



State Procurement Office (SPO)

Procurement Informational Briefing
October 12, 2021

Agenda

- Bid Protest, Specifications and Change Orders
- Performance Reviews of Consultants and Contractors
- Departmental Procurement and Contract Management Procedures
- Effective Management of Statewide procurement & Contracting
- Other Issues and Recommendations

Bid Protests

- **Act 224 signed into law July 2021 to expedite the protest process**
 - **Limits protest determination to 75 days + 45 day extension for extenuating circumstances**
 - **1% protest bond to mitigate unwarranted protests**
- **DCCA Office of Administrative Hearing must hear within 21 days and resolve in 45 days**
- **SPO-043, Report of Procurement Protest**
 - **Revised to gather more data for easier identification of problem areas**
 - **SPO review of department's procurement practices if there is a trend in protests**

Act 224
SPO-043

Bid Protests – Potential Problem Areas

Subcontractor Listing

Amend statute to eliminate the requirement to disclose what the subcontractors will do; limiting only to the subcontractor's identity

32 states (like the federal government) do not require any subcontractor disclosure for any construction procurement

11 States request subcontractor information only from the apparent winning vendor after bids are opened and analyzed

7 States have some variation on requiring submission. Only two state, NM & WY have similar Hawaii practices.

Preference Programs

Hawaii Products

Apprenticeship program

SPECIFICATIONS AND CHANGE ORDERS

Chapter 3-122

Specifications Types:

Design:

Dimensional and other physical requirements

Sets the requirements for the product, detailing the characteristics the item must possess; how the product is to be manufactured

Primarily used when the agency knows exactly what it wants and has the capability to develop exact procedures or process that should be followed

Advantages:

Accurate supply arrangement

Compliance to design characteristic

Specifies exactly what the design intends

Disadvantages:

May limit competition

May create restrictiveness

Puts responsibility on the agency and not the supplier

SPECIFICATIONS AND CHANGE ORDERS

Specifications Types:

Performance:

The functional or performance requirements of what the product does and how well it performs

Describes the capabilities the product/service must meet

Advantages:

Result/outcome specific

Can result in quality goods/services

Allows Offeror's flexibility

Disadvantages:

Time consuming

Must take special care to describe design intent

Poor performance specs can result in poor quality goods/services

SPECIFICATIONS AND CHANGE ORDERS

Chapter 3-125, HAR

Writing specification is an art and a balance between being too prescriptive or too broad.

Change orders are permitted pursuant to Chapter 3-125. However, the problem can be the overreach of the use of change orders beyond the original scope of work.

Change orders cannot be eliminated as there may times when there will be unforeseen circumstances, or events beyond the control of the purchasing agency, or what may be in the best interest of the state.

However, there should be accountability and a price/cost analysis to determine if the State is receiving the best value. This may involve additional oversight by the procurement officer or the head of the purchasing agency.

The federal government has very extensive documentation and oversight protocols.



Performance Reviews of Consultants & Contractors

Act 188 signed July 2021 to address issues of repeated inefficiencies and substandard work.

Requires SPO to establish & administer a past performance data base and adopt rules, NLT 12/31/2023

Requires agencies to consider past performance (if available) in evaluating for award.

Past Performance Policy and recommendation for administrative rule changes – conducted in June 2019

Department Procurement Issues

103D-304

Professional Services

Problem: Agencies required to obtain a minimum of 3 quotes.

Possible Solution: Propose language

§103D-304(g) (g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. **If the purchasing agency fails to get a minimum of 3 qualified persons, the agency may submit a request for alternative procurement pursuant to the rules established by the procurement policy board.** The contract file shall contain a copy of the summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause.

Department Procurement Issues

103D-307, HRS
3-122-88, HAR

Emergency Procurement:

Problem: Agencies want to expand emergency language to include repairs.

Possible Solution: HAR 3-122-88 does not apply to small purchases (under \$100K). SPO would consider rescinding circular that requires all emergency procurement regardless of the dollar value to be submitted for CPO approval, provided the awards are posted and proper documentation.

Department Procurement Issues

103D-302

Competitive Sealed Bidding (IFB)

Problem: Lowest bidder is awarded the contract regardless of previous work performance

Possible Solution: Past Performance Database; move toward Competitive Sealed Proposals (RFP)

Encourage use of SPO-021, Standard Qualification Questionnaire

IFB should be used when the purchasing agency can clearly and identifiably provide the scope of work in its entirety for all work to be done.

RFP should be used when the purchasing agency wants to evaluate the vendor based on pre-established criteria. May use a shorter posting requirement if justified

Past Performance database will be available to all purchasing agencies. Alert all agencies to potential poor performers.

Department Procurement Issues

103D-102

Construction Exemptions from 103D, HRS

Currently 103D-102(b)(4)(L) states, “ Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State;”

The language precludes construction from being exempt from the Code, which can hamper or delay projects. However, there are times when it is not practicable or advantageous to procure.

Possible solution: Propose language change to include construction:

“ Any other **goods, services, or construction** which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State;”

Department Procurement

3-122-143, HAR

Indefinite Delivery/ Indefinite Quantity Contracts (IDIQ)

- Type of fixed-price contract for an indefinite amount of goods or services to be furnished at specific times, or as ordered.
- Obligates the purchasing agency to order all the actual requirements from the awarded vendor
- Beneficial for routine purchases of goods/services

Problem: Departments not familiar with this type of procurement & contracting.

