
HOUSE CONCURRENT RESOLUTION

REQUESTING THE STATE PROCUREMENT OFFICE TO CONDUCT A STUDY ON
THE FEASIBILITY, NECESSARY PROCESSES, AND COSTS RELATIVE TO
REQUIRING THE CONSIDERATION OF PAST PERFORMANCE AS A FACTOR
IN AWARDING PUBLIC CONTRACTS, INCLUDING LOW BID CONTRACTS.

1 WHEREAS, according to the State Procurement Office,
2 debarring a contractor for poor performance is not a common
3 practice; and
4

5 WHEREAS, a contractor's past performance, if considered, is
6 only considered during the evaluation of proposals submitted to
7 a specific request for proposals; and
8

9 WHEREAS, this raises concerns with regard to low bid
10 construction contracts, which must be awarded to the lowest and
11 responsive bidder; and
12

13 WHEREAS, the determination of a bidder's responsibility
14 includes only a determination of capability, integrity, and
15 reliability to perform contract requirements in good faith and
16 does not require a determination of quality of work or require
17 inquiry into past performance; and
18

19 WHEREAS, the determination of a bidder's responsiveness
20 includes only evaluation of material conformity to the
21 invitation for bids; and
22

23 WHEREAS, several other jurisdictions, including the federal
24 government, other states, municipalities, and tribal governments
25 require consideration of past performance in low bid contracts;
26 and
27

28 WHEREAS, having an opportunity to review the past
29 performance of contractors would give the State an opportunity



BE IT RESOLVED by the House of Representatives of the Twenty-seventh Legislature of the State of Hawaii, Regular Session of 2014, the Senate concurring, that the State Procurement Office is requested to conduct a study on the feasibility, necessary processes, and costs relative to requiring the consideration of past performance as a factor in awarding public contracts, including low bid contracts; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor and the Administrator of the State Procurement Office.

HCR HMS 2014-2449



MAR 07 2014

____.B. NO.____

A BILL FOR AN ACT

RELATING TO RESPONSIBILITY UNDER THE STATE PROCUREMENT CODE.

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

1 SECTION 1. The purpose of this act is to enhance
2 accountability and transparency in state procurement by
3 clarifying the requirement for and a definition of responsible
4 contractor determination that requires government due diligence
5 and contractor responsibility determinations be made prior to
6 awarding any government contract under chapter 103D, Hawaii
7 Revised Statutes. The legislature finds that recent and
8 relevant past performance shall be a consideration factor in all
9 contractor responsibility determinations of capability,
10 integrity, and reliability to perform contract requirements in
11 good faith.

12 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
13 amended as follows:

14 (1) By adding a new definition to be appropriately
15 inserted and to read as follows:

16 "Past performance" means available recent and relevant
17 performance by the contractor on state, federal, or private

1 contracts to be considered as a responsibility determination
2 within the relevance of the current solicitation."

3 (2) By amending the definition of "responsible bidder or
4 offeror" to read as follows:

5 "Responsible bidder or offeror" means a person who has the
6 capability in all respects to perform fully the contract
7 requirements, and the integrity and reliability ~~[which]~~ "that"
8 will assure good faith performance~~[-]~~, pursuant to the
9 responsibility determination standards adopted by the policy
10 board."

11 SECTION 3. Section 103D-310, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) Whether or not an intention to bid is required, the
14 procurement officer shall ~~[determine]~~ make a determination of
15 responsibility for any awardee, pursuant to rules adopted by the
16 policy board, including whether the prospective offeror has the
17 financial ability, resources, skills, capability, and business
18 integrity necessary to perform the work. For ~~[this]~~ the
19 purpose~~[, the]~~ of responsibility determination, the procurement
20 officer shall possess or obtain available information sufficient
21 to be satisfied that a prospective offeror meets the applicable
22 standards set forth by the policy board. The procurement
23 officer shall consider available recent and relevant past

1 performance of the offeror as it applies to a responsibility
2 determination for the current solicitation. The officer, in the
3 officer's discretion, may also require any prospective offeror
4 to submit answers, under oath, to questions contained in a
5 standard form of questionnaire to be prepared by the policy
6 board. Whenever it appears from answers to the questionnaire or
7 otherwise, that the prospective offeror is not fully qualified
8 and able to perform the intended work, a written determination
9 of nonresponsibility of an offeror shall be made by the head of
10 the purchasing agency, in accordance with rules adopted by the
11 policy board. The unreasonable failure of an offeror to
12 promptly supply information in connection with an inquiry with
13 respect to responsibility may be grounds for a determination of
14 nonresponsibility with respect to such offeror. The decision of
15 the head of the purchasing agency shall be final unless the
16 offeror applies for administrative review pursuant to section
17 103D-709."

18 SECTION 4. This Act does not affect the rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

23 SECTION 6. This Act shall take effect upon approval.

____.B. NO.____

1

2

INTRODUCED BY: _____

3

BY REQUEST

Report Title:

Procurement Code; Responsibility Determination; Past Performance

Description:

Includes recent and relevant past performance information as a responsibility determination for all government procurement.
Effective upon approval.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

REVISED DATE: November 26, 2014

1st DRAFT DATE: September 16, 2014

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO RESPONSIBILITY UNDER THE STATE PROCUREMENT CODE.

PURPOSE: To increase accountability and transparency in state procurement by clarifying the due diligence requirement for contractor responsibility determination to be made prior to awarding any government contract under chapter 103D, Hawaii Revised Statutes; establishing a past performance definition; and requiring recent and relevant past performance to be considered in all offeror and bidder responsibility determinations of capability, integrity, and reliability to perform contract requirements in good faith.

MEANS: Amend sections 103D-104 and 103D-3109(b), Hawaii Revised Statutes.

JUSTIFICATION: Clarifies that past performance is part of responsibility determination and a procurement officer must consider relevant and recent contractor past performance prior to an award for any state contract. Provides a legislative mandate for the Procurement Policy Board to adopt administrative rules to implement past performance accountability measurements and clarify appropriate applications of past performance information.

Impact on the public: Increases accountability on offerors and bidders by clarifying that past performance shall be considered as a responsibility determination for all state contracts. Increases transparency and accountability of government responsibility determinations when awarding public contracts to responsible contractors.

Impact on the department and other agencies:

Increases due diligence requirement on procuring agencies to possess or obtain information sufficient to be satisfied that a prospective bidder or offeror meets applicable standards adopted by the Procurement Policy Board.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: All agencies procuring goods and services pursuant to chapter 103D, Hawaii Revised Statutes.

EFFECTIVE DATE: Upon approval.

Suggested HAR changes for
Clarifying Responsibility and Past Performance by
Amending HAR §3-122

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to Chapter 3-122

Interim

Hawaii Administrative Rules

October 30, 2014

SUMMARY

1. §3-122-1 is amended.
2. §§3-122-9.03 and 3-122-52.1 are added.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 122

SOURCE SELECTION AND CONTRACT FORMATION

1. Section 3-122-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Past performance" means available recent and relevant performance by the contractor on state, federal, or private contracts to be considered as a responsibility determination within the relevance of the current solicitation."

2. Chapter 3-122, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§ 3-122-9.03 Responsibility determination. The procurement officer shall make a determination of responsibility for any awardee. In making a responsibility determination, the procurement officer shall possess or obtain available information sufficient to be satisfied that a prospective offeror meets the requirements of HRS §103D-310(b), as well as the applicable standards set forth in the solicitation and pursuant to the designated method of procurement. The procurement officer may consider available recent and relevant past performance of the contractor as it applies to a responsibility determination for the current solicitation."

3. Chapter 3-122, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§3-122-52.1 Clarification Communications during Evaluation. (a) During the initial evaluation of proposals or bids, a procurement officer may engage in limited exchanges of direct clarification communications with an offeror when the procurement officer believes there is an

apparent mistake in a proposal that would have otherwise prevented an offeror from being included on the "priority list;

(b) The communications shall be documented and be limited to written exchanges to resolve specific apparent minor or clerical errors, to provide an opportunity to clarify specific aspects of the offer for responsibility or responsiveness determinations."

DRAFT

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-122, Hawaii Administrative Rules, on the Summary Page dated October 30, 2014 were adopted at the Procurement Policy Board meeting on October 30, 2014, pursuant to interim rules authorized by §103D-202, Hawaii Revised Statutes.

The rules replace rules previously adopted and effective on 03/17/2008. The rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

DEAN H. SEKI
State Comptroller

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General

FEDERAL Past Performance Protocols

Past performance is considered when qualifying responsible offerors for federal acquisitions, and specifically for negotiated federal contracts during source selection.

- **RESPONSIBILITY OF OFFERORS** - ALL federal contracts require a determination of responsibility of offerorsⁱ with the guiding principles of delivering the **best value products, or services** to the customer on a timely basisⁱⁱ while “selecting contractors to provide products or perform services, the Government will use contractors who have a track record of **successful past performance** or who demonstrate a current superior ability to perform.”ⁱⁱⁱ

A. DEFINED: “Responsible prospective contractor” means a contractor that meets the standards in 9.104:

- (a) Have* adequate **financial resources** to perform the contract
 - (b) Be able to comply with the required or proposed **delivery or performance schedule**, taking into consideration all existing commercial and governmental business commitments;
 - (c) Have* a **satisfactory performance record** (see 9.104-3(b) and Subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history...;
 - (d) Have a **satisfactory record of integrity and business ethics**
 - (e) Have the necessary organization, experience, accounting and **operational controls, and technical skills**
 - (f) Have the necessary production, construction, and **technical equipment and facilities**
 - (g) Be **otherwise qualified** and eligible to receive an award under applicable laws and regulations
- * *or the ability to obtain*

B. DETERMINATIONS: 9.105-1 Obtaining information. (a) Before making a **determination of responsibility**, the contracting officer shall ***possess or obtain information*** sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

- Furthermore, *If \geq the simplified acquisition threshold (SAT) (\$ 150,000), the CO must consider all information in FAPISS and other past performance information*^{iv}

C. APPLICATION OF PERFORMANCE STANDARDS

9.104-3 (b) Satisfactory performance record. A prospective contractor that is or recently has been **seriously deficient** in contract performance shall be **presumed** to be **nonresponsible**, unless the contracting officer determines that the circumstances were properly beyond the contractor’s control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the

FEDERAL Past Performance Protocols

number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to [Subpart 19.7](#), The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see [9.405](#) and [9.405-2](#) regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (*e.g.*, when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

9.104-5 Certification regarding responsibility matters.

(a) When an offeror provides an affirmative response in paragraph (a)(1) of the provision at [52.209-5](#), Certification Regarding Responsibility Matters, or paragraph (h) of provision [52.212-3](#), the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see [9.405](#)); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see [9.406-3\(a\)](#) and [9.407-3\(a\)](#)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds \$3,000.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

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- **PAST PERFORMANCE INFORMATION COLLECTION** – relevant information for future source selection purposes must be collected (FAR 42.15)^v
 - Agencies assign responsibility and management accountability, as well as identify and assign past performance evaluation roles
 - **FAPIIS**
 - Includes Terminations for Cause or Default, DoD Determination of Contractor Fault and Defective Cost or Pricing Data
 - Confidential: Private Information- available to government personnel and the Contractor themselves Public information: past performance not available to public
 - **PPIRS**
 - RECENCY: 3 years from completion (6 for construction or A&E)
 - **CPARS**
 - Calculation Metric includes 6 evaluation areas that rate the contractor's performance:

(1) Quality;	(5) Utilization of Small Businesses;
(2) Schedule;	(6) Regulatory Compliance;
(3) Cost Control;	(7) Other Areas (3) may be deemed
(4) Management;	necessary by the AO ^{vi}

AGENCY DIFFERENCES: all agencies are required to meet the FAR past performance information sharing requirements and each CFO has discretion on how to implement past performance standards within their own specialty

- Establishes past performance reporting baseline, adjusting for any agency-specific thresholds or other anomalies that the standard reports do not reflect
- Set process for compliance: strategic quarterly targets for meeting the annual federal targets

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BEST PRACTICES:

- Consider strategies for prioritizing **high-risk actions**, such as:
 - **CONTRACT TYPE**- such as cost reimbursement or time-and-material contracts and orders;
 - **COMPLEXITY** - Awards that are complex in nature, such as large construction, architect-engineer, research and development, software development and implementation acquisitions, etc.;
 - **MONETARY AMOUNT** - Awards involving high dollar values or major acquisition systems, consistent with OMB Circular No. A-109, regardless of the contract type;
 - **NO EXCEPTIONS**: Actions overseas and for contingency operations, regardless of the contract type; and
 - **OTHERS**- contracts as deemed to be high risk by the agency.
- CAOs and SPEs must ensure that **relevant** performance and integrity material is reported appropriately
 - **COMMUNICATE** to the workforce about past performance importance and information
 - **STAFF ACCOUNTABILITY** to improve quality and quantity of information
 - **MOTIVATE EMPLOYEES** to use innovative practices and take action

TIMELINE: FAR subsection 9.105-2(b)(2) was changed to include a **14-calendar-day** waiting period for Government-entered items on FAPIIS to be made public. This allows the awardee the opportunity to dispute the release of information if they believe it falls under a disclosure exemption in the Freedom of Information Act. This change was effective on January 3, 2012. See [76 FR 197-202](#). Past performance reviews are not available in FAPIIS

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Table 1 – Business Sector, Dollar Threshold and Reviewing Official Business Sector	Dollar Threshold¹	Reviewing Official²
Civilian Agencies (excludes DoD):		
Systems and Non-Systems	>Simplified Acquisition Threshold	One level above the Contracting Officer, as determined by Department or Agency policy
Architect-Engineer	>\$30,000; All Terminations for Default	One level above the Contracting Officer, as determined by Department or Agency policy
Construction	>\$650,000; All Terminations for Default	One level above the Contracting Officer, as determined by Department or Agency policy
DoD Services and Agencies:		
Systems (includes new development and major modifications)	>\$5,000,000	One level above the PM3
Non-Systems		
Operations Support	>\$5,000,000 ⁴	One level above the AO
Services	>\$1,000,000	One level above the AO
Information Technology	>\$1,000,000	One level above the AO
Ship Repair and Overhaul	>\$500,000	One level above the AO
Architect-Engineer	>\$30,000; All Terminations for Default	One level above the AO
Construction	>\$650,000; All Terminations for Default	One level above the AO
1 The contract/order thresholds for CPAR collection (see FAR 42.1502) apply to the “aggregate” value of contracts/orders; that is, if a contract’s/order’s original award value were less than the applicable threshold but subsequently the contract/order was modified and the new value is greater than the threshold, then evaluations are required to be made, starting with the first anniversary that the contract’s/order’s face value exceeded the threshold. If the total contract/order value including unexercised options and orders (for IDIQ contracts, total estimated value of unexercised options and orders) is expected to exceed the collection threshold, initiate the collection process at the start of the contract/order. Buying activities may choose to collect performance evaluations for awards below these thresholds.		
2 Only required when the contractor indicates non-concurrence with the CPAR or if otherwise requested by the contractor during the 60-calendar day comment period.		
3(Or equivalent individual) responsible for program, project or task/job order execution.		
4 For contracts/orders under the reporting thresholds, buying activities should continue to accumulate contractor performance data from existing management information systems,		

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which already capture data on timeliness of delivery and quality of product or service (an example of a performance information collection systems is the Past Performance Information Retrieval System - Statistical Reporting Module).

ⁱ **1.102-2 Performance standards.**(a)(3) When selecting contractors to provide products or perform services, the Government will use contractors who have a track record of **successful past performance** or who demonstrate a current superior ability to perform.; 48 C.F.R. §9.103(b). *See also* 48 C.F.R. §9.103(a) “Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.”

ⁱⁱ **1.102 Statement of guiding principles for the Federal**

Acquisition System.

(a) The vision for the Federal Acquisition System is to deliver on a timely basis the **best value product** or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

(b) The Federal Acquisition System will—

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example—

(i) Maximizing the use of commercial products and services;

(ii) **Using contractors who have a track record of successful past performance** or who demonstrate a current superior ability to perform; and

(iii) Promoting competition;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

ⁱⁱⁱ **1.102-2 Performance standards.**(a) *Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service.* (3) When selecting contractors to provide products or perform services, the Government will use contractors who have a track record of **successful past performance** or who demonstrate a current superior ability to perform.

^{iv} **FAPIIS 9.104-6 Federal Awardee Performance and Integrity Information System.**

(a) Before awarding a contract in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information Sys-tem (FAPIIS),

(b) The contracting officer shall consider all the information in FAPIIS and other **past performance** information (see subpart [42.15](#)) when making a responsibility determination. For source selection evaluations of **past performance**, see [15.305\(a\)\(2\)](#). Contracting officers shall use sound judgment in determining the weight and relevance of the information contained in FAPIIS and how it relates to the present acquisition. Since FAPIIS may contain information on any of the offeror’s previous contracts and information covering a five-year period, some of that information may not be relevant to a determination

FEDERAL Past Performance Protocols

of present responsibility, *e.g.*, a prior administrative action such as debarment or suspension that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.

(c) If the contracting officer obtains relevant information from FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; terminations for default or cause; determinations of nonresponsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics; or comparable information relating to a grant, the contracting officer shall, unless the contractor has already been debarred or suspended

^v **42.1501** (a) **Past performance** information (*including the ratings and supporting narratives*) is **relevant** information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts or orders. It includes, for example, the contractor's record of—

- (1) Conforming to requirements and to standards of good workmanship;
- (2) Forecasting and controlling costs;
- (3) Adherence to schedules, including the administrative aspects of performance;
- (4) Reasonable and cooperative behavior and commitment to customer satisfaction;
- (5) Reporting into databases (see subpart 4.14, and reporting requirements in the solicitation provisions and clauses referenced in 9.104-7);
- (6) Integrity and business ethics; and
- (7) Business-like concern for the interest of the customer.

(b) Agencies shall monitor their compliance with the **past performance** evaluation requirements (see 42.1502), and use the Contractor Performance Assessment Reporting System (CPARS) and **Past Performance** Information Retrieval System (PPIRS) metric tools to measure the quality and timely reporting of **past performance** information.

FAPIIS 9.104-6 Federal Awardee Performance and Integrity Information System. (a) Before awarding a contract *in excess of the simplified acquisition threshold* (\$150,000), the contracting officer **shall review** FAPIIS.

(b) The contracting officer **shall consider** all the information in FAPIIS and other **past performance information** (see subpart 42.15) when making a responsibility determination.

^{vi} A quality written narrative is important, as it not only supports the rating assigned, but it also assists the source selection official in making an informed source selection and/or award decision. The narrative that supports the rating should be concise and provide sufficient supporting rationale.

FEDERAL EVALUATION CRITERIA

TABLE 42-1—EVALUATION RATING DEFINITIONS		
Rating	Definition	Note
(a) Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with few minor problems for which corrective actions taken by the contractor were highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified
(b) Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with some minor problems for which corrective actions taken by the contractor were effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There should have been no significant weaknesses identified.
(c) Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order. There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be evaluated with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.
(d) Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being evaluated reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating should be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).
(e) Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the evaluation status.

NOTE 2: N/A (not applicable) should be used if the ratings are not going to be applied to a particular area for evaluation.

OTHER NOTE: **TABLE 42-2—EVALUATION RATINGS DEFINITIONS (FOR THE SMALL BUSINESS SUBCONTRACTING EVALUATION FACTOR, WHEN 52.219-9 IS USED).**

FEDERAL EVALUATION CRITERIA

COMPLIANCE METRICS

Two Past Performance systems are used to calculate an agency's Compliance Metrics: **CPARS** and **PPIRS**

What happens in **CPARS (Contractor Performance Assessment Reporting System)**:

- CPARS receives the eligible contract actions from FPDS that fall above the reporting thresholds (\$150k base + option for most) and makes them available for registration (based on Contracting Office IDs) in Auto-Register.
- A Focal Point (FP) registers the action in CPARS and assigns it to an Assessing Official, who logs in and completes the evaluation. Once the evaluation is completed, this count becomes the **numerator** of the metrics calculation.

What happens in **PPIRS (Past Performance Information Retrieval System)**:

- PPIRS receives the list of available actions from CPARS and determines which ones should have a completed evaluation by an Assessing Official. ○ PPIRS removes any actions that are 'too young' to have an evaluation and the remaining pool of actions (ones that should have been reported on) becomes the **denominator** in the equation.

- Compliance Metrics calculation:
$$\frac{\text{\# of completed evaluations (CPARS)}}{\text{\# of actions eligible to be reported on (PPIRS)}} = \text{Agency Compliance \%}$$

Bottomline: the compliance metric calculates the number of complete devaluations against the contract actions that should have had an evaluation completed. This number is displayed as a percentage.

Timeframe: The entire CPARS evaluation process must be completed within 120 days following the end of the period of performance.

This timeframe includes the CR's 60 day comment period.

A CPAR includes six evaluation areas to rate the contractor's performance

1. Quality,
 2. Schedule,
 3. Cost Control,
 4. Management,
 5. Utilization of Small Business, and
 6. Regulatory Compliance.
7. Other Areas (≤ 3) *may be assessed as deemed necessary by the AO*¹

¹ A quality written narrative is important, as it not only supports the rating assigned, but it also assists the source selection official in making an informed source selection and/or award decision. The narrative that supports the rating should be concise and provide sufficient supporting rationale that addresses questions about the performance that may be asked by a source selection team.

FEDERAL EVALUATION CRITERIA

Each CPAR evaluation must be based on **objective data** (or measurable, subjective data when objective data are not available) supportable by program and contract/order management records. The following sources of data should be considered:

- Contractor operations reviews
- Status and progress reviews
- Production and management reviews
- Management and engineering process reviews (e.g. risk management, requirements management, etc.)
- Cost performance reports and other cost and schedule metrics (e.g. Earned Value Management System (EVMS))
- Other program measures and metrics such as:
 - Measures of progress and status of critical resources
 - Measures of product size and stability
 - Measures of product quality and process performance
- Customer feedback/comments and satisfaction ratings
- Systems engineering and other technical progress reviews
- Technical interchange meetings
- Physical and functional configuration audits
- Quality reviews and quality assurance evaluations
- Functional performance evaluations
- Business System Reviews such as Contractor Purchasing System Reviews or Property Management System Analyses
- Earned contract/order incentives and award fee determinations
- Subcontract Reports
- Quality Control Program documentation
- Schedules and milestones
- Deficiency reports
- Safety standard compliance
- Labor standard compliance

Subjective evaluations concerning the cause or ramifications of the contractor's performance may be provided; however, speculation or conjecture should not be included.

Comparative Analysis of Selected State Procurement Laws, Rules, and Regulations as Related to Considering Past Performance of Vendors as a Factor in Awarding Public Low Bid Contracts

July 28, 2014

Foreword

This analysis was authored by Kenyon Tam at the request of the State Procurement Office (“SPO”) as part of a larger initiative studying the feasibility of considering past performance in awarding public contracts. Tam is a summer intern at the SPO, through the State of Hawaii’s Transformation Internship Program, and a graduate student in the Public Administration program at the University of Hawaii at Manoa. Sarah Allen, SPO Administrator, and Robyn Pfahl, project lead for the overall study initiative, provided guidance and feedback on this analysis.

Introduction

During the 2014 Legislative Session, the Hawaii State House of Representatives adopted House Concurrent Resolution 176 (“HCR 176”) requesting the SPO to “conduct a study on the feasibility, necessary processes, and costs relative to requiring the consideration of past performance as a factor in awarding public contracts, including low bid contracts.” As part of this study, HCR 176 suggests analyzing other states that do require consideration of past performance of vendors in competitive bidding processes. This report attempts to fulfill that portion of the legislative request.

Allen and Pfahl identified four states to include in this analysis: Alaska, Oregon, Texas, and Virginia. Anecdotal evidence suggests that Oregon, Texas, and Virginia have effective procurement policies, whereas Alaska is the only other remote state besides Hawaii. Additionally, Allen emphasized paying closer attention to procurement policies relevant to construction contracts since they tend to constitute the majority of large public contracts being awarded through the competitive sealed bidding process.

Further, the design of the side-by-side state comparison incorporated within this report, attached as Exhibit A, uses the American Bar Association’s (“ABA”) 2000 Model Procurement Code (“Model Code”) as guidance. Since 1979, many states, including Hawaii, have adopted and adapted provisions within the ABA’s Model Procurement Code. While the Model Code is not descriptive about the inclusion of past performance as an evaluation factor, it comments that a determination of nonresponsibility—that is the finding that a prospective contractor does not have the capability, integrity, or reliability to perform the contract requirements—may depend on the “bidder’s or offeror’s past record of contract performance in the public and private sectors.”¹ Therefore, the state comparison is designed to analyze policies surrounding responsibility and responsibility determinations

¹ American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, Section of Public Contract Law, 2000, p. 31.

prior to the awarding of a contract as well as the evaluation and award phases of the competitive bidding process.

Specifically, the comparison reviewed state laws, rules, regulations, policies, and procedures in the following categories:

- Definitions of “responsible bidder,” “responsible offeror,” or “responsible;”
- Provisions related to responsibility determinations;
- Provisions related to competitive bidding evaluation and award; and
- Other mentions of “past performance” or “record of performance.”

This report first provides an overview of Hawaii’s procurement laws and rules as they relate to past performance then compares, analyzes, and comments on the other selected states with the intent of providing examples of the potential ways to evaluate past performance. This is in no way a comprehensive study of the procurement policies and their effectiveness in the selected states. However, this report still provides a preliminary recommendation as to how Hawaii might consider implementing past performance evaluations.

Hawaii

Hawaii’s statute allows past performance to be included as an evaluation factor in certain source selection methods, such as the competitive sealed proposal method (also known as the request for proposals process). However, statute is not clear whether past performance may be considered in the competitive sealed bidding method, also known as the invitation for bids (“IFB”) process. The definition of “responsible bidder or offeror” in Hawaii statute is identical to the definition in the ABA’s Model Code, which does not explicitly include past performance as part of being responsible. As mentioned earlier, the Model Code implies that the issue of considering past performance can be addressed through the determination of nonresponsibility, in which Model Code §3-401(1) states, “A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.”²

The responsibility determination provision in Hawaii’s statute³ is similar to the Model Code’s but includes more prescriptive language on which factors should be considered in determining responsibility, which includes only “financial ability, resources, skills, capability, and business integrity.” Still, there seems to be some policy discretion left to administrative rules in developing a questionnaire to gather necessary information to make responsibility determinations. While the administrative rules⁴ require such a questionnaire to request “references for the determination of a satisfactory performance record,” they are not entirely clear on how these past performance references are integrated into the

² American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, Section of Public Contract Law, 2000, p. 31.

³ See Exhibit A, pages 3-4.

⁴ See Exhibit A, pages 4-7.

responsibility determination. Practically, the questionnaire, attached as Exhibit B, asks for references; but it is not explicitly represented as a reference check, and procuring agencies are not necessarily required to follow up and verify with references. Additionally, it is unclear as to when during the procurement process this questionnaire would be used. There are no clear delineations for the timeline for competitive sealed bidding or competitive proposals.

It does not appear past performance is allowed to be an evaluation criterion in determining the “lowest responsive, responsible bidder” in the solicitation of bids, as Hawaii’s statutes and rules state that such criteria must be “objectively measurable.”⁵ Arguably, measuring past performance will always include some level of subjectivity; therefore, under current regulations, it cannot be used as a solicitation criterion under the IFB process.

Alaska

While Alaska’s statute does not explicitly allow past performance to be considered in the responsibility determination (as its statute concerning responsibility determinations is nearly identical to the Model Code), Alaska’s administrative rules allow government agencies to use a “record of performance” in determining if a bidder is responsible.⁶ Interestingly, Alaska’s laws and rules are absent of a definition for “responsible,”⁷ but contracts are nonetheless awarded to the “lowest responsive and responsible bidder” through the competitive bidding method.⁸

Even though Alaska’s policies allow for considering past performance in determining responsibility, there is no evidence of practical application. There does not appear to be any standardized forms in which agencies could use to implement these policies other than a simple questionnaire, attached as Exhibit C, which probably works similarly to Hawaii’s questionnaire. Like Hawaii’s, this questionnaire is not explicitly a reference check nor does it appear to intend to function as such.

Oregon

Oregon’s statute and administrative rules are very clear that a “satisfactory record of performance”—which is described in law—is considered in the responsibility determination as part of the “standards of responsibility” set forth in statute.⁹ Oregon’s statute also references the inclusion of the standards of responsibility in its definitions of “lowest responsive bidder,” “responsible bidder,” and “responsible.”¹⁰ By awarding contracts to the lowest responsive bidders¹¹, Oregon’s law effectively includes past performance as a consideration in the competitive bidding source selection method.

⁵ See Exhibit A, pages 14-19.

⁶ See Exhibit A, pages 3-6.

⁷ See Exhibit A, page 1.

⁸ See Exhibit A, pages 14-18.

⁹ See Exhibit A, pages 3-14.

¹⁰ See Exhibit A, pages 1-2.

¹¹ See Exhibit A, pages 14-18.

While Oregon's statutes and rules undoubtedly allow for past performance evaluations through responsibility determinations, it is not entirely clear how this is implemented. For construction procurements, prequalification of bidders seems to be required, and the prequalification application, attached as Exhibit D, suggests that a reference check¹² is the only possible way of considering past performance through this method, although the application is not explicitly a reference check. However, there is also a contractor evaluation form, attached as Exhibit E, which evaluates the contractor's performance annually or 60 days after the close out of the contract from the project manager's (who presumably is a government employee) perspective. It is unclear what is done with completed and filed evaluation forms.

It is reasonable to assume completed contractor evaluation forms are entered into some kind of database, possibly for the use by various state agencies, but at the least it is clear the Department of Transportation, the department responsible for construction contracts, uses findings of unsatisfactory performance to suspend contractors from prequalification.¹³ The evaluation form scores five categories: management, safety, administration, regulations, and workforce and small business equity. Based on scores, each category is assigned a performance level, and the occurrences of lower performance levels determine further actions. The contractor has an opportunity to meet with the project manager after receiving the initial evaluation and may appeal the final evaluation. The contractor also has the opportunity to evaluate the agency's process by completing a construction process feedback form, attached as Exhibit F. Again, it is not clear what is done with either of these evaluation forms, but it appears to create a quantifiable record of contractor past performance as well as to hold government agencies responsible for following processes.

Texas

Of the other state laws reviewed in this analysis, Texas has the most unique approach to considering past performance in awarding contracts through the competitive bid source selection method. There are no provisions relating to responsibility determinations, and instead of awarding bids to the lowest responsible and responsive bidder, Texas law requires that the contract be awarded to the "bidder offering the best value for the state."¹⁴ Statute describes factors which agencies must consider in determining the bidder offering the best value, including the "quality of performance of previous contracts or services."¹⁵

In addition, Texas statute requires a "vendor performance tracking system"—where mandatory performance reviews of contractors are stored—and uniform forms for reporting contractor performance.¹⁶ This vendor performance tracking system includes a database and evaluation forms that

¹² See Exhibit D, page 10.

¹³ See Exhibit E, page 9.

