is posted;
 - (B) The procurement officer shall complete the past performance database system to include any contractor comments;
 - (C) Contractors shall be entitled to appeal decisions as provided by state law."
 [Eff _____] (Auth: HRS§103D-202) (Imp: HRS §§103D-104, 103D-202)

Justification:

Pursuant to Act 188, SLH 2021, section 103D-329, HRS, Past Performance Database, was created, requiring the State Procurement Office to implement and administer a past performance database in regard to state contract and adopt rules no later than December 31, 2023, on the information required to be included in the past performance database. With the creation of this statute, the following changes are recommended:

- (1) *Adds language about the information and procedures associated with the past performance database pursuant Act 188, SLH 2021;*
- (2) *Includes the procedures to information a contractor of the information contained in the past performance database about the contractor;*

- (3) *Includes the procedures for a contractor to correct or respond to the information contained in the past performance database about the contractor, and also notifies the contractor that once finalized the assessment will be posted electronically into the past performance database and accessible for future solicitation evaluations as a condition of award for the applicable methods of procurement affected by Act 188, SLH 2021.*

Changes after PC2023-07's Feedback:

- (1) *Removed references to HRS 103D-305 and 103D-307 in subsection (a) and added in what procurement methods Act 188 requires agencies to do a past performance assessment for: HRS sections 103D-302, 103D-303, 103D-306.*
- (2) *Added in Board of Water Supply's suggested language to subsection (c)(1) to provide clarity to ensure the form is completed, not just prepared, by the procurement officer.*
- (3) *Removed original subsection (c)(1)(A) in its entirety to remove confusion on when the past performance assessment shall be completed.*
- (4) *Added in suggested changes to original subsection (c)(1)(B), now subsection (c)(1)(A) from ABC Hawaii Chapter to clarify that procurement officers are required to document the basis for, and the contractor's response to, any part of an assessment identified as "unsatisfactory" to ensure greater transparency in the process and afford a contractor a fuller record upon which it can refer or rely in the event it seeks to dispute an assessment after final submission.*
- (5) *Added in suggested language to original subsection (c)(1)(C), now subsection (c)(1)(B) from ABC Hawaii Chapter to add the requirement that the agency confirm a contractor's receipt of notification to keep the agency accountable*

- and provides a cleaner record in the event of a contractor dispute.*
- (6) *Changed number of working days from 10 to 20 in original subsection c)(1)(D), now subsection (c)(1)(C) as suggested by both the General Contractors Association of Hawaii (GCA Hawaii) and the County of Hawaii - Department of Public Works to align with the time allowed in federal procurement and to give contractor a more reasonable amount of time to provide a rebuttal to a negative assessment and the State/County to provide a response to the rebuttal.*
 - (7) *Also added in suggested language to original subsection c)(1)(D), now subsection (c)(1)(C), from Lance Inouye, of the PPB, to provide clarity on the process for evaluation of the assessment and to clarify that if a contractor fails to timely provide further statements, the assessment will be considered complete vs. accepted.*
 - (8) *Changed number of working days from 5 to 20 in original subsection c)(1)(E), now subsection (c)(1)(D) to give the procurement officer a more reasonable amount of time to post the completed assessment electronically into the past performance database system.*
 - (9) *Removed original subsection (c)(1)(F) in its entirety as requested by Gartner, Department of Accounting and General Services - Contract Management Branch, GCA Hawaii, and the City and County of Honolulu's Department of Design and Construction (DDC) and Budget & Fiscal Services (BFS) to clarify that the contractor should not have its final payment delayed if failure to complete the assessment is not due to any fault of the contractor. There is also the question if the State/County can legally withhold or delay payment to a contractor for the government's inability to timely perform an assessment.*
 - (10) *Added in suggested language to original subsection (c)(1)(F), now subsection (c)(1)(E)*

to remind agencies that a copy of the completed assessment shall be kept in the agency's contract file.

- (11) Added in suggested changes from City and County of Honolulu Budget & Fiscal Services for contractors to submit a "written" request to make the rebuttal formal and to remove the arbitrary standard of "substantial" evidence in subsection (c) (2) (A). No change made to 10 working days as contractors already have 20 working days to dispute and rebut assessment and it only takes 5 working days to submit a protest under HRS 103D-701.*

Changes after Feedback from PPB meeting on 10/16/2023:

- (1) Renamed Subchapter 13.5's title to Contractor Past Performance Database.*
- (2) Removed the word "assessment" throughout HAR section 3-122-115.01.*
- (3) Footnote(ii) is now footnote(i) after original footnote(i) in section 3-122-1 was deleted in its entirety.*
- (4) Added in suggested verbiage from Bonnie Kahakui, SPO's Acting Administrator, to footnote(i) stating "It is recommended that the IFB, RFP, and Sole Source state the past performance process in the solicitation" as past performance is statutory.*
- (5) Added in suggested change to subsection (a) from Stella Kam, AG, to add verbiage from the definition of "Past Performance" to state "that includes available recent and relevant performance of the contractor" to justify new definitions "recent" and "relevant" added to HAR section 3-122-1.*
- (6) Removed original subsection (b) in its entirety as PPB removed entire Section 2. Assessment of the Contractor Past Performance Form with SPO's recommended "responsibility determination standards" pursuant to Act 188's amended*