Solution: Provide training to purchasing agencies



Effective Management of Statewide Procurement & Contracting

- ❖ Procurement Policy Board – 103D-201, HRS
- ❖ State Procurement Office – 103D-204, HRS
- ❖ Departments Procurement Offices – 103D-208, HRS



Procurement Policy Board

HRS 103D-
201-202

The seven member Procurement Policy Board (PPB) adopts, amends, or repeals, administrative rules to carry out and effectuate the purpose and provisions of HRS chapter 103D governing the procurement, management, control, and disposal of any and all goods, services, construction, and HRS Chapter 103F, for the purchase of health and human services. Considers and decides on matters of policy, including those referred to it by a chief procurement officer; audits and monitors the implementation of its rules and the requirements of its statutes. Makes recommendation to the governor for selection of SPO Administrator.

Composition:

- Comptroller
- County employee with high level experience
- 5 general members = 1 certified professional, 2 HHS, 1 federal experience + 1 general member

Currently on two members: Comptroller Curt Otaguro + James Masten
Unable to obtain quorum since May 2019.

Proposed legislation to reduce the PPB to 5 members & eliminate the nominating committee.



State Procurement Office

The State Procurement Office (SPO)

- Plans, organizes, directs, and coordinates the various procurement activities under Chapter 103D and Chapter 103F, HRS
- Develops Hawaii Administrative Rules (HAR) & policies for all governmental bodies
- Provides procurement, inventory management and surplus property management services
- Development, implementation and maintenance of policies and procedures, and programs (HANDS, HCE, HlePRO, pCard, Surplus Auction, Excess Property etc.)
- Provides accessibility to government contracts through cooperative purchasing agreements.
- Provides Procurement Training
- Reviews Requests for CPO determination (Executive Branch)
- Provides guidance to all governmental agencies on all facets of procurement
- Conducts investigations into procurement inconsistencies



Departmental Procurement Offices

**103D-208,
HRS**

Pursuant to 103D-208, HRS, the CPO may delegate procurement authority to any agency or official within their respective jurisdiction.

Procurement Delegation 2014-01, 2014-02

- CPO delegated to all executive branch department heads (HOPA)
- Requires HOPA procurement delegation and mandatory training
- Decentralized procurement environment (current)

Concerns: Inexperienced staff conducting procurement; inconsistent procurements; lack of oversight.

Possibly solutions:

- Centralization of procurement activities within each Department, with Dedicated procurement staff
- Certified training
- eProcurement System
- More procurement reviews by State Auditor



Certified Training Program

The State of Hawaii would benefit from a certified training program provided the necessary resources are provided.

- Dedicated training section within SPO consisting of:
 - Training section chief/supervisor
 - Two (2) professional training instructors
 - One (1) support staff
- Multi-tiered program based on method of procurement and dollar threshold. Renewal Period: Every 3- 5 years:

For example:

Basic	\$100K for goods/services \$250K for construction	Small purchase, sole source, exemptions, emergency, professional services
Intermediate	\$100K to less than \$2M	Competitive Sealed Bids, Competitive Sealed Proposals,
Advance	\$2M and above	Competitive Sealed Bids, Competitive Sealed Proposals

Cost: \$425K for salaries excluding fringe benefits
\$35K stand alone LMS

\$18K eLearning software
\$200K consultant

- Centralization of procurement activities within each Department
 - Dedicated procurement staff
- Full-service eProcurement System from solicitation to contract management.
 - \$5M implementation + \$1M per year for annual licenses
 - Increased administrative efficiency (one stop shop for buyers and vendors)
 - Increased competition (more competition... lower costs\
 - Manage all spend (leverage buying power, monitor compliance)
 - Government policy automated (built in adaptable technology to keep compliant with policy)
 - Transparency and accountability
- SPO – Evaluating a procurement automation system based on a self-funded model to fund an eprocurement system.

Centralization and eProcurement

Auditing Department Procurement and Contract Management

103D-107 – Compliance audit unit within the office of the auditor

- 1) Periodically review and audit procurement practices to ensure compliance
- 2) Advocate competition, fairness, and accountability in procurement

103D-108 – Compliance audit shall

- 1) Review and assess procurement methods
- 2) Review current or proposed statutes & rules for fairness & accountability
- 3) Review selected contract awards pursuant to 103D-304
- 4) Conduct studies, research, and analysis
- 5) Establish and maintain procurement library
- 6) Report noncompliance and recommendation for remedial action
- 7) Be present at legislative hearings and policy board meetings to present findings

SPO proposes:

Monitoring protests, procurement violations, and conducting periodic reviews of procurement practices and procedures of all Executive Branch departments/agencies, for compliance with the procurement code on a regularly scheduled basis will be a challenging undertaking and require senior staff members who are well-versed in procurement. SPO estimates it will require a minimum of two (2) additional full-time positions. These employees will work closely with individual departments on procurement training, procurement issues, recommendations to resolve protests, and resource center, which are just a few of the tasks the full-time employees (FTEs) will be tasked with. Estimated \$150,000 per year (excluding benefits).

Recommendations

- ❖ Proposed statutory language changes
- ❖ Centralized procurement unit within each department
- ❖ Procurement Certification program
- ❖ Proposed legislation to increase SPO staff
 - ❖ Conducts regular periodic reviews of department's procurement practices
 - ❖ Investigate patterns of protests
 - ❖ Implement certified training program
 - ❖ Oversight of construction procurements
 - ❖ Implement and maintain an eMarketplace and eProcurement System