



JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA

BONNIE KAHAKUI  
ADMINISTRATOR

**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I**  
**PROCUREMENT POLICY BOARD**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 587-4701

Email: [procurement.policy.board@hawaii.gov](mailto: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, April 11, 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: April 11, 2025 09:30 AM Hawaii

Join Zoom Meeting

<https://zoom.us/j/93592047684?pwd=aLbeStpyTYHnayEpdZ1lGal1rqnO5a.1>

Meeting ID: 935 9204 7684

Passcode: rVj7yg

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One tap mobile

+12532050468,,93592047684#,,,,\*848088# US

+12532158782,,93592047684#,,,,\*848088# US (Tacoma)

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Dial by your location

• +1 253 205 0468 US

• +1 253 215 8782 US (Tacoma)

• +1 346 248 7799 US (Houston)

• +1 669 444 9171 US

• +1 669 900 6833 US (San Jose)

• +1 719 359 4580 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

• +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

Meeting ID: 935 9204 7684

Passcode: 848088

Find your local number: <https://zoom.us/u/adYWtgwF9g>

### **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](mailto: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](mailto: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](mailto:ruth.a.baker@hawaii.gov) as soon as possible, preferably by 4:30 p.m. HST, April 9, 2025. If a response is received after April 9, 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, April 11, 2025, 9:30 a.m. (HST)**

- I. Call to Order, Public Notice
- II. Roll Call, Quorum
- III. Review and Approval of Meeting Minutes of the Procurement Policy Board
  - a. Meeting Date: [February 28, 2025](#)
  - b. Meeting Date: [March 28, 2025](#)
- 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 provides a list of 2025 legislation related to procurement. The status indicated is as of April 4, 2025.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
<a href="#">Senate Bill No. 383, Senate Draft 2, House Draft 1 (Advancing)</a>	<a href="#">House Bill No. 381, House Draft 1 (Advancing)</a>	RELATING TO SMALL PURCHASES. Increases the minimum amount for purchases constituting small purchase procurements not subject to an electronic system from \$25,000 to \$50,000. Requires a report to the Legislature. Effective 7/1/3000. (HD1)	Oppose	Support: Hawaii State Public Library System, Honolulu Policy Department, Honolulu Mayor.
<a href="#">House Bill 371, House Draft 1, Senate Draft 1 (Advancing)</a>	<a href="#">Senate Bill 257 (Dead)</a>  <a href="#">Similar: Senate Bill 809, Senate Draft 1 (Dead)</a>	RELATING TO CAMPAIGN CONTRIBUTIONS. Prohibits state or county grantees and officers and immediate family members of state or county contractors or grantees from contributing to candidate or noncandidate committees, candidates, or any person for any political purpose for the duration of the contract. Requires disclosures of the names of any officers and immediate adult family members of a state or county	Comment	Support: Campaign Spending Commission, League of Women Voters of Hawaii, various individuals

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
		contractor or grantee for contracts exceeding a certain amount. (SD1)		
<u>House Bill No. 412,</u> <u>House Draft 1</u> <u>(Advancing)</u>	<u>Senate Bill 290</u> <u>(Dead)</u>	RELATING TO LOBBYING. Establishes certain presumptions regarding lobbying on behalf of private clients. 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. (HD1).  The bill states that the attorney general, in consultation with the head of the purchasing agency impacted, shall have the authority to enforce the new section in Chapter 97, HRS.	Comment	Support: Hawaii State Ethics Commission, Natalie Iwasa
<u>House Bill No. 987,</u> <u>House Draft 1</u> <u>(Advancing)</u>	<u>Senate Bill No. 1306,</u> <u>Senate Draft 1</u> <u>(Dead)</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. (HD1)	Support	Support: Department of Accounting and General Services
<u>House Bill No. 988,</u> <u>House Draft 1</u> <u>(Advancing)</u>	<u>Senate Bill No. 1307 (Dead)</u>  <u>Similar Bill:</u> <u>Senate Bill No. 382</u> <u>(Advancing)</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	Support: Department of Accounting and General Services, Department of Transportation. Oppose: General Contractors Association.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
<u>House Bill No. 1155,</u> <u>House Draft 1</u> <u>(Advancing)</u>	<u>Senate Bill No. 1474 (Dead)</u>	RELATING TO PROCUREMENT. Exempts from the Hawai'i Public Procurement Code contracts by government bodies to procure certain construction projects. (HD1)	Oppose in part; Support in part	Support: Department of Transportation.  Oppose: International Brotherhood of Electrical Workers, Subcontractors Assn of Hawaii.
<u>House Bill No. 1297,</u> <u>House Draft 1</u> <u>(Advancing)</u>		RELATING TO PROCUREMENT. Sets a time limit for submitting bid protests. Makes the 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. (HD1)	Support	Support: Department of Accounting and General Services, Department of Transportation.  Oppose: General Contractors Association.
<u>Senate Bill No. 382,</u> <u>House Draft 1</u> <u>(Advancing)</u>	<u>Similar Bills:</u> <u>House Bill No. 988</u> <u>(Advancing),</u> <u>Senate Bill No. 1307 (Dead)</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. Effective 7/1/3000. (HD1)	Support	Support: Department of Transportation.  Comments: General Contractors Association.  Oppose: City & County of Honolulu Department of Budget and Fiscal Services.

Bill Number and Status	Companion or Similar Bill Number and Status	Title and Description	SPO Position	Other Positions
<u>Senate Bill No. 1651,</u> <u>Senate Draft 1,</u> <u>House Draft 1</u> <u>(Advancing)</u>		RELATING TO PUBLIC MEETINGS. Requires board packets to be posted two full business days 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. (SD1)	Track	Comments: Office of Information Practices; Hawaii Public Housing Authority; Department of Human Services; Hawaii State Commission on Fatherhood; Hawaii State Lesbian Gay, Bisexual, Transgender, Queer Plus Commission; Hawaii Employer-Union Health Benefits Trust Fund.  Support: Society of Professional Journalists, League of Women Voters of Hawaii Public First Law Center, Individuals

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

As provided in section 91-2.6, Hawaii Revised Statutes, the proposed rules in Ramseyer format 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/2025/04/RAM-HAR-3-122-Subchapter-6\\_PPB-041125.pdf](https://spo.hawaii.gov/wp-content/uploads/2025/04/RAM-HAR-3-122-Subchapter-6_PPB-041125.pdf)

Online through the SPO website at <https://spo.hawaii.gov>: click on [Procurement Policy Board](#) > [Procurement Policy Board](#) > [https://spo.hawaii.gov/wp-content/uploads/2025/04/RAM-HAR-3-122-Subchapter-6\\_PPB-041125.pdf](https://spo.hawaii.gov/wp-content/uploads/2025/04/RAM-HAR-3-122-Subchapter-6_PPB-041125.pdf)

#### Amendments to **SUBCHAPTER 6 – COMPETITIVE SEALED PROPOSALS:**

1. §3-122- 41 – Purpose.  
Amend section to remove “when it is determined that competitive sealed bidding is neither practicable nor advantageous to the State” to align with the revisions to section 103D-301, HRS and HAR section 3-122-16 Methods of Source Selection. It is not required to determine that competitive sealed bidding is neither practicable nor advantageous to the State in order to use the competitive sealed proposal method of procurement.