¹⁴ See Exhibit A, pages 1-3, 16.

¹⁵ See Exhibit A, pages 17-18.

¹⁶ See Exhibit A, pages 22-24.

are accessible to government agencies by logging into an online portal.¹⁷ All purchasing agencies are required to submit a vendor performance report on any purchase over \$25,000 via the online portal. The report scores four categories: commodity delivery, service delivery, commodity performance, and service performance. After the report is submitted, the vendor has 14 calendar days to respond if there are any unsatisfactory scores. The vendor performance reports appear to be compiled for the use by other government agencies, presumably for determining best value in awarding contracts.

Virginia

Like Hawaii, Alaska, Oregon, and the Model Code, Virginia's law includes provisions relating to responsibility determinations of bidders. However, Virginia law only allows a bidder to contest a determination of nonresponsibility under a section of law that is separate and different from the process for protesting the award or proposed award of a contract. Further, Virginia's law is silent about the factors to be considered in the responsibility determination, but Virginia's procurement manual includes "satisfactory record of performance" as a factor to consider in determining responsibility.¹⁸ It appears that determining a "satisfactory record of performance" is left to the discretion of each purchasing agency, as the procurement manual does not explain further and provides agencies with a phone number to call for assistance in determining responsibility. The "lowest responsive and responsible bidder" is awarded the contract under the IFB process.¹⁹

In practice, it appears the primary method of considering past performance in the responsibility determination is through reference checks. Virginia's Vendor Data Sheet, attached as Exhibit G, may be used by agencies in the solicitation for bids and requires vendors to submit at least four references to be followed up on. In addition, there is also a Procurement Complaint Form, attached as Exhibit H, which agencies can seemingly use to establish a record of unsatisfactory performance of a vendor. However, it is unclear if there is a central database to file these complaint forms and how agencies use them, if at all, in considering past performance in responsibility determinations. Other than this complaint form, there does not appear to be any other form or evaluation completed upon close out of a contract.

Summary

It is important to note that this analysis is not comprehensive in nature. To truly understand how each of the selected states address the past performance issue, further analysis and study is needed by contacting the appropriate government officials in each state to get a better idea of how each system works as well as to gain their professional perspective on the success their respective states have in dealing with this issue. Further, this report analyzes only four states, as permitted by time constraints. It is highly likely even more examples than are reported here could be found across the country in the other states.

¹⁷ Information about Texas's Vendor Performance Tracking System is available to the public online at http://www.window.state.tx.us/procurement/prog/vendor_performance/. However, evaluation forms are only accessible through an online login.

¹⁸ See Exhibit A, pages 3-10.

¹⁹ See Exhibit A, pages 14-17.

With that said, this report still provides useful findings. All states selected for this analysis at least attempt to address the issue of considering past performance through policy. Alaska, Oregon, and Virginia do this through responsibility determinations while Texas does this through considering and awarding contracts to the best value rather than the lowest responsible bidder. Implementation of policies varies greatly and ranges from reference checks to close out evaluation forms with performance metrics to online databases. Ultimately, there are several examples, from both the policy and practical perspectives, of how to consider past performance of vendors as a factor in awarding public low bid contracts that Hawaii's policymakers and procurement officials may want to contemplate.

Recommendation

Not only is it possible to consider past performance of vendors in awarding low bid contracts, but it is in the best interest of the State, counties, and taxpayers. Considering past performance ensures the public is getting the best value for their tax dollars rather than just the apparent cheapest deal and maximizes government economy. As is the case with all public policy, though, establishing a legitimate and acceptable policy on past performance requires public participation from all stakeholders—vendors and contractors, government procurement specialists, and taxpayers, to name a few.

Further, the implementation of such policies must always keep the public's best interest in mind through the creation of fair, open, and transparent processes. Any effective policy that requires the consideration of past performance will need a methodology and tools for evaluating contractor performance, and implementation should utilize technology (such as an online database) and standardization (such as standard forms) to increase efficiency, effectiveness, and fairness. Transparency and accessibility can be increased by making contractor performance results available online for public viewing. Contractor performance evaluations and decisions should be legitimized by allowing contractors to be heard and respond to evaluations. Not only should contractors be held accountable for unsatisfactory performance, but procuring agencies should be held responsible for unsatisfactory contract administration (and both should be subject to corrective actions), which may require agency evaluations. Still, the IFB process should remain timelier and less complex than the RFP process to allow government to operate efficiently, and it may not be necessary to consider past performance for every IFB solicitation, such as those for contracts under a certain dollar threshold, for example.

Conclusion

In conclusion, the states examined in this report provide useful examples of how to consider past performance of contractors as a factor in awarding public low bid contracts. It is in the best interest of Hawaii's State and county governments as well as its taxpayers to consider past performance prior to awarding contracts to get the best value and to "promote economy, efficiency, effectiveness, and impartiality in procurement."²⁰

²⁰ State Procurement Office, mission statement, <http://spo.hawaii.gov/about-spo/>.

Exhibits Index

Note for electronic viewing: Index is hyperlinked. Click exhibit number to skip to beginning of corresponding exhibit. Also, depending on .pdf viewer, bookmarks for main sections are available for quick navigating.

<u>Exhibit A</u>	Side-by-side Comparison of Procurement Laws, Rules, and Regulations of Selected States as Related to Past Performance
<u>Exhibit B</u>	Hawaii Sample Standard Qualification Questionnaire for Offerors
<u>Exhibit C</u>	Alaska Contractor Questionnaire
<u>Exhibit D</u>	Oregon Prime Contractor Prequalification Application
<u>Exhibit E</u>	Oregon Construction Project Evaluation: Prime Contractor Performance Evaluation Documentation
<u>Exhibit F</u>	Oregon Contractor's Construction Process Feedback Form
<u>Exhibit G</u>	Virginia Vendor Data Sheet
<u>Exhibit H</u>	Virginia Procurement Complaint Form

EXHIBIT A

Side-by-side Comparison of Procurement Laws, Rules, and Regulations of Selected States as Related to Past Performance

	Hawaii	Alaska	Oregon	Texas	Virginia
Laws, rules, and regulations	Hawaii Revised Statutes ("HRS") Chapter 103D Hawaii Administrative Rules ("HAR") Chapter 3-122	Alaska Statutes ("AS") Title 36, Chapter 30 Alaska Administrative Code ("AAC") Title 2, Chapter 12 Procurement Policies and Procedures Manual or Alaska Administrative Manual ("AAM") <u>Note</u> <i>The AAM has not been updated since 1999.</i>	Public Contracting Code: Oregon Revised Statutes ("ORS") Chapters 279A (general provisions), 279B (public procurements), and 279C (public improvements and related contracts) Oregon's Administrative Rules ("OAR") Division 46 (general provisions for public contracting), Division 47 (public procurements for goods and services), Division 48 (consultant selection), and Division 49 (general provisions for public contracts for construction services)	Texas Government Code ("TGC") Chapter 2155 (Purchasing: General Rules and Procedures), Chapter 2156 (Purchasing Methods), Chapter 2261 (State Contracting Standards and Oversight), and Chapter 2262 (Statewide Contract Management) Texas Administrative Code ("TAC"), Title 34, Part 1, Chapter 20 Texas Procurement Manual ("TPM")	Code of Virginia Title 2.2, Chapter 43, or the Virginia Public Procurement Act ("VPPA") Agency Procurement and Surplus Property Manual ("APSPM"), as authorized by Virginia Administrative Code Title I, Agency 30, Chapter 130 Construction and Professional Services Manual ("CPSM")
Definitions of "responsible bidder," "responsible offeror," or "responsible"	HRS 103D-104 "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and	<u>Note</u> <i>No apparent definition of "responsible bidder" or "responsible" in AS or AAC.</i>	ORS 279A.010(1)(r) "Lowest responsible bidder" means the lowest bidder who: (A) Has substantially complied with all prescribed public contracting procedures and requirements; (B) Has met the standards of responsibility set forth in ORS	<u>Note</u> <i>No apparent definition of "responsible bidder" or "responsible" in TGC.</i> TAC 20.32(55) Responsible vendor--A vendor who has the capability to	VPPA 2.2-4301 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the

	Hawaii	Alaska	Oregon	Texas	Virginia
Definitions of “responsible bidder,” “responsible offeror,” or “responsible” (cont.)	the integrity and reliability which will assure good faith performance.		<p>279B.110 or 279C.375; (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and (D) If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.</p> <p><u>ORS 279B.005(1)(d)</u> “Responsible bidder” or “responsible proposer” means a person who meets the standards of responsibility described in ORS 279B.110.</p> <p><u>OAR 137-046-0110(30)</u> “Responsible” means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.</p> <p><u>OAR 137-046-0110(31)</u> “Responsible Offeror” means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-</p>	perform all contract requirements in full compliance with applicable state law, ethical standards, and applicable Commission rules.	moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

	Hawaii	Alaska	Oregon	Texas	Virginia
<p>Provisions relating to responsibility determinations</p> <p>Provisions relating to responsibility determinations</p>	<p><u>HRS 103D-310(b)</u> Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer's discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board.</p> <p>Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work,</p>	<p><u>AS 36.30.360(a)</u> A written determination of nonresponsibility of a bidder or offeror shall be made by the procurement officer in accordance with regulations adopted by the commissioner. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination of nonresponsibility with respect to the bidder or offeror.</p> <p><u>2 AAC 12.500</u> (a) Factors that may be considered in determining whether a prospective contractor is responsible include whether the</p>	<p><u>ORS 279B.110</u> (1) A contracting agency shall prepare a written determination of nonresponsibility for a bidder or proposer if the contracting agency determines that the bidder or proposer does not meet the standards of responsibility. (2) In determining whether a bidder or proposer has met the standards of responsibility, the contracting agency shall consider whether a bidder or proposer: (a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities. (b) Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this paragraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting</p>	<p><u>Note</u> <i>No provisions relating to responsibility determinations in TGC or TAC.</i></p>	<p><u>VPPA 2.2-4359</u> A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the process for competitive sealed bidding set forth in § 2.2-4302.1. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the process for competitive sealed bidding set forth in § 2.2-4302.1. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows: 1. Prior to the</p>

Provisions relating to responsibility determinations (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
	<p>a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the offeror applies for administrative review pursuant to section 103D-709.</p> <p><u>HAR 3-122-108</u> (a) Pursuant to section 103D-310, HRS, a determination of</p>	<p>prospective contractor (1) has a satisfactory record of performance; (2) is qualified legally to contract with the state; and (3) has supplied all necessary information in connection with the inquiry concerning responsibility. (b) The procurement officer may require the prospective contractor to demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel, by submitting (1) evidence that the contractor possesses the necessary items; (2) acceptable plans to subcontract for the necessary items; (3) a documented</p>	<p>agency shall document the bidder's or proposer's record of performance if the contracting agency finds under this paragraph that the bidder or proposer is not responsible. (c) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's or proposer's record of integrity may consider, among other things, whether the bidder or proposer has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's or proposer's performance of a contract or subcontract. The contracting agency shall document the bidder's or proposer's record of integrity if the contracting agency finds under this paragraph that the bidder or proposer is not responsible. (d) Is legally qualified to contract with the contracting agency. (e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder's or proposer's responsibility based on available information or may find that the bidder or proposer is not responsible.</p>		<p>issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice. 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public</p>

Provisions relating to responsibility determinations (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
	<p>responsibility or nonresponsibility of an offeror or prospective offeror to perform the work called for in the solicitation shall be made by the procurement officer on the basis of available information.</p> <p>(b) If the procurement officer requires additional information, the offeror or prospective offeror may be required to answer questions contained in the sample questionnaire provided by the policy board.</p> <p>(c) The requested information shall be furnished upon request within two working days or longer at the discretion of the procurement officer. Failure to furnish the requested</p>	<p>commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items; or</p> <p>(4) other information required by the procurement officer.</p> <p>(c) The state's determination of responsibility does not relieve the contractor from the requirements for performance under the contract.</p> <p>(d) If a prospective contractor supplies information in response to a request for information made by a procurement officer under (b) of this section, information supplied in response to the request is confidential and may not be disclosed unless the prospective</p>	<p>(f) Was not debarred by the contracting agency under ORS 279B.130.</p> <p>(3) A contracting agency may refuse to disclose outside of the contracting agency confidential information furnished by a bidder or proposer under this section when the bidder or proposer has clearly identified in writing the information the bidder or proposer seeks to have treated as confidential and the contracting agency has authority under ORS 192.410 to 192.505 to withhold the identified information from disclosure.</p> <p><u>ORS 279C.375(3)</u> In determining the lowest responsible bidder, a contracting agency shall do all of the following:</p> <p>(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.</p> <p>(b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the contracting agency that the bidder:</p> <p>(A) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual</p>		<p>body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.</p> <p>3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.</p> <p>The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.</p>

Provisions relating to responsibility determinations (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
	<p>information within the time allowed may be grounds for a determination of nonresponsibility.</p> <p>(d) Upon determination of nonresponsibility, the offeror or prospective offeror shall be notified in writing. The decision shall be final unless the offeror or prospective offeror applies for administrative hearing pursuant to section 3-126-42.</p> <p><u>HAR 3-122-109</u> The questionnaire shall request information for the following categories:</p> <p>(1) Financial ability to deliver the goods or perform the work required;</p> <p>(2) Material, equipment, facility, and personnel resources and expertise available,</p>	<p>contractor gives prior written consent to its disclosure.</p>	<p>responsibilities.</p> <p>(B) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.</p> <p>(C) Is covered by liability insurance and other insurance in amounts the contracting agency requires in the solicitation documents.</p> <p>(D) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.</p> <p>(E) Has made the disclosure required under ORS 279C.370.</p> <p>(F) Completed previous contracts of a similar nature with a satisfactory record of performance.</p> <p>For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's control, the bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency shall document the bidder's record of performance if the contracting agency finds under this subparagraph that the bidder is not responsible.</p> <p>(G) Has a satisfactory record of</p>		<p>B. If, upon appeal pursuant to § 2.2-4364 or 2.2-4365, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed in award as provided in subsection A of § 2.2-4364 or both.</p> <p>If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of</p>

Provisions relating to responsibility determinations (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
	<p>or the ability to obtain them, in order to meet contractual requirements;</p> <p>(3) References for the determination of a satisfactory record of performance;</p> <p>(4) References for the determination of a satisfactory record of integrity;</p> <p>(5) Legal qualifications to contract with the State; and</p> <p>(6) Additional information necessary for a determination of responsibility.</p>		<p>integrity. The contracting agency in evaluating the bidder's record of integrity may consider, among other things, whether the bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's performance of a contract or subcontract. The contracting agency shall document the bidder's record of integrity if the contracting agency finds under this subparagraph that the bidder is not responsible.</p> <p>(H) Is legally qualified to contract with the contracting agency.</p> <p>(I) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder's responsibility based on available information, or may find that the bidder is not responsible.</p> <p>(c) Document the contracting agency's compliance with the requirements of paragraphs (a) and (b) of this subsection in substantially the following form: [<i>form in statute</i>]</p> <p>(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the</p>		<p>Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 2.2-4360.</p> <p>C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 2.2-4360.</p> <p>D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.</p>

Provisions relating to responsibility determinations (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
			<p>Construction Contractors Board within 30 days after the date the contracting agency awards the contract.</p> <p><u>OAR 137-047-0500</u> Before Awarding a Contract the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and OAR 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.</p> <p><u>OAR 137-047-0640(1)(c)(F)</u> The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror... Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible</p>		<p><u>VPPA 2.2-4364.A.</u> A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the</p>

Provisions relating to responsibility determinations (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
			<p>Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:</p> <p>(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;</p> <p>(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and</p>		<p>criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.</p> <p><u>APSPM 3.20</u> In determining a responsible bidder or offeror, a number of factors, including but not limited to the following, are considered. The vendor should:</p> <p>a. be a regular dealer, supplier, or when required in the solicitation an</p>

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to responsibility determinations (cont.)			<p>public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);</p> <p>(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency</p>		<p>authorized dealer of the goods or services offered;</p> <p>b. have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;</p> <p>c. have a satisfactory record of performance;</p> <p>d. have a satisfactory record of integrity; and</p> <p>e. have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract (see Vendors Manual, 3.7).</p> <p>Assistance in making this determination (preaward surveys, etc.) is available from DGS/DPS Contract Compliance Section at 804-225-4045.</p>

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to responsibility determinations (cont.)			<p>shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to 279B.110(2)(c);</p> <p>(iv) Is legally qualified to contract with the Contracting Agency; and</p> <p>(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.</p> <p><u>OAR 137-049-0390(2)</u> Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:</p> <p>(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the</p>		

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to responsibility determinations (cont.)			<p>resources and expertise, necessary to meet all contractual responsibilities;</p> <p>(b) Has completed previous contracts of a similar nature with a satisfactory record of performance.</p> <p>A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;</p> <p>(c) Has a satisfactory record of</p>		

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to responsibility determinations (cont.)			<p>integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;</p> <p>(d) Is legally qualified to contract with the Contracting Agency; and</p> <p>(e) Has supplied all necessary information in connection with the</p>		

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to responsibility determinations (cont.)			inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.		
Provisions relating to competitive bidding evaluation and award	<p><u>HRS 103D-302(f)</u> Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or</p>	<p><u>AS 36.30.150(a)</u> Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable. No evaluation criteria to be used. No criteria may be used in a bid evaluation that are not set forth in</p>	<p><u>ORS 279B-055(6)(a)</u> The contracting agency shall evaluate all bids that are received before the time and date indicated for bid opening in the invitation to bid. The contracting agency shall evaluate the bids based on the requirements set forth in the invitation to bid. The requirements may include, in addition to the information described in subsection (2) of this section, criteria to determine minimum acceptability, such as inspection, testing, quality and suitability for intended use or purpose. Criteria that will affect the bid price and will be considered in evaluation for award including, but not limited to, discounts, transportation costs and total costs of ownership or operation of a product over the life of the product must be objectively measurable. The invitation to bid must set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that are not set forth in</p>	<p><u>TGC 2156.007</u> BEST VALUE STANDARD FOR PURCHASE OF GOODS OR SERVICES. (a) For a purchase of goods and services under this chapter, each state agency, including the commission, shall purchase goods and services that provide the best value for the state. (b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the commission or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including: (1) installation costs; (2) life cycle costs; (3) the quality and reliability of the goods and</p>	<p><u>VPPA 2.2-4302.1</u> The process for competitive sealed bidding shall include the following... 4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and 5. Award to the lowest responsive and responsible bidder.</p>

Provisions relating to competitive bidding evaluation and award (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
	<p>life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.</p> <p><u>HRS 103D-302(h)</u> The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids exceed available funds as certified by the appropriate fiscal officer, the head of the purchasing agency responsible for the procurement in question is authorized in situations where</p>	<p>measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.</p> <p><u>AS 36.30.170</u> After applying any preferences that apply under AS 36.15.050 and AS 36.30.321 - 36.30.338, a procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in</p>	<p>the invitation to bid or in a qualified products list maintained under ORS 279B.115. The contracting agency may not consider for award bids received after the time and date indicated for bid opening in the invitation to bid. The contracting agency may retain bids or copies of bids received after the bid time and date indicated in the invitation to bid.</p> <p><u>ORS 279B-055(10)</u> If a contracting agency awards a contract, the contracting agency shall award the contract:</p> <p>(a) To the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; or</p> <p>(b) If the invitation to bid specifies or authorizes the award of multiple contracts, to the responsible bidders:</p> <p>(A) Whose bids substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; and</p> <p>(B) Who qualify for the award of a public contract under the terms of the invitation to bid.</p>	<p>services;</p> <p>(4) the delivery terms;</p> <p>(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;</p> <p>(6) the cost of any employee training associated with a purchase;</p> <p>(7) the effect of a purchase on agency productivity;</p> <p>(8) the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; and</p> <p>(9) other factors relevant to determining the best value for the state in the context of a particular purchase.</p> <p>(c) A state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications when the</p>	<p>When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.</p> <p><u>APSPM 6.3</u> a. Receipt. Bids shall be received until the date and time specified in the IFB. Bids are then publicly opened and read aloud. Late bids shall not be considered. Bid receipt deadlines and public openings scheduled during a period of suspended state business operations will be deemed rescheduled for processing at the appropriate times on the next regular business day. The public opening of bids for construction type contracts shall be held 24 hours after the date and time set for submission of bids, Code of Virginia, § 2.2-4330A(ii). (See 3.1e</p>

Provisions relating to competitive bidding evaluation and award (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
time or economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsive bidder, in order to bring the bid within the amount of available funds.	the invitation to bid. <u>2 AAC 12.180</u> (a) Award of a bid may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the bidder. A bid shall be evaluated to determine whether the bidder responds to the provisions, such as goals or financial incentives, established in the invitation to bid in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability. (b) An evaluation	After a contracting agency has opened bids and determined that the contracting agency will award a public improvement contract, the contracting agency shall award the contract to the lowest responsible bidder. <u>OAR 137-047-0600(1)</u> Contracting Agency Evaluation. The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.	agency procures through competitive bidding goods or services with a value that exceeds \$100,000. <u>TGC 2155.074</u> CONTRACT AWARD. (a) The commission or other state agency making a purchase shall award a contract to the bidder offering the best value for the state while conforming to the specifications required. (b) In determining the bidder offering the best value , the commission or other state agency may consider the safety record of the bidder, the entity represented by the bidder, and any person acting for the represented entity only if: (1) the commission or other state agency has adopted a written definition and criteria for accurately determining the safety record of a bidder; and (2) the commission or state agency provided notice in the bid specifications to prospective bidders that a bidder's safety record may be considered in determining the bidder offering the best value for the state. (c) A determination of a	for further guidance on the receipt and opening of sealed bids.) b. Opening. After bid opening, each bid is evaluated to determine if it is responsive to the IFB. The responsive bids are then evaluated according to the criteria and/or evaluation procedure described in the IFB to determine which is the lowest bid (see 3.1e). c. Evaluation. The lowest responsive bidder is then evaluated to determine if the firm is responsible (see 3.20). d. Award. The contract is awarded to the lowest responsive and responsible bidder (see 3.20 and 3.21). If the provision for award to other than the lowest priced bidder was made by including the appropriate clause in Appendix B., Section	
	<u>HAR 3-122-33</u> (a) The award shall be made to the lowest responsive, responsible bidder and shall be based on the criteria set forth in the invitation for bids. (b) Only objectively measurable criteria which are set forth in the invitation for bids shall be applied and may include but not be limited to: (1) Discounts;				

Provisions relating to competitive bidding evaluation and award (cont.)	Hawaii	Alaska	Oregon	Texas	Virginia
Transportation costs; and (3) Total or life cycle costs. (c) Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall: (1) Be reasonable estimates based upon information the government jurisdiction has available concerning future use; and (2) Treat all bids equitably. (d) The invitation for bids shall set forth any evaluation criterion to be used in determining product acceptability: (1) The solicitation may require the submission of samples, descriptive literature, technical data, or other	(2) Transportation costs; and (3) Total or life cycle costs. (c) Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall: (1) Be reasonable estimates based upon information the government jurisdiction has available concerning future use; and (2) Treat all bids equitably. (d) The invitation for bids shall set forth any evaluation criterion to be used in determining product acceptability: (1) The solicitation may require the submission of samples, descriptive literature, technical data, or other	of product acceptability shall be conducted to determine whether a bidder's offering is acceptable as set out in the invitation to bid. A bid that does not meet the acceptability requirements shall be rejected as nonresponsive. (c) Bids may be evaluated to determine which bid offers the lowest cost to the state in accordance with the evaluation criteria set out in the invitation to bid. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors must (1) be reasonable estimates based upon information the state has available concerning future use; and (2) treat all bids equitably.	General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (ORS 279C.375(3)(a)) or is ineligible for Award as a nonresident education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple contract awards when specified in the ITB. OAR 137-049-0390(6) Evaluation of Bids. The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid. (a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid	bidder's safety record may not be arbitrary and capricious. (d) In determining the bidder offering the best value, in addition to price the commission or other state agency shall consider: (1) the quality and availability of the goods or contractual services and their adaptability to the use required; (2) the scope of conditions attached to the bid; (3) the bidder's ability, capacity, and skill to perform the contract or provide the service required; (4) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference; (5) the bidder's character, responsibility, integrity, and experience or demonstrated capability; (6) the quality of performance of previous contracts or services; (7) the bidder's previous and existing compliance with laws relating to the contract or service; (8) the bidder's previous or existing noncompliance	II, 7. J. in the solicitation, the award may be made to a reasonably priced DMBE-certified small business bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). If the award is made to other than the lowest priced bidder, the award shall be made to the lowest responsive and responsible DMBE-certified small business bidder. No bidder or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids.

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to competitive bidding evaluation and award (cont.)	<p>material to verify product acceptability;</p> <p>(2) The solicitation may also provide for accomplishing any of the following prior to award:</p> <p>(A) Inspection or testing of a product for characteristics as quality or workmanship;</p> <p>(B) Examination of elements as appearance, finish, taste, or feel; or</p> <p>(C) Other examinations to determine whether the product conforms to any other purchase description requirements;</p> <p>(3) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a</p>	<p>(d) Nothing in this section permits contract award to a bidder submitting a higher quality item than that designated in the invitation for bids if the bidder is not also the lowest bidder as determined under (c) of this section.</p> <p>This section does not permit negotiations with a bidder.</p>	<p>of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.</p> <p>(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.</p> <p>(c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.</p>	<p>with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates;</p> <p>(9) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service; and</p> <p>(10) the bidder's ability to provide future maintenance, repair parts, and service for the use of the contract's subject.</p> <p><u>TGC 2155.075(a)</u> For a purchase made through competitive bidding, the commission or other state agency making the purchase must specify in the request for bids the factors other than price that the commission or agency will consider in determining which bid offers the best value for the state.</p> <p><u>TGC 2261.052(a)</u> In determining the lowest and best bid or proposal, a state agency shall consider:</p> <p>(1) the vendor's price to provide the good or service;</p> <p>(2) the probable quality of</p>	

	Hawaii	Alaska	Oregon	Texas	Virginia
<p>Provisions relating to competitive bidding evaluation and award (cont.)</p>	<p>bidder's offer is acceptable as set forth in the invitation for bids; (5) Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive. (e) The award shall be issued to the lowest responsive, responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids and posted pursuant to section 1030-701, HRS, for five working days. (f) In the event all bids exceed available funds, the provisions of section 1030-302(h), HRS, shall apply.</p>			<p>the offered good or service; and (3) the quality of the vendor's past performance in contracting with the agency, with other state entities, or with private sector entities.</p> <p><u>TAC 20.36</u> (a) Bid evaluation. (1) The commission may accept or reject any bid or any part of a bid or waive minor technicalities in a bid, if doing so would be in the state's best interest. (2) A bid price may not be altered or amended after bids are opened except to correct mathematical errors in extension. (3) No increase in price will be considered after a bid is opened. A bidder may reduce its price provided it is the lowest and best bidder and is otherwise entitled to the award. (4) Bid prices are considered firm for acceptance for 30 days from the bid opening date for open market purchases and 60 days for term contracts, unless otherwise specified in the invitation for bids. (5) A bid containing a self-</p>	

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to competitive bidding evaluation and award (cont.)				<p>evident error may be withdrawn by the bidder prior to an award.</p> <p>(6) Bid prices which are subject to unlimited escalation will not be considered. A bidder may offer a predetermined limit of escalation in his bid and the bid will be evaluated on the basis of the full amount of the escalation.</p> <p>(7) A bid containing a material failure to comply with the advertised specifications shall be rejected.</p> <p>(8) All bids must be based on "F.O.B. destination" delivery terms unless otherwise specified.</p> <p>(9) If requested in the invitation for bids, samples must be submitted or the bid will be rejected. The commission will require samples only when essential to the assessment of product quality during bid evaluation. Samples for non-winning bids shall be returned to a bidder whenever practicable, at the bidder's expense. Otherwise, samples will be disposed of in the same manner as surplus or salvage property.</p> <p>(10) When brand names</p>	

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to competitive bidding evaluation and award (cont.)				<p>are specified, bids on alternate brands will be considered if they otherwise meet specification requirements.</p> <p>(11) Cash discounts are acceptable but are not considered in making an award. All cash discounts offered will be taken if they are earned by the agency.</p> <p>(12) No electrical item may be purchased unless the item meets applicable safety standards of the federal Occupational Safety and Health Administration (OSHA).</p> <p>(b) Award.</p> <p>(1) All awards shall be made to the bidder complying with the best value criteria used in the bid and conforming to the advertised product or service specifications. In determining which bidder is offering the best value, in addition to price, the commission may consider and evaluate the factors set out in Government Code, Title 10, Subtitle D, Subchapter A, §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, and all other factors comprising the best value criteria as may be set forth in the solicitation.</p>	

	Hawaii	Alaska	Oregon	Texas	Virginia
Provisions relating to competitive bidding evaluation and award (cont.)				(2) An open market purchase contract is awarded and created when the director of purchasing or his designee authorizes an open market purchase order. A term contract is awarded and created when the director of purchasing or his designee signs a notice of award. (3) In case of tie bids which cannot be resolved by application of one or more preferences described in §113.8 of this title (relating to Preferences), an award shall be made by drawing lots.	
Other mentions of “past performance” or “record of performance”	Note “Past performance” is mentioned in HRS 103D-304(e), relating to procurement of professional services, and HRS 103D-1002(b), relating to Hawaii products.	Note “Past performance” or “record of performance” is not mentioned in AS.	Note “Record of past performance” is mentioned in ORS 279C.110(3)(c), relating to the selection procedures for consultants to provide services. “Past performance” is mentioned in OAR 137-049-0640(2), relating to evaluation factors for RFP, and OAR 137-049-0650(2)(a), relating to RFP criteria.	Note “Past performance” or “record of performance” is not mentioned in TGC. However, there are provisions within TGC and TAC relating to the tracking of vendor performance. <u>TGC 2262.055</u> VENDOR PERFORMANCE TRACKING SYSTEM. (a) The comptroller shall evaluate the vendor's performance based on information reported by state agencies and criteria established by the comptroller. (b) The comptroller shall	Note “Past performance” or “record of performance” is not mentioned in VPPA.

	Hawaii	Alaska	Oregon	Texas	Virginia
Other mentions of “past performance” or “record of performance” (cont.)				<p>establish an evaluation process that allows vendors who receive an unfavorable performance review to protest any classification given by the comptroller.</p> <p>(c) The comptroller shall include the performance reviews in a vendor performance tracking system.</p> <p><u>TGC 2262.153</u> FORMS FOR REPORTING CONTRACTOR PERFORMANCE. As part of the uniform forms published under Section 2262.152, the comptroller shall develop forms for use by state agencies in reporting a contractor's performance for use in the vendor performance tracking system under Section 2262.055.</p> <p><u>TAC 20.108</u> (a) TBPC shall utilize the vendor performance tracking system, available at [link]. The system measures vendor performance for purchases over \$25,000, and is used by TBPC to score vendor performance in the areas of commodity delivery and service and service delivery</p>	

	Hawaii	Alaska	Oregon	Texas	Virginia
Other mentions of “past performance” or “record of performance” (cont.)				<p>and performance. (b) State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exempt from TBPC's procurement rules and procedures.</p> <p>Note See Section 2-36 of the TPM for more information on the vendor performance tracking system.</p>	

EXHIBIT B

Hawaii Sample Standard Qualification Questionnaire for Offerors

SAMPLE

STATE OF HAWAII
STANDARD
QUALIFICATION QUESTIONNAIRE
FOR
OFFERORS

issued by the
PROCUREMENT POLICY BOARD
STATE OF HAWAII
June 16, 2003

To be filed with the procurement officer calling for offers
in accordance with Section 103D-310, HRS, as amended.