- definition of "responsible bidder or offeror" in HRS section 103D-104.
- (7) Original subsection (c) is now subsection (b) and "assessment" was replaced with "database."
 - (8) Added in "or designee" after procurement officer in new subsection (b)(1) as suggested by Bonnie Kahakui, SPO's Acting Administrator.
 - (9) Removed original subsection (c)(1)(A) in its entirety as PPB removed entire Section 2. Assessment of the Contractor Past Performance Form with SPO's recommended "ratings."
 - (10) Added in suggested change to new subsection (b)(1)(B) from Lance Inouye, of the PPB, for the form to be completed vs. accepted if the contractor does not respond within 20 working days.
 - (11) Added in suggested change to end of original subsection (c)(2)(A), now subsection (b)(2)(A), from Bonnie Kahakui, SPO's Acting Administrator to state "form is posted."
 - (12) Added in suggested changes from Rick Heltzel, of the PPB, for the procurement officer to complete vs. update the assessment to include any contractor comments, not just taking them into consideration to original subsection (c)(2)(A), now subsection (b)(2)(A).
 - (13) Added in suggested changes from Rick Heltzel, of the PPB, to original subsection (c)(2)(C), now subsection (b)(2)(C) to provide clarity that the final determination is subject to appeal decisions as provided by state law to allows for an appeal process.

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Procurement Policy Board, pursuant to rulemaking authority in chapter 91, Hawaii Revised Statutes, and filed with the office of the Lieutenant Governor on _____.

LISA MARUYAMA
Chairperson
Procurement Policy Board

KEITH REGAN
State Comptroller

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General

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§103D-702 Authority to debar or suspend. (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer, after consultation with the using agency and the attorney general or corporation counsel, may debar a person for cause from consideration for award of all public contracts and from performance on any public contract. The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for a governmental body's protection and not for the purpose of punishment. An agency shall impose debarment or suspension to protect a governmental body's interests and only for cause and in accordance with this section. The debarment period shall not exceed three years. The same officer, after consultation with the using agency and the attorney general or corporation counsel, may suspend a person from consideration for award of all public contracts and from performance on any public contract if there is probable cause for debarment. The suspension period shall not exceed three months. The authority to debar or suspend shall be exercised in accordance with the procedures prescribed by rules adopted by the policy board and shall be applied only to causes, convictions, and violations under subsection (b) after the effective date of the rules adopted by the policy board.

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

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) Conviction under state or federal statutes relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character that is regarded by the chief procurement officer to be so serious as to justify debarment action:
 - (A) Deliberate failure without good cause to perform in accordance with the specifications or within the

time limit provided in the contract; or

- (B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (5) Any other cause the chief procurement officer determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy board; and
- (6) Violation of the ethical standards set forth in chapter 84 and its implementing rules, or the charters and ordinances of the several counties and their implementing rules.

(c) The existence of a cause for debarment does not necessarily require that a contractor be debarred. The seriousness of a contractor's acts or omissions and any remedial measure or mitigating factors shall be considered in making any debarment decision. Before arriving at any debarment decision, the chief procurement officer shall consider factors such as the following:

- (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity constituting cause for debarment or had adopted those procedures prior to any government investigation of the activity cited as the cause for debarment;
- (2) Whether the contractor brought the activity cited as the cause for debarment to the attention of the appropriate government agency in a timely manner;
- (3) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and made the result of the investigation available to the chief procurement officer;
- (4) Whether the contractor cooperated fully with government agencies during the investigation and any court or administrative action;
- (5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for improper activity, including any investigative or administrative costs incurred by the governmental body, and has made or has agreed to make full restitution;

- (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity constituting the cause for debarment;
- (7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the governmental body or the chief procurement officer;
- (8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment; and
- (10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent its recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as those set forth in this subsection shall not necessarily be determinative of a contractor's present responsibility. If a cause for debarment exists, the contractor has the burden of demonstrating to the satisfaction of the chief procurement officer the contractor's present responsibility and that debarment is not necessary.

(d) The chief procurement officer shall issue a written decision to debar or suspend. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the debarred or suspended person involved of the person's rights to review as provided in this part.

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

(f) The chief procurement officer shall transmit a copy of the decision to debar or suspend a contractor to the state procurement office, which shall distribute a list to all governmental bodies containing the names of persons or firms debarred or suspended from consideration for award of all public contracts and from performance on any public contract.

(g) Upon written notification under subsection (f), the chief procurement officer shall make a written determination whether to allow the debarred or suspended person or firm to continue performance on any contract awarded prior to the effective date of the

debarment or suspension.

(h) A decision under subsection (d) shall be final and conclusive, unless the debarred or suspended person commences an administrative proceeding under section 103D-709. [L Sp 1993, c 8, pt of §2; am L 1997, c 352, §23; am L 1999, c 162, §2; am L 2004, c 216, §2]

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