2. §3-122-43 – When competitive sealed bidding is not practicable or advantageous.  
Amend section by changing title to “Procurement Planning” and removing all subsections and replacing it with “A strategic procurement plan for competitive sealed proposals should at the minimum, include the following determinations: (1) Requirements definition; (2) market research to substantiate requirements definition; (3) period of performance; (4) type of contract; (5) analysis of the relative importance of price and other evaluation criteria; (6) Oral or written discussions, as applicable, with offerors concerning technical and price aspects of their proposals. This clarifies that a determination that competitive sealed bidding is not practicable or advantageous is not required. However, other determinations should be included in the planning process.
3. §3-122-45 – Determinations.  
This section is repealed because it is no longer relevant due to amended section 103D-301, HRS, which included the competitive sealed bids method of procurement as an optional method of procurement rather than a required method of procurement. §3-122-45 allowed for a pre-approved list of goods, services, or construction that may be procured by competitive sealed proposals without determination by the head of the purchasing agency that competitive sealed bidding is not practicable or advantageous.
4. §3-122-45.01 – Evaluation committee.  
This section is amended for clarity, consistency, and style by reformatting some of the subsections and adding that evaluation committee members are encouraged to participate in the development of the solicitation, that all evaluation committee members shall sign an affidavit, and that the procurement officer may require participants to sign a non-disclosure agreement prior to reviewing any information.
5. §3-122-46 – Preparing a request for proposals.  
This section is amended for clarity, consistency, and style. These revisions also incorporate past performance as part of the evaluation and add that the proposal shall be signed by an authorized agent of the vendor and may be submitted with a digital or original signature. This clarifies that electronic signatures are accepted.
6. §3-122-51 - Receipt and registration of proposals. Amend subsections (a) and (a)(1) to clarify circumstances when procurement is conducted electronically. Subsection (a) adds “date and” and “unless submitted via an electronic procurement system” and subsection (a)(1) adds “If conducted electronically, proposals and modifications shall not be opened publicly and not required to be opened in the presence of two or more state officials;”.
7. §3-122-52 – Evaluation of proposals. Amend subsection (d), add subsection (e) and renumber subsection (e) to (f) and subsection (f) to (g) for clarity, consistency, and style.
  - o Amend subsection (d) to remove “When applicable, cost” and replace it with “Price”.
  - o Add subsection “(e) Past performance shall be an evaluation factor.”

8. NEW §3-122-52.5 – Clarifications with Offerors After Receipt of Proposals.  
The addition of this section allows for clarifications prior to priority listing.
9. §3-122-53 – Discussions with offerors.  
Amend subsections (a)(1) and (b), remove subsection (d)(1) and renumber subsection (d)(2) to (d)(1). Add a new subsection (d)(2).
  - o Amend subsection (a)(1) to clarify that proposals shall be classified initially as unacceptable “based on the criteria outlined in the solicitation;”.
  - o Amend subsection (b) to reflect that the procurement officer shall also keep a record of the discussions, as well as the date, time, place, purpose of meetings, and attendees.
  - o Remove subsection (d)(1) “Any substantial oral clarification of a proposal shall be reduced to writing by the priority listed offeror;”. This subsection is removed because any mandated writing can only be accepted as a Best and Final Offer.
  - o Add new subsection (d)(2) Limits on discussions. This subsection provides more details on what should not take place during discussions.

## **VII. Announcements**

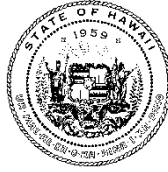
Future meeting dates for the Procurement Policy Board, subject to change:

- Friday, May 16, 2025, 9:30 a.m. (HST)
- Friday, June 6, 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**

**Minutes of Meeting**

Date/Time: Friday, February 28, 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

Members Excused: Keith Regan

Deputy Attorney General  
Excused: Stella Kam

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

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

University of Hawaii: Sarah Allen

City & County of Honolulu: Paula Youngling

Guests: Tim Lyons  
Pane Meatoga III

## **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) introduced themselves.

## **III. Consideration and Approval of Minutes of February 14 Meeting**

The minutes of the February 14, 2025, were reviewed and corrected for clarity. Member Inouye requested a correction to the minutes under Agenda Item VI. Review and Possible Approval of Proposed Amendments to Hawaii Administrative Rules Chapter 3-122 – Source Selection and Contract Formation > 2. Subchapter 4 – Methods of Source Selection and General Guidance, §3-122-16.03 – Public notice – Amend subsections (b), (c), and (d). The correction is in the recommended language for “(b)(7)” for clarity (underlined for emphasis):

Recommendation: The Board recommended that (b)(7) 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.”

Member Rick Heltzel made a motion to approve the corrected minutes and Member Lance Inouye seconded the motion. The members voted to approve the minutes.

The Chair requested that any corrections made to meeting minutes be documented in the subsequent minutes for the record.

## **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)**

In accordance with the Sunshine Law, the Board Packet includes a list of procurement legislation, the State Procurement Office’s position, the position of other entities, and the status of the legislation.

Written testimony: None  
Oral testimony: None

Administrator Bonnie Kahakui provided an update on the bill status of various bills:

- House Bill 381 – Increases small purchase threshold – Amended
- Senate Bill 382 – Clarifies disclosure of competing offerors’ proposals – Amended
- House Bill 1155 – Exempts from the Hawai’i Public Procurement Code contracts by government bodies to procure certain construction projects – Amended

- House Bill 1297 – Places a cap on protests and removes language – Amended
- House Bill 1414 – Allows agencies to select 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 - Amended
- Senate Bill 383 – Increases the small purchase threshold – Amended
- Senate Bill 1057 - Clarifies bid incentive given to bidders for public works construction projects who utilize apprenticeable trades – Amended
- Senate Bill 1255 – Amends the Uniform Information Practices Act to require agencies to disclose information – Deferred
- Senate Bill 1543 – Requires each purchasing agency to provide justification for hiring external consultants – Amended

Lisa Maruyama and Rick Heltzel asked for an update on Senate Bill 1175, which added information to the past performance database. Administrator Kahakui reported that unless this bill comes out of the Senate Ways and Means Committee on February 28, 2025, the bill dies; there is no companion bill.