Submitted By _____

Address _____

Date _____

STANDARD QUALIFICATION QUESTIONNAIRE

COVERING EXPERIENCE, EQUIPMENT AND FINANCIAL STATEMENT OF OFFERORS. THE OFFICER CALLING FOR OFFERS MAY REQUIRE THE OFFEROR TO FURNISH ADDITIONAL INFORMATION NOT SPECIFICALLY COVERED HEREIN. ALL ITEMS MUST BE ANSWERED AND OMISSIONS MAY BE CONSIDERED GOOD CAUSE FOR UNFAVORABLE CONSIDERATION.

GENERAL INFORMATION

1. The statements contained in this Questionnaire are being furnished for consideration in submitting an offer for the following project:

(a) Project Title _____

(b) Location _____

(c) Bid Opening Date _____

2. The Questionnaire is being submitted in behalf of:

(a) Name of Offeror _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual
☐ A Joint-Venture

(b) Address _____

(c) Telephone No. _____

(d) Date Submitted _____

3. If the bid is submitted by a joint venture, composed of two or more individual firms, then each member firm comprising the joint venture must submit all information listed on pages 3 through 16, inclusive, of the Questionnaire and, in addition, answer the following:

(a) Members of joint Venture _____

(b) Date of Joint Venture Agreement _____

(c) Is agreement between members comprising the joint venture joint and several liability? _____

If not, state the terms of agreement in this respect: _____

EXPERIENCE QUESTIONNAIRE

Submitted by _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual

Principal Office _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

1. How many years has your organization been in business as a [General Contractor] under your present business name? _____
2. How many years experience in [construction] _____ has your organization had: (A) as a [General Contractor] _____; (B) as a [Sub-Contractor] _____
3. Show what [construction] projects your organization has completed in the past five (5) years in the following tabulation:

Contract Amt.	Class of Work	When Completed	Name and Address of Owner

4. Have you ever failed to complete any work awarded to you? _____ If so, state when, where and why? _____

5. Has any officer or partner of your organization in the past five (5) years been an officer or partner of some other organization that failed to complete a contract? If so, state name of individual, other organization and reason therefore _____

6. Has any officer or partner of your organization in the past five (5) years failed to complete a contract handled in his own name? _____ If so, state name of individual, name of Owner and reason therefore.

7. In what other lines of business are you financially interested? _____

8. For what corporations or individuals in the past five (5) years have you performed work, and to whom do you refer? _____

9. For what counties within the State of Hawaii have you performed work and to whom do you refer?

10. For what Bureaus or Departments of the State government have you performed work and to whom do you refer?

11. Have you performed work for the U. S. Government? _____ If so, when and to whom do you refer?

12. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? _____ If so, when and to whom do you refer? _____

13. What is the [construction] experience of the principal individuals of your organization?

Individual's Name	Present Position or Office	Years of Work Experience	Magnitude and Type of Work	In What Capacity?

EQUIPMENT QUESTIONNAIRE

Submitted by _____

Principal Office _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

1. In what manner have you inspected this proposed work? Explain in detail. _____
2. Explain your plan or layout for performing the proposed work. _____
3. The work, if awarded to you, will have the personal supervision of whom?
4. Do you intend to do the hauling on the proposed work with your own force? _____ If so, give amount and type of equipment to be used.
5. If you intend to sublet the hauling or perform it through an agent, state amount of sub-contract or agent's contract, and, if known, the name and address of sub-contractor or agent, amount and type of his equipment and financial responsibility _____
6. Do you intend to do grading on the proposed work with your own forces? _____ If so, give type of equipment to be used _____

7. If you intend to sublet the grading or perform it through an agent, state amount of sub-contract or agent's contract, and, if known, the name and address of sub-contractor or agent, amount and type of his equipment and financial responsibility _____

8. Do you intend to sublet any other portions of the work? _____ If so, state -amount of sub-contract, and, if known, the name and address of the sub-contractor, amount and type of his equipment and financial responsibility _____

9. From which sub-contractors or agents do you expect to require a bond? _____

10. What equipment do you own that is available for the proposed work?

Quantity	Item	Description, Size, Capacity, Etc.	Condition	Years of Service	Present Location

11. What equipment do you intend to purchase for use on the proposed work, should the contract be awarded to you?

Quantity	Item	Description, Size, Capacity, Etc.	Approximate Cost

12. How and when will you pay for the equipment to be purchased? _____

13. Do you propose to rent any equipment for this work? _____ If so, state type, quantity
 and reasons for renting _____

FINANCIAL STATEMENT

Submitted by _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual

Principal Office _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

BALANCE SHEET

As of _____, 20____

Assets

Current assets:

Cash and cash equivalents (1)	\$ _____
Short-term investments (2)	_____
Accounts receivable, net (3)	_____
Inventories (4)	_____
Costs and estimated earnings in excess of billings on uncompleted contracts (5)	_____
Prepaid expenses and other (6)	_____
Sub-Total Current Assets	_____

Property and equipment:

Land (7)	_____
Buildings (8)	_____
Vehicles, machinery and equipment (9)	_____
Furniture and fixtures (10)	_____
Less accumulated depreciation	(_____)
Sub-Total Net Property and Equipment	_____

Other assets:

Cash surrender value of life insurance policies (11)	_____
Deposits and other (12)	_____
Sub-Total Other Assets	_____

Total Assets: \$ _____

BALANCE SHEET (Continued)

Liabilities and Stockholder's Equity

Current liabilities:

Current portion of long-term debt (1)	\$ _____
Accounts payable (2)	_____
Billings in excess of costs and estimated earnings on uncompleted contracts (3)	_____
Accrued liabilities and other (4)	_____
Sub-Total Current Liabilities	_____

Long-term debt, net of current portion (5)	_____
--	-------

Sub-Total Liabilities & Long-term Debt:	\$ _____
---	----------

Stockholder's equity:

Capital stock (6)	_____
Additional paid-in capital (7)	_____
Retained earnings	_____
Treasury stock (8)	(_____)
Sub-Total Stockholder's Equity	\$ _____

Total Liabilities and Stockholder's Equity	\$ _____
--	----------

DETAILS RELATIVE TO ASSETS

(1) Cash and cash equivalents:

<u>Financial Institution</u>	<u>Type of Account</u>	<u>Amount</u>
		\$ _____

		\$ _____

(2) Short-term investments:

<u>Type of Security</u>	<u>Cost</u>	<u>Unrealized Gains</u>	<u>Unrealized Losses</u>	<u>Estimated Fair Value</u>
	\$ _____	\$ _____	\$ _____	\$ _____
	_____	_____	_____	_____
	_____	_____	_____	_____
	\$ _____	\$ _____	\$ _____	\$ _____

(3) Accounts receivable (list major debtors):

Completed contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Amount Receivable</u>
		\$ _____	\$ _____	\$ _____
		_____	_____	_____
		_____	_____	_____
		\$ _____	\$ _____	\$ _____

Other than completed contracts

<u>Name</u>	<u>Description</u>	<u>Due Date</u>	<u>Amount Receivable</u>
Less allowance for doubtful accounts			(_____)
			\$ _____

(4) Inventories

<u>Description</u>	<u>Cost</u>	<u>Market Value</u>	<u>Lower of Cost or Market Value</u>
	\$ _____	\$ _____	\$ _____
	_____	_____	_____
	_____	_____	_____
	\$ _____	\$ _____	\$ _____

DETAILS RELATIVE TO ASSETS (Continued)

(5) Costs and estimated earnings in excess of billings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Costs and Estimated Earnings in Excess of Billings</u>
		\$	\$	\$	\$	
			\$	\$	\$	\$

(6) Prepaid expenses and other

<u>Description</u>	<u>Amount</u>
	\$
	\$

(7) Land

<u>Description</u>	<u>Location</u>	<u>Amount</u>
		\$
		\$

(8) Buildings

<u>Description</u>	<u>Location</u>	<u>Amount</u>
		\$
		\$

(9) Vehicles, machinery and equipment

<u>Description</u>	<u>Amount</u>
	\$
	\$

(10) Furniture and fixtures

<u>Description</u>	<u>Amount</u>
	\$
	\$

DETAILS RELATIVE TO ASSETS (Continued)

(11) Cash surrender value of life insurance policies

<u>Key Employee</u>	<u>Insurance Company</u>	<u>Policy Amount</u>	<u>Paid-Up Additional Insurance</u>	<u>CSV Amount</u>
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Less loans payable		_____	_____	(_____)
		\$ _____	\$ _____	\$ _____

(12) Deposits and other

<u>Description</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
	\$ _____

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY

(1) Current portion of long-term debt (maturing within 12 months)

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ _____

(2) Accounts payable (list major creditors)

<u>Name</u>	<u>Past Due Amount</u>	<u>Amount</u>
	\$ _____	\$ _____
	_____	_____
	_____	_____
	\$ _____	\$ _____

(3) Billings in excess of costs and estimated earnings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Billings in excess of costs and Estimated Earnings</u>
			\$ _____	\$ _____	\$ _____	\$ _____
			_____	_____	_____	_____
			_____	_____	_____	_____
			\$ _____	\$ _____	\$ _____	\$ _____

(4) Accrued liabilities and other

<u>Description</u>	<u>Amount</u>
	\$ _____

	\$ _____

(5) Long-term debt, net of current portion

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ _____

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY (Continued)

(6) Capital stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares Authorized</u>	<u>No. of Shares Issued and Outstanding</u>	<u>Par Value</u>	<u>Amount</u>
				\$	\$
					\$

(7) Additional paid-in capital

<u>Description</u>	<u>Amount</u>
	\$
	\$

(8) Treasury stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares</u>	<u>Cost</u>
			\$
			\$

STATEMENTS OF INCOME AND RETAINED EARNINGS

For the Years Ended _____, 20____ and 20____

	20____	20____
	_____	_____
Contract revenues	\$ _____	\$ _____
Costs of contracts	_____	_____
Gross income from contracts		
General and administrative expenses	_____	_____
Income from operations		
Other income (expense)	_____	_____
Income before income taxes		
Income taxes	_____	_____
Net income		
Retained earnings, beginning of the year	_____	_____
Retained earnings, end of the year	\$ _____	\$ _____

If a corporation, answer this: Capital paid in cash, \$ _____ When Incorporated _____ In what State _____ Date registered in Hawaii _____ President's name _____ Vice-President's name _____ Secretary's name _____ Treasurer's name _____	If a partnership, answer this: Date of organization _____ Date registered in Hawaii _____ State whether partnership is general or limited _____ <div style="border-top: 1px solid black; height: 10px; margin-top: 5px;"></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th style="width: 80%;">Name and address of partners:</th> <th style="width: 20%;">Age</th> </tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </table>	Name and address of partners:	Age	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Name and address of partners:	Age												
_____	_____												
_____	_____												
_____	_____												
_____	_____												
_____	_____												

The undersigned hereby declares: that the foregoing is a true statement of the financial condition of the individual, partnership or corporation herein first named, as of the date herein first given; that this statement is for the express purpose of inducing the party to whom it is submitted to award the offeror a contract; and that any depository, vendor or other agency herein named is hereby authorized to supply such party with any information necessary to verify this statement.

NOTE: A partnership must give firm name and signatures of all partners. A corporation must give full corporate name, signature of official, and affix corporate seal.

Affidavit for Individual

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that the foregoing financial statement, taken from his books, is a true and accurate statement of his financial condition as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Applicant must also sign here)

 Notary Public

Affidavit for Partnership

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that he is a member of the firm of _____; and that he is familiar with the books of the said firm showing its financial condition; that the foregoing financial statement, taken from the books of the said firm, is a true and accurate statement of the financial condition of the said firm as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Members of firm must also sign here)

 Notary Public

Affidavit for Corporation

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that he is _____ of the _____, the corporation described in and which executed the foregoing statement; that he is familiar with the books of the said corporation showing its financial condition; that the foregoing financial statement, taken from the books of the said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Officer must also sign here)

 Notary Public

EXHIBIT C

Alaska Contractor Questionnaire

2. What percent of the total value of this contract do you intend to subcontract? _____ %

3. Do you propose to purchase any equipment for use on this project?
[] No [] Yes If YES, describe type, quantity, and approximate cost:

4. Do you propose to rent any equipment for this work?
[] No [] Yes If YES, describe type and quantity:

5. Is your bid based on firm offers for all materials necessary for this project?
[] Yes [] No If NO, please explain:

C. EXPERIENCE

1. Have you had previous construction contracts or subcontracts with the State of Alaska?
[] Yes [] No

Describe the most recent or current contract, its completion date, and scope of work:

2. List, as an attachment to this questionnaire, other construction projects you have completed, the dates of completion, scope of work, and total contract amount for each project completed in the past 12 months.

I hereby certify that the above statements are true and complete.

Name of Contractor

Name and Title of Person Signing

Signature

Date

EXHIBIT D

Oregon Prime Contractor Prequalification Application



OREGON DEPARTMENT OF TRANSPORTATION
**PRIME CONTRACTOR
PREQUALIFICATION APPLICATION**

Submit application and make check payable to:

Oregon Department of Transportation
ODOT Procurement Office – Construction Contracts Unit
455 Airport Road SE, Bldg K, Salem OR 97301-5348
Phone: 503-986-2710
Website: www.oregon.gov/ODOT/CS/CONSTRUCTION

Filing Fee \$100

FSB Date

Initials

A. Date: _____ **Expiration Date:** _____
Enter today's date To be completed by ODOT

B. Application of _____
Legal Business Name (as shown on your federal form W-9)

Assumed Business Name(s) (Complete Section 6)

List previous business names of your organization: _____

C. Business Structure (Check one):

- ☐ Oregon Corporation
☐ General Partnership
☐ Foreign Corporation
☐ Limited Liability Company (LLC)
☐ Limited Liability Partnership (LLP)
☐ Limited Partnership (LP)
☐ Individual Sole Proprietorship

D. ☐ **Joint Venture**

E. Purpose of Application (Check all that apply):

- ☐ **ODOT Projects**
1st anticipated bid opening date _____
- ☐ **Local Government Projects**
1st anticipated bid opening date _____
- ☐ **Other Government Projects**
1st anticipated bid opening date _____

F. Address:

Physical address, city, state, zip (for courier use)			
Mailing address, city, state, zip			
Phone		Fax	

PERSON COMPLETING APPLICATION:

Name		Phone	
Email		Fax	

PERSON TO APPEAR ON PLANHOLDERS LIST:

Name		Phone	
Email		Fax	

FOR OFFICE USE ONLY:

RECEIPT DATE #1	RECEIPT DATE #2	RECEIPT DATE #3	RECEIPT DATE #4
SOS _____ / CCB _____ / CCB _____ / BOLI _____ / Fed EPL _____			
APPROVAL/LAST RECPT DATE / INIT _____		ADD #1 DATE _____ / INIT _____ DESC: _____	
REVIEW DATE / INIT _____		ADD #2 DATE _____ / INIT _____ DESC: _____	
ELIGIBILITY DATE _____		CHECK SENT TO FSB: DATE _____ / INIT _____	
VENDOR NO. _____			
DATA ENTRY DATE / INIT _____			

BUSINESS STRUCTURE: Complete section 1, 2, 3, 4, or 5 as applies

1 If an Oregon corporation, complete this section

☐ NA

Date Corporation was registered with Secretary of State _____

President _____ Secretary _____

1st Vice President _____ Treasurer _____

CONTRACT EXECUTION - List of Authorized Personnel

A) President and Secretary (**Both** President **and** the Secretary of the corporation are **required** to sign ODOT contracts and performance and payment bonds unless certified, true and correct copy of corporate bylaws or minutes state otherwise and **are attached to this prequalification.**)

Printed name of President _____ Signature _____

Printed name of Secretary _____ Signature _____

B) Are other officers besides the President and Secretary of your company authorized to execute contracts?
☐ Yes ☐ No **If yes, list below and attach certified, true and correct copy of corporate bylaws or minutes stating that authority.**

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

C) Are any of the officers (listed above in A & B) authorized to sign and execute contracts and bonds on **behalf of the company without the signature of others?** ☐ Yes ☐ No

IF YES, YOU MUST ATTACH CORPORATE BYLAWS OR MINUTES STATING THIS AUTHORITY TO SIGN ALONE ON BEHALF OF THE CORPORATION IN THE CORPORATE BYLAWS OR MINUTES.

BID EXECUTION - List of Authorized Personnel

Signatures of all individuals (**INCLUDING ANY OFFICERS LISTED ABOVE**) authorized to execute **Bids** on behalf of the company shall be listed in this section, including any officers listed above and those individuals with digital signatures used for electronic bidding.

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

(Additional documentation may be required by the public contracting agency)

2 If a general partnership, complete this section☐ NA

Date of Organization _____

If a foreign (out of state) co-partnership or persons engaging in business in the state under an assumed name, but not domiciled within this state, is the partnership or business organization registered as required in compliance with Chapter 648, Oregon Revised Statutes? ☐ Yes ☐ No ☐ N/A

Names and addresses of partners:

If the Contractor is a partnership or limited liability partnership, an authorized representative of **each** Entity comprising it shall sign the Contract, Performance Bond, and Payment Bond, and an authorization to sign shall be attached. **If only one partner is signing, then bylaws or minutes must include the authority to sign without the signature of others.**

Printed names, titles and signatures of partners authorized to **EXECUTE CONTRACTS**

Printed name of partner	Signature
-------------------------	-----------

Printed name of partner	Signature
-------------------------	-----------

Bylaws or Minutes Submitted: (Check one) ☐ Yes ☐ No (Only submit if signatures differ from above)Printed names, titles and **signatures** of personnel authorized to **EXECUTE BIDS**

Signatures of all individuals **(INCLUDING ANY OFFICERS LISTED ABOVE)** authorized to execute **Bids** on behalf of the company shall be listed in this section, including any officers listed above and those individuals with digital signatures used for electronic bidding.

Printed name and title	Signature
------------------------	-----------

Printed name and title	Signature
------------------------	-----------

Printed name and title	Signature
------------------------	-----------

Printed name and title	Signature
------------------------	-----------

(Additional documentation may be required by the public contracting agency)

3 If a foreign (out of state) corporation, complete this section☐ NA

When incorporated _____

President _____ Secretary _____

1st Vice President _____ Treasurer _____

CONTRACT EXECUTION - List of Authorized Personnel

A) President and Secretary (**Both** President **and** the Secretary of the corporation are **required** to sign ODOT contracts and performance and payment bonds unless certified, true and correct copy of corporate bylaws or minutes state otherwise and **are attached to this prequalification.**)

Printed name of President _____ Signature _____

Printed name of Secretary _____ Signature _____

B) Are other officers besides the President and Secretary of your company authorized to execute contracts?
☐ Yes ☐ No **If yes, list below and attach certified, true and correct copy of corporate bylaws or minutes stating that authority.**

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

C) Are any of the officers (listed above in A and B) authorized to sign and execute contracts and bonds on **behalf of the company without the signature of others?** ☐ Yes ☐ No

IF YES, YOU MUST ATTACH CORPORATE BYLAWS OR MINUTES STATING THIS AUTHORITY TO SIGN ALONE ON BEHALF OF THE CORPORATION IN THE CORPORATE BYLAWS OR MINUTES.

BID EXECUTION - List of Authorized Personnel

Signatures of all individuals (**INCLUDING ANY OFFICERS LISTED ABOVE**) authorized to execute **Bids** on behalf of the company shall be listed in this section, including any officers listed above and those individuals with digital signatures used for electronic bidding.

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Printed name and title _____ Signature _____

Name and address of registered agent in Oregon:

Date of authorization by Oregon Secretary of State to transact business in Oregon:

Has applicant filed with Oregon Department of Revenue (DOR) forms required by ORS 279A.120? ☐ Yes ☐ NoSec. of State
Phone: 503-986-2200Department of Revenue
Phone: 503-378-4988Website: www.filinginoregon.com Website: www.oregon.gov/DOR

(Additional documentation may be required by the public contracting agency)

4 If a limited liability company, limited liability partnership or a limited partnership complete this section <input style="float: right;" type="checkbox"/> NA	
Check One: <input type="checkbox"/> Limited liability company <input type="checkbox"/> Limited liability partnership <input type="checkbox"/> Limited partnership	
Have you registered with the Oregon Secretary of State, Corporation Division, Business Registry? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name and address of organizer:
SUBMIT ARTICLES OF ORGANIZATION AND OPERATING AGREEMENTS THAT INDICATE THE AUTHORITY TO SIGN CONTRACTS AND BONDS. If the Contractor is an LLP, or LP, an authorized representative of each Entity comprising it shall sign the Contract, Performance Bond, and Payment Bond. If any representative is authorized to execute contracts without the signature of others, this must be stated in the Articles of Organization and Operating Agreements.	
Printed names, titles and signatures of personnel authorized to EXECUTE CONTRACTS :	
Printed name and title	Signature
Printed name and title	Signature
Are other representatives besides those listed above able to execute contracts? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, submit names, titles and signatures separately.	
Printed names, titles and signatures of personnel authorized to EXECUTE BIDS Signatures of all individuals (INCLUDING ANY OFFICERS LISTED ABOVE) authorized to execute Bids on behalf of the company shall be listed in this section, including those individuals with digital signatures used for electronic bidding.	
Printed name and title	Signature
Printed name and title	Signature
Printed name and title	Signature
Printed name and title	Signature
Printed name and title	Signature

5 If doing business as a sole proprietorship, complete this section <input style="float: right;" type="checkbox"/> NA	
Name of individual liable for all obligations of the business: _____	
If applicant is a sole proprietor using an assumed business name, please list name below:	
Secretary of State registration date: _____	Expiration date: _____
Printed name and title	Signature

(Additional documentation may be required by the public contracting agency)

6 If doing business under an assumed business name, complete this section☐ NA

Assumed business name: _____

Owner's name and
address: _____Oregon Secretary of State Corporation Division's Registration
Number: (www.filinginoregon.com/bizreg/index.htm)Renewal
Date: _____

Assumed business name: _____

Owner's name and
address: _____Oregon Secretary of State Corporation Division's Registration
Number: (www.filinginoregon.com/bizreg/index.htm)Renewal
Date: _____**If you have additional assumed business names, attach a sheet with business information.****7 OWNERSHIP AND CONTROL (A, B, and C)**

- A) In the space below, list any parent company or corporation, or individuals with at least 10% ownership interest in applicant's firm. If none, write N/A in the space below.

--

- B) In the space below, list any subsidiary company or corporation owned or controlled by the applicant doing business in Oregon under another name. For the purposes of this information, the applicant includes the applicant's officers, directors, or partners, or other entity in which the applicant is an officer, director, or partner. If none, write N/A in space below.

--

- C) Are there any other personnel in applicant's organization who have a financial interest in or serve as officers or partners in another firm prequalified to bid in this or another state?

☐ Yes☐ No

If yes, please list below in space provided. If no, write NA in space below.

Individual's Name	Present Position or Office	Other Firm or Firms	Position in Other Firm(s)	State of Other Firm(s)

8

LICENSES AND REGISTRATIONS

**Oregon Secretary of State Corporation
Division – Active Business Registry No.**

http://www.filinginoregon.com/pages/business_registry/index.html

Phone: 503-986-2200

☐ **THIS IS A NEW REGISTRY NUMBER**

Required for Legal Business Name, Assumed Business Name (page 1, Section B), Corporations, LLCs, LLPs, and LPs. Required prior to contract execution.

Oregon Construction Contractors Board No.

www.ccb.state.or.us

Phone: 503-378-4621

Required prior to bid opening for state-funded projects or prior to contract execution for federally-funded projects (not required for Aggregate Production or Landscaping work categories).

Oregon Business Landscape Contractors

License No. and company name:

Individual Landscape Contractor License No. and name:

www.lcb.state.or.us

Phone: 503-986-6561

**Oregon Electrical Contractor License No. and
company name:**

Supervisor's License No. and name :

<http://www.cbs.state.or.us/external/bcd/>

Building Codes Division phone: 503-378-4133

**Oregon Plumbing Business License No. and
company name:**

Journeyman's License No. and name:

**Oregon Boiler/Pressure Vessel Business
License No. and company name:**

<http://www.cbs.state.or.us/external/bcd/>

Building Codes Division phone: 503-378-4133

Other License No. and name or type:

9

SUPPLEMENTAL QUESTIONS

- A) Within the last five years has the applicant, or any parent, subsidiary or affiliate, been denied prequalification or had prequalification suspended or revoked by any state, local or federal agency in this or any other state?
☐ Yes ☐ No **If yes, please attach an explanation.**
- B) Within the last five years has the applicant, or any parent, subsidiary or affiliate, been debarred from bidding on contracts by any state, local or federal agency in this or any other state under any state or federal law?
☐ Yes ☐ No **If yes, please attach an explanation.**
- C) Has any officer or partner of the applicant, or of any parent, subsidiary or affiliate, ever applied for prequalification with ODOT under a different name?
☐ Yes ☐ No **If yes, please attach an explanation.**
- D) Within the last five years has the applicant, or any parent, subsidiary or affiliate, failed to complete a state, local or federal public improvement (works) contract?
☐ Yes ☐ No **If yes, please attach an explanation.**
- E) Within the last five years has any officer or partner of the applicant, or of any parent, subsidiary or affiliate, been found in breach of a local, state or federal contract?
☐ Yes ☐ No **If yes, please attach an explanation.**
- F) Within the last five years has the applicant, or any officer, partner, agent or employee of applicant, or any parent, subsidiary or affiliate, been found to have violated any state or federal prevailing wage statute or regulation (including the federal Davis-Bacon and related Acts and ORS 279C.800 et. seq.), or any provision requiring prompt payment to subcontractors, in any Final Order of the Oregon Bureau of Labor and Industries or the United States Department of Labor, by any other state or federal agency, or by any court of competent jurisdiction?
☐ Yes ☐ No
If yes, provide copies of the final order(s) or judgment in which this occurred and explain **in detail**:
(a) the circumstances behind any violation, including the amount(s) not paid
(b) whether the amount(s) have now been paid
(c) the reasons for the violation
(d) all efforts undertaken to ensure that future violations will not occur
- G) Within the last five years has the applicant, or any officer, partner, agent or employee of applicant been found to have violated any state or federal environmental statute or regulation (including but not limited to Environmental Protection Agency, Department of Environmental Quality, US Fish and Wildlife Service, Department of Fish and Wildlife, US Army Corps of Engineers, Division of State Lands, Department of Agriculture or Department of Interior), or any permit issued by one of these agencies, in any agency Final Order or by any court of competent jurisdiction?
☐ Yes ☐ No
If yes, provide copies of the final order(s) or judgment in which this occurred and explain **in detail**:
(a) the circumstances behind any violation, including the amount(s) not paid
(b) whether the amount(s) have now been paid
(c) the reasons for the violation
(d) all efforts undertaken to ensure that future violations will not occur

10 CLASSES OF WORK

Fill in the classes of work on which you wish to be pre-qualified to bid. Classes of work include, but are not limited to, work listed in parentheses. If more space is required, attach additional sheets.

For Each Class of Work:

Check beside each Class of Work for which you have demonstrated experience in Section 11 or Section 12. This may be with your own work force or through project management of subcontractors.

List all other states where applicant is currently qualified to perform work or has been qualified within the last three (3) years.

Class of Work	States qualified within the last (3) years
<input type="checkbox"/> (AB) Aggregate Bases	_____
<input type="checkbox"/> (ACP) Asphalt Concrete Paving and Oiling (Paving, Chip Sealing, Crack Sealing, Slurry Sealing, Fog Sealing)	_____
<input type="checkbox"/> (REIN) Bridges and Structures (Concrete, Steel, and Timber Bridges, Retaining Walls and Soundwalls; Seismic Retrofit; Box Culverts; Structural Plate Pipe, and Pipe Arches)	_____
<input type="checkbox"/> (BLD1) Buildings (Toilets, Bathhouses, Maintenance, Sand Sheds)	_____
<input type="checkbox"/> (EART) Earthwork and Drainage (Clearing, Earthwork, Blasting, Riprap, Culverts, Manholes, Inlets, Storm Sewers, Sanitary Systems)	_____
<input type="checkbox"/> (ELEC) Electrical (Traffic Signals, Illumination, Ramp Meters, Roadway Weather Information Systems (RWIS), Variable Message Signs (VMS), Traffic Cameras)	_____
<input type="checkbox"/> (LS) Landscaping (Roadside Seeding, Lawns, Shrubs, Trees, Irrigation Systems, Topsoil, Temporary and Permanent Erosion Control)	_____
<input type="checkbox"/> (MHA) Miscellaneous Highway Appurtenances (Guardrail, Barrier, Curbs, Walks, Fences, Protective Screening, Impact Attenuators, Cold Plane Pavement Removal, Rumble Strips)	_____
<input type="checkbox"/> (PAI1) Painting (Bridges and Buildings)	_____
<input type="checkbox"/> (PAVE) Pavement Markings (Permanent - Painted, Durable, Markers, Delineators)	_____
<input type="checkbox"/> (PCP) Portland Cement Concrete Paving	_____
<input type="checkbox"/> (AC) Rock Production (Aggregate Crushing, Sanding Rock)	_____
<input type="checkbox"/> (SIGN) Signing (Permanent)	_____
<input type="checkbox"/> (TTC) Temporary Traffic Control (All Temporary Traffic Control Items Including Flaggers and Pilot Cars)	_____
<input type="checkbox"/> (OTH1) Other, (List specific class)	_____
_____	_____
_____	_____
_____	_____
_____	_____

You may list "OTHER" (OTH1) classes of work; however, ODOT does not normally solicit bids under this class. This class of work is typically used by Local Agencies (Cities, Counties, etc.)

11 ODOT PROJECT EXPERIENCE

List all ODOT projects substantially completed (second notification issued) in the past year as a prime or subcontractor, up to twenty (20). Failure to list ALL ODOT projects could be grounds for denial. **Attachments are acceptable, if all required information is included.**

1. Name of Project and Location of Work: _____		ODOT Contract # _____
Project Manager Name and Phone: _____		
Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.		
P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor		
AB <input type="checkbox"/> ACP <input type="checkbox"/> REIN <input type="checkbox"/> BLD1 <input type="checkbox"/> EART <input type="checkbox"/> ELEC <input type="checkbox"/> LS <input type="checkbox"/> MHA <input type="checkbox"/> PAI1 <input type="checkbox"/> PAVE <input type="checkbox"/> PCP <input type="checkbox"/> AC <input type="checkbox"/> SIGN <input type="checkbox"/> TTC <input type="checkbox"/> OTH1 <input type="checkbox"/>		
Contract Amount at Award: _____		Date of Completion: _____
If your company was Prime, were liquidated damages for late completion assessed: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, explain: _____		
DBE goal, if your company was Prime: _____ % Met: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If no, explain: _____		

2. Name of Project and Location of Work: _____		ODOT Contract # _____
Project Manager Name and Phone: _____		
Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.		
P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor		
AB <input type="checkbox"/> ACP <input type="checkbox"/> REIN <input type="checkbox"/> BLD1 <input type="checkbox"/> EART <input type="checkbox"/> ELEC <input type="checkbox"/> LS <input type="checkbox"/> MHA <input type="checkbox"/> PAI1 <input type="checkbox"/> PAVE <input type="checkbox"/> PCP <input type="checkbox"/> AC <input type="checkbox"/> SIGN <input type="checkbox"/> TTC <input type="checkbox"/> OTH1 <input type="checkbox"/>		
Contract Amount at Award: _____		Date of Completion: _____
If your company was Prime, were liquidated damages for late completion assessed: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, explain: _____		
DBE goal, if your company was Prime: _____ % Met: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If no, explain: _____		

11 ODOT PROJECT EXPERIENCE

List all ODOT projects substantially completed (second notification issued) in the past year as a prime or subcontractor, up to twenty (20). Failure to list ALL ODOT projects could be grounds for denial. **Attachments are acceptable, if all required information is included.**

3. Name of Project and Location of Work: _____	ODOT Contract # _____
Project Manager Name and Phone: _____	
Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.	
P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor	
AB <input type="checkbox"/> ACP <input type="checkbox"/> REIN <input type="checkbox"/> BLD1 <input type="checkbox"/> EART <input type="checkbox"/> ELEC <input type="checkbox"/> LS <input type="checkbox"/> MHA <input type="checkbox"/> PAI1 <input type="checkbox"/> PAVE <input type="checkbox"/> PCP <input type="checkbox"/> AC <input type="checkbox"/> SIGN <input type="checkbox"/> TTC <input type="checkbox"/> OTH1 <input type="checkbox"/>	
Contract Amount at Award: _____ Date of Completion: _____	
If your company was Prime, were liquidated damages for late completion assessed: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, explain: _____	
DBE goal, if your company was Prime: _____ Met: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If no, explain: _____	

4. Name of Project and Location of Work: _____	ODOT Contract # _____
Project Manager Name and Phone: _____	
Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.	
P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor	
AB <input type="checkbox"/> ACP <input type="checkbox"/> REIN <input type="checkbox"/> BLD1 <input type="checkbox"/> EART <input type="checkbox"/> ELEC <input type="checkbox"/> LS <input type="checkbox"/> MHA <input type="checkbox"/> PAI1 <input type="checkbox"/> PAVE <input type="checkbox"/> PCP <input type="checkbox"/> AC <input type="checkbox"/> SIGN <input type="checkbox"/> TTC <input type="checkbox"/> OTH1 <input type="checkbox"/>	
Contract Amount at Award: _____ Date of Completion: _____	
If your company was Prime, were liquidated damages for late completion assessed: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, explain: _____	
DBE goal, if your company was Prime: _____ Met: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If no, explain: _____	

11 ODOT PROJECT EXPERIENCE

List all ODOT projects substantially completed (second notification issued) in the past year as a prime or subcontractor, up to twenty (20). Failure to list ALL ODOT projects could be grounds for denial. **Attachments are acceptable, if all required information is included.**

5. Name of Project and Location of Work: _____	ODOT Contract # _____
Project Manager Name and Phone: _____	
Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.	
P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor	
AB <input type="checkbox"/> ACP <input type="checkbox"/> REIN <input type="checkbox"/> BLD1 <input type="checkbox"/> EART <input type="checkbox"/> ELEC <input type="checkbox"/> LS <input type="checkbox"/> MHA <input type="checkbox"/> PAI1 <input type="checkbox"/> PAVE <input type="checkbox"/> PCP <input type="checkbox"/> AC <input type="checkbox"/> SIGN <input type="checkbox"/> TTC <input type="checkbox"/> OTH1 <input type="checkbox"/>	
Contract Amount at Award: _____ Date of Completion: _____	
If your company was Prime, were liquidated damages for late completion assessed: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, explain: _____	
DBE goal, if your company was Prime: _____ % Met: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If no, explain: _____	

6. Name of Project and Location of Work: _____	ODOT Contract # _____
Project Manager Name and Phone: _____	
Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.	
P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor	
AB <input type="checkbox"/> ACP <input type="checkbox"/> REIN <input type="checkbox"/> BLD1 <input type="checkbox"/> EART <input type="checkbox"/> ELEC <input type="checkbox"/> LS <input type="checkbox"/> MHA <input type="checkbox"/> PAI1 <input type="checkbox"/> PAVE <input type="checkbox"/> PCP <input type="checkbox"/> AC <input type="checkbox"/> SIGN <input type="checkbox"/> TTC <input type="checkbox"/> OTH1 <input type="checkbox"/>	
Contract Amount at Award: _____ Date of Completion: _____	
If your company was Prime, were liquidated damages for late completion assessed: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, explain: _____	
DBE goal, if your company was Prime: _____ % Met: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If no, explain: _____	

12 ADDITIONAL EXPERIENCE FOR QUALIFICATION IN NEW CLASS OF WORK

Note: If your company is currently prequalified in a work class, you need not resubmit earlier experience. List projects to demonstrate experience in work categories not included in the above ODOT projects. Include a minimum of three (3) projects up to a maximum of five (5) projects to demonstrate experience in each new class of work selected in Section 10. Please limit the experience to the past five years. **Attachments are acceptable, if all required information is included.** If you do not have three (3) qualifying projects within the last five years, you may go back further.

1. Agency or Owner Name, address and phone: _____

Name of Project and Location of Work: _____

Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.

P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor

AB ☐ ACP ☐ REIN ☐ BLD1 ☐ EART ☐ ELEC ☐ LS ☐ MHA ☐ PAI1 ☐ PAVE ☐ PCP ☐ AC ☐ SIGN ☐ TTC ☐ OTH1 ☐

Contract Amount at award:

Date of Completion:

If your company was Prime, were liquidated damages for late completion assessed: Yes ☐ No ☐

If yes, explain:

DBE goal, if your company was Prime: %

Met: Yes ☐ No ☐ N/A ☐

If no, explain:

Project Bonded: Yes ☐ No ☐

Surety Company, if Project Bonded:

2. Agency or Owner Name, address and phone: _____

Name of Project and Location of Work: _____

Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.

P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor

AB ☐ ACP ☐ REIN ☐ BLD1 ☐ EART ☐ ELEC ☐ LS ☐ MHA ☐ PAI1 ☐ PAVE ☐ PCP ☐ AC ☐ SIGN ☐ TTC ☐ OTH1 ☐

Contract Amount at award:

Date of Completion:

If your company was Prime, were liquidated damages for late completion assessed: Yes ☐ No ☐

If yes, explain:

DBE goal, if your company was Prime: %

Met: Yes ☐ No ☐ N/A ☐

If no, explain:

Project Bonded: Yes ☐ No ☐

Surety Company, if Project Bonded:

12 ADDITIONAL EXPERIENCE FOR QUALIFICATION IN NEW CLASS OF WORK

Note: If your company is currently prequalified in a work class, you need not resubmit earlier experience. List projects to demonstrate experience in work categories not included in the above ODOT projects. Include a minimum of three (3) projects up to a maximum of five (5) projects to demonstrate experience in each new class of work selected in Section 10. Please limit the experience to the past five years. **Attachments are acceptable, if all required information is included.** If you do not have three (3) qualifying projects within the last five years, you may go back further.

3. Agency or Owner Name, address and phone: _____

Name of Project and Location of Work: _____

Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.

P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor

AB ☐ ACP ☐ REIN ☐ BLD1 ☐ EART ☐ ELEC ☐ LS ☐ MHA ☐ PAI1 ☐ PAVE ☐ PCP ☐ AC ☐ SIGN ☐ TTC ☐ OTH1 ☐

Contract Amount at award:

Date of Completion:

If your company was Prime, were liquidated damages for late completion assessed: Yes ☐ No ☐

If yes, explain:

DBE goal, if your company was Prime: %

Met: Yes ☐ No ☐ N/A ☐

If no, explain:

Project Bonded: Yes ☐ No ☐

Surety Company, if Project Bonded:

4. Agency or Owner Name, address and phone: _____

Name of Project and Location of Work: _____

Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.

P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor

AB ☐ ACP ☐ REIN ☐ BLD1 ☐ EART ☐ ELEC ☐ LS ☐ MHA ☐ PAI1 ☐ PAVE ☐ PCP ☐ AC ☐ SIGN ☐ TTC ☐ OTH1 ☐

Contract Amount at award:

Date of Completion:

If your company was Prime, were liquidated damages for late completion assessed: Yes ☐ No ☐

If yes, explain:

DBE goal, if your company was Prime: %

Met: Yes ☐ No ☐ N/A ☐

If no, explain:

Project Bonded: Yes ☐ No ☐

Surety Company, if Project Bonded:

12 ADDITIONAL EXPERIENCE FOR QUALIFICATION IN NEW CLASS OF WORK

Note: If your company is currently prequalified in a work class, you need not resubmit earlier experience. List projects to demonstrate experience in work categories not included in the above ODOT projects. Include a minimum of three (3) projects up to a maximum of five (5) projects to demonstrate experience in each new class of work selected in Section 10. Please limit the experience to the past five years. **Attachments are acceptable, if all required information is included.** If you do not have three (3) qualifying projects within the last five years, you may go back further.

5. Agency or Owner Name, address and phone: _____

Name of Project and Location of Work: _____

Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.

P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor

AB ☐ ACP ☐ REIN ☐ BLD1 ☐ EART ☐ ELEC ☐ LS ☐ MHA ☐ PAI1 ☐ PAVE ☐ PCP ☐ AC ☐ SIGN ☐ TTC ☐ OTH1 ☐

Contract Amount at award:

Date of Completion:

If your company was Prime, were liquidated damages for late completion assessed: Yes ☐ No ☐

If yes, explain:

DBE goal, if your company was Prime: %

Met: Yes ☐ No ☐ N/A ☐

If no, explain:

Project Bonded: Yes ☐ No ☐

Surety Company, if Project Bonded:

6. Agency or Owner Name, address and phone: _____

Name of Project and Location of Work: _____

Indicate your role for each Class of Work listed below and that you listed in section 10. Put one of the following letters from the drop-down menu in the appropriate boxes included in this project. Multiple classes of work can apply to each project.

P=Performed work as Prime S=Performed work as Subcontractor M=Managed a subcontractor

AB ☐ ACP ☐ REIN ☐ BLD1 ☐ EART ☐ ELEC ☐ LS ☐ MHA ☐ PAI1 ☐ PAVE ☐ PCP ☐ AC ☐ SIGN ☐ TTC ☐ OTH1 ☐

Contract Amount at award:

Date of Completion:

If your company was Prime, were liquidated damages for late completion assessed: Yes ☐ No ☐

If yes, explain:

DBE goal, if your company was Prime: %

Met: Yes ☐ No ☐ N/A ☐

If no, explain:

Project Bonded: Yes ☐ No ☐

Surety Company, if Project Bonded:

13 EXPERIENCE – Continued

A. How many years has applicant been in business under present name?

As a prime contractor? _____ As a subcontractor? _____

B. How many years' experience in construction work has applicant had?

As a prime contractor? _____ As a subcontractor? _____

14 EXPERIENCE – Continued

What is the construction experience of all owners, officers, partners and principal individuals in applicant's organization?
(Attach additional sheets, if needed)

[illegible]

15 GENERAL REMARKS

Use the following space for general remarks and explanations pertaining to the foregoing prequalification statements. Explain here any claimed experience of a business organization or entity other than the applicant or principals, including that of any business entity which was a predecessor of applicant or which has been acquired by applicant.

[illegible]

16 AFFIDAVIT

STATE OF _____)

County of _____)

ss.

I, _____ being first sworn, state that I am

_____ of the applicant herein and that the statements made in
(Title of individual authorized to execute bids and/or contracts) this application are true and I acknowledge that any false, deceptive or fraudulent statements on the application or at a hearing will result in the denial of prequalification, and may subject me to charges of false swearing or perjury; should there be any subsequent material reduction in applicant's ability to carry out any project for which applicant desires to submit a bid, applicant will give written notice of such change to the designated officer to whom this application is submitted at least ten days prior to the bid opening, and it is understood that such notice may change the eligibility of applicant to submit the bid.

(Original Signature of Individual Authorized to Execute Bids and/or Contracts)

Subscribed and sworn to before me
this _____ day of _____, Year _____

*Notary Seal
or
Stamp*

Original Notary Public Signature

My commission expires _____

EXHIBIT E

Oregon Construction Project Evaluation: Prime Contractor Performance Evaluation Documentation



ODOT CONSTRUCTION PROJECT EVALUATION PRIME CONTRACTOR PERFORMANCE EVALUATION DOCUMENTATION

PROJECT NAME	PROJECT MANAGER	CONTRACT NO.
CONTRACTOR	REPORTING PERIOD	<input type="checkbox"/> Annual <input type="checkbox"/> Final
SCORES		

Management Subtotal	0
Safety Subtotal	0
Administration Subtotal	0
Regulations Subtotal	1
Workforce and Small Business Equity Subtotal	0
FINAL SCORE	1

SECTION A: INITIAL REVIEW

PERFORMANCE LEVEL FOR THIS EVALUATION (See table to the right for the selection criteria for which Performance Level is appropriate)

Management	<input checked="" type="radio"/> Perform. Level 1	<input checked="" type="radio"/> Perform. Level 2	<input checked="" type="radio"/> Perform. Level 3
Safety	<input checked="" type="radio"/> Perform. Level 1	<input checked="" type="radio"/> Perform. Level 2	<input checked="" type="radio"/> Perform. Level 3
Administration	<input checked="" type="radio"/> Perform. Level 1	<input checked="" type="radio"/> Perform. Level 2	<input checked="" type="radio"/> Perform. Level 3
Regulations	<input checked="" type="radio"/> Perform. Level 1	<input checked="" type="radio"/> Perform. Level 2	<input checked="" type="radio"/> Perform. Level 3
Workforce and Small Business Equity Programs	<input checked="" type="radio"/> Perform. Level 1	<input checked="" type="radio"/> Perform. Level 2	<input checked="" type="radio"/> Perform. Level 3
Project Total	<input checked="" type="radio"/> Perform. Level 1	<input checked="" type="radio"/> Perform. Level 2	<input checked="" type="radio"/> Perform. Level 3

FORM SUBMITTED TO CONTRACTOR	MANDATORY MEETING <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No	HOW SUBMITTED <input type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Cert. Mail	VERIFIABLE RECEIPT
MEETING REQUESTED <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No	MEETING HELD	ACTION TAKEN BY CONTRACTOR <input checked="" type="radio"/> Signed <input checked="" type="radio"/> Not Signed (after 15 day period) <input checked="" type="radio"/> Request Appeal with CAE	
COMMENTS			

SECTION B: APPEAL REVIEW (CONSTRUCTION SECTION)

EVALUATION RCVD BY CONSTRUCTION SECT.	APPEAL MEETING HELD	ACTION TAKEN BY CAE <input type="checkbox"/> Score Remained <input type="checkbox"/> Score Chan	CONTRACTOR SIGNED <input type="checkbox"/> N/A
COMMENTS			

SECTION C: OCCURRENCE LEVEL EVALUATION (CONSTRUCTION SECTION)

<input type="checkbox"/> Management	<input type="checkbox"/> All categories were in Performance Level 1	
<input type="checkbox"/> Safety		
<input type="checkbox"/> Administration		
<input type="checkbox"/> Regulations		
<input type="checkbox"/> Workforce and Small Business Equity Programs		
<input type="checkbox"/> Project Total		
ANALYSIS PERFORMED BY		FORWARD TO SCME

COMMENTS

SECTION D: STATE CONSTRUCTION AND MATERIALS ENGINEER ACTION

SCME ACTION TAKEN

SCME COMMENTS

NOTIFICATION SENT TO OPO	CORRECTIVE ACTION PLAN RCVD
CONTRACTOR REQUESTED DAS APPEAL	



ODOT CONSTRUCTION PROJECT EVALUATION PRIME CONTRACTOR PERFORMANCE EVALUATION

PROJECT NAME 0	PROJECT MANAGER 0	CONTRACT NO. 0
CONTRACTOR 0	REPORTING PERIOD 0	<input type="checkbox"/> Annual <input type="checkbox"/> Final

INSTRUCTIONS: The Project Manager should complete the following evaluation providing one answer for each category. Once completed, the Project Manager should send the evaluation to the Contractor for their review and signature. The Contractor has 14 days to respond, either by requesting a meeting or signing and returning the evaluation. If a meeting is held, the Contractor then has seven (7) days to sign the evaluation either by accepting the score or requesting an appeal meeting with the Contract Administration Engineer. If an appeal meeting is held, the decision of the CAE is final.

MANAGEMENT

SUPERVISION

Score

- +5 Superintendent is always taking the lead and correcting issues. Superintendent is very hands on and manages/assists all subcontractors on a daily basis.
- +1 Superintendent is very proactive when addressing issues and takes the lead to correct problems without being notified by Agency.
- 0 **Baseline: Superintendent is available when needed and has good control of his subcontractors. Individual is very knowledgeable of the work, while performing quality work throughout the project.**
- -1 Superintendent is unavailable and/or slow in addressing quality concerns.
- -2 Superintendent is not addressing poor performance and not willing to address poor workmanship.
- -3 The Agency has to suspend any portion of work, due to lack of supervisor or performance by the prime contractor's superintendent.

0

PROGRESS SCHEDULE

Initial Project Schedule and Narrative Submittal

- 0 **Baseline: Initial schedule and narrative submitted 10 days prior to pre-construction conference.**
- -1 Initial schedule and narrative submitted less than 10 days prior to pre-construction conference (if PM allows, still score down)
- -2 Initial schedule and narrative submitted at pre-construction conference (if PM allows, still score down)
- -3 Initial schedule and narrative submitted after pre-construction conference (if PM allows, still score down)

0

Project Schedule and Narrative: Completeness and Detail

- +2 Initial schedule and narrative complete, significantly added detail, completeness and/or an initial meeting set up with PM office to review schedule.
- +1 Initial schedule and narrative complete, includes added detail.
- 0 **Baseline: Initial schedule and narrative complete according to Specifications (Type C schedule include resource information).**
- -1 Initial schedule and narrative incomplete according to Specification.
- -2 Initial schedule and narrative significantly incomplete according to Specification (PM had to send back to Contractor for more information).

0

PROJECT NAME	0	PROJECT MANAGER	0	CONTRACT NO.	0
CONTRACTOR	0	REPORTING PERIOD	0	<input type="checkbox"/> Annual	<input type="checkbox"/> Final

Look-Ahead Schedule:

- +3 Communication by Contractor about Schedule is excellent.
- +1 Look-ahead Schedule submitted per Contract, schedule is realistic, Work matches schedule.
- 0 **Baseline: Look-ahead Schedule submitted per Contract (Type C Schedule includes resource information).**
- -1 Performed work does not match Schedule.
- -2 Look-ahead Schedule not submitted per Contract.

0

Schedule Updates:

- +2 Schedule updates as required; Schedule communication is excellent.
- 0 **Baseline: Schedule updates submitted per Contract, on time, complete (Type C Schedule includes resource information).**
- -2 Schedule updates not submitted per Contract, not on time, incomplete.

0

Schedule Coordination with Subcontractors:

- +2 Contractor proactively ensures Subcontractor's work meets schedule.
- 0 **Baseline: Subcontractors coordinated in Contractor's schedule, work complies with schedule.**
- -1 Subcontractors occasionally do not comply with Contractor's Schedule.
- -2 Subcontractors often do not comply with Contractor's Schedule.

0

Project Completion:

- +2 Second note issued more than two weeks before the Contract Completion date.
- 0 **Baseline: Second note issued within two weeks of the Contract Completion date.**
- -2 Project completed late, LD's charged.

0

QUALITY OF MATERIALS & WORKMANSHIP:

- +2 Contractor is always reviewing and improving performance. They take the lead to reject bad workmanship and redo items on their own. All material certification is reviewed by the Prime and meets Contract requirements.
- +1 Contractor is very proactive in working with all parties to ensure proper and timely documents are provided. Workmanship is high quality and performed in a timely manner.
- 0 **Baseline: Proactively checks to assure Contractor's and subcontractor's work meet specifications. Manages documentation of Field Tests and Certifications, provides documents prior to installation.**
- -1 Contract documents are not complete and workmanship is below industry standards, but materials were accepted as meeting intended use per specifications.
- -2 Critical material certifications were not provided and work was suspended and/or workmanship was poor enough that remove and reinstall was required.

0

MANAGEMENT ADDITIONAL INFORMATION

+10 /
-10

0

MANAGEMENT SUBTOTAL

0

PROJECT NAME	PROJECT MANAGER	CONTRACT NO.
0	0	0
CONTRACTOR	REPORTING PERIOD	<input type="checkbox"/> Annual <input type="checkbox"/> Final
0	0	

SAFETY

SAFETY:

OSHA Violations:

- +2 Visit from OSHA resulted in no violations or warnings, or the Contractor is SHARP certified.
- 0 **Baseline: Contractor did not receive any warnings/violations from OSHA on the project.**
- -1 Contractor received one (1) OSHA violation on the project.
- -2 Contractor received multiple OSHA violations on the project.

0

ODOT's Safety Documentation/Questionnaire:

- +2 Contractor made sure the questionnaire was job specific and very detailed. The document named the actual person responsible for performing the duties.
- 0 **Baseline: Contractor submitted filled out questionnaire on time (within the 10-day before pre-construction conference as required).**
- -1 Contractor submitted questionnaire late. Report incomplete.
- -2 There was no relationship between the completed questionnaire and the actual performance on the project.

0

Daily Performance of Safety:

- +4 Unannounced visits by Contractor's offsite safety officer.
- +1 Contractor is proactive with safety -- walks the talk, holds weekly safety meetings, invites ODOT, and backs off when traffic is too heavy.
- 0 **Baseline: Contractor is safety minded, follows safe practices -- reacts to ODOT concerns.**
- -1 Safety not emphasized day-to-day.
- -2 There are repeated warnings, slow to react to ODOT's safety concerns.
- -4 Any portion of entire project was shut down by the Agency due to safety concerns.

0

TRAFFIC CONTROL

Traffic Control Plan (TCP):

- +2 Contractor brings in off-site safety personnel to review project.
- +1 Contractor exceeds requirements, goes above and beyond (includes TCS).
- 0 **Baseline: Contractor follows and maintains TCP and traffic control devices (TCD's), changes by the PM, assigns proper personnel to traffic control, and TCS performed as specified.**
- -1 Contractor is unprepared/disorganized.
- -2 Traffic Control Supervisor (TCS) documentation not submitted timely and/or is inaccurate.

0

Mobility:

- +3 Contractor exceeds requirements, above and beyond.
- 0 **Baseline: Contractor met mobility requirements/mobility calendar.**
- -3 Mobility requirements not met/Agency agreements with trucking association in jeopardy.

0

SAFETY ADDITIONAL INFORMATION

+7 /
-7

0

SAFETY SUBTOTAL

0

PROJECT NAME	0	PROJECT MANAGER	0	CONTRACT NO.	0
CONTRACTOR	0	REPORTING PERIOD	0	<input type="checkbox"/> Annual	<input type="checkbox"/> Final

ADMINISTRATION

PAYMENT

Subcontractor/Supplier Payments:

- +3 Prime Contractor contacted PM proactively working to resolve Subcontractor payment issues.
- 0 **Baseline: Prime Contractor complied with Subcontractor/Supplier payment requirements (including letting PM know why payment to Subcontractor/Supplier not made.**
- -1 Contractor, on one occasion, withholds payment to subcontractor or supplier without complying with ORS 279C.580(8), including providing the Project Manager a copy of the notice required to be provided to the subcontractor or supplier.
- -3 Contractor, on more than one occasion, withholds payment to subcontractor or supplier without complying with ORS 279C.580(8), including providing the Project Manager a copy of the notice required to be provided to the subcontractor or supplier.

0

Certified Payrolls:

- +3 Contractor consistently submitted required certified payrolls early.
- +1 Contractor submitted required certified payrolls a majority of the time.
- 0 **Baseline: Contractor submitted required certified payrolls according to Contract.**
- -1 PM provided 1-2 reminders to Contractor during the project to submit certified payrolls and/or requested revised payrolls.
- -2 PM provided 3-5 reminders to Contractor during the project to submit certified payrolls and/or requested revised payrolls.
- -3 PM had to consistently send reminders to Contractor during the project to submit certified payrolls.

0

Wage Complaints:

- +2 Contractor did not receive any wage complaints.
- 0 **Baseline: Contractor complied with wage payment requirements.**
- -1 PM received 1-2 wage complaints that could not be resolved within two months.
- -2 PM received three or more wage complaints that could not be resolved within two months.

0

DISPUTES/CLAIMS

Disputes:

- +5 Contractor is proactive in resolving disputes (provides documentation, responds to PM questions).
- 0 **Baseline: Contractor complies with contract requirements when raising and resolving disputes.**
- -5 Contractor does not work to resolve disputes.

0

Claims:

- +5 Contractor goes over and above to proactively work to get claim resolved.
- 0 **Baseline: Contractor complies with contract requirements (Section 199) when raising and resolving disputes.**
- -5 Contractor does not provide required documentation w/claims or does not provide additional records when requested by Agency.

0

PROJECT NAME	PROJECT MANAGER	CONTRACT NO.
0	0	0
CONTRACTOR	REPORTING PERIOD	<input type="checkbox"/> Annual <input type="checkbox"/> Final
0	0	

BREACH

0

No Breach of Contract on this project.

-25

Contractor received Breach of Contract Letter for Material Breach, requires at a minimum meeting with the State Construction and Materials Engineer.

-50

Contractor is Terminated for Default, requires impact on pre-qualification. (This item automatically results in 6-month prequalification suspension.

0

ADMINISTRATION ADDITIONAL INFORMATION

+5 / -5

0

ADMINISTRATION SUBTOTAL

0

PROJECT NAME	0	PROJECT MANAGER	0	CONTRACT NO.	0
CONTRACTOR	0	REPORTING PERIOD	0	<input type="checkbox"/> Annual	<input type="checkbox"/> Final

REGULATIONS

ENVIRONMENTAL, PERMITTING, AND REGULATIONS:

- +4 Contractor exceeded requirements of project.
- +1 Contractor cooperated proactively with State and Federal inspectors.
- 0 **Baseline: Contractor met all permitting requirements with no violations.**
- -1 Contractor received one or more regulatory warning letters.
- -4 Contractor received one or more notice of violation(s).

1

Erosion and Sediment Control:

- +3 Contractor proactively dealt with erosion and sediment control issues.
- 0 **Baseline: Contractor met Erosion and Sediment Control requirements on the project.**
- -1 Contractor did not submit revised initial project specific ESCP prior to preconstruction conference and/or did not provide appropriate documentation.
- -2 Contractor did not have required emergency materials on the project site to deal with erosion control issues and/or PM had to send repeated reminders to submit appropriate documentation.
- -3 Contractor did not update ESCP during the project showing revisions.

0

REGULATIONS ADDITIONAL INFORMATION

+3/
-3

0

REGULATIONS SUBTOTAL

1

PROJECT NAME 0	PROJECT MANAGER 0	CONTRACT NO. 0
CONTRACTOR 0	REPORTING PERIOD 0	<input type="checkbox"/> Annual <input type="checkbox"/> Final

WORKFORCE AND SMALL BUSINESS EQUITY PROGRAM

ONLY COMPLETE THE AFFIRMATIVE ACTION SECTION ON THE FINAL EVALUATION!

WORKFORCE AND SMALL BUSINESS EQUITY:

Disadvantaged Business Enterprise (DBE) Requirements:

- +5 Prime Contractor exceeded hard or aspirational DBE goals.
- +1 All DBE documentation was completed and submitted without reminders.
- 0 **Baseline: Prime Contractor assured that all DBE requirements were met (including Commercial Useful Function requirements). Met DBE goals.**
- -1 PM sent written notice to Prime Contractor to obtain proper DBE documentation.
- -2 PM sent more than one written notice to Prime Contractor to obtain proper DBE documentation.
- -3 Prime Contractor did not meet DBE requirements on the project (e.g., established DBE goals, Commercial Useful Function (CUF) requirements, etc.).

0

Equal Employment Opportunity (EEO) Requirement:

- 0 **Baseline: Contractor met EEO requirements for the project.**
- -1 PM sent written notice to Prime Contractor to obtain proper EEO documentation.
- -3 Contractor did not meet the EEO requirements for the project.

0

On-the-Job Training (OJT/Apprenticeship) Requirements:

- +3 Contractor used more OJT/Apprenticeship Hours/Training Positions (even if ODOT not participating).
- 0 **Baseline: Contractor used proper number of OJT/Apprenticeship Hours and provided proper documentation.**
- -3 Contractor did not meet the number of required OJT/Apprenticeship Hours or allocated training positions on the project and/or the Contractor did not provide proper documentation.

0

WORKFORCE AND SMALL BUSINESS EQUITY ADDITIONAL INFORMATION

+5/ -5	
-----------	--

0

WORKFORCE AND SMALL BUSINESS EQUITY SUBTOTAL

0

SCORES/SIGNATURES

Management Subtotal	0
Safety Subtotal	0
Administration Subtotal	0
Regulations Subtotal	1
Workforce and Small Business Equity Subtotal	0

CONTRACT REPRESENTATIVE SIGNATURE	Date
PROJECT MANAGER SIGNATURE	Date

☐ Contractor elects to appeal the score to the Contract Administration Engineer pursuant to OAR 734-010-0300

TOTAL SCORE 1

PROJECT NAME	0	PROJECT MANAGER	0	CONTRACT NO.	0
CONTRACTOR	0	REPORTING PERIOD	0	<input type="checkbox"/> Annual	<input type="checkbox"/> Final

PERFORMANCE LEVEL CRITERIA AND ACTION PLAN

CRITERIA

Category	Perf Level 1	Perf Level 2	Perf Level 3
Management	>-8	Between -8 and -11	<-11
Safety	>-8	Between -8 and -10	<-10
Administration	>-9	Between -9 and -12	<-12
Regulations	>-6	Between -6 and -7	<-7
Workforce and Small Bus. Equity Program	>-6	Between -6 and -7	<-7
Project Total	>-28	Between -28 and -38	<-38

REQUIRED ACTIONS

All Performance Levels

- (a) Sign and return the evaluation to the Project Manager.
- (b) Request a Review meeting with the Project Manager to discuss the evaluation score within 14 days of receipt. Following the Review meeting with the Project Manager, sign and return the evaluation to the Project Manager.
- (c) Request an Appeal meeting with the Contract Administration Engineer within 7 days from Construction Project Manager Review meeting, to appeal the Project Manager's evaluation score.