There were no questions from the public.

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

Chair Maruyama introduced the discussion on the proposed amendments to Hawaii Administrative Rules, Chapter 3-122 – Source Selection and Contract Formation. The proposed rules are included in the board packet and may also be viewed in person at the State Procurement Office, located at 1151 Punchbowl Street, Room 416, and online.

Written testimony: None

Oral testimony: None

Chair Maruyama turned the floor over to the State Procurement Office Staff.

Carey Ann Sasaki, Purchasing Specialist of the Policy and Compliance Section of the State Procurement Office, explained that the proposed amendments to Hawaii Administrative Rules (HAR), Chapter 3-122, parts of subchapter 2 and subchapters 4 and 4.5 are related to and will implement the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes. The purpose of the Code is to promote economy, efficiency, effectiveness, and consistency in all procurements by the State and several counties. She reiterated that the proposed rule amendments are available and may be viewed in person and online.

### **1. Subchapter 2 – General Provisions – Proposed deferral**

Purchasing Specialist Sasaki noted that the proposed amendments to Hawaii Administrative Rules §3-122-9 (c)(2)(E) and §3-122-9 (c)(2)(F) were discussed by the Procurement Policy Board during its meeting on February 14, 2025, and that there were no objections.

She requested that the Board defer discussion on §3-122-9.01 regarding disclosure of information until after the end of the legislation session, as the Legislature is considering Senate Bill 382 and House Bill 988, bills that authorize the disclosure of proposals and selection committee names public only after contract execution, and that would be prudent to wait for the outcome of these measures. She reported that Deputy Attorney General Stella Kam conferred with a Deputy Corporation Counsel with the City & County of Honolulu, and learned that it is the City's practice to make the proposals available upon award, and that the City was unaware that the State makes the proposals and selection committee names public only after contract execution.

Member Lance Inouye asked a question to be clarified by the Deputy Attorney General regarding disclosure in Hawaii Administrative Rules subsections §3-122-58, §3-122-60, and §3-122-63(b). Purchasing and Contracts Administrator Paula Youngling, of the City & County of Honolulu's Department of Budget and Fiscal Services Division of Purchasing, said she also conferred with the Deputy Corporation Counsel about the City's interpretation of those rules, and that the City also concurs deferring discussion on §3-122-9.01.

The SPO presented the following proposed amendments.

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

Purchasing Specialist Stacey Kauleinamoku-Murakami explained the proposed amendments to Subchapter 4 – Methods of Source Selection and General Guidance.

She noted that the proposed amendment to §3-122-16.03(b)(7), as corrected in the meeting minutes for February 14, 2025, must also be corrected for the February 28, 2025, Agenda Item VI.2.a. (page 11 of the agenda), and read as follows:

- §3-122-16.03 – Public notice – Amend subsections (b), (c), and (d).
  - a. Addition of “if any” to subsection (b)(4) and addition of new subsection (b)(7) to read: “(7) A copy of the solicitation may be made available electronically and may be picked up at the respective issuing office.”

She stated that this is the language that was approved by the Board on February 14, 2025.

Purchasing Specialist Kauleinamoku-Murakami continued to explain the following proposed amendments.

- §3-122-16 – Methods of source selection – Add missing source selection methods: “Subchapter 5 – Competitive Sealed Bidding” and “Subchapter 6.5 – Multi-Step Competitive Sealed Bidding.”
  - a. Proposed addition of “include the requested professional class or category and shall” to subsection (c) to read:

(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:

Justification: This amendment mandates that offerors are required to include the relevant professional class or category in their submissions for professional services. This clarification benefits both the agencies and contractors by ensuring clear identification of services provided by engineers, architects, surveyors, and landscape artists.

Member Inouye asked if “professional class or category” is defined in statute. Purchasing Specialist Kauleinamoku-Murakami referenced that Procurement Circular 2014-16, Amendment 1, lists the types of professional services that must use the professional services method of procurement. Administrator Kahakui added that “professional services” is defined in §103D-104 - Definitions, HRS, which references the United States Office of Personnel Management's Qualifications Standards Handbook. She explained that the amendment seeks to align the definition with the HRS and Handbook, and noted that the SPO generally does not point the rules to procurement circulars, which are subject to change, but can reference §103D-104, HRS.

For Action: Although the members have no objections to the amendment after discussion, the Chair requested that the SPO verify the addition of the definition of “professional class or category” with the Deputy Attorney General and present proposed language at the next Board meeting.

Purchasing Specialist Kauleinamoku-Murakami continued to explain the following proposed amendments.

b. Remove “or provider” in subsection (d)(1):

(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;

Justification: This amendment enhances clarity, consistency, and style by specifying that public notices shall, at a minimum, be published on a purchasing agency’s website. It also clarifies that notices may be sent by mail or electronically to individuals on relevant mailing lists, ensuring that the purchasing agency remains responsible for public notifications. Additionally, it notes that “Provider,” as defined in §103F-102, HRS, refers to an organization or individual contracted by a state agency to provide health or human services to the public on its behalf; the definition does not mention goods and services or construction.

c. Revise (2)(B) for clarity and consistency that a notice may be sent by mail or electronically to persons on any applicable mailing list by the state agency:

(B) Notice by mail~~[, electronic mail, or facsimile transmission]~~ or electronically to persons on any applicable bidders mailing list, if any; and

With the exception of the language pertaining to “professional class or category,” the Board had no objections on the proposed amendments to subsection (d)(1) and (2)(B).

o §3-122-16.05 – Pre-bid or pre-proposal conference – Amend subsections (a), (b), and (f).

a. The proposal is to delete the entire subsection (b):

~~[(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.]~~

Explanation: Subsection (b) 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.* In this case, the DCCA hearing officer reasoned that regardless of a bidder's non-attendance at a site visit, submitting a bid after being given the opportunity to visit the job site signifies the bidders' commitment to performing the work at a stated price. The bidder assumes the risk of an unforeseen cost increases due to observable site conditions. The ruling determined that failure to attend a pre-bid conference does not constitute a valid basis for non-responsiveness.