Once the score becomes final, the Construction Section will determine which occurrence level is appropriate. The Construction Section will contact the Contractor if further action is necessary.

Performance Level 1

If the evaluation score falls within Performance Level 1, no further action will be required of the contractor. However, the contractor may still request a Review Meeting, regardless of the score, with the Construction Project Manager to review the score.

Performance Level 2

The following table identifies the actions required for a final score under Performance Level 2 depending on the number of occurrences in Levels 2 and 3. Occurrences are considered on a per category basis, as well as a project total. An occurrence in Performance Level 2 is considered a 1/2 occurrence in the Performance Level 3 course of action.

Occurrence	Performance Level 2 Action
1 st Occurrence	Mandatory Meeting with Project Manager
2 nd Occurrence	State Construction and Materials Engineer contact (phone call or meeting)
3 rd Occurrence	Mandatory Meeting with State Construction and Materials Engineer requiring written corrective action prepared by contractor per 734-010-0330.
4 th Occurrence	Mandatory 3 month prequalification suspension requiring written corrective action plan at least 30 days prior to end of suspension per 734-010-0330.
Each subsequent occurrence	Doubles the previous length of suspension (6 month, 12 month, 24 month, etc.).

Performance Level 3

The following table identifies the actions required for a final score under Performance Level 3 depending on the number of occurrences in Levels 2 and 3. Occurrences are considered on a per category basis, as well as a project total. An occurrence in Performance Level 3 is considered 2 occurrences in the Performance Level 3 course of action.

Occurrence	Performance Level 2 Action
1 st Occurrence	State Construction and Materials Engineer contact (phone call or meeting)
2 nd Occurrence	Mandatory Meeting with State Construction and Materials Engineer requiring written corrective action prepared by contractor per 734-010-0330.
3 rd Occurrence	Mandatory 3 month prequalification suspension requiring written corrective action plan at least 30 days prior to end of suspension per 734-010-0330.
4 th Occurrence	Mandatory 6 month prequalification suspension requiring written corrective action plan at least 30 days prior to end of suspension per 734-010-0330.
Each subsequent occurrence	Doubles the previous length of suspension (6 month, 12 month, 24 month, etc.).

EXHIBIT F

Oregon Contractor's Construction Process Feedback Form



Sent to Contractor on _____

Contract No. _____

Part A Contractor's Construction Process Feedback

Office Use Only

Date Received _____ Final % Score _____

Project Manager _____

Project Name _____

Contractor _____

Evaluation Year _____

Contract No. _____

Instructions to Prime Contractor Representative

Answer all questions in Part A determining and entering the appropriate points to be assigned to each question in the box next to the question. For questions that do not apply, enter "0" in the score box. Review the completed evaluation with the PM. If the PM is unavailable, sign and date the evaluation, and send a copy to the ODOT PM office for their review. The PM will review and distribute copies.

Enter "0" for
non-applicable

Score Possible

QUALITY OF PLANS AND SPECIFICATIONS

1. Were the details of the Contract Plans Adequate to construct the project?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

0

2. Were the specifications for the project clear on what was required?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

0

3. Were the specifications for the project clear on how the contractor would be paid for the various bid items?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

0

4. Were the plans and specifications organized in a manner that made them easy to understand and follow?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

0

5. How well did the plan details match with field conditions?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

0

6. Were utility conflicts dealt with prior to pre-construction?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

0

Provide specific examples resulting in the Very Good rating (limit 500 characters)

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

Suggestions for Improving Plans and Specifications (limit 500 characters)

CONSTRUCTIBILITY

7. Was the project constructible within the time allowed for the contract documents?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
8. Were seasonal restrictions adequately defined and provide a reasonable opportunity to construct the project on time?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
9. Were staging details adequate to complete the project?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
10. Were allowable traffic restrictions adequately detailed and reasonable to construct the project safely?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
11. How well were utility conflicts addressed during construction?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

Provide specific examples resulting in the Very Good rating (limit 500 characters)

ENVIRONMENTAL/CONTEXT SENSITIVE AND SUSTAINABLE SOLUTIONS

12. Were environmental constraints adequately communicated in the contract documents?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
13. Did environmental constraints allow for reasonable construction practices to be followed in completing the project?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
14. Were any unknown environmental conditions discovered during construction?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
15. Were mobility requirements adequately communicated in the contract documents?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
16. Did mobility requirements allow for reasonable construction practices?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		

Provide specific examples resulting in the Very Good rating (limit 500 characters)

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

APPROVALS OF SUBMITTALS

17. Were shop drawings reviewed and returned in a timely manner with specific, clear comments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
18. Were falsework, formwork and shoring drawings reviewed and returned in a timely manner with specific, clear comments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
19. Were materials sources and preliminary material samples reviewed and returned in a timely manner with specific, clear comments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
20. Were mix designs reviewed and returned in a timely manner with specific, clear comments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
21. Were construction plans and progress schedules reviewed and returned in a timely manner with specific, clear comments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
22. Was the contractor's written quality plan reviewed and returned in a timely manner with specific, clear comments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
23. Was the contractor's Traffic Control Plan reviewed and returned in a timely manner with specific, clear comments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		

Provide specific examples resulting in the Very Good rating (limit 500 characters)

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

Enter "0" for non-applicable	
Score	Possible

MANAGEMENT AND ADMINISTRATION

24. Did the PM help facilitate contact with utilities, railroads and other government agencies?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
25. How well did the PM anticipate problems?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
26. What was the availability of the PM and were decisions communicated in a timely, accurate manner?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
27. What was the cooperation of the PM to address CCO, EWO, RFI's, etc.?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
28. How was the accuracy and timeliness of Contract Change Orders and Progress Payments?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		
29. How well did the PM respond to Pre-bid questions?		0
Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.		

Provide specific examples resulting in the Very Good rating (limit 500 characters)

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

Enter "0" for
non-applicable

Score	Possible
-------	----------

QUALITY INSPECTION AND COMPLIANCE VERIFICATION

30. How was the knowledge and training of the inspectors and quality compliance personnel?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

	0
--	---

31. How was the objectivity and fairness of inspectors regarding the compliance of materials and workmanship with contract quality requirements?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

	0
--	---

32. How was the timeliness and availability of inspectors and quality compliance personnel?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

	0
--	---

33. What was the timeliness and accuracy of verification sample and test results for comparison to contractor's results?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

	0
--	---

34. How was the attitude of the PM and inspection staff regarding Project Safety, Public Safety and Work Zone Traffic Control?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

	0
--	---

Provide specific examples resulting in the Very Good rating (limit 500 characters)

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

Enter "0" for
non-applicable

Score	Possible
-------	----------

COMPLIANCE WITH REGULATIONS AND RESTRICTIONS

35. Were limitations on project traffic restrictions and mobility delay thresholds communicated adequately by the PM?

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

	0
--	---

36. How was the PM's support in helping the contractor comply with the requirements referenced in 00290.00 through 00290.91 and any related permits required for the project.

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

	0
--	---

Provide specific examples resulting in the Very Good rating (limit 500 characters)

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

FINAL INSPECTION AND PROJECT CLOSEOUT

32. How was the PM's coordination and effectiveness regarding final inspection and closeout of the project?

	0
--	---

Very Good = 5 pts. Satisfactory = 4 pts. Needs Improvement = 3 pts.

Provide specific examples resulting in the Very Good rating (limit 500 characters)

--

Provide specific examples of issues that resulted in the Needs Improvement rating (limit 500 characters)

--

Section A Total Score / Total Possible			0
Percentage Score			

Contract Representative Signature (signature indicates that contractor has reviewed evaluation.)

Date

Project Manager Signature

Date

☐ Agree
☐ Disagree

NOTE: Use a separate sheet for additional comments and staple to the back of this document.

*Forward a scanned copy to ODOT Contract Services mailbox.
PM to retain original*

EXHIBIT G

Virginia Vendor Data Sheet

Annex 6-C

VENDOR DATA SHEET

Note: The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive. (In the case of a two-step IFB, it may cause the proposal portion to be determined to be not acceptable.)

1. Qualification: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

2. Vendor's Primary Contact:

Name: _____ Phone: _____

3. Years in Business: Indicate the length of time you have been in business providing this type of good or service:

_____ Years _____ Months

4. Vendor Information:

eVA Vendor ID or DUNS Number: _____

5. Indicate below a listing of at least four (4) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

A. Company: _____ Contact: _____

Phone: (____) _____ Fax: (____) _____

Project: _____

Dates of Service: _____ \$ Value: _____

B. Company: _____ Contact: _____

Phone: (____) _____ Fax: (____) _____

Project: _____

Dates of Service: _____ \$ Value: _____

C. Company: _____ Contact: _____

Phone: (____) _____ Fax: (____) _____

Project: _____

Dates of Service: _____ \$ Value: _____

D. Company: _____ Contact: _____

Phone: (____) _____ Fax: (____) _____

Project: _____

Dates of Service: _____ \$ Value: _____

I certify the accuracy of this information.

Signed: _____ Title: _____ Date: _____

When used: This form is used as an attachment to a solicitation when the agency or institution wishes to check the bidder's/offeror's references or to verify the bidder's/offeror's experience.

EXHIBIT H

Virginia Procurement Complaint Form

Annex 10-H
COMMONWEALTH OF VIRGINIA
Department of General Services
Division of Purchases and Supply
PROCUREMENT COMPLAINT FORM

INSTRUCTIONS FOR COMPLETING THE PROCUREMENT COMPLAINT FORM:

Ir up #S uhsdudwlrq#qvwxfwlrqv#

Heading: Vendor /Agency information and distribution instructions.

1. Insert the full name and address of the vendor/agency and Insert the eVA Number when submitting the report.
2. Name the person that is to be contacted.
- 3.# **Any responsible person's signature is acceptable (Authorized Vendor/Agency Signature).**
4. Insert phone number of contact person.

Closure: Agency and Order Entry Information

1. Insert the full name and address of the agency/vendor against which this report is filed.
2. Insert the agency representative/buyer/vendor you last contacted, including the phone number and extension.
3. Insert buyer /agency/vendor representative signature.
4. Insert date this form was initiated.
5. Insert the bid number if not an agency order.
6. Insert the purchase order number
7. Insert the purchase order date.
8. Insert the contract number if using state or single agency contract.
9. Insert generic commodity name of the item. Example: chair, etc.
10. Insert Agency Code/ eVA number.

Nature of Complaint: Insert (X) for principle reason (s) for complaint. Attach additional information and documentation.

NOTE:

1. Additional documentation can be attached to e-mail or faxed.
2. Transmit Copy by e-mail, fax or postal delivery.
3. Send via Email to: valerie.deloach@dgs.virginia.gov , fax (804) 786-5413 or mail to 1111 E. Broad Street, Richmond ,VA 23218-1199.
4. Agency/Vendor must print or save a copy for their files.

5.# This form may be used by both Agency and Vendor for complaint issues concerning contracts.

COMMONWEALTH OF VIRGINIA
 Department of General Services
 Division of Purchases and Supply
PROCUREMENT COMPLAINT FORM

FOR DPS USE ONLY	File Date:	Status:	File No:
	Action/Date:		

TO:

Name of Vendor and eVA# / Agency & Agency Code :		
Address:		
City:	State:	Zip Code:

Contact Name:	Title:
Signature:	
Phone No:	

NOTE: VENDOR/AGENCY MUST SUBMIT THEIR WRITTEN REPLY BELOW WITHIN TEN (10) DAYS OF RECEIPT OF THIS REPORT. INDICATE YOUR COUNTERMEASURE/CORRECTIVE ACTION BELOW AND MAIL A COPY TO THE ORIGINATING AGENCY AND A COPY TO THE CONTRACT COMPLIANCE OFFICER, DIVISION OF PURCHASES AND SUPPLY, P.O. BOX 1199, RICHMOND, VA 23218-1199. ATTACH ADDITIONAL SHEETS FOR YOUR RESPONSE IF REQUIRED.

FROM:

Agency/Vendor Name:		
Address:		
City:	State:	Zip Code:

Agency /Vendor Contact :
Phone No:
Buyer/Vendor Signature:

Date:	Agency Code/ Vendor eVA#:	Contract No:	P.O. No:	P.O. Date:	Description:
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NATURE OF COMPLAINT

INVOICE/PAYMENT	DELIVERY	SPECIFICATION/AGREEMENTS	OTHER
<input type="checkbox"/> NON-PAYMENT	<input type="checkbox"/> DELIVERY REFUSED	<input type="checkbox"/> SPECS DELAYED	<input type="checkbox"/> AGENCY DELAYS
<input type="checkbox"/> LATE PAYMENT	<input type="checkbox"/> SHIPPED TO WRONG LOCATION	<input type="checkbox"/> MODIFICATION (NO CHANGE ORDER)	<input type="checkbox"/> UNAUTHORIZED CANCELLATION
<input type="checkbox"/> INCORRECT PAYMENT	<input type="checkbox"/> PARTIAL DELIVERY	<input type="checkbox"/> BID SAMPLE PROBLEMS	<input type="checkbox"/> UNAUTHORIZED PURCHASE FROM NON-CONTRACT VENDOR
<input type="checkbox"/> REFUSED LATE CHARGES	<input type="checkbox"/> TIME OF DELIVERY INAPPROPRIATE	<input type="checkbox"/> DID NOT MEET SPEC.	<input type="checkbox"/> POOR CUSTOMER SERVICE
<input type="checkbox"/> INVOICE PRICE INCORRECT	<input type="checkbox"/> IMPROPER METHOD OF DELIVERY	<input type="checkbox"/> UNAUTHORIZED SUBSTITUTION	<input type="checkbox"/> SHORT/OVER WEIGHT OR COUNT
<input type="checkbox"/> INCORRECT QUANTITY	<input type="checkbox"/> DAMAGED SHIPMENT	<input type="checkbox"/> DAMAGED PRODUCT	<input type="checkbox"/> UNSATISFACTORY INSTALLATION
<input type="checkbox"/> ITEMS DID NOT SHIP	<input type="checkbox"/> LATE/NO DELIVERY	<input type="checkbox"/> LACKS INSPECTION REPORT	<input type="checkbox"/> FAILURE TO IDENTIFY SHIPMENT PER CONTRACT TERMS

OTHER OR FURTHER EXPLANATION: _____

COMMONWEALTH OF VIRGINIA
Department of General Services
Division of Purchases and Supply
PROCUREMENT COMPLAINT FORM

COUNTERMEASURES:

(Agency/Vendor: Be accurate, complete and factual. Indicate manner in which you suggest complaint be settled.)

FOR DPS USE ONLY	File No: _____
	Action/Date: _____
	Resolved _____
	Removed from Bidder List _____
	Suspension _____
	Debarment _____
	Contract Compliance Officer _____

CITY AND COUNTY OF HONOLULU DEPARTMENT OF DESIGN AND CONSTRUCTION			STANDARD OPERATING PROCEDURES CONSTRUCTION PHASE	
SUBJECT CONSTRUCTION CONTRACTOR EVALUATION			PROCEDURE ID CONSTRUCTION 32	
EFFECTIVE DATE (MM/DD/YYYY)	CURRENT REVISION (PAGE OR ATTACHMENT)	APPROVED	DISTRIB. ADM, MED, FD, CD, WD	PAGE 1 of 2

PURPOSE:
To conduct meaningful and consistent performance evaluations of construction contractors that can be used during evaluation of bids for future projects. The evaluation process can also be used to alert contractors to deficiencies that can be addressed during construction.

POLICY STATEMENT:
The Department of Design and Construction (DDC) contracts with construction contractors for construction of capital improvement projects. Consistent, comprehensive evaluations of contractor performance shall be conducted at the completion of each construction contract. The evaluations shall be available for consideration when contractors are selected for future construction contracts.

Note: Under current law it is allowable for past performance of construction contractors to be a criterion in bid evaluations, as long as this criterion is clearly stated in the invitation for bids. HRS 103D-302(f) states: "The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids," (Reference 1). Similarly, for competitive sealed proposals, HRS 103D-303(g) states: "Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation," (Reference 2)

RESPONSIBILITY:
DDC Administration, Mechanical Electrical, Facilities, Civil, and Wastewater Divisions and Budget and Fiscal Services (BFS).

SCOPE:
Conduct consistent and comprehensive procedures for performance evaluation of construction contractors to be used for all construction projects. The construction performance evaluations will be available for consideration during bid evaluations for future construction contracts.

PROCEDURE:
At a minimum, when all services under a construction contract have been completed, the DDC construction project manager or inspector, or contracted construction manager (CM), if used, shall conduct an evaluation of the quality of construction services provided. If the evaluation is done by a contracted CM, the DDC construction project manager or inspector shall review the evaluation with the contracted CM and understand the reasons for the evaluation results.

One or more interim performance evaluations should be done during construction if there are performance problems that could potentially result in a Marginal or Unsatisfactory rating in any of the performance elements. This would give the contractor an opportunity to correct the problem(s) and improve their final performance evaluation. Interim performance evaluations are optional if the contractor's performance is Satisfactory or better in all of the performance elements.

Each evaluation shall include the following activities:

- Complete the Construction Performance Evaluation Form (Attachment 1).
- Review the evaluation with the contractor, advise the contractor that a written response (optional) is encouraged and will be attached to the evaluation, and obtain the contractor's signature. If the contractor refuses to sign the evaluation form, document the refusal (date and persons involved).
- Obtain the required DDC signatures; and
- Distribute the signed evaluation form as follows:
 1. PDF file or hard copy to the contractor.
 2. PDF file or hard copy to DDC Project Control and Contract Management Section for uploading to the Project Control database for future Departmental access.
 3. Original document to the project file.

REFERENCES:

1. [HRS 103D-302, Competitive Sealed Bidding](#)
2. [HRS 103D-303 Competitive Sealed Proposals](#)

ATTACHMENTS:

1. DDC Construction Performance Evaluation Form with Instructions

PERFORMANCE EVALUATION (CONSTRUCTION)		1. CONTRACT NUMBER	
		2. DDC DIVISION	
PART I - GENERAL CONTRACT DATA			
3. TYPE OF EVALUATION (X one) <input type="checkbox"/> INTERIM (COMPLETION _____ %) <input type="checkbox"/> FINAL <input type="checkbox"/> AMENDED			
4.a. CONTRACTOR (Name, Address, and ZIP Code)	5.a. PROCUREMENT METHOD (X one) <input type="checkbox"/> SEALED BID <input type="checkbox"/> NEGOTIATED		
	b. TYPE OF CONTRACT (X one) <input type="checkbox"/> FIRM FIXED PRICE <input type="checkbox"/> COST REIMBURSEMENT <input type="checkbox"/> OTHER (Specify)		
	6. PROJECT NAME, DESCRIPTION AND LOCATION OF WORK		
b. CONTRACTOR (Project Manager's Name)			
c. CONTRACTOR (Site Superintendent's Name)			
7. SUBCONTRACTORS: (List each subcontractor's name and specialty. Attach separate sheet, if necessary)			
8. FISCAL DATA		9. SIGNIFICANT DATES	
a. ORIGINAL CONTRACT AMOUNT		a. CONTRACT AWARD DATE	
b. TOTAL AMOUNT OF MODIFICATIONS		b. ORIG CONTR COMPL DATE	
c. LIQUIDATED DAMAGES ASSESSED		c. REV CONTR COMPL DATE	
d. NET AMOUNT PAID CONTRACTOR		d. ACCEPTANCE DATE	
IMPORTANT: Complete Part VI - Evaluation of Performance Elements before completing Part II (see instructions)			
PART II - PERFORMANCE EVALUATION SUMMARY			
10. OVERALL RATING (X appropriate box) <input type="checkbox"/> OUTSTANDING <input type="checkbox"/> SATISFACTORY <input type="checkbox"/> UNSATISFACTORY <input type="checkbox"/> ABOVE AVERAGE <input type="checkbox"/> MARGINAL			
PART III - EVALUATOR			
11.a. EVALUATOR'S NAME & TITLE		b. COMPANY (if CM consultant)	
c. SIGNATURE		d. DATE	
PART IV - CONTRACTOR ACKNOWLEDGEMENT OF RECEIPT			
12. I have received a copy of this report and been advised that a response is encouraged and shall be attached to this report upon signature.			
a. NAME & TITLE	b. SIGNATURE	c. DATE	
PART V - REVIEWS			
13. SECTION HEAD REVIEW			
a. NAME	b. SIGNATURE	c. DATE	
14. BRANCH HEAD REVIEW			
a. NAME	b. SIGNATURE	c. DATE	
15. DIVISION CHIEF REVIEW			
a. NAME	b. SIGNATURE	c. DATE	
16. DIRECTOR REVIEW			
a. NAME	b. SIGNATURE	c. DATE	

PART VI - EVALUATION OF PERFORMANCE ELEMENTS							CONTRACT NUMBER						
N/A = NOT APPLICABLE O = OUTSTANDING A = ABOVE AVERAGE S = SATISFACTORY M = MARGINAL U = UNSATISFACTORY													
	N/A	O	A	S	M	U		N/A	O	A	S	M	U
17. QUALITY CONTROL							19. EFFECTIVENESS OF MGMT						
a. QUALITY OF WORKMANSHIP							a. COOPERATION AND RESPONSIVENESS						
b. STORAGE OF MATERIALS							b. MANAGEMENT OF RESOURCES AND PERSONNEL						
c. ADEQUACY OF MATERIALS							c. COORDINATION AND CONTROL OF SUBCONTRACTORS						
d. ADEQUACY OF SUBMITTALS							d. ADEQUACY OF SITE CLEANUP						
e. ADEQUACY OF TESTING							e. EFFECTIVENESS OF JOB-SITE SUPERVISION						
f. ADEQUACY OF AS-BUILTS							f. GENERAL COMPLIANCE WITH LAWS, REGULATIONS, AND CONTRACT REQUIREMENTS						
g. USE OF SPECIFIED MATERIALS							g. PROFESSIONAL CONDUCT						
h. IDENTIFICATION/CORRECTION OF DEFICIENT WORK IN A TIMELY MANNER							h. REVIEW/RESOLUTION OF SUBCONTRACTORS ISSUES						
18. TIMELY PERFORMANCE							20. LABOR STDS COMPLIANCE						
a. ADEQUACY OF INITIAL PROGRESS SCHEDULE							a. GENERAL COMPLIANCE WITH LABOR LAWS AND REGULATIONS						
b. ADHERENCE TO APPROVED SCHEDULE													
c. RESOLUTION OF DELAYS													
d. SUBMISSION OF REQUIRED CONTRACT SUBMITTALS AND DOCUMENTATION													
e. COMPLETION OF PUNCHLIST ITEMS													
f. SUBMISSION OF UPDATED AND REVISED PROGRESS SCHEDULES													
g. WARRANTY RESPONSE													
21. REMARKS (Explanation of each unsatisfactory and marginal evaluation is required. Other comments are optional. Provide facts concerning specific events or actions to justify the evaluation. The information must be in sufficient detail to assist branch heads and division chiefs in determining the contractors responsibility and associated performance.)													

INSTRUCTIONS FOR CONTRACTOR PERFORMANCE EVALUATION

Part I – General Contract Data

Block 3, Type of Evaluation:

- a. At a minimum, when all services under a construction contract have been completed, the DDC construction project manager or inspector, or contracted construction manager (CM), if used, shall conduct an evaluation of the quality of construction services provided.
- b. One or more interim performance evaluations should be done during construction if there are performance problems that could potentially result in a Marginal or Unsatisfactory rating in any of the performance elements. This would give the contractor an opportunity to correct the problem(s) and improve the final performance evaluation. Interim performance evaluations are optional if the contractor's performance is Satisfactory or better in all of the performance elements.
- c. An evaluation is amended only if:
 1. The contractor contests the final evaluation and a decision is made by the DDC project manager (or their section or branch head) to change the evaluation, or
 2. Post-construction contractor response merits a revision of the original evaluation.

Part II – Performance Evaluation Summary

Block 10, Overall Rating:

- a. The overall rating is based upon the evaluation of performance elements in Part VI. There are four performance elements as follows:
 1. Quality Control
 2. Timely Performance
 3. Effectiveness of Management
 4. Labor Standards Compliance
- b. Use Attachment 1, Block 10 – Overall Rating Algorithm to determine the overall rating, based on the results of the group ratings determined in Part VI, Evaluation of the Performance Elements.

Part III – Evaluator

Block 11: The DDC construction project manager or inspector or the contracted construction manager (CM), if used, shall be the evaluator. If the evaluation is done by a contracted CM, the DDC construction project manager or inspector shall review the evaluation with the contracted CM and understand the reasons for the evaluation results before it is reviewed by the section or branch head.

Part IV – Contractor Acknowledgement of Receipt

Block 12: The contractor's project manager or a company officer shall review the evaluation, be encouraged by the DDC project manager to provide a written response to be attached to the evaluation (optional), and sign and date the evaluation to acknowledge receipt. Refusal by the contractor to sign the evaluation shall be adequately documented.

Part V – Reviews

Blocks 12 - 15: The section head, branch head, division chief, and director (or deputy) shall each review, sign, and date the evaluation.

Part VI – Evaluation of Performance Elements

General Guidelines

- a. Outstanding ratings shall be selectively given to truly recognize outstanding performance in a particular performance element. It must be supported by specific events or actions performed by the contractor and documented in Block 22, Remarks.
- b. Above average ratings shall be given to contractor performance beyond the normal expectations under the specific performance element.
- c. Satisfactory ratings shall be given for performances considered to be normal expectations under the performance element.
- d. Marginal ratings shall be given for minor performance deficiencies for the performance element.
- e. Unsatisfactory ratings shall be given to a contractor who exhibits a major deficiency in performance for the performance element. This rating shall be supported by documentation in Block 22, Remarks, of specific events or actions that the contractor was responsible for.

Block 17, Quality Control; Block 18, Timely Performance; and Block 19, Effectiveness of Management:

Use Attachment 2, Blocks 17, 18, & 19 – Group Rating Algorithm to determine the group rating for Block 17, Block 18, and Block 19.

Block 20, Labor Standards Compliance:

In addition to the general guidelines indicated above, the following more specific guidelines shall also be applied to this “standards compliance” evaluation element:

- O: Appeared to meet the applicable standards with no noted deficiencies and clearly exceeded the requirements for one or more of the applicable standards.
- A: Appeared to meet the applicable standards with no noted deficiencies.
- S: Appeared to meet the applicable standards with minimal minor deficiencies that were quickly corrected after being noted.
- M: Generally met the applicable standards, but had multiple minor deficiencies that were corrected within a reasonable time.
- U: Had one or more major deficiencies or had multiple minor deficiencies that were not adequately corrected within a reasonable time.

Block 21, Remarks:

Provide reasons for each unsatisfactory and marginal rating, and additional comments as appropriate.

DDC CONSTRUCTION EVALUATION INSTRUCTIONS: ATTACHMENT 1

Block 10 - Overall Rating Algorithm		
Rating Results for the 4 Groups		Overall Rating
>1 U		U
Only 1 U		
	At least 1 M	M
	No M	
	No A or O	M
	At least 1 A or O	S
No U & >1 M		M
No U & only 1 M		
	At least 1 S	S
	No O	S
	No S	A
No U or M		
	>2 S	S
	1 or 2 S	A
No U or M or S		
	Not more O than A	A
	More O than A	O

DDC CONSTRUCTION EVALUATION INSTRUCTIONS: ATTACHMENT 2

Blocks 17, 18, & 19 - Group Rating Algorithm		
Rating Results for the 7 or 8 Elements		Group Rating
>1 U		U
Only 1 U		
	>1 M	M
Only 1 M		
	>2 S	M
	Not >2 S	S
No M		
	>3 S	M
	Not >3 S	S
No M & no S		
	>3 A	S
	Not >3 A	A
No U & >2 M		M
No U & 1 or 2 M		
	1 or more S	S
	No S & not >2 O	S
	No S & >2 O	A
No U or M		
	>3 S	S
	2 or 3 S	A
	Only 1 S	
	>2 A	A
	Not >2 A	O
No U or M or S		
	Not more O than A	A
	More O than A	O

Past Performance Survey Results Summary

[View all responses](#) [Publish analytics](#)

STAKEHOLDER PROFILE:

What role(s) have you held with regard to invitations for bids (IFBs) issued by a government entity?

General Contractor	364	43%
Subcontractor	236	28%
Employee of a vendor	153	18%
Government Employee	97	11%
Procurement Specialist	61	7%
Legislator	3	0%
Attorney	7	1%
Procurement Policy Advocate	6	1%
Concerned Taxpayer	57	7%
Other	133	16%

What size contracts have you worked with?

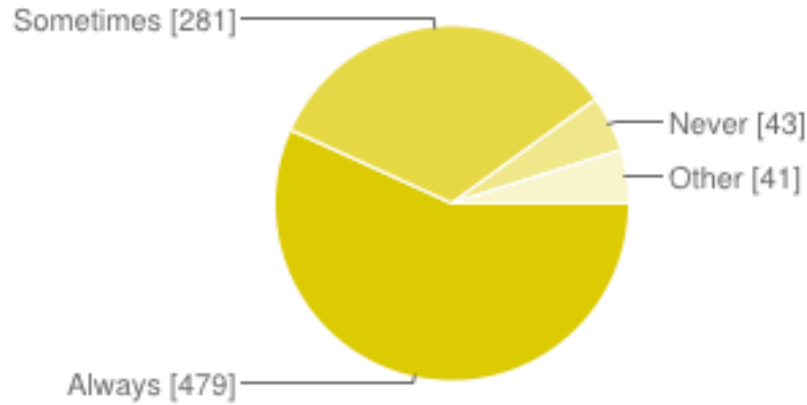
What types of IFB contracts have you worked with?

Goods	279	33%
Services	518	61%
Construction	281	33%
N/A	42	5%

None	41	5%
\$1- \$2,500	185	22%
\$2,501 - \$15,000	293	35%
\$15,001 - \$100,000	420	50%
\$100,001 - \$250,000	316	37%
\$250,001 - \$1,000,000	309	37%
> \$1,000,000	257	30%

Past Performance Survey Results Summary

When the competitive sealed bid (IFB) is used to procure for goods, services or construction, do you think past performance should be an evaluation factor?



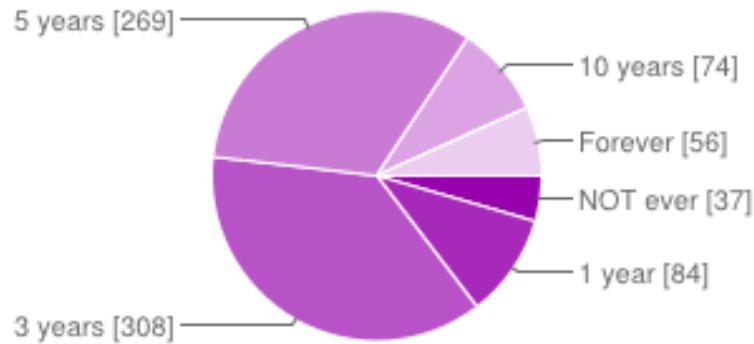
Always	479	57%
Sometimes	281	33%
Never	43	5%
Other	41	5%

When do you think past performance should be evaluated in the IFB process?

As soon as offerors submit their bids	363	43%
At source selection - For the lowest bid only	55	7%
At source selection - For the lowest three bids	310	37%
At award of contract to lowest bid	68	8%
At contract closeout	51	6%
Other	63	7%

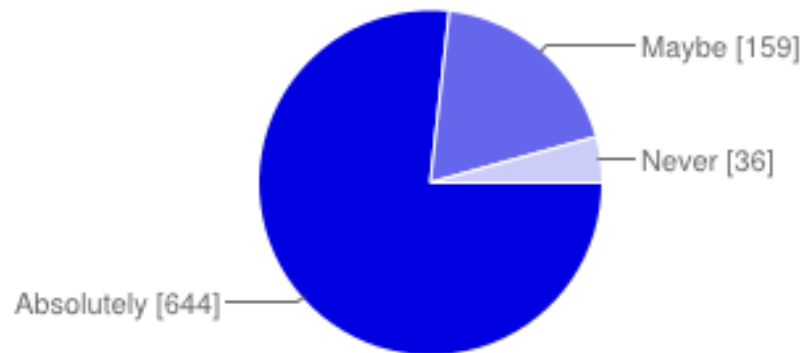
Past Performance Survey Results Summary

How far in the past should a vendor's relevant past performance be considered when evaluating offers in response to an IFB?



NOT ever	37	4%
1 year	84	10%
3 years	308	36%
5 years	269	32%
10 years	74	9%
Forever	56	7%

Should past performance be considered in determining whether a bidder has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance?



Absolutely	644	76%
Maybe	159	19%
Never	36	4%

Past Performance Survey Results Summary

What performance criteria do you think would be important for performance metrics?

Cost (unjustified or multiple cost overruns, justified or minimal cost overruns, no overruns or cost savings)	635	75%
Time (unjustified delays, justified delays, deadlines met or early)	649	77%
Modifications (excessive, justifiable, or none)	464	55%
Quality (inadequate, adequate, exceptional)	734	87%
Other	123	15%

How do you think past performance should be reported?

Through an internal state database	342	41%
On paper files only	30	4%
Through objective evaluation criteria with contract regency and relevancy noted	490	58%
With subjective notations	149	18%
As a matter of vendor compliance (reported through Hawaii Compliance Express)	301	36%
Through three references supplied by the offer	239	28%
Other	71	8%

How do you perceive past performance?

A major problem with poor past performers abusing the low-bid IFB system	406	48%
Dismissive to vendors with high-quality procurement performance	214	25%
Not an issue that should be addressed in IFBs	51	6%
Good information that should be shared with other procuring departments	455	54%
Important to consider when awarding taxpayer funded contracts	537	64%
Other	43	5%

Past Performance Survey Results Summary

Do you have any recommendations for how to incorporate past performance in bidder evaluation of IFBs?

- 1) Quality of Work 2. Timeliness 3. Experience
- 2) Minimum requirements, reference checks
- 3) through interviews.
- 4) Focusing on past performance insures you get the same old boys using the same old methods. Open the process to new entities with new ideas.
 1. Add a percentage to the bid for those with poor past performance; subtract a percentage for those with excellent past performance; 2) determine a poor past performer is not a qualified bidder
- 5) Speed and ease in billing and payment process. Clarity in requirements and operations needed for the performance of services for the contract.
- 6) Have bidder's sign an information/liability release form and get in-depth performance review information from their references. Require enough references so it provides an accurate assessment. Keep that info confidential so the reference givers are willing to be open and honest.
- 7) Assign points to past performance but not too many. Otherwise new bidders would never have a chance. You could incorporate it into the "experience" section. Too many points will give the appearance of favoring a certain vendor and trying to avoid choosing a new vendor but I recognize the desire of entites to want to have an opportunity to choose a known vendor with whom they have worked with and been satisfied with.
- 8) It depends on how and when you plan to implement: If you start now, and 3 years of data collection is needed you can't implement in solicitation until 3 years + 1 days from start or data collection. You will also need to have an alternate method in lieu of past performance if vendor bank is not large enough for specific department, may only have awarded two contracts to same vendor over a four or five year period. Is SPO going to be repository for data collection from all exec dept? These are some of my ideas, but what is SPO thinking.
- 9) Standardized performance evaluation form to be completed by the contracting agency/customer. Must be objective with pass fail parameters and the abiity for the contractor to exception to the evaluation.
- 10) Have a survey filled out after every contractor finishes a job.
- 11) Contractor should be able to verify and confirm past work experience in the field of IFB.
- 12) review past monitoring reports, have monitoring reports be scaled 1-5
- 13) project descriptions with reference contacts.
- 14) Inspection upon completion with incoming inspection and or checklist. Actual delivery date as opposed to promised delivery date.
- 15) Keep honest, open records of past performance and share these with the providers.
- 16) 15%

Past Performance Survey Results Summary

- 17) Get input from people who have used product or service to evaluate the effectiveness or service of said product or vendor used.
- 18) Preferably, no bidder should be on a bid list who not qualified to perform the work. Pre-qualification is the method the private sector uses to establish a list of bidders. This strategy serves the private sector well in that it avoids wasting time disqualifying bidders after the bids are received and does not waste the time unqualified bidders spend seeking work for which they are not qualified.
- 19) Past performances is very subjective. I have had situations where staff was incompetent, non-responsive or was changed in the middle of a project which ultimately lead to the poor outcome of a project.
- 20) Low bidder doesn't always mean best bidder. I was in purchasing for over 10 years before being in sales. Factors of past performance, quality of goods, timely deliver should also be considered along with origin of manufacture.
- 21) Work performance and quality on completed jobs. Does their completed project continue to have the same problems they have had in the past. Do they improve their systems, methods and techniques, or do they continue to have failures happen. Does their final product hold up well and perform like it should. Sometimes to get low bids they will take short cuts and skip steps. This may cause failures in the long run. Do you have a lot of Gym floors that aren't holding up as well as they should?
- 22) inquires of past performances (good or bad) must be shared with all departments. records should be kept and shared. contractors or vendors must be held accountable for poor performance and follow up corrections necessary.
- 23) Require each agency to use a standardized objective score card with criteria: late project delivery, deficient document submittals, quality control, and project coordination.
- 24) At the end of each project, an evaluation form should be filled out and provided to the Contractor. If negative scores were given in the evaluation, this should be a factor in determining if this Contractor is awarded future jobs.
- 25) How long have they been in business? Have they applied for IFB's before? How has it helped your organization? How? What were the results?
- 26) Make it a requirement to disclose past contracts and provide the government contract project manager name so that past performance can validated on a standardized form provided to the government project manager. This information shall be shared with all parties including bidders.
- 27) Performance should be based on a variety of things that make the job work from the State to the general contractor down to the subcontractor, so on and so forth and based soley on facts. *Work performance on the job *Paying subcontractors in a timely manner *Turning in paperwork on time
- 28) It should be similar to Notice of Suspension list, where any bidder on the list is ineligible to submit his bid.
- 29) At the time of completion of the contract, when job is cleared by the person in charge. 1) job should not be paid or only a partial payment should be done, An amount large enough withheld to make the vender/ provider want to take care of business . Also hold placed on their compliance status.
- 30) Have them submit Past Performance References (contact information), and Past Performance Questionnaires to those References. The References should be sending the Past Performance Questionnaires directly back to the Contracting Officer.

Past Performance Survey Results Summary

- 31) The simplest way is to follow normal process of asking for three to five references. More complex or detailed procedures would slow down business and increase costs to administration of the bid and contract. It should be noted that some types of work, such as building construction, will be much easier to quantify than those that require very specialized, technical services or products.
- 32) Add an evaluation criteria with variable score, up to 20%, depending on degree of relevancy and level of confidence in implementing contract being bid on. For example, if the evaluation panel agrees that a series of past good contract performances should be considered, they would also agree on evaluation percentage or score. Same of negative past performance of related services or product.
- 33) Follow the process used by the Federal Government.
- 34) Project performance evaluations after each project is complete.
- 35) Ask Bidders to submit monitoring reports for the last year to 18 months as a requirement of the proposal submission. If the vendor does not undergo standard monitoring as part of the contract. The vendor should be responsible for soliciting a performance evaluation from the payor/Procuring entity so that they have documentation of past performance evaluation related to rendering the service.
- 36) Keeping this information on file
- 37) Past performance should be evaluated at the end of the contract period, and if unacceptable follow the existing statutes for corrective action regarding future procurements. Do not wait until a new bid to tell a vendor their performance is unacceptable and they cannot bid.
- 38) Evaluations should be ongoing throughout the life of a contract and that data made available to all agencies at the time an RFP/RFB is requested.
- 39) NONE
- 40) From my architect's view if a contractor, architect or engineer has negative evaluations from the users, school, project manager, DAGS, etc....he should not get the project even if he is the lowest bidder.
- 41) Only that is should include the applicable facility operations and maintenance team.
- 42) vendor must have intimate, working knowledge of task necessary by those who have a need for and practice in, the use the service.
- 43) Include individuals, some companies change their name get a new dba and are do not get poor past performance evaluated. If the same people are running a new company their participation in poor past performance should be considered.
- 44) Let bidders bring up past performance in their qualifications.
- 45) Have the agency personnel directly involved with the project evaluate each contractor as a project is completed. There should be a standard form with various criteria each contractor is rated on.
- 46) Not sure. However the criteria must be totally objective and in no way should it be subjective or left to interpretation.

Past Performance Survey Results Summary

- 47) Evaluate past performance of the lowest bidder If past performance is an issue, evaluate the next lowest bidder and so forth until the lowest bidder with acceptable past performance is selected
- 48) Quality of service impacts the overall cost. Purchasing the lowest bid is not necessarily the most costs effective solution.
- 49) I highly recommend qualifications based selection, especially for services.
- 50) We have in the past provided pest services and always report on invoice our findings and recommendations. When providing termite control service we have kept the requestor informed of the status by providing annual or semi annual inspections with written report and diagrams the structure with findings that include both species of termites when we were only contracted for one species. We have never been acknowledged for doing this. We are certain our competitors do not do this...but eventually lost to lowest bidder. I doubt who ever is in charge read those reports and can fully judge or care to judge past performance.
- 51) THE OFFICE OF THE AUDITOR SHOUL DSET UP A GRADING SYSTEM FOR ALL HAWAII VENDORS. tHAT SYSTEM CAN BE USED FOR BIDDER EVALUATION.
- 52) Questionnaires to bidder's past jobs awarded by all sectors of business (private & all levels of government)
- 53) Every completed project should have an evaluation sheet filled out by the Contracting Officer, Project Design Consultant and three inspectors, (Building, Electrical and Plumbing) which ever applies. This evaluation sheet can be incorporated and use for all jobs.
- 54) First there needs to be a standard evaluaton factors/criteria that ALL State Departments/Agencies and Counties agree to in evaluating vendors performance. The performance rating should be five levels from Unsatisfactory (Rating 1) to Satisfactory (Rating 3) to Exceptional or Exceeds all Expectations (Rating 5). Second there needs to be a consistent process with proper oversight (possibly with an independant review panel/board) reviewing ALL ratings 1 (Unsatisfactory), 2 (Less than Satisfactory) and 5 (Exceptional) before the ratings are made public. The Panel/Board must provide the vendors and the rater the opportunity to mitigate any ratings 1 and 2 before the rating are made official. The Panel/Board may request further justification for any rating 5 (Exceptional). Rating 3 (Satisfactory) and 4 Excellent ratings do not need further justifications from the rater. Third there needs to be a central database that is continually maintained and updated that all State Department/Agencies, Counties and Vendors can easily access. Posting of the official rating can only be done by the gatekeeper of the database after receiving final approval by the Panel/Board. Third
- 55) Keep a database section on HCE
- 56) Ensure the offeror/bidder has not been debarred within the past three years. 2) Request at least three references that can verify the services or products were successfully delivered on-time.
- 57) Communicate with persons using products being bid on. Unfortunately the world changes. For instance insecticides and antibiotics that worked a decade ago may no longer work because pests or disease has developed tolerance. Ingredient costs change. For instance fish meal has risen to 4x level of 5 years ago. Suppliers reformulate to use less fish meal and more alternative protein sources in fish food.

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- 58) No. Performance and payment bonds protect the State. Evaluation of past performance by unqualified government employees lead to exclusionary policy and corruption. Especially in Hawaii.
- 59) completion of job on time. Safety compliance. Following of the Specs to plans and the controller of entity or government contact. Any public complaints during job within reason.
- 60) Asking for references, but references outside of Hawaii should be permitted. Otherwise it would be impossible for a vendor new to doing business in Hawaii to be awarded a contract.
- 61) Past performance working with the State should be a minimum requirement. Reason being is State procurement has nuances and restrictions which are NOT applicable to private sector, i.e., IFBs can be written with NO change orders allowed and MUST be all inclusive. Whereas in private sector, change orders are the rule and not the exception. State agencies work and operate in budget CONSTRAINTS and agencies CANNOT fabricate additional funds out of the stratosphere as many a private agency are ignorant of this FACT. Thus past experience working with State agencies should be MANDATORY if not rated highly when DAGS approves an IFB, RFP or even a simple bid response on HiePro.com.
- 62) An evaluation of services performed or product sold should be made by the agency who awarded the contract based upon relevant criteria. See below.
- 63) Ask for listings of completed past contracts and verify that these contracts validly represent similar work as the new IFB.
- 64) General Contractors carry bid bonds and performance bonds for the expressed reason to show that they will perform. The state should allow the bonding company to determine risk in performance. Contractors that cannot perform will have their bond taken and the bonding company will no longer bond them on those projects. The state should not concern themselves with performance in this way because there is already a guarantee in place that the job will be finished.
- 65) There should be a sliding scale of performance vs price. Performance should be graded and compared to price. There should be a performance threshold that a bidder must pass to be eligible to bid. There are companies out there who only bid on government contracts because they have figured out that low bid is the only thing that matters. They cannot work for the private sector because their quality of work is so low.
- 66) Have the project managers and inspectors always submit reports on the project. For the construction industry the quality and performance should be evaluated. you have a lot of cheap contractors, that do cheap or poor workmanship to make up for there cheap pricing. cheap price bidders always cannot man the job correctly.
- 67) When there is a significant lower bid, there should be flags raised to see why there is a difference in price. Lowest bid do not mean the specified product is being offered.
- 68) Consider subject matter and state requirements as they vary from project to project
- 69) Unless you provide information on the criteria to be used for evaluation and who will be doing the evaluation, we hesitate to comment on how past performance can be incorporated in the evaluation process. We think the state is opening itself for many more challenges that it currently has to do deal with in the competitive bid process.
- 70) Require the vendor to disclose past IFB awards

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- 71) Questionnaire
- 72) Provide a question form or affidavit for all bidders to complete stating that there have been no previous projects with poor or incomplete contracts that were awarded.
- 73) Ask for a brief explanation of the work and subsequent results. Also, ask for references to verify.
- 74) Was the work done on time? Was the work completed in a satisfactory manner?
- 75) A history of excessive RFI's, Change Order requests, final costs higher than 15% above initial bid price. Frequent delays due to poor planning. Poor response to directives from the State. Frequent complaints over job performance/craftsmanship.
- 76) No. It's a bad idea. It would make the entire IFB system subjective and open to opinion. There is a better way to get rid of bad contractors, but it has to be before the bid, not after. Purchasing agencies are not equipped to cast judgment.
- 77) Past (and current) jobs goes into a data base based on evaluation numbers (without names).
- 78) I think that it is important to review the quality and timeliness of the work completed. Just because someone bids low, does not mean they are doing the best job. History of work should be consider for 3-5 years back. Review past work history and look for complaints or complements regarding workmanship. Was the job completed on time? Under or over budget? For example: On a roadway...did the bike path and sidewalk have to be removed to stay within the bid? If so, hire a new company next time.
- 79) You could create a scoring system whereby participating bidders are awarded points based upon years in business, past performance and pricing.
- 80) Use prior CAVR evaluations
- 81) where the goods delivered correct? above min bid spec?
- 82) Review of the past performance discrepancies and how they have resolved these issues. Also, if they are doing work that require a licensed journeyman, verification of the licenses on these projects is also a major factor as too many contractors that have been awarded such contracts have not been following these rules.
- 83) none at this time
- 84) We do business with the Department of Defense and they incorporate past performance with value - maybe the lowest bidder is not always the best value. They determine a competitive range, and who ever is in the competitive range is evaluated based on past performance and price, all others, including the low ball bidders are knocked off.
- 85) If past performance is an important factor in determining award, then the competitive sealed proposal (RFP) process should be used.
- 86) It would be assumed that during the bidding process all aspects of the contract should be evaluated as it pertains to each bid. That does not seem to happen. This alone would eliminate many low bids allowing a responsible bidder to be awarded the contract. It would seem that a data base should be set up within the procurement organization that new bids could be evaluated by. Any infraction by a contract awardee during the length of their contract should be noted in this system. The State should develop a concise confidential document asking pertinent questions that would act as a performance appraisal on a company. A

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bidder should provide at least 3 references for each bid being submitted. That document would be sent to each reference provided by a bidder and be returned prior to the bid openings.

- 87) tough one - but there might an evaluation process of past contracts to show history and tendencies
- 88) Standard Checklist with uniform scoring
- 89) One idea is to survey and collect response from the agencies that have had experience with a vendor, asking them to rate them on delivery, price, perceived service, etc.
- 90) follow feds past performance questionnaire model
- 91) Maybe a BBB accredit.
- 92) Point system. Deductions for unsatisfactory performance.
- 93) Contractor can list past experience with government to evaluate how they think the contracted work went from their point of view. We should also be looking at ways to improve as we all know it takes a long period to get things moving
- 94) It has to be fair, with minimal subjectivity that eliminates the threat of a lawsuit that could delay the award or start of a contract.
- 95) Past performance should be used to prequalify bidders.
- 96) I think past performance should only be relevant when the performance has not met expectations otherwise the system will evolve into a closed "good old boys" network. So, I believe there should be a system to check for poor performance upon submitting a bid.
- 97) Timely completion of tasks. Quality of materials or services meets expectations.
- 98) As part of the application process. Add a couple of questions, like, have you had a contract with the state? date? completed?
- 99) The decision makers need to recuse themselves from the process if any conflicts exist or if there are any business, financial, personal or political ties. Donors to political campaigns should have to disclose the FULL list of donations made by the company, employees and families of the employees.
- 100) Disqualify any bidder who has personally, or as a company donated campaign money to ANY politician in the prior 5 years.
- 101) look at corporation history, officers past companies, eliminate the good old boy network. check the low bidder vs the change order metrics. anyone can bid low and issue change orders. hold them accountable for their mistakes.
- 102) Give the end user the opportunity to be in on the decision process of awarding the bid. They are the ones that will have to use the product and probably deal with the supplier whenever there is a need or problem.
- 103) If a vendor does anything that negatively impacts the tax payer they should not be eligible to work for the tax payer in the future.
- 104) Use to confirm a select list of qualified bidders.
- 105) criteria should be developed to set a pass/fail standard. Offering organization can reset to 0 upon 3 or 5 year and bid again

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- 106) Incorporate and make part of compliant requirements
- 107) not at this time.
- 108) Companies should be given a rating. The rating should be a tied to a discount or add to the bid price. Example, a favorable rating would entitle a company to a 2% discount off the bid price. No rating would be the submitted bid price. Unfavorable rating would add a percentage to the bid price.
- 109) no
- 110) Addendum or attachment link.
- 111) Similar to the evaluation of proposals which has categories given scores or points which are then compiled, seems fair.
- 112) Have a scoring system as part of the bid qualification process for each vendor that will add an estimated dollar factor to the bid to indicate the added cost to manage low performance work, likewise high performers can have their bids reduced by the same factors for good work and value. New vendors will be neutral.
- 113) Past performance shouldn't be considered because there could of been changes that a company had gone through and worked out their issues to provide better services.
 - 1. Procurement officer must scrutinize submitted references to avoid "friendly" relationships. 2. Solicit past performance evaluations from all state agencies for lowest 3 bidders. 3. Subcontractors should also be included in the evaluation since they typically represent 60-80% of the contract amount.
- 114) The procurement officer must evaluate past performance to make any meaningful determination of "responsibility" prior to award. I recommend the state use multi-step sealed bidding and include a requirement that the offeror provide a statement of technical qualifications (including past performance - e.g. "past performance of at least one project of similar nature within last 3 years") to have its proposal determined to be technically acceptable.
- 115) past IFB contracts completed
- 116) Questionnaire to be submitted with bid.
- 117) Include question as to changes in personnel (IFB for services), or processes within the past 3 years that would positively affect delivery of services today than in years past.
 - 1. Completion of projects within specified timeframes. 2. Number of change orders initiated by contractor or subs. 3. Ease of working with contractor.
- 118) Past performance should be based on the relevancy of the scope of work of projects worked on. In some of the proposal that we have submitted for, we may not have work on the exact project type, but we have worked on projects very similar in the scope of work. In the actual proposals it states: "Does your firm have any experience in providing CM services for the installation of passenger loading bridge system?" These types of projects seldom arise, therefore how can a local firm have the exact experience? Most firms would have the knowledge and technical ability to work similar in scope.
- 119) I think it should count as points or take away points for poor past performance.
- 120) Make a part of the solicitation.

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- 121) Project administrator to fill an evaluation for the contractor at the project completion and give scores to contractors. Poor scored contractors shall be informed at the end of each project and shall be eliminated from bidding for the new projects for a period of 5 years. We may ask contractor to submit his rating scores with his bid
- 122) For consulting contracts and analysis it should be the government's technical rep's evaluation
- 123) Just prequalify the best interested bidders, then have low price govern.
- 124) Possibly in the referral section when the IFB requests referrals from similar work. Questions could be included to ask about past performance in this section.
- 125) A discussion by the bidder about their past performance and why they should be selected for the current contract.
- 126) A review prior to the selection for lowest, three lowest, or award to lowest, of all documentation from the various departments regarding the debarment process and/or ongoing complaints for failure to adhere and/or violations to the contract provisions. The determination should take into consideration a period of time (1-3 years) of complaints and/or violations for past performances or lack thereof as factors for rejecting the vendors response.
- 127) My company does not compete for IFBs.
- 128) You need to get a response from the buyer on their experience and quality of the product
- 129) Evaluate the bidder and determine "PASS" or "NO PASS"
- 130) Reliability, trustworthiness, consistency, personal touch, professionalism, efficiency with time and money, and of course the bid itself.
- 131) Poor performance in previous contract should auto deduct from score. Good performers and new bidders would then have equal opportunity.
- 132) Plus or minus 1% of their total bid for good or bad past performance for evaluation purposes only.
- 133) 2 step process...pre-qualify bidders...responsible bidders allowed to submit a bid price.
- 134) Make the data requirements simple for small business to provide and update.
- 135) This will change on a case by case basis. There is no one size fits all.
- 136) credibility and are they licensed....The Hawaii Compliance Express currently does not ask for Pro/Voc License....the state actually has unlicensed contractors working on assignments.....
- 137) NO
- 138) Evaluation should be done at the end of each project. Similar to what bonding companies require. Rate the Contractor right there and then. Give the contractor a copy of their evaluation. Let the contractor evaluate the agency too so as to see two sides should something be "amiss"... As far as the evaluation, it should be by each department or by scope of work. Some Contractors might specialize and do better in one field and should not be "punished" for all work. There are so many issues that can come up....a past employee that was a bad seed....How does a contractor get experience in a field or have a chance to do something that they have not done under the procurement process? Would need to start with a level playing field for these companies.

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- 139) Have all bidders submit relevant projects with a contract number if applicable, the contract agency POC, title of the scope of work performed, dates of performance, contract size and a brief of work performed. This should be included as part of the proposers bid submission. This way if it is a low bid situation and a proposer has no relevant past performance and is the significant low bidder then the agency will have the understanding that the lowest bid may not be fulfilling the requirements of the RFQ. It will also give the agency a view of two opposing bids that are in consideration and past performance may be the key to a final award.
- 140) Establish short survey format evaluation to be completed by the purchasing agency for reporting performance experience with the vendor when project completed or end of year reporting for others (supplies, etc)
- 141) Has the bidder provided the service Has the bidder complied with the contract conditions
- 142) the federal government already has a process in place for selecting qualifications and evaluating past performance.
Why not use this as a guide to create the state selection process.
- 143) If the vendor has worked with the requestor previously, a simple statement of satisfaction from the requestor should do.
For vendors new to the requestor, two or three references from people they've done business with in the past.
- 144) Include a simple rating (1-10) of contractor to be submitted with final invoice payment on contract. Those who encounter vendors with ratings less than 5 on subsequent RFPs could then be preovided with contact info for those who rated vendor less than 5, like a job recommendation. Make sure vendors know what is going on so they can perform properly.
Concurrently, if contract administrator is overly harsh on rating vendors, that will be obvious with consistantly low ratings of vendors.
- 145) no it should not be used. argument is mistakes happen and so does improvement. Also business A could have a poor mark in their past but could be subcontracting a business that has only excellent past performance ratings. Past performance cannot be used objectively. There is too much room for bias and opinion. If a business is suspended from doing business with the state it has gone thru a process where it has been deemed unfit. As a result there is a suspension that is in place.
- 146) A star or number rating system along with comments, each agency would be required to complete the survey after the completion of each job. A higher rated past performance bidder could offset the lowest price factor (you get what you pay for).
- 147) None
- 148) Examine responsiveness/compliance of bidder; contract monitoring of performance; compliance with reporting requirements/procedures as stated in contract standards.
- 149) Cannot do after. Must come up with a way to prequalify bidders or not use IFB process. Use CMAR or other alternative bid processes. Evaluation has to remove any "opinions" and be measurable.
- 150) see above - IFB when the criteria is price and it can be quantitatively evaluated between the bidders - RFP, my suggestion, when you want to dictate the criteria and the % weighting to each of the criteria
- 151) Check their contacts and past job supervisors

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- 152) Allow customers to complete a survey once they have made their purchases. This would be easy to do, if the customer was ordering online or through a punchout system.
- 153) Evaluate all past government contracts, past and present. Evaluate court data base for civil actions against contractors.
- 154) Contact customers AND subcontractors. Make sure subs were paid and treated fairly.
- 155) Identify three sources for procurement office to validate past performance and quality/results of past performance. Name and contact info and paragraph on scope of work/results.
- 156) No
- 157) If a contractor has been non compliant with contracts or has repeatedly underperformed then their proposal/bid should not even be considered.
- 158) not at this time
- 159) If goods or services were considered substandard bidders should be disqualified unless they can provide substantial proof that any past issues have been corrected and will no longer be problematic. If goods and services were exceptional, there should be some weight carried for that recommended vendor. A set percentage/advantage which would give some benefit to this vendor.
- 160) Some new companies won't have Past Performance so their capabilities should be considered along with their subcontractors. Also should give advantage to SDVOSB.
- 161) Establish a vendor rating which must be completed by the buyer for every purchase made
- 162) Criteria should be simple...on time, on budget for the past 3 years with a minimum of 3 jobs completed. If the bidder doesn't have 3 state/fed jobs completed in that time period then review 3-5 private projects with owner and or general contractor feedback... Past performance should have been a consideration years ago!!!
- 163) Any contract that has experienced a negative outcome, i.e., poor performance vis-a-vis the contract specifications, should be logged onto a poor performance log that DAGS and or state agencies should maintain for reference in granting future, (3 years), of like products and or services.
- 164) No. There is no way when all of the facts are considered.
- 165) A grading system A-F, including quality of work, maintaining a clean and safe work environment and if work was completed on time without extended delays.
- 166) Before the contract ends an evaluation should be given to the contractor based on performance, time and money invested in the services. This way the contractor can reap benefits from his investments into the services. Sometimes on a 3 yr contract the contractor has to invest money in remodeling, small construction to the location. And then the state takes it away due to the low bid policy. Yes look at the low bidder however, look at what was invested by the contractor due to contractual agreements. Don't blow off the investment especially when it is coming out of the contractors monies. You don't give us a chance to reap back the investment. It appears that when the contractor invests monies because the rest of the competition

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knows the first one in puts out a lot money on the next bid process the state usually awards the contract to someone else. That's why past performance with investments should be part of the decision making process.

- 167) A percentage number could be assigned to a contractor for their performance on a particular contract, one from the contracting officer and one from the end user and they equally averaged. ie ... The contracting office gives the contractor a 87 (pretty good) the end user give as 80 The score is 83.5 for that contractor. The problems that arise are often a specification / scope of work that is not clear or maybe incorrect.
- 168) none
- 169) Under "Evaluation Criteria", "Experience and Capability"... points should be awarded for past performance: High quality history - full points Average performance - 1/2 points Poor performance - 0 points No performance history - 1/2 points
- 170) We provide professional consulting services in the area of public utility regulation and ratemaking. Past performance in this area would probably include filing written testimony and testifying before state public utility regulatory authorities, such as the Hawaii Public Utilities Commission.
- 171) Efficiency, timeliness and quality of workmanship
- 172) A database or quick reference of government contract performances for government employees to access and review.
- 173) i checked that it should always be considered above but acceptance should be an easy/painless process for companies that have already done successful State jobs. It should be more rigorous with companies new to Hawaii or experiencing recent setbacks.
- 174) This should be under special condition.
- 175) Technical support services
- 176) References, Monitoring Reports if any, Violation Reports, Debarment & Suspension, Compliance, Reported Compliant, etc.
- 177) For critical items of specialty construction or services, we would like to see usually 3yrs of successful similar work to show that the bidder is capable.
- 178) Require contact number for the government project manager.
- 179) For IFBs requiring past performance, change the IFB into an RFP. Eval Criteria to be 75% Price, 25% Past Performance...or something to that effect. That's if you want to treat past performance as a "red mark" rather than a "black flag." Marginal past performance counts against an Offeror but does not bar their chances from getting a contract completely. Otherwise, intential poor performing contactors should go thru the debarment process.
- 180) There are other factors that can be used to determine if a vendor is capable of providing the service or product - past performance should only be used in construction contracts
- 181) A "past performance" requirement would go a long way towards weeding out the few "bad apples" that never seem to perform properly. However, any bidder must have a clear and transparent means to challenge any "past performance" label as

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many procurement people and administrators have biases. Knowledgeable people should be passing judgement - not political appointees or government employees who hold power due to tenure, not capability.