- b. As a result of deleting subsection (b), subsection (a) is amended for clarity, consistency, and style to reflect that attendance at pre-offer conferences are optional. This subsection will read:

(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]~~.

Explanation: Purchasing Specialist Kauleinamoku-Murakami referenced §103D-303.5 - Pre-bid conference, HRS, which states that the Procurement Policy Board shall adopt rules to effectuate this section. She also noted that the DCCA OAH ruling referenced *Starcom Builders, Inc. V. Board of Water Supply; PCH-2003-18 (October 18, 2003)*.

The members discussed the disadvantage faced by companies that do not attend a mandatory meeting and thus did not have the privilege to learn about the risks involved in a project, and that the purchasing agency should be given the flexibility to decide whether a pre-bid conference is mandatory.

Purchasing and Contracts Administrator Youngling offered the perspective of the City & County of Honolulu, citing the case law of *Starcom Builders, Inc. V. Board of Water Supply*, and noted that purchasing agencies, especially those handling design and construction, prefer to make pre-bid conferences mandatory to avoid potential bid protests if a bid is not awarded to the low bidder based on non-attendance.

Member Heltzel suggested that the SPO survey the agencies on making pre bid meetings mandatory and explore the feasibility of introducing legislation.

- c. Add "including questions and answers" to subsection (f), which will now be read as subsection (e).

Explanation: This amendment provides clarity and consistency and ensures fair competition by requiring that a conference summary – including questions and answers, any changes to the solicitation, and other information, shall be issued as an addendum to be provided sufficiently in advance of the receipt of offers.

The members agreed that all bidders should see the questions and answers, the summary and addendum "shall" be supplied sufficiently, and the agency should have some flexibility to wrap up a bid before the end of the fiscal year and avoid a lapse in funds. Administrator Kahakui noted that the Legislature is considering House Bill 1297, which states that a protest based on the content of the solicitation must be submitted in writing at least 24 hours prior to the date and time set for the receipt of offers. She advocated for the deletion of "known to

have received a solicitation,” as it is difficult to determine whether prospective offers have received that information.

After discussion, the members agreed that subsection (e) be revised as follows:

~~[-(f)-]~~ (e) A summary of the conference, including questions and answers, in addition to any changes to the solicitation, shall 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)

The Board approved the amendments as discussed to §3-122-16.05 (a), (b), and (e).

- §3-122-16.06 – Amendment and clarification to solicitation – The proposal to remove subsections (c) and (d) in their entirety so there is no confusion and ambiguity on the distribution requirements of an addendum. This clarifies that it is the offeror’s responsibility to read the addendum. Also, revise subsection (a) so it references the correct subsection and add “or electronic means” to new subsection (c)(1), previously subsection (e)(1).

Discussion: Member Heltzel commented that striking out “(c) Addenda may require that offerors acknowledge receipt of the addendum issued” potentially conflicts with general practice and the acknowledgement may be required per statute. Administrator Kahakui said that while the acknowledgement may be a common practice in construction procurement, it is not for procurement of goods and services. After Member Inouye commented that there is a provision in the HAR about the “notice of intention to offer.” Purchasing Specialist Kauleinamoku-Murakami responded that the section regarding notice and intention to offer is proposed to be deleted from the HARs.

After discussion, the Board agreed to keep subsection (c) as is, and revise (d) to read as follows:

(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]~~.

With the aforementioned amendment, the next subsection will revert to (e)(1). Purchasing Specialist Kauleinamoku-Murakami explained that the proposed amendment will align with the changes made to HAR Section 3-122-9, titled Use of Electronic communication.

After discussion, the Board agreed on the following language:

- (e) 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]~~ electronically and confirmed in the addendum;

- §3-122-16.07 – Pre-opening modification or withdrawal of offer - Amend for clarity, consistency, and style to reflect that an offeror's modification may be submitted electronically.

"§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 ~~[electronically]~~ 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,

After provided the explanation, the Board had no objection to the amendments to §3-122-16.07.

- §3-122-16.08 – Late offer, late withdrawal, and late modification – Amend for clarity.

Explanation: The amendment requires written documentation for the reason late offer, withdrawal or modification is accepted by the head of the purchasing agency. The amendment to (b), is for clarity, consistency, and style, as well to replace “procurement activity” with “purchasing agency” as defined in HRS 103D-104.

The Board agreed that 3-122-16.08(a) and (b) be amended as discussed and 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 the purchasing agency’s 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.

3. **Subchapter 4.5 – Source Selection for Federal Grants**

- §3-122-16.30 - Purpose and §3-122-16.31 – Exception; request for interest – Replace “providers” with “contractors” for clarity, consistency, and style to reflect that providers selected for federal grants are contractors

Explanation: “Contractor” is a more accurate term because it pertains to the procurement of goods, services, or construction and defined in §103D-104, HRS, while “provider” pertains to the purchases of health and human services and is defined §103F-104.

- §3-122-16.30 – Purpose – Remove from subsection (b) the phrase “the appropriate source selection methods in” and simply reference the section 3-122-16, which lists all the methods of source selection.

Explanation: As proposed at the [February 14, 2025](#), Board meeting, the proposed amendment to §3-122-16 adds source selection methods “Subchapter 5 – Competitive Sealed Bidding” and “Subchapter 6.5 – Multi-Step Competitive Sealed Bidding, pursuant to 103D-301, HRS, as amended by Act 239, Session Laws of Hawaii 2013.

The Board commented that leaving the phrase “the appropriate source selection methods in” would be helpful and provide clarity.

For Action: The SPO will confer with the Deputy Attorney General if the proposed amendment in §3-122-16.30(b) is appropriate or will it limit the methods of source selection to be used, as she recommended that amendment.

- §3-122-16.31 – Exception; request for interest – Add the phrase “when applying or after receipt of a grant.”

Explanation: The amendment to §3-122-16.31(a) is to ensure the purchasing agency fulfills its due diligence and remains with the contractor specified in the federal grant and does not switch to a different contractor. Administrator Kahakui also explained that some grant applications require that a contractor is named, while others allow for a change of a contractor. She added that a purchasing agency is to conduct a procurement method as specified by §3-122-16 before it can name a contractor in a federal grant application.

The “request for interest for federal grants” is an option for applying for a grant and can be used either during the application process or after receiving a grant if the purchasing agency does not have time to do a full procurement.