- 182) I feel professional experience and competency are more important than selecting the lowest fee. You might save a few \$1,000 initially but loose out on much more by choosing someone with less experience and the lowest bid.
- 183) It shouldn't be a consideration. My answer is no recomendation.
- 184) Relevant to the SOW
- 185) Small, ethnicity, veteran, expertise, set a side consideration
 - 1. Complaints/ sustained or not; 2. Service Response; 3. Employee complaints.
- 186) The State has third party quality control in place on the job that I am referring to, however, there is a DISCONNECT. In this case either the MANY negative reports were never reviewed and/or an evaluation was not forwarded to the Contracting Officer awarding the jobs. Knowing that kickbacks are common in contracting, I am never sure if there is corruption or just ineptitude. In either case the third party QC was expensive and completely ineffective.
- 187) Customer satisfaction from prior contracts/jobs should be extremely scrutinized, along with timely completion of projects/work, and punctuality of employees and staff, as well as dedication to getting the job done correctly and properly the first time; thoroughness, accountability, and responsibility of employer and employees are also crucial elements in awarding contracts
- 188) Bidders with less than satisfactory performance evaluation should not have their bids accepted for 2-3 years. Bidders with excellent performance evaluation should have their bid proposal reduced by maybe 10% in selecting the low bidder, although his bid proposal may be higher than the actual low bidder.
- 189) Make it a required response to all vid proposals to provide a history of past work
- 190) "Technically Acceptable Low Price" - Utilize best value process by selecting the lowest price technically acceptable.
- 191) Considering past performance and the methodology to evaluate past performance should be left to the discretion of the procurement officer. If past performance is to be considered, the procurement officer should inform the potential offerors in the solicitation document and disclose the methodology to be used in the evaluation. Past performance should only be considered when the procurement officer determines that past performance is relevant to future performance under the contract to be awarded.
- 192) survey came out too late the company has closed the regular school bus and special needs division as of june 30, 2014.
- 193) Past performance for construction procurements different than for professional services and if structured into procurement and selection should be treated to accommodate such differences.
- 194) Pre-qualificaion of bidders
- 195) The federal government has been using past performance in bidder evaluation for quite some time. I would recommend using their process as a template.

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- 196) I believe past performance is important. If there is a past history of a vendor not able to fulfill bids, they shouldn't be awarded the bid. However, past performance shouldn't be mandatory. (If you are new, you won't have a history).
- 197) Bidders should be subjectively evaluated based on past performance. Low Bid award process is the worst type of procurement; it always ends up costing the Government more in the end; cost, time and quality. Best Value should also be considered.

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What are your concerns with incorporating past performance into all public contracting award processes?

- 1) Past performance is a very important factor in the overall evaluation of costs however if it is not shared properly and evaluated with all parties involved then this could lead to too much power in the hands of the end user/decision maker. Unfair, biased and favoritism may be the result of a poorly designed system that evaluates past performance.
- 2) No subjective way to evaluate. Cannot on every IFB - process won't work. Need a PRE-qualification if you want to eliminate bidders.
- 3) Contractors need to be held to standards to deliver great work without over charging after they've submitted the lowest bid.
- 4) Objective vs. subjective. Keep it simple, did the past performance involve late completion date, were change orders requested that proved unnecessary, was the work professionally done, etc.
- 5) It could open a door for unfair practice in awarding bids.
- 6) How to obtain objective vice subjective information and establishing the objective criteria for applying performance factors. Who would be critiquing the performance would be a concern. Questions could arise with the individual's objectivity of the performance. This would be similar to the evaluation ratings associated with RFPs.
- 7) New applicants may be excluded
- 8) May complicate IFB process. Where does it end? Are we going to add other factors as well? We already have a method (RFP) to consider past performance as well as other factors.
- 9) Contractor's past poor performances are ignored and not used in reviews for future solicitation results; therefore, poorly performed contractors are allowed to continue bid solicitation process without consequences for improvements to their contracted work qualities.
- 10) The biggest issue is when a vendor does not follow the specs
- 11) None, the past performances should be considered with the right for the contractor to also present a rebuttable about the State's review. This will give a chance for both sides to state their issues on the table. Certain State inspectors are unfair too.
- 12) My only concern is that a new bidder be given an equal opportunity to bid. If any bidder's past performance has been shoddy, overly expensive, of poor quality, then this SHOULD be disclosed. Taxpayer money should not go to incompetent performers.
- 13) Past performance penalty actions should be limited to 2-3 years. This will allow the contractor a reasonable amount of time to correct his poor performance, such as replacing poor performing personnel. Then he should be given a clean slate and allowed to bid again. If he performs poorly again he should be subject to past performance penalty actions again for 2-3 years. This will limit the number of contracts given to poor performance contractors.
- 14) I don't believe in the low bid system. Most likely the low bidder will miss something. Very rarely will the bid be low due to innovative ideas. They probably find errors in the drawings and try to make back what they sacrificed in lowering their initial bid.

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- 15) None! It is way overdue. If you do quality work you should be rewarded for it. In fact why should gov continue to go out to bid on the same projects with outstanding contractors providing quality service. Contractors that do great work should be rewarded for that and placed on priority lists saving money, time and energy
- 16) one major concern is that this new evaluation system should not prohibit in any way new vendors from getting into the process and winning bids, just because they don't have a track record - previous evaluations. also, there should be something in place so that vendors with poor past evaluations cannot simply reincorporate under a new name and then be competitive again. i'd be concerned that all evaluations and reporting should be transparent, and there should be a system for vendors to check, maintain, improve and appeal evaluations. i'd also be concerned that this process won't jam up the system and things won't get awarded and done. i'm concerned that the evaluation system established is fair and equitable - meaning that people who are providing similar services are evaluated in the same way.
- 17) This will allow vendor awards to be based on the overall of the company and not cost.
- 18) Unqualified government employees judging the qualities required of new contracts. Favoritism is rampant in Hawaii and other states. If you are new, these types of programs lead to abuses of power and exclusions.
- 19) It does allow for subjecting "weighting" of bids that could be used to favor one supplier over another qualified supplier.
- 20) I think that I have stated those in the other sections
- 21) No concerns. Past performance shows capability, results show consistency in product, success.
- 22) Need some way to document performance that is accurate
- 23) Unless the performances are measured within ranges and the final numbers weighed in terms of importance, the performances will become subjective and then become contestable.
- 24) May lead to strict performance criteria which prevents new vendors from being able to offer product.
- 25) N/A
- 26) That such information would be used unfairly in awarding and not awarding contracts.
- 27) When procuring relatively rare consulting services, be sure not to make the past performance requirements (in terms of applicability) too restrictive.
- 28) Pass performance indicates consistency on standards used by vendor
- 29) Might cause a problem with new bidders who do not have a history.
- 30) giving the bid to companies who are simply fulfilling numbers and not the quality of service.
- 31) That the wrong information may be leaked that could possibly destroy a contractor.
- 32) Consistency, transparency and apathy.
- 33) Objectivity by evaluators. Nepotism. Vindictiveness.
- 34) Unless a fair, open and objective system for evaluation is established, incorporating past performance should NOT be considered in the public contracting award processes. This leaves too much room for "subjective" decision making. It's too

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personal (personality conflicts may play a role in a bad evaluation etc) Unless a company is banned from bidding (i.e. not paying Davis-Bacon, no licenses, etc) they should be qualified to bid on all IFB's

- 35) The same people get all of the awards - if pricing and quality are similar, then past performance or previous user input should be considered.
- 36) More paperwork.
- 37) Excellent past performance should be heavily considered to save on cost \$ receipt of goods.
- 38) Past performance reflects employees who may or may not still be with the said firm.
- 39) Limiting the ability for small vendors to grow. Increase the potential for the big to get bigger
- 40) Evaluation of vendors must be done by an unbiased source.
- 41) That someone's personal prejudices will interfere with objective evaluations. 2) That this process may delay the evaluation and award process.
- 42) None.
- 43) No concern, it should be the main factor in awarding a contract. I would not go with the cheapest when selecting something for myself. Paying for quality is acceptable and will probably even save cost in the long run. Especially when you have unqualified contractors, lowballing their bids then going change order happy to make the money back.
- 44) Subjective issues should be considered, such as why projects may have been delayed or overrun in cost; is often due to client (state) delays or change in scope
- 45) That it not weed out progressive alternative delivery.
- 46) Might make it harder for new vendors/contractors to get awarded jobs if we give too much of a past performance discount to prior contractors. Also some contractors may try to find a way to sue the State or just generally make trouble if they start losing awards, then again it may make them do better work...
- 47) NONE
- 48) No concerns, I welcome more transparency.
- 49) In Hawaii we see a few large contractors getting most of the projects . In my experience some of the smaller contractors are more consciences and interested in providing a quality product at a fair price
- 50) Opportunity for corrupt decision makers to take kick backs or bribes or show favoritism.
- 51) Lack of vendors
- 52) None, the State should get the best services for their money.
- 53) Credibility
- 54) Faulty design, uncooperative procurement QC oversight, or site conditions can create a situation of change orders or unsatisfactory results that evaluators may be biased to "blame" on the contractor rather than the conditions, such would then be carried forward into evaluations used by others later. There needs to be some realistic opportunity for contractor comments, explanatory remarks to reveal mitigating factors, especially when there are less-than-satisfactory performance evaluations.

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- 55) Lack of objectivity of anyone evaluating the performance as I do not believe that yearly evaluations of employees provide any useful purpose
- 56) Consistent process and rating or evaluation of vendors. Not all State and County buyers have the same perspective of vendors performance.
- 57) None!
- 58) That the State gets and keeps the information accurate and correct.
- 59) if issues are tracked or noted, then resolutions and vendor performance and cooperation should also be tracked and noted.
- 60) Creates a subjective metric that could be abused - either in favorably awarding contractors that do not deserve the contract or to punish a contractor due to petty differences between procurement agent & contractor.
- 61) Better, newer vendors with more efficient systems and higher level skills unable to compete
- 62) Past performance is often based on subjective evaluation, and subjective evaluation can easily be mis-used and abused.
- 63) As long as standards of Safety for Public and Private sector is held to the Highest standard. All within reason our tax dollars should be accounted for the job to be well done.
- 64) If a blanket policy, it may jeopardize exceptions to the "rule" when unique circumstances arise.
- 65) The low bid process for construction seems to be in conflict with the use of past performance evals. My opinion is that the State should stick with the low bid process for construction (not for services). The main reason is that it is more controllable from a fraud standpoint. If past performance is introduced, now personal judgement is involved and it must be assigned a dollar value in evaluating bids. It's open to abuse. The current system of low bids does have its drawbacks and bad performers, however it is generally under control. That is why we have performance bonds, payment bonds, etc, ... and attorneys. Bad performers eventually get sued out of existence, it just takes some time. For the contracting of services, recommend staying with the Brooks Act (not low bid) or as close to it as possible. Using low bid for services is not a good idea. Example: If you had a heart attack, would you want your doctor to be the cheapest one or the best one? Or if the State needed to sue someone, would you want the cheapest attorney or the best?
- 66) I would not include for contracts less the \$10K.
- 67) There has to be some type of quantifiable (objective) scoring system, with a minimum passing score (grade).
- 68) FAIRNESS, QUALIFICATIONS OF EVALUATOR ACCURACY OF RECORDS CONSIDERATION OF SPECIAL CIRCUMSTANCES QUALITY OF DESIGN & ENGINEERING in BID PACKAGE ENSURING THAT SUPPLIER?CONTRACTOR IS INVOLVED IN THE EVALUATION.
- 69) New vendors, who may have better products and/or better products will not have a past performance history, and won't be considered.
- 70) None. Probably adds time to procurement process, but poor procurement has its costs in time and money as well.
- 71) My concern is that past performance is NOT a consideration. This brings down the quality of the work by far. Tax dollars are being wasted on these low bid contractors who do shoddy work and are a liability to the State in many other ways.

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- 72) Not having enough information on Out-of the state bidders Not having staff to do the work prior to the bidding process
- 73) I think it will be difficult to determine a source of information for the performance record
- 74) It is another form of pay to play.
- 75) I was not aware that past performance was not a part of the procurement process. I have been bidding government contracts since 1974, and have never seen an RFP (of any kind) that ignored past performance. I have had many that seemed to go overboard in reporting past performance but I don't mind. I have also witnessed the history of government contracting rules, which runs something like this: A set of rules exists. Someone breaks those rules and steals a bunch of money. Government writes a longer, more involved set of rules. Someone figures out how to break them and steals a lot of money. Government writes a longer and more complicated set of rules. And so on, and so on. Is that what we are proposing here?
- 76) Past performance records should be factual and not subjective. Evidence should be kept in written/electronic records and copies should be provided to the vendor/contractor.
- 77) Could be misused if not managed properly.
- 78) bigger is not always better. small business entities have more respect and work harder for the business. projects on outer islands should also have policies in place to keep the business as local as possible.
- 79) No concerns at this time.
- 80) The performance on a project has a lot to do with the inspector and designer. These external factors that are not controlled by the contractor could seriously effect the job. If all the parties don't work together to solve problem to get the job done the contractor will get the blame.
- 81) They are not looked at objectively and contractors staff are not included in the performance. Since how service the tax payers should be a part of the process when you need to invest to produce as noted in the contracts signed.
- 82) The inspectors and/or CMs on the current projects writing the past performance reviews of construction projects will be highly subjective and can be bought.
- 83) Change will always trigger some concern but if the federal gov't and other state municipale agencies have already incorporated this it's becoming a best practice and should be seriously considered.
- 84) Reduces competition. Departments may start only using vendors that have been used in the past ruling out new vendors.
- 85) If there were extenuating circumstances that prohibited performance.
- 86) No concerns w/incorporating past performance into contract award process. Should be open, fair, and transparent. Have more concerns with poor past performance contractors still winning bids based on low-balling bids to win, then submitting multiple change orders that increase contract price.
- 87) I think if justified delays that was not the fault of the contractor should be of lesser concern than unjustified or excessive delays overall the period of the contract have a more telling experience of the Contractors ability to meet the time lines/costs and performance. The Subcontractors chosen as well can be telling if they consistently use same subs but have delays with these contractors but still choose to use them. As always, there are factors to take into consideration overall performance, quality,

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timeliness should be taken into the consideration of a bid being an accurate bid that is doable for that project. The understanding that change orders happen throughout the job, however, If you have these delays due to changes orders is one thing but if it is through poor workmanship where work is being redone that is something else.

- 88) No concerns, as a contractor, I am proud to share my past performance.
- 89) Factors outside a contractor's control that create time delays, or other possible "poor performance" must be taken into consideration. A contractor must have the ability to correct their record if extenuating circumstances contributed to the poor performance, or if they have made changes to ensure that problem(s) that contributed to poor performance have been corrected.
- 90) This should have been done fifty years ago.
- 91) Unless the system is done open, fair and transparent, it may lead to bias and corruption. It may be another factor for bid protests that will delay contract award and cost tax payers more money..
- 92) No concerns. It should be mandatory on all bids.
- 93) This is something that is needed to give taxpayers the best bang for their buck.
- 94) It is necessary as there are too many contractors that lie about their ability.
- 95) I worry that low-bidders with poor past performance will protest awards that consider performance, thereby holding up to commencement of projects. This may impact grants-in-aid or other grants awarded related to nonprofit work.
- 96) As a new company, I've been told point blank by members of the police and fire companies to not even try to bid on clothing contracts because they always go to the same company...
- 97) Employees change and effect the ability (good or bad) to achieve project goals which drive past performances.
- 98) For contracts under \$2,500 and with a short duration, you are asking for so much more documentation then necessary. past performance becomes just another piece of paper I need to get together and the total amount doesn't even justify the bid. I have seen it time and time again when bidders are just tired of getting all the paperwork for very limited amount of money.
- 99) There are two sides to every story. I have talked with many vendors (services) who may have been unfairly evaluated because the agency representative was not knowledgeable.
- 100) should limit added work involved to work relevant to address objectives
- 101) a bowl of spaghetti - go with an RFP, tell them the criteria and the weighting of each metric
- 102) Contractor may get a low rating for pursuing a bona fide dispute. Selection may be viewed as politically driven when the selection criteria becomes subjective.
- 103) Judgment of past performance can be subjective. How it is reported and used can be an additional burden with little benefit if not used properly.
- 104) Evaluation process, specific project knowledge for the job being evaluated, objectivity.
- 105) It is something that could be good or bad depending on how it is implemented. I like the idea of keeping companies honest and held to a high standard, but a company could unfairly get a black mark that could affect future work. Would there

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be an appeal process? Would it be transparent such that a company would know they were being listed as a poor performer and have an opportunity to contest the judgment?

- 106) that there will be subjective criteria used and people with good political connections will get reports that show them to be better than they are. We need to stop giving the contracts to people who have political connections and give them to people who can do a good job.
- 107) From my experiences; Past performance is a subjective grading tool that may be based on the competence of the person a vendor is working with.
- 108) That you will somehow attempt to automate a process that should be done via an interview.
- 109) My concern is that the large companies have the ability to sue and challenge negative past performance reports. The government will not be able to use this past performance because it will be tied up in courts as soon as one company files a suit. Second concern is that the current contractors who are already doing the large and profitable jobs will become locked into receiving all the better projects and new guys will not have the chance to break into this group.
- 110) A concern is that past performance is often subjective. Additionally, agencies are often responsible for agency-borne issues, like moving forward with poorly coordinated or unrealistic design or unfair handling or untimeliness of changes. These are often manifested in or affect a contractor's performance.
- 111) the cost to do it correctly, including manpower. SPO will probably need to add resources...which I would support.
- 112) Are PP's really evaluated?
- 113) No concerns
- 114) The process and performance criteria should be fairly applied to all bidders to maintain the public's trust. It should be as objective as possible. Longevity in providing satisfactory service should be a consideration but not the only criteria.
- 115) Past Performance should be considered. Too often the lowest bidder is awarded a contract that does not meet the requirement of being a responsible bidder. Yet they receive the contract, do not follow the contract requirements which includes having equipment that is non-compliant with the contract, endanger the environment through their business practices, and yet are allowed to submit another bid for the same job. Not providing the services directed by the contract should automatically not allow a bidder to resubmit for that same contract. Past performance must be taken into consideration. The low bid cannot be the only determining factor when awarding a bid.
- 116) It needs to be a fair and objective process. Subjective comments (unjustified) made by upset inspectors can hurt a good contractor. For example, inspector and GC may not see eye to eye on one item and the inspector can submit a bad review which will hurt the GC in future projects.
- 117) Many of the bad projects are caused by poor plans and compounded by overpaid incompetent construction managers. Plans come out incomplete causing delays and change orders. CM's get hired non-bi by their friends. They need to substantiate their jobs by asking for numerous documents and fighting contractor change orders. Poor plans cause change orders and delays. Bad Construction Managers compound the delays/problems. They then blame the contractors.

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- 118) No problem
- 119) Sometimes you need to try a new vendor out, create competition. We know that we can do a job better than a provider, but aren't given a chance. The competition would make both better. We lost a bid of 100,000 to a vendor. Agencies would continue to come to us for peer mentoring help because we had more peers, we didn't shut off our phone at 5pm, we had more empathy because we had been there. Yet the state refused to open the bidding and award to a few people. We could have been a better job with \$10,000. And the final comment at the end of their grant was "they are worthy because they have done a good job with housing. The grant was with peer mentoring and they didn't work with peers -- and asked for our help, for free.
- 120) It should be a consideration, yet would not want it to become overly burdensome, especially if it was not really giving consideration or if there wasn't any flexibility to award based on past performance. If it is all about low cost/low bid and that is the only really deciding factor, don't waste bidder's time and money by including a factor that is not really allowed/weighted in the consideration or award.
- 121) My concern would be that the past performance rankings be objective. Regardless of whether the government official likes or dislikes the contractor at a personal level, if they performed well, they should be ranked as such. I also believe that there should be a time limit on how far back to look at performance, too allow companies the opportunity to improve.
- 122) Where and how does a good contractor develop a past performance if they don't have one?
- 123) Low bids should not be the only criteria in awarding contracts, quality (resulting in fewer breakages/fixes) time (less time, less money). It's like awarding a good employee for being productive, rather than a bad one you keep around just because
- 124) I think it would better serve everyone including contractors who are being responsible and bidding projects correctly and with integrity.
- 125) It may not give "new" bidders a fair chance if there's nothing to base their performance on.
- 126) Past Performance should only be incorporated into procurements/acquisitions that are complex or require adherence to strict delivery requirements.
- 127) Keeping the performance issues current Keeping subjective contract officers' opinions out of the performance evaluation. Sticking to specifications, not subjective criteria
- 128) Abuse of system - like any rubric
- 129) Again, past performance should not be used to limit competition or new companies from entering into bids. Performance evaluation considerations in the IFB, both the weight of past performance and the impact it might have on future contracts. Past performance can also be impacted by circumstances outside of the contractor's control. Time, modifications or cost considerations may or may NOT be the fault of the contractor. The state needs to look at its contractors as PARTNERS in accomplishing a goal, keeping costs low and performance high. As contractor should have the opportunity to see and comment on past performance evaluations.
- 130) Subpar contractors can just change the name of their company - and start with a clean record.
- 131) make paper work easier.

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- 132) What they did or didn't do or achieve or not achieve is not relevant to what they need to do today, especially in the technology field.
- 133) I think it is a good idea to include past performance in all public contracting award processes. The increase in costs and time for contracting agencies to include past performance evaluation, is minimal, as it deters poor performers from bidding, or will cause them to lose to a better performing contractor. You cannot stop bidders from protesting, but you can reduce the number of sustainable protests, through proper evaluation of contractors, as this will do.
1. Subjective performance evaluations may not always provide accurate feedback.
 2. Offerors should be allowed to take on larger projects if past performance indicates growing capabilities.
- 134) Unfair evaluations Evaluations made by Poor performing CM's Evaluations made by Officials who want to hire their friends (ex UH) Evaluations cannot be done fairly with the current system
- 135) None
- 136) Poor past performance must be based on objective/measurable criteria so I think the State or C&C can only based that on their own experiences with the vendor/contractor; so based on past project. If it is a new vendor/contractor, there must be a means to measure since they have no past performance with the State or c&C.
- 137) Protests
- 138) If vendors will be "graded" on past performance, there should be a system in place for vendors to see and respond to negative (or positive) comments on their performance. Maybe a contract agency wouldn't want to work with a specific vendor, not due to performance issues but other reasons, so they would give an agency bad marks. Evaluation for performance needs to be objective, must be substantiated, and must have a mechanism for vendor feedback.
- 139) State of Hawaii misspelled perceive... How would anyone know if Hawaii is actually capable of evaluating this input???
- 140) Politics needs to be left at home. Criteria needs to be listed and documented as rules are to fair play in sports.
- 141) Honesty and credibility in evaluation of past performance. Lowest price rarely equals best product or service. It's a true saying that you almost always find a vendor will have best of only two out of the three - Quality, Service or price. Almost never the best in all 3.
- 142) How to encourage new vendors to bid on projects to keep costs competitive and still ensure the taxpayer gets quality projects completed in a timely manner at a fair price.
- 143) delays in procurement process, misinterpretation of subjective feedback, incomplete feedback limited to dissatisfied constituents
- 144) How will past performance be incorporated into the award? Will a score of say 80 points out of 100 be acceptable? How will this be compared against the cost? Will a past perform score (PPS) of 95 and second lowest score beat a vendor scoring 80 PPS but the lowest cost offer?
- 145) People, businesses and companies won't be able to compete if they have no past performance history.

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- 146) There are many factors that could influence the performance of a project and does not always indicate how future projects will be performed. Maybe should have an explanation or type (ie product, service, quality, response time etc) if a project was considered to be of a low performance level. Lessons can be learned and many things are not in everyone's control. Sometimes the way adversities are handled can turn a bad performance on the vendor side by a good performance on the supplier side.
- 147) Not recognizing if the offending Contractor has addressed past issues.
- 148) independent judgement need to be allowed. past performance for a vendor should be used as decision support criteria, but not a binary criteria. there may have been issues with the procuring area impacting perceived performance.
- 149) Red tape that could delay process. Keep it simple and legal so bidders don't sue the State or county if they don't get the bid.
- 150) Protests and lawsuits
- 151) Some of the market is monopolized, specifications are drawn up to suit their products. This makes it impossible for others to bid on projects. Gym floor systems are a good example. When a job is specked out, it usually calls for 1 of 2 systems. These systems are represented by contractors and would have to be purchased through them. This makes it impossible to bid against them. There are a wide range of systems out there. Sometimes we need to think outside the box.
- 152) Availability to procurement officials
- 153) Vendors should get details on past performance so they can make improvements and or enhancements to offer the best possible solution, and/or comparable solutions.
- 154) None. Should be standard.
- 155) Please be careful not to use PP as a means to exclude all responses except one preferred vendor.
- 156) Poor performing offerors may slip through this system if it is not fully implemented. Every one will attempt to put their "best foot" forward which will make it important to verify offerors. Subcontractors are not included in the evaluations.
- 157) weed out poor quality, non-complying contractors.
- 158) none
- 159) **EXPERIENCE & REFERENCES IN PAST JOBS & CONTRACTS**
- 160) Low bidders who intentionally underbid then run into cost overruns. Also unqualified contractors that hire a minority to qualify for state work.
- 161) Very time consuming and costly for bidders who have no guarantee of winning the bid. It can also slow down the bidding and award process. This would particularly be a problem for emergency work and for fiscal year end contracts.
- 162) None - it should definitely be a part of the process
- 163) Not adequate experience in IFB contracted work.
- 164) Past performance should not be utilized. There will always be new techniques, technology, means and methods introduced into our industry that local contractors may not have. Including past performance requirements preclude utilization

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of local contractors who are willing to hire the necessary people or obtain new training prior to NTP that will allow them to perform the work. Just because a contractor is doing a certain type of work for the first time does not necessarily mean that they are going to do a poor job. Also, holding companies to past performance requirements does not allow for employees who hold specialized skills that benefit their new company. The past performance history will be with their former employer, and yet the key person is no longer employed there. This would unfairly qualify the former contractor, yet disqualify the new contractor that this person now works for. The people are the key, not the company.

- 165) See previous comments. Establishing objective criteria for evaluation would be a huge task. But you need to see if you can do that first before proceeding. Don't put the cart before the horse.
- 166) Numerous RFI's Always overpricing on change orders unwarranted delays lack of submittals inaccurate certified payroll safety concerns on the job
- 167) There are no objective criteria. It is our responsibility to provide a detailed scope of work with measurable objectives, goals, and parameters that will produce the product you desire. The vendor has no choice but to deliver what's in black and white or not get paid. If you are not able to provide a scope of work of this nature you need to use the RFP process and then past performance measures of all sorts can be used and evaluated effectively and transparently with the review committee through the RFP process.
- 168) The state uses a lot of poor performing architects who receive non-bid contracts. These contracts are awarded by friends in the department. Plans come out incomplete and cause changes/delays. The state also uses poor performing Construction Managers (non-bid/hired by friends) who hire laid off construction engineers. They are laid off because they cannot perform or have a poor attitude. You now have a CM with a large contract with little to do. He must create work to show he is doing his job. He asks for numerous reports, tries to condemn items, and looks for anything he can to show he is doing something. This causes delays, change orders, and hostility in the industry.
- 169) I would not want past performance to become a subjective decision. We would need performance based on objective criteria.
- 170) Sometimes a company could improve but will still be judged on poor past performance.
- 171) Large companies or those with political ties may have an advantage over small businesses trying to establish themselves if the evaluation process becomes subjective. Weight should be given to the merit of the proposal or offer and past performance considered as a reference for the bidders reputation, experience and qualifications.
- 172) Almost all poor performing construction projects are due to poor plans. Architects/consultants receive non-bid projects. They are hiring new employees and rush out poor plans. These defects come out during the build process and cause delays and change orders. Construction Managers who are also non-bid blame the contractor and not the agency who hired them. The agency needs to do plan checks. They are responsible for hiring consultants with bad plans.
- 173) The primary hurdle with using past performance as a factor in awarding jobs, is the ability to devise a method that fairly determines why a contractor's past performance was bad. Was it because the prime contractor managed the project

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poorly, or was it because one or more of the subcontractors did not perform in an efficient manner. Or maybe it was due to the procuring agency not being clear in the specs and creating a situation where the project becomes delayed or over budget due to change orders? There are many factors that determine the outcome of a project, some which are the contractors doing and others that are not. Leaving the determination up to the procuring agency may not be fair and can be a potential area for favoritism.

- 174) That it is fair
- 175) Obviously, changes in management, technology, & practices, etc. can significantly affect the quality & delivery of their product or service. Using a system without consideration to this would have a negative effect on business to improve as they would be perpetually "labeled". Additionally, it could result in less competition as companies that have improved would be less inclined to submit offers and engage in government work. However, there are those companies that bid low, and rely on contract modifications, change orders, etc. which leads to significant costs over the initially projected budget. While this can be attributed to bad specs, and unknown factors; there is also a potential for fraud. Is there any analysis done by and between the contract project managers to monitor objective metrics during the life of the contract? And where does this information go to? Do all stakeholders and the public need to know this information? Can we develop metrics and require progress monitoring. How do we consider awarding "cost-plus" and "award-fee" based contracts as an incentive to deliver results within the cost parameters. Was there a study done to compare the actual life cycle costs of these types of contracts as opposed to low-bid type contracts?
- 176) It would make the process subjective and enter opinion into the format. The system would then be ripe for abuse. Hawaii's entire contracting law was built on keeping the system honest. This idea is wrong-headed and will undo what has taken decades to get right. There is a better way to get rid of bad contractors, and it has to be before they bid, not after.
- 177) Might make it difficult for new contractors looking for their first contract. No matter how good a contractor is, they may have a job or two along the way that didn't turn out as planned.
- 178) While past performance is important, new agencies should also be considered.
- 179) subjectivism hard to avoid (plus or minus), inroad to cronyism
- 180) Only that there should be a formal process for vendors who may want to respond to unfavorable evaluations and have their response attached to the record of evaluation.
- 181) Past performance is only one of the criteria that should be evaluated. It is not everything. Poor performance is sometimes the fault of others. Providers should have the same opportunity to rate the government agencies/agent that they worked with. Past performance is truly a 2 way street.
- 182) Biased and/or unreasonable by the public contracting evaluator. Need a check and balance when submitting a negative report, however the evaluator(s) or committee needs to be willing to do it.
- 183) Mostly that the same contractors always are awarded the bids

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- 184) I see none and support including past performance as a requirement. However this information is only as good as the state's willingness to validate it. Let's not include it merely to check a box but understand its true value by ensuring vendors are providing accurate and meaningful data that is defensible.
- 185) With the bid or when it is to be awarded.
- 186) Easy to get around by forming new companies or buying existing companies to bid on contracts.
- Process is too arduous - disincentive for implementation and too heavy a burden for the evaluator - Process uses inappropriate or irrelevant criteria to suit the job - Process is not transparent, ripe for abuse - Catch 22 for new firms or firms that haven't worked with the government - you can't get a contract award unless you have past performance; to get past performance you need a contract award.
- 187) I'm all for it.
- 188) definitely a point to consider.
- 189) My concern is that it takes on a 'life of its own' and adds unnecessary cost to projects without adding consistent value.
- 190) One of the main issues I see is how the SPO will roll out incorporating past performance into procurement. I imagine there would be a transition period where all Contractors would be notified of the policy change. For sake of argument, let's say the period is 2 years. Contractors who work on smaller, less complex projects may be able to complete 5 projects in that 2 year period, whereas Contractors who work on bigger, more complex projects might not even be able to complete 1 project in the same period. If those two Contractors then bid on the same project after the transition period, one would have a past performance record and the other would not. How would that be handled? Another consideration would be for new contractors. Would they be an overall disadvantage since they would have no past performance? Lastly, there is going to be some subjectivity in the process, no matter how well it is thought out. It is important that the City is ready to defend the process, in court if need be.
- 191) We would love to see a good and fair system, however, we do not have faith that this is possible. Many great ideas are problematic in implementation. Past experience has revealed biases and "protectionism of their own reputations" on behalf of individuals in the procurement chain. There are many reasons for change orders and delays in projects and if the claims and time are granted by an agency then how can they be construed as the fault of the contractor? Concern is that this will unfairly damage good offerors much more than isolate the poor performers. If the agencies had the guts to use the existing system to default the bad contractors and deal with it during the contract performance period, then the poor performers would not come back to bid again. We have seen what we thought were good and fair systems be abused due to lack of training and consequences on behalf of the evaluators.
- 192) There needs to be objective evaluation to make sure both parties are protected from personal agendas
- 193) it will be misunderstood???
- 194) Good rule of thumb and measurements on performance and hopefully avoid favoritism.