The Board agreed that §3-122-16.30 and §3-122-16.31 be amended as discussed and 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)

"§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 for a grant 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.

## **VII. Announcements**

### **1. Introduction of Small Business Procurement Coordinator**

Administrator Kahakui introduced Keari Shibuya as the State Procurement Office's Small Business Procurement Coordinator, who will be drafting rules on the Small Business Initiative for consideration by the Board.

### **2. Next meetings**

Chair Maruyama announced planned meetings of the Procurement Policy Board:

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

The schedule will be assessed and is subject to change. The meetings will be on Zoom and in-person at the physical location of Room 416, the Bid Room, in the State Procurement Office at 1151 Punchbowl Street.

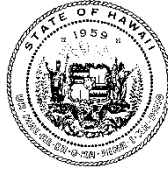
## **VIII. Adjournment**

The Chair asked the public if they have any questions, and there were none.

Since there was no additional new business, Member Heltzel moved to adjourn the meeting and Member Inouye seconded the motion. All members voted to adjourn the meeting. The meeting adjourned at 11:59 a.m.

Respectfully submitted,

Lisa Maruyama, Chair  
Procurement Policy Board



JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA

BONNIE KAHAKUI  
ADMINISTRATOR

PROCUREMENT POLICY  
BOARD  
RICHARD HELTZEL  
LANCE INOUE  
LISA MARUYAMA  
KEITH REGAN

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

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

## **Procurement Policy Board**

### **Minutes of Meeting**

Date/Time: Friday, March 28, 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

Deputy Attorney General: Stella Kam

State Procurement Office: Bonnie Kahakui, Administrator  
Christopher Amandi  
Ruth Baker  
Grace Dobbin  
Fai Goya  
Chan Lee (in public location)

Kelli Nekomoto  
Carey Ann Sasaki  
Keari Shibuya  
Donn Tsuruda-Kashiwabara  
Alan Yeh

Department of Accounting and General Services: Jolie Yee

University of Hawaii: Sarah Allen

City & County of Honolulu: Paula Youngling

Guests: David Ha  
J. Masatsugu

**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) introduced themselves.

**III. Consideration and Approval of Minutes of February 28, 2025, Meeting**

The minutes of the February 28, 2025, were not available; review and possible approval will be deferred to the next meeting.

Deputy Attorney General Stella Kam advised that draft meeting minutes need to be posted within 40 days of the meeting.

**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)**

In accordance with the Sunshine Law, the Board Packet includes a list of procurement legislation, the State Procurement Office's position, the position of other entities, and the status of the legislation.

Written testimony: None

Oral testimony: None

Administrator Bonnie Kahakui of the State Procurement Office (SPO) provided an update on the bills that the SPO is tracking.

- House Bill 381 – Increases small purchase the threshold - SPO opposes this bill because we need transparency and fairness, and there is a concern about parceling. Other departments support this bill because of the perception that it would be faster to get quotes over the phone.
- Senate Bill 383 – Increases the minimum amount for purchases constituting small purchase procurements not subject to an electronic system from \$25,000 to \$50,000. While other departments support this bill, SPO is in opposition because of the issue of transparency and wants to make sure there is a level playing field for all vendors. Purchasing agencies should not be going backwards and not resort to paper/manual processes by getting quotes over the phone.
- House Bill 371 – This bill would require agencies to disclose the names of any officers and immediate adult family members of a state or county contractor for contracts over a certain amount to the Campaign Spending Commission. The SPO provided comments that the

disclosure of such information would require an extensive administrative process on gathering that information, and noted that rules would have to be drafted should this bill pass.

- House Bill 988 – Prohibits a procurement officer from disclosing a competing offeror's proposal or evaluation scores, except the summary of scores, during a debriefing requested by a non-selected offeror prohibits disclosure during debriefing. SPO supports this bill.
- House Bill 1155 – Exempts from the Hawai'i Public Procurement Code contracts by government bodies to procure certain construction projects. This bill has been amended. The SPO supports this bill. The SPO is also aware of opposition from those in the construction industry, and will again review the language to help departments with specific construction needs. This bill will affect the Department of Transportation.
- House Bill 1297 – This bid protest bill that sets a time limit for submitting bid protests. Makes the 75-day limit for issuing a written decision on protests apply to any contract awarded by competitive sealed bid or competitive sealed proposal. Places a \$1.5 million cap on protests and removes language – Amended. SPO supports this bill.
- House Bill 1414 – Allows agencies to select 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. Amended. The SPO opposes this bill and states that an agency can utilize the Request for Proposal method of procurement, which is based on evaluation, not the price.
- Senate Bill 382 – 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. The SPO supports this bill
- Senate Bill 1057 – Clarifies that bid incentives given to bidders who work, who work on constructions and are given, who are parties to apprenticeship program is based on apprenticeable trades utilized, rather than employed, to construct the public works. The SPO supports that language.
- Senate Bill 1543 – Requires each purchasing agency to provide justification for hiring external consultants – Amended. The SPO provided comments on this bill.

There were no questions from the public.

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

Chair Maruyama introduced the discussion on the proposed amendments to Hawaii Administrative Rules (HAR), Chapter 3-122 – Source Selection and Contract Formation.

Written testimony: None

Oral testimony: None

Chair Maruyama turned the floor over to the State Procurement Office Staff.

For the record, Deputy Attorney General Stella Kam explained that HAR Chapter 3-122 was last amended in 2008, and reminded the Board that their responsibility is to promulgate rules to expand on the statute and help stakeholders understand what is legally covered under the statute. She responded to the Chair's question on aligning the rules with new statute(s) will require another round of review of the rules. Administrator Kahakui added that at the conclusion of the legislative session, the SPO will issue guidance through procurement circulars to summarize the new statute(s) and to facilitate their implementation. The circulars will serve as guidance until the Procurement Policy Board can promulgate rules reflecting those statutory changes.

Carey Ann Sasaki, Purchasing Specialist of the Policy and Compliance Section of the State Procurement Office, explained that the agenda will be on the proposed amendments to Hawaii Administrative Rules (HAR), Chapter 3-122, parts of subchapters 4, 4.5, and subchapter 5 that relate to the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes (HRS). The

proposed rule amendments are included in the board packet and may also be viewed in person at the State Procurement Office, located at 1151 Punchbowl Street, Room 416, and online.

Purchasing Specialist Sasaki summarized the HAR sections that had been previously discussed by the members and received no objections. She also noted that Board action on HAR 3-122-9 was deferred until the final outcome of Senate Bill 328 and House Bill 988 during the 2025 Legislative session.

## **1. Subchapter 4 – Methods of Source Selection and General Guidance**

- §3-122-16.03 Public notice.

Purchasing Specialist Sasaki explained that for the record, the proposed amendments to Hawaii Administrative Rules (HAR) subsections 3-122-16.03(b)(2), (b)(3), (b)(4), part of HAR subsection 3-122-16.03(c), and HAR subsections 3-122-16.03(d)(1) and (d)(2)(B) were discussed by the Procurement Policy Board on February 14, 2025, and there were no objections to these amendments.

She informed the members that subsection 3-122-16.03(c) will not be amended. As requested by the Board, the SPO staff conferred with Deputy Attorney General Stella Kam on the proposal to amend subsection (c). Since Deputy Attorney General Kam opined that "class" and "category" are not defined in the Hawaii Revised Statutes, subsection (c) will not be amended. It will state:

(c) Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 shall invite persons to submit statements of qualifications that include:

After discussion, the members had no objections.

## **2. Subchapter 4.5 – Source Selection for Federal Grants**

- §3-122-16.03 Public notice.

Purchasing Specialist Sasaki explained that for the record, HAR 3-122-16.30(a) and part of (b) were discussed by the Procurement Policy Board on February 28, 2025. The members had no objections to these amendments, but requested that the SPO confer with the Deputy Attorney General if the removing the source selection methods from subsection 3-122-16.30(b) will limit the methods of source selection to be used. Since then, the Deputy Attorney General opined that doing so does not affect, reduce, or limit the methods of source selection used. Thus, subsection 3-122-16.30(b) will be amended to remove "the appropriate source selection methods" and reference the whole section 3-122-16 for clarity, and will read:

(b) The selection of contractors for federal grants shall be in accordance with section 3-122-16.

After discussion, the members had no objections to the amendment.

## **3. Subchapter 5 – Competitive Sealed Bidding**

- §3-122-21 - Preparing a competitive sealed bid.
  - Amend subsections (1), (2), and (5).
  - Remove "and" from subsection (1)(C) and add it in subsection (1)(D) for grammar.

After discussion, (1)(A), (1)(D), and (1)(E) were revised for language for consistency and style to reference "date," then "time."

The revised language will match HAR 3-122-30(b) and 103D-302, HRS, which states that bids shall be open publicly in the presence of one or more witnesses at the time, date and place designated in the invitation for bids. The phrase "receipt of bids" is deleted because this is already in (1)(A), and thus (1)(E) is revised to read:

(E) The date, time, and location of the opening of bids;

- Amend subsection (2) by deleting "or" and "as are not included in the purchase description" and adding "and" for clarity. Deputy Attorney General Kam explained that minimum qualifications are part of the criteria. After much discussion, the revised language is as follows:

(2) The purchase description, plans, if applicable, specifications, evaluation factors, delivery and/or performance schedule, and inspection and acceptance requirements;

- Amend subsection (5) to clarify that electronic signatures are accepted. This will now read:

(5) The bid form shall be signed by an authorized agent of the vendor and may be submitted with a digital or original signature as specified in the solicitation;

The members had no objections to the aforementioned amendments to §3-122-21.

#### **4. Subchapter 5 – Competitive Sealed Bidding**

- §3-122-34 – Low tie bids

Amend subsection (b)(2) to correct misspelled word "contacts" to "contracts."

The members had no objections to the amendment.

#### **5. Subchapter 5 – Competitive Sealed Proposals**

- §3-122-35 – Waiver to competitive sealed bid process

Amend subsection (c) for clarity, consistency and style and to add that the procurement officer shall be responsible to ensure proper documentation of the selected alternative procurement method is in the contract file and it also contains a determination that the price is fair and reasonable. This will now read:

(c) The procurement officer shall be responsible to ensure proper documentation of the alternative



procurement method selected is in the contract file, and shall include:

- (1) Reasons for selection and length of contract period;
- (2) A determination that the price is fair and reasonable; and
- (3) Prior approval of the chief procurement officer or a designee. [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp 03/21/2008] (Auth: HRS §103D-202) (Imp: HRS §103D-302)

After discussion, the members had no objections to these amendments.

The Chair asked if there were any comments/questions from the public, and there were none.

#### **VII. Announcements**

Chair Maruyama announced planned meetings of the Procurement Policy Board:

- Friday, April 11, 2025, 9:30 a.m.
- Friday, April 25, 2025, 9:30 a.m.
- Friday, May 16, 2025, 9:30 a.m.

The meetings will be on Zoom and in-person at the physical location of Room 416, the Bid Room, in the State Procurement Office at 1151 Punchbowl Street.

#### **VIII. Adjournment**

The Chair asked the public if they have any questions, and there were none.

Since there was no additional new business, Member Regan moved to adjourn the meeting and Member Inouye seconded the motion. All members voted to adjourn the meeting. The meeting adjourned at 11:24 a.m.

Respectfully submitted,

Lisa Maruyama, Chair  
Procurement Policy Board

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

Interim  
Hawaii Administrative Rules

April 11, 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.

SUBCHAPTER 6

COMPETITIVE SEALED PROPOSALS

**1. §3-122-41, Hawaii Administrative Rules, is amended to read as follows:**

§3-122-41 Purpose. The purpose of this subchapter is to provide rules for the use of the competitive sealed proposal method of source selection ~~[when it is determined that competitive sealed bidding is neither practicable nor advantageous to the State.].~~ [Eff 12/15/95; comp 11/17/97; comp 3/21/2008; am \_\_\_\_\_] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

**2. §3-122-43, Hawaii Administrative Rules, is amended to read as follows:**

§3-122-43 ~~[When competitive sealed bidding is not practicable or advantageous. (a) Unless the nature of the procurement permits award to a low~~

~~bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the invitation for bids, competitive sealed bidding is not practicable or advantageous.]~~

~~[(b) A determination may be made to use competitive sealed proposals if it is determined that competitive sealed bidding is not practicable, even though advantageous. Factors to be considered in determining whether competitive sealed bidding is not practicable include:~~

- ~~—— (1) Whether the primary consideration in determining award may not be price;~~
- ~~—— (2) Whether the contract needs to be other than a fixed-price type;~~
- ~~—— (3) Whether the specifications for the goods, services, or construction, or delivery requirements cannot be sufficiently described in the invitation for bids;~~
- ~~—— (4) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;~~
- ~~—— (5) Whether offerors may need to be afforded the opportunity to revise their proposals, including price; and~~
- ~~—— (6) Whether award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal.]~~

~~[(c)] (b) A determination may be made to use competitive sealed proposals if it is determined that competitive sealed bidding is not advantageous, even though practicable. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:~~

- ~~(1) If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and~~

~~(2) Whether the factors listed in subsection (b) (4) through (b) (6) are desirable in conducting a procurement rather than necessary; if they are, then the factors may be used to support a determination that competitive sealed bidding is not advantageous.~~

~~— [(d)] The determinations required by this section shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.]~~

Procurement planning for competitive sealed proposals. (a) A strategic procurement plan for competitive sealed proposals should at the minimum, include the following determinations:

- (1) Requirements definition;
- (2) Market research to substantiate requirements definition;
- (3) Period of performance;
- (4) Type of contract;
- (5) Analysis of the relative importance of price and other evaluation criteria; and
- (6) Oral or written discussions, as applicable, with offerors concerning technical and price aspects of their proposals. [Eff 12/15/95; am and comp 11/17/97; am and comp 3/21/2008] (Auth: HRS §§103D-202, 103D-318) (Imp: HRS §§103D-303, 103D-318)

**3. §3-122-45, Hawaii Administrative Rules, is repealed:**

~~[§3-122-45 Determinations. (a) Pursuant to section 103D-303(a), HRS, the procurement policy board may approve a list of goods, services, or construction that may be procured by competitive sealed proposals without a determination by the head of the purchasing agency.~~

~~(b) The list, entitled "Procurements Approved for Competitive Sealed Proposals," shall be reviewed biennially by the procurement policy board and issued by procurement directive. Although the good, service,~~

~~or construction is listed, purchasing agencies may use the competitive sealed bidding process under section 103D-302, HRS.~~

~~(c) If the procurement is not listed pursuant to subsection (a), the head of a purchasing agency shall then determine in writing that competitive sealed proposals is a more appropriate method of contracting in that competitive sealed bidding is neither practicable nor advantageous. The determinations may be made for categories of goods, services, or construction rather than by individual procurement.~~

~~(d) When it is determined that it is more practicable or advantageous to the State to procure construction by competitive sealed proposals:~~

~~(1) A procurement officer may issue a request for proposals requesting the submission of proposals to provide construction in accordance with a design provided by the offeror; and~~

~~(2) The request for proposals shall require that each proposal submitted contain a single price that includes both design and build.~~

~~(e) The head of the purchasing agency who made the determination pursuant to subsection (c) or (d) may modify or revoke it at any time and the determination shall be reviewed for current applicability on the next procurement for the goods, services, or construction. The head of the purchasing agency may also request that the procurement of the goods, services, or construction by competitive sealed proposals be added to or deleted from the list in subsection (b).~~

~~(f) The determinations required by this section shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. [Eff 12/15/95; am and comp 11/17/97; am 07/06/99; am and comp 3/21/2008] (Auth: HRS §§103D-202, 103D-303, 103D-318) (Imp: HRS §§103D-303, 103D-318)]~~

§3-122-45 REPEALED. [R \_\_\_\_\_]

**4. §3-122-45.01, Hawaii Administrative Rules,  
is amended to read as follows:**

§3-122-45.01 Evaluation committee. (a) Prior to the preparation of the request for proposals, a determination shall be made by the procurement officer that the procurement officer or an evaluation committee selected in writing by the procurement officer shall evaluate the proposals. ~~[A copy of the document identifying any committee members and any subsequent changes thereto shall be placed in the contract file.]~~ The document identifying all committee members, approved by the procurement officer, shall be placed in the contract file. Subsequent changes, approved by the procurement officer, shall also be filed.

(b) Evaluation committee members are encouraged to participate in the development of the solicitation.

- (1) The evaluation committee shall consist of at least three governmental employees with sufficient qualifications in the area of the goods, services, or construction to be procured;
- (2) Private consultants may also serve on the committee and shall:
  - (A) Have sufficient knowledge to serve on the committee;
  - (B) Serve without compensation, unless justified and determined in writing by the head of the purchasing agency that compensation is justified; and
  - ~~[(C) Sign an affidavit:]~~
- (3) All evaluation committee members shall sign an affidavit:
  - (i) Attesting to having no personal, business, or any other relationship that will influence their decision in the evaluation process;
  - (ii) Agreeing not to disclose any information on the evaluation

- process to other than an employee of a governmental body; and
- (iii) Agreeing that their names will become public information upon award of the contract;
- (iv) The procurement officer may require participants to sign a non-disclosure agreement prior to reviewing any information;
- ~~[(3)]~~ (4) The contract administrator shall serve as a member of the committee;
- ~~[(4)]~~ (5) The contract administrator or a designee shall serve as chairperson, and the procurement officer or a designee shall serve as advisor. [Eff and comp 3/21/2008] (Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

**5. §3-122-46, Hawaii Administrative Rules, is amended to read as follows:**

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

- (1) The specifications for the goods, services, or construction items to be procured, including a description of the performance or benefit required;
- (2) All contractual terms and conditions applicable to the procurement;
- ~~[(3) A statement as to when and in what manner prices are to be submitted;]~~
- ~~[(4)]~~ (3) A statement ~~[concerning]~~ whether the proposal shall be accompanied by a proposal security pursuant to subchapter 24 or other evidence of financial responsibility;
- ~~[(5)]~~ (4) The term of the contract and conditions of renewal or extension, if any;
- ~~[(6)]~~ (5) Instructions and information to offerors, including pre-proposal

conferences, the location, date, and time  
where proposals and pricing are to be  
received~~[, and the date, time, and place~~  
~~where proposals are to be received and~~  
~~reviewed]~~;

~~[-(7)]~~ (6) ~~[The relative importance of price and~~  
~~other evaluation criteria; and]~~ The specific  
evaluation criteria to be used, including  
relative importance of price, in evaluation  
of proposals which may include but is not  
limited to:

(A) Technical capability and approach for  
meeting performance requirements;

(B) Price [€] competitiveness and  
reasonableness~~[-of price]~~;

(C) Managerial capabilities; and

(D) Best value factors;

(E) Past performance.

(i) Past performance information is one  
indicator of an offeror's ability to  
perform the contract successfully.  
The currency and relevance of the  
information, source of the  
information, context of the data,  
and general trends in contractor's  
performance shall be considered.

(ii) The solicitation shall describe the  
approach of evaluating past  
performance, including evaluating  
offerors with no relevant  
performance history, and shall  
provide offerors an opportunity to  
identify past or current contracts  
(including Federal, State, and local  
government and private) for efforts  
similar to the Government  
requirement. The agency shall  
consider this information, as well  
as information obtained from any  
other sources, when evaluating the  
offeror's past performance. The  
evaluation committee shall determine



the relevance of similar past performance information.

(iii) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance;

~~[(7)]~~ (7) A statement that discussions may be conducted with "priority-listed offerors" pursuant to section 3-122-53, but that proposals may be accepted without discussions; ~~[and]~~

~~[(8)]~~ (8) A statement that offerors shall designate in writing those portions of the unpriced proposal that contain trade secrets or other proprietary data that are to remain confidential, subject to section 3-122-58; that the material designated as confidential shall be readily separable from the proposal ~~[in order]~~ to facilitate inspection of the nonconfidential portion of the proposal~~[-]~~;

(9) The proposal shall be signed by an authorized agent of the vendor and may be submitted with a digital or original signature.

[Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/2008] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

**6. §3-122-51, Hawaii Administrative Rules, is amended to read as follows:**

§3-122-51 Receipt and registration of proposals.

(a) Proposals and modifications shall be date and time-stamped upon receipt and held in a secure place by the procurement officer, unless submitted via an electronic procurement system, until the established due date. Purchasing agencies may use other methods of receipt when approved by the chief procurement officer.

- (1) Proposals and modifications shall not be opened publicly, but shall be opened in the presence of two or more state officials. If conducted electronically, proposals and modifications shall not be opened publicly and not required to be opened in the presence of two or more state officials;
  - (2) Proposals and modifications shall be shown only to members of the evaluation committee and state personnel or their designees having legitimate interest in them.
- (b) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals:
- (1) The name of each offeror;
  - (2) The number of modifications received, if any; and
  - (3) A description sufficient to identify the good, service, or construction item offered.
- (c) The register of proposal shall be open to public inspection as provided in section 3-122-58.
- (d) Proposals shall be open to public inspection as provided in section 3-122-58. [Eff 12/15/95; am and comp 11/17/97; am and comp 3/21/2008] (Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

**7. §3-122-52, Hawaii Administrative Rules, is amended to read as follows:**

§3-122-52 Evaluation of proposals. (a) Evaluation factors shall be set out in the request for proposals and the evaluation shall be based only on the evaluation factors. Evaluation factors not specified in the request for proposals may not be considered.

(b) A numerical rating system shall be used. The relative priority to be applied to each evaluation factor shall also be set out in the request for proposals.

(c) The points to be applied to each evaluation factor shall be set out in the request for proposals.

- (1) The procurement officer, or each member of the evaluation committee, as applicable, shall explain his or her ranking determination in writing which shall be placed in the procurement file;
- (2) The written ranking evaluations or explanations shall be available for public inspection after the award of the contract is posted.
- (d) ~~[When applicable, cost]~~ Price shall be an evaluation factor.
- (1) The proposal with the lowest cost factor must receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest must have a lower rating for cost;
- (2) The points allocated to higher-priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.
- (e) Past performance shall be an evaluation factor.

~~[(e)]~~ (f) An evaluation factor must be included which takes into consideration whether an offeror qualifies for any procurement preferences pursuant to chapter 3-124.

~~[(f)]~~ (g) Evaluations may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap, or political affiliation of the offeror. [Eff 12/15/95; am and comp 11/17/97; am and comp 3/21/2008] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

**8. NEW §3-122-52.5, Hawaii Administrative Rules, is added to read as follows:**

§3-122-52.5 Clarifications with Offerors After Receipt of Proposals. (a) Clarifications are limited exchanges, between the agency and offerors prior to priority

listing. Clarifications may occur with or without further discussions as defined in 3-122-53.

(b) Agencies may give offerors the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past (e.g., the relevance of an offeror's past performance information and adverse past performance information) or to resolve minor or clerical errors which shall not affect price, quantity, quality, delivery, or contractual conditions. Such clarifications may be considered in rating proposals for the purpose of establishing the priority list. All clarifications shall be documented by the procurement officer or evaluation committee at the evaluation stage.

(c) Clarifications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. [Eff ] (Auth: HRS §103D- ) (Imp: HRS §103D-303)

**9. §3-122-53, Hawaii Administrative Rules, is amended to read as follows:**

§3-122-53 Discussions with offerors. (a) Before conducting discussions, a "priority list" shall be generated by the procurement officer or evaluation committee.

- (1) In order to generate a priority list, proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable based on the criteria outlined in the solicitation;
- (2) All responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list;
- (3) If numerous acceptable and potentially acceptable proposals have been submitted, the procurement officer or the evaluation committee may rank the proposals and limit the priority list to at least three

responsible offerors who submitted the highest-ranked proposals;

- (4) Those responsible offerors who are selected for the priority list are referred to as the "priority-listed offerors".

(b) Discussions will be limited to only "priority-listed offerors" and are held to:

- (1) Promote understanding of a state agency's requirements and priority-listed offerors' proposals; and
- (2) Facilitate arriving at a contract that will provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals.

The procurement officer shall establish procedures and schedules for conducting discussions and keep a record of the discussions, date, time, place, purpose of meetings, and [those attending] attendees.

(c) Proposals may be accepted on evaluation without discussion.

(d) Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

- ~~(1) Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror;~~

~~[-(2)-]~~ (1) If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended by an addendum to incorporate the clarification or change.

- (2) Limits on discussions. Government personnel involved in the procurement shall not engage in conduct that:

- (i) Favors one offeror over another;
- (ii) Reveals an offeror's technical solution, include unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another

offeror; or  
(iii) Reveals the names of individuals  
providing reference information about an  
offeror's past performance.

- (e) Addenda to the request for proposals shall be distributed only to priority-listed offerors.
- (1) The priority-listed offerors shall be permitted to submit new proposals or to amend those submitted;
- (2) If in the opinion of the procurement officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the request for proposals shall be canceled and a new request for proposals issued.
- (f) The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion process. [Eff 12/15/95; comp 11/17/97; am and comp 3/21/2008] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

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

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

12. 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 April 11, 2025, by the Procurement Policy Board and filed with the Office of the Lieutenant Governor.

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LISA MARUYAMA  
Chairperson  
Procurement Policy Board

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KEITH REGAN  
State Comptroller

APPROVED AS TO FORM:

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Deputy Attorney General