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- 195) I think it's necessary to look at past performances in order to gauge how a company and its employees will perform for future contracts, especially if there has been concerns, complications or problems in general with past clients, employees, or staff and admin
- 196) The low bid system is broken and detrimental to both vendors, contractors and end users. It encourages bad behavior and poor craftsmanship. European bidders evaluated the three middle bidders out of their pool and evaluate on the basis of completeness and past performance. That has always seemed like a great solution to me.
- 197) Companies change over time, for better and worse. Sometimes past performance evaluation is not a true and reliable indicator of how a different contract will turn out. It also does not take into account problems that a vendor might not have or have had full control over including late delivery of materials, a strike or natural disaster. Vendors who have a good price but a few blemishes should not be instantly rejected without a close review.
- 198) favoring high performance on past contracts could keep new bidders out of the process.
- 199) None. Improves the process and the quality of work.

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Any additional comments you would like to share with SPO?

- 1) Thank you for allowing me to make comment. Aloha James
- 2) Always going with the lowest bid has ALWAYS been a problem.
- 3) Best Value needs to be used. State should mirror Federal procurement. SPO needs to catch up to the rest of the modern world and stop using carbon copies. Start using digital signatures.
- 4) Past performance of any subcontractors that require prequalification should also be considered when selecting a general contractor.
- 5) Architects/Consultants/Construction Managers - hugely overcharge the state for their services. They are non-bid and are hired by friends in the agency. They put out poor plans. The CM covers by blaming the contractor. This covers things up for the Agency who hired them. DAGS is the only fair agency. All projects should run thru DAGS. DAGS recently did the CM work for the Youth Challenge Building in Hilo. Only charging back the agency \$10k. A private construction manager would have charged the state approx \$500k, Please investigate. The state is throwing away millions of dollars on incompetent Construction Managers.
- 6) This will improve the quality of finished projects and minimize the overall cost or long term cost of projects. A well done or quality project will cost less to maintain and will last longer.
- 7) I think a minimum of 5 qualified bids should be required and the 3rd lowest bidder should win the award. The imperative is that the bidder be qualified with an B rating or higher.
- 8) I see the frustrations of the government people when poor performing Contractors are awarded contracts based on low bids. It seems that the way to address that is with clearer and more enforceable contracts rather than to change the system. For awarding government contracts, it must be perceived as fair. Performance evals introduce judgement and subjectiveness. This is different from awarding a contract between two private parties. Its award need not be fair, ... it is my money to spend however I want, and I wanted to give it to my brother in law. Governments do not have this option.
- 9) There should be an overall selection process which allows for the awarding party to make a decision based on not only cost but other factors as well. One which could be past performance. Other determining factors would be resumes of managers and similar size and type of projects recently completed.
- 10) I think that lowest bid is an issue. May inhibit some quality vendors from applying so the state ends up with lessor capable bidders applying for a project.
- 11) We should be looking on paying the contractor faster. It really hurts the smaller contractors with smaller pockets when the payments takes over 30 days, It shouldn't have to take that long to pay. A lot of money has to be spent before we get paid, the government should look at helping the small guys. Every body has to pay their bills on time. Everybody.
- 12) no projects in reference to this
- 13) Yes many, Furlough the legislature ..we have too many laws on the books already and very little enforcement Good luck

Past Performance Survey Results Summary

- 14) Past performance should be considered in awarding contracts and services due to vendors who under bid and then drive up the cost. Past performance should also be considered if the vendor under bid but the quality of job done is sub par and we end up paying again for shoddy work.
- 15) awareness of the experience others have had with a vendor would be helpful when evaluating vendors.
- 16) (Negative) Past performance should be considered in the contractors license renewal process. The State then has the right to deny the bad contractor his ability to continue. But any action has to be based on fact (judgments, written complaints, etc...) and not arbitrary opinion.
- 17) Low bid for every contract is not the best solution! Especially for construction contracts; too often I have seen a "smart" general contractor work the system, and change order and otherwise delay the contract for considerable profit.
- 18) The same old Contractors(pay to play) constantly win these bids. Many other Contractors could do the same job or even better, but until you get your foot in the door, we don't stand a chance cause this excuse of past performance always comes up. How do you even get past performance until you get a CIP job under your belt. How's that for your noodle?
- 19) If you proceed with this, make sure the questions for evaluation are worded simply and clearly. This questionnaire uses all kinds of jargon that ordinary people probably don't understand.
- 20) Vet the contractors during the license renewal process. If he has performed poorly (judgments, written complaints, etc...) then those facts should be considered to possibly pulling his license. The State Contractors Board can be as diligent in the renewal process as they are with the original license issuance.
- 21) Reconfirm belief that past performance should be outside the bid process, and only after award ...if at all.
- 22) I am a small business with many innovative approaches to modify the driving attitudes of specific target audiences (pre-teens, novice drivers, parents, traffic violators, all employees). I have been fortunate to do a few small projects in the state of Hawaii. Sadly, although unlike other companies I actually measure results realistically (either quantitatively or qualitatively), I cannot compete with well-known companies who spend a lot of time seeking out as many government contracts as possible. Although my areas of expertise are in academia and curricular development as well as in marketing and business management (I was a Senior VP at a \$15 billion global conglomerate of marketing and advertising firms), I went into driver safety because I felt I had results-oriented approaches to addressing the Number One killer of our children age 1-24: motor vehicle crashes. Although I have a wonderful working relationship with those in driver education in Hawaii, I have been unable to provide my other successful programs to the state because I have no ability or contacts to talk about them to the right people. I hope in future I can be included in various bids addressing the target audiences just mentioned. I would also like to train all teachers in Hawai'i who teach grades K-12 on how to teach 21st century students so that they actually LEARN and can apply what they learn, rather than the current exercise of teaching forgettable information to pass a test. My hope is I can reach those decision-makers involved with training teachers so that I can assist them to be on the cutting edge of helping our children learn. Thank you for your kind attention.

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- 23) It Is Important To Assure Positive Input And Performance From Those Participating IN The Engagement From The Offer Side Of The Contract.
- 24) Past performance is a good thing to keep unfair, poor performing contractor out of the bid pool but like anything else it can be manipulated by savvy unethical groups to make it work in their favor. Nothing is perfect and I have no suggestions or ideas on how to make this system better.
- 25) It's not very pleasant.
- 26) Past performance should not be viewed as the only qualifier. Many companies are more than capable to handle projects that are outside the scope of their current or past performance but it does give the contracting agency a good qualifying criteria piece when there is a "low bid" or "tight race" situation between submissions. Because someone wrote a nice proposal or is the lowest bid, they may not have the true capability to perform. Past performance does not guarantee a perfect contract but helps the contract agency make a better informed decision in many cases.
- 27) They should look at the businesses as a entity and not personally. Minimize the politics and the eliminate personal feelings about specific persons going after the bids.
- 28) I think that this review process is fantastic! Thank you for the opportunity to participate. Awarding contracts should always factor in past performance rather than just taking the lowest bid.
- 29) No. Need for consideration for veterans status or DBE in replacement of past credentials.
- 30) Past performance measurement is not a black and white area -- careful thought and attention to avoiding unintended consequence should be used when developing a program.
- 31) Apply to other methods small purchase RFQ etc Documented poor performing vendors should not be able to make purchasing agencies waste time reviewing aggressive low bid offers or disqualifying impractical offers or canceling contract after poor performance.
- 32) There must be a path such that a contractor with poor past performance can overcome that history by way of good recent performance, or by a change of procedures, methods, etc., or some such.
- 33) Thx for asking...I believe most of my work has been "sole-source"...
- 34) The current system of hiring Consultants and Construction Managers needs to be changed. Consultants and Construction Managers get hired non-bid. Friends get selected and are allowed to charge huge amounts with no liability. Poor Plans get fast tracked and cause delays/change order - Contractor gets the blame. If you ask most contractors they will tell you that they don't like Change Orders. They are slow to process and slow down the construction time. They cost more than they are worth. Please investigate. Have contractors rate the CM and consultants. CM's and consultants respond at a snails pace. They are the root cause. Once accepted as qualified. Their work should be bid also.
- 35) Performance should be rated the opposite way. Contractors need to build the project. They should be allowed to rate the consultants and construction managers. If projects are moving slowly then the CM does not know how to do his job. A good CM can deliver a timely project within budget. This is not happening in Hawaii. Change is needed.

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- 36) This is long overdue...please fix IFB problem that allows bad contractors to continually low ball their price in order to win projects.
- 37) The Department of Defense has such a process and standard criteria for evaluating general construction/services contractors and professional services contractors (design). I believe the City and County of Honolulu DPW uses the DoD forms.
- 38) Right now, judgment on "past performance" is one-way - usually against the contractor, engineer or vendor. Problem is many times the construction manager, or administrator, or principal, or similar - has unrealistic expectations or holds grudges. Suggest 360 degree peer group reviews be implemented as well so the "judges" can be judged as well.
- 39) Our clients outside of the Government maintain a strict compliance vendor database which considers, work quality, cost, timing and competency for specific assignments.
- 40) There must be a way to prevent constant awarding of contracts to low bidders who's past performance clearly indicate their intent to cheat the Government with maximum of change orders and with disregard for quality of work.
- 41) None.
- 42) Quicker approval time of docs submitted.
- 43) I have spent years developing contracts for service provision of healthcare workers for the state of Hawaii and have never once been called upon to offer candidates for open positions. Working with the state is a total waste of time, and taxpayer money.
- 44) Relying on low bids only does not ensure quality work.
- 45) Timely communications. Sometimes SPO does not return emails or calls when asking for clarification or other matters.
- 46) Thanks for asking, it feels like people are trying to improve what has been long broken.
- 47) None at this time.....
- 48) NONE
- 49) Have a nice day !
- 50) IFB is for procurement of a tangible good or easily definable service or construction project where there is little room for interpretation of specs and timing of deliverables. RFP is a method already available with a process to review pas performance, references, etc.
- 51) I think in taking this survey the assumption being made here is that vendors being selected are not doing a good job, but has a reviewed been made to see if the specs that the state is posting clear and concise about what it is the state is wanting purchased. If we are then our selection system is flawed when we select low bid, perhaps selection should not be based on low bid, but quality of materials and workmanship (then looking at past performance by vendor makes sense) but do we have State employees with the expertise or evaluation tool to determine good quality from bad? If our answer is "no" then perhaps this is what we need to be developing (either the tool or specialized purchasers) and not all purchases are the same, so based on potential purchase how can we create a tool for State staff that don't purchase frequently enough to have the expertise to make a wise value and quality-based selection. I don't think "low-bid" is answer.

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- 52) The procurement process should not award jobs to the lowest bidder and take the second bidder. Anyone can make mistakes on there bids to become the low bidder. To become the second bidder you would really need to look at the plans and be accurate with your bid.
- 53) I'm exhausted as a subcontractor with general contractors not paying us and claiming they were not paid or not paying us retention because a project is not closed out yet only to find out later that they were paid. These are the types of GC's I would not want being awarded jobs. Also an issue is doing change order work and not being paid for it until 6+ months down the road because the State or C&C or UH has not approved it... yet we've already paid labor and materials for the change order work.
- 54) I am very happy that you folks are looking into this as it truly is a problem, and the taxpayer should have their money spent wisely. Vendors who fail to perform end up costing the taxpayer more by needing to fix issues they left behind.
- 55) None at this time.
- 56) Small businesses should have a preference over larger companies. In addition, locally owned businesses, should be a consideration. State of Hawaii should support locally owned businesses.
- 57) bravo! we need this...way too many people abuse the system. lets start using tax dollars more wisely.
- 58) Not necessarily pointed to Hawaii, but the amount of paperwork required after the PO is issued is getting to the point it is not worth the sale. 30 pages of documents that must to signed off in various departments to process an order is getting nuts. The City of Los Angles has a document of many that requires certification that as a Vendor, we don't employ slaves. A little overboard these days, don't you think?
- 59) Contracts should be awarded to capable company's that make the requirements of said bid contracts. ie licensed, properly insured and compliant with DCCA good standings.
- 60) Almost all contractors dislike change orders and delays. Almost all state change orders are caused by poor or changed construction plans. Plans should be reviewed prior to bid. We are seeing the plans getting worse. Consultants picked by friends in the agency are fast tracking incomplete drawings. Construction Managers - the state is being extremely over charged by incompetent construction managers. CM's have little or no liability yet their profit mark ups are larger than the contractor doing the project. They need to create work to show they are doing something. Most of the CM's being hired used laid off construction engineers. They are laid off for a reason. They are incompetent or have a poor attitude. You now have a CM in power with a poor attitude towards contractors and will do anything to create hardship.
- 61) I do not think that government agencies always get the best deal with the lowest sealed bid. The supplier may not be able to fulfill the expectations of the agency and workmanship may be shoddy. Having the flexibility to negotiate the terms of a contract provides the agency with the best opportunity to meet its needs.
- 62) No thank you
- 63) make sure the state pays on time and not 3 - 4 months late contractors and subcontractors are subject to service fees from their vendors.

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- 64) Keep in mind that selection is based on the LOW bid. Low bids could be because the contractor knows how to efficiently do the work, have good personnel, however, more likely, they underestimated the project, missed items, or "low-balled" the bid hoping to make it up with Change Orders. There is also the saying, "you get what you pay for".
- 65) STOP all political contributions!!! Allow only contributions to races. Example: allow contributions to a race for Governor, specify primary or general election. All qualified candidates get an equal share of the funds available at specified time during the race. NO candidate owes anybody ANYTHING!!! Then perhaps they will work for the Public.
- 66) We are confused and concerned about how certain contractors bids are very low than the next contractors. Obviously low. It doesn't make sense when material cost would be X amount unless they are using something else than what is spec out then how are they paying the wage scale???????? It's pretty obvious who maybe cheating the system.
- 67) Hawaii Projects should be awarded to contractors that live in Hawaii and Bank in Hawaii . We need to create futures for our best and brightest here . Someone that lives here should be able to work here and not only if they are members of a select organization . Contractors should be interviewed and evaluated on skill , integrity , rliability and sence of community
- 68) Best Value needs to have a place. Selection team needs to be qualified and not direct or employed by the provider or agency.
- 69) Cost over runs are also an issue. A lowest bidder submitted a bid for approx. \$750,000. Our entity submitted a bid more accurately for \$1.2 Million. We were not awarded the bid. After submission of cost over runs and also informing the engineering dept. that their drawings and requirements were flawed, they ignored our appeal and selected the lowest bid. After the entire project was completed, the total project was about \$1.25 Million. I would be happy to give more input: Gifford Chang 306-4570
- 70) Using prior expense as part of the IFB process for construction contracts will add cost and time to the procurement process.
- 71) "Yelp" system
- 72) Too often government contracts are looked upon a gravy trains for those contractors who have political influence and/or low bids, in spite of a poor past performance record. Something should be done to hold contractors accountable for misuse of tax dollars.
- 73) I think the State should definitely be looking for "Best Value" rather than strictly lowest cost. The State needs to have subject experts participating in the bid evaluations.
- 74) i'm a small time vendor. i've been getting between \$40k and \$80K in state contracts annually. i KNOW that in my area of contracting that there are people and companies who do shoddy work and are winning contracts. this hurts us all. i welcome evaluation. if a company is good and does an honest job, there should be no worry.
- 75) There should be a way to reverse decision as well as change ratings after warranty period is complete, corrections are made, or an appeal made overturning original ruling. Everyone makes mistakes, however, contractors are expected to make the corrections and fix the mistakes. Once corrected the poor rating should have a way to change to reflect the better outcome/final product. Or a good rating changed if they did not to the warranty work in a timely manner or was poorly performed and incomplete.

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- 76) The state would need to make sure that the state employee that is reporting past performance is accurate and have the contractor be able to respond.
- 77) In special ordering vehicles. Payment if any for internet fees should not be due till delivery. 4 months from award on a custom ordered vehicle. Thanks Richard Vaughn Cutter CJD, Inc. 808-564-9527
- 78) The State of Hawaii procurement website is one of the worst in the nation. I have dealt with at least 40 other State procurement websites. The tax and labor components are of particular concern and often cause issues for vendors because State employees either make mistakes or have internal systems so rigid they are unable to adjust. As an example we are now non-compliant with labor simply because our employees are provided through a local employment company. That company is local and we are local, yet we are not tagged as not having employees in Hawaii. That is messed up.
- 79) I would like to see more of our local small business get some if these jobs. We are the businesses that provide to the local economy. To many mainland companies are taking our jobs.
- 80) The quality of some "low bid" contracts cause taxpayers more money and headaches and like all government contracts (and employment) , I believe that there needs to be an 'accountability' especially when dealing with taxpayer monies.
- 81) needs to be awarded on merit and professional capability, not the good old boys system
- 82) So do contractors/consultants also get a chance to rate the performance of our government liaisons?
- 83) Not right now ... but thanks so much for listening! =D
- 84) Probably adds time to procurement process, but poor procurement has its costs in time and money as well.
- 85) The people hired to evaluate need to be fair witnesses.
- 86) Proofread your questionnaire.
- 87) Yes, This system is so antiquated it is embarrassing and encourages only those with immense will and perseverance to participate at all. It is NOT transparent, and changes are often posted DAYS within the ending date of the IFB's barring any vendor without dedicated staff from having time to respond, revise, and/or resubmit.
- 88) Past performance should not be the only criteria and reviewers should be encouraged to solicit explanation with regards to any concerns of past performance.
- 89) If you need any additional feedback let me know.
- 90) it is a very difficult thing to implement, but at least an attempt is being made.
- 91) I'm tired of paying indirect and profit - state should figure out how to do its own work. Save the state money.
- 92) Another option would be to take the 2nd lowest bidder (Construction Projects) instead of the lowest. This will eliminate the so called "diving" for a job and reduce the work level for the SPO. Many times the lowest bidder is not the right price and mistakes are made. Contractors op to take the job instead of pulling out in hopes of acquiring change orders to boost the contract amount. Using the second or third lowest bidder will make all the contractors bid honestly and both the state and the contractor will benefit from this.
- 93) no

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- 94) We have performed two assignments for the good State of Hawaii. We were able, after much difficulty, to get paid for one. The other has gone unpaid for years, despite our paying for qualification every year.
- 95) No, thank you for this opportunity to comment
- 96) People in the system should be diversify with different ethnic group to control discrimination and conflict of interest to save tax payers money to be used to other programs and share the opportunity to other ethnic groups in the State of Hawaii.
- 97) If past performance is the criteria, you will stick with past suppliers who may not have the best products or prices.
- 98) Low bid is good but there are a lot of smaller companies that can do a great job if given the chances. But if they did poor quality work, it should be hold against them.
- 99) In a solicitation received, it stated: "Preference will be given to firms whose proposed construction management team resides near the project location." If a firm has the flexibility to provide services anywhere in the State of Hawaii, they should not be discriminated against because they do not reside near the project.
- 100) Statement of Qualifications should be included in every RFP review process and integrated with the weighting of selecting qualified bidders. Why would past performance be ignored?
- 101) awarding a contract to the lowest bidder is definitely not the correct way to select a company to "get the job done"... a company with past problems, complaints, and even a history of poor performance could easily bid low just to get the contract, but is that what the client wants? QUALITY and the ability to satisfactorily complete the duties assigned should be of utmost importance, and then look at how much the bid is and if the job can be done for that amount, especially considering the minimum wage going up soon
- 102) As a concerned taxpayer, I believe that there are many contracts out there that have been awarded to the lowest bidder that will eventually cost us more in the long run than if we had awarded it to a more reputable vendor. I believe that future fall out for poor work product should also be considered.
- 103) Past performance should be used sparingly as it may reduce your competitive base and make it difficult for small and new businesses to participate.
- 104) Thank you for soliciting feedback.
- 105) Often times there are specifications written by architects/designers that no one can meet for my scope of work. Outdated specs for items that are no longer manufactured. Hence no one can meet spec word for word.
- 106) I really like this idea of making it easier to get info about contractors performance to other departments and so we can do something with that information. It's seems to be almost impossible to not give a construction job to a bad contractor because he always bids low.
- 107) The ability of a Supplier/contractor to Bond a project is critical. The Bonding Companies have vetted their clients, and thus have performed much of the qualification analysis intended in this survey. We recommend that all projects require Performance and Payment Bonding.
- 108) The qualitative analysis should be the determining factor in awarding a contract.

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- 109) No additional comments
- 110) SHOULD BE COMMUNICATED THROUGH THE STATE OF HAWAII IN BIDDER WORK PERFORMANCE & BIDDER'S COMPLIANCE IN GETTING THE JOB DONE IN THE TIMEFRAME THE BIDDER HAD ESTIMATED.
- 111) Be careful.
- 112) We appreciate the opportunity to serve the State of Hawaii and its municipalities. Kind Regards, Nick Miller, CFO
Phoenix Software International, Inc.
- 113) Sounds like more of RFP than IFB if price is not the determining factor.
- 114) Why is the text below in a different language? I can't read it and have to guess which button to click to submit this survey.
- 115) I have heard of companies that have submitted to perform one service and then amend and do another that may not have been comparable. Then they submitted to do something totally different which if would have been considered at the time of the grant submission may not have been superior to another proposal. Just disappointing if some companies are allowed to submit one thing and then get to do another with no accountability.
- 116) The IFB system and your project management system should discourage poor performance with Contracts that stipulate time performance fines. State project management system needs more qualified licensed individuals to manage projects to assure project performance and a project documentation system which will indicate project contract performance managed by the State. How can a unlicensed person without sufficient background rate a licensed A/E or Contractor.
- 117) No.
- 118) It should be available to anyone public employee who procures contracts. Ratings and rankings should be consolidated in one location for all to use.
- 119) Low bids do not represent the best value to the State. Construction is a service dependent industry as opposed to a commodity/product. Apples-to-apples comparison should be based on the end product and service provided. High performing contractors are not rewarded for their efforts.
- 120) Hawaii will only benefit by using past performance with a level observation. The current CM's/Poor Performing State Employees are locked into cronyism and cannot judge fairly. The UH was able to select who they wanted - this resulted in huge overcharges to the State and numerous accusations of cronyism. This will repeat itself if used at this time without changes implemented first.
- 121) I find that city and county as well as state agencies do not rely on the performance bond as they should. The agencies are not insurance carriers and should not be required to evaluate risk to the degree that non performance is a factor. That's the job of insurance companies and a system for their governance already exists. Allow the bonding companies to do their job and if the General Contractor does not perform hold the bonding companies to their bonds. The bonding companies will weed out the poor performers by way of not bonding them on future projects.

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- 122) Edit public surveys before disseminating. In one of the above questions the word "perceive" is misspelled. It conveys unprofessionalism.
- 123) NO
- 124) A major problem with the States projects are bad plans. Architects/consultants should have to bid for their work. They should be rated on how well their plans are. They should not get awarded non-bid by their friends in the State. They fast track poor plans at high rates and cause problems. The contractor is then blamed for poor performance. All plans need to be thoroughly reviewed by a State plans inspector before it goes out to bid. Most of the new engineers have only book experience with no common sense.
- 125) While past performance is important, what's more important is that known negative issues should be more damaging than a lack of past performance.
- 126) Our experience in winning three bids with Hawaii Colleges has been positive
- 127) This system is in desperate need of revamp. Vendors should be pre-screened and need to show: licences, current on taxes, financial solvency, insurance, bonding, past performance of projects. In addition, political contributions made by the company, employees and family. The qualifications need to be updated annually to remain pre-screened to qualify to submit a bid.
- 128) Having past performance evaluation factors in government bidding processes has become standard practice in federal government contracting. All contractors are aware of it, and like it because it reduces the likelihood of a poor performing contractor winning a lowest bid, technically acceptable solicitation. More importantly it reduces the likelihood of having to re-compete a contract because the poor performer has poorly performed (as has been their track record), thus increasing costs to the government for re-competing the contract early (costs associated with reconvening a source selection board, and the administrative costs of the solicitation as well).
- 129) Thank you for asking. We believe that past experience and performance are very important considerations as part of the evaluation criteria for an IFB. Low cost without the ability to perform is not low cost. Also, it is proven that low cost focused IFB's have led to instances where lower performing, less knowledgeable bidder/vendors have responded with low cost responses that did not consider all the costs involved as they ought to have. Thus they were awarded on low cost only, could not make a return and did not perform. This was an unsatisfactory outcome for all involved. This has led to a number of SPO's weighting past performance in their IFBs by as much as 30%.
- 130) We're always asked for either iron clad specs that are not implemented with end product from designated others sources or open ended quotes that aren't specific enough that leaves our tax dollars not spent at optimum. Our company is in a niche market and our expertise is asked for but if we 'design' for project; we are eliminated from bidding on project. Our company has invested heavily in equipment and people in Hawaii with a long history of what works in our environment while having to adhere to strict guidelines and high cost for basing our company in Hawaii. I would like to see local past performance based reviews and adherence to specifications after job has been completed.

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- 131) None
- 132) I don't think anyone monitors current bids to assure compliance in any of the departments. Are we assuring contractor has liability insurance and state is added as insured? How do we determine if delays/cost additions are needed? Is there a checklist of things that all bids should have that is used by departments? I would like to see a monitoring or at least random audit on contract bids for all departments.
- 133) As a designer, I used bidder qualification based on past experience of the company and project-specific personnel for a UH project (Lyon Arboretum Albizia Removal). UH Facilities fought me every step of the way about using this process due to concerns about bid protests. The work was extremely hazardous, even for experienced workers, and inexperienced workers would be likely to die on the job. The work was also to be carried out above endangered species that required protection. The contract has been awarded but work has not commenced as yet. There were no bid protests.
- 134) Good luck quantifying the criteria used for this type of information on bids
- 135) Overall, I think this is a good thing. There are contractors that abuse the system. There are contractors that bid low and come up with change orders. There are contractors that find reasons for delays, whether with start up or finish of project. Concerned that if this is available to the public, that some of these contractors might be put out of business if their rating is not a 5 star!! Would tarnish how they are viewed.... I think this should be an internal thing (for procurement projects) and that the contractors that do the procurement work should get copies of reports and have their rebutals heard on anything that is negative by an independent, unbiased party.
- 136) Thank you for the opportunity to provide feedback.
- 137) Blow up the current system and start over. It is obvious that that current system does not create a seamless - painless process for vendors that perform well under the proper intentions. May want to privatize the process.
- 138) The public contracting personnel must not always rely on the consultant too. They (both public contracting personnel) also must be willing to consider new products, and techniques. Many times, it's new and they are not willing to do the research or consider new ideas, etc.
- 139) You got a hard job. Keep Calm. Do your best. At the end of the day, relax and try not to think of work. Your staff there are good, smart workers. Year of invaluable experience in the technical aspects of procurement. Keep them happy. Family and health always comes first.
- 140) The Federal Procurement System has had several iterations of decent systems, however, these too have flaws and are constantly being revised. When Hawaii agency personnel have been asked to file evaluations in the Federal system, we have seen the gamut from fair, to extremely biased and unfair and there is no check and balance on this. We have seen absolutely every category checked as "average" and when questioned, the evaluators have stated they were told to fill out all forms in this fashion by their bosses. If this moves forward, a transparent feedback loop is necessary as in some federal programs where the contractor can comment for the record on the evaluation. The vast majority of personnel in Hawaii agencies involved in procurement are fair and competent. Unfortunately, a program such as this will be problematic in Hawaii where there are little

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to no consequences for those agency personnel who hold biases and may be tasked with evaluations. What is to stop a poor performer from getting a new license and change the name of their business? There have been many successful design-build solicitations with fair and necessary pre-qualification procedures - they are a lot of work and a good example to follow, but that is the level that is needed to make a system fair enough to be effective and achieve the results needed. We hear from the agencies that this process is too burdensome, however, the system must be complete if it is to be used.

141) Mahalo for soliiting opinion.

142) Suggest looking into the Federal Governments' Contractor Performance Assessment Reporting System (CPARS). It is an effective program requiring government agencies to submit an evaluation annually that will be available to state contracting agencies to check when evaluating past performance.

143) First time in 14 years that we have been asked an opinion. Thanks.

144) No

145) Excellent pursuit! FINALLY! It is a necessary facet to incorporate past performance(s) of a vendor. Awarding only on the lowest bid is short sighted. The vendor with the lowest bid can cost more in the long run. Incorporating past performances will provide a venue for vendors with integrity and qualified workers to have a fair chance to obtain contracts.

146) Don't do it. Favorite local contractors and large outsiders will dominate. No room for new contractors this way. Hawaii government employees have a history of abuse of power. Don't do it.

147) na

148) We should be able to monitor critical analytics with respect to all contracts. Contracts should be managed through the entire life cycle, with key performance indicators (cost, time) recorded and measured against a defined standard. This information should be shared to all stakeholders. Procurement officials as well as the public should be able to monitor the quality and progress of the contract through its life cycle. This would help enhance transparency and accountability for all individuals involved in the process.

149) Often tax payers go thru situations when all taxes are not paid but are making payments to clear back taxes but are often not able to clear it due to the economy fluctuations and situations. It then enables these vendors to bid because they cannot get a tax clearance although they are making payments. Many vendors are disqualified for this reason. The pool becomes short of quality vendors.

150) Yes, I don't believe in awarding a contract based on lowest bidder, unless the lowest bidder is a PROVEN entity and can show SUCCESSFUL past projects completed with State or private entities. Low bid is fine but low bid for low bid sake is and has always been a LOSER in both private and State contracted projects. Keep in mind, Good Work is NOT cheap and Cheap work is NOT good. I wish you the best, cheers. ACNET doing business in Hawaii since 1992 in both State and private sector.

151) My company states to all customers that if you're not completely satisfied don't pay us. We will build the software first and if you don't like it, don't pay for it. We're all integrity all the time.

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- 152) Past performance and after support and service should be a major factor in the selection process.
- 153) I think it's good that you are discussing this,
- 154) Thank you for looking at this. Something really needs to be done, and soon! It is amazing it has taken this long to look at it. This is an important issue and state staff should not have their hands tied when awarding contracts. Past performance is one of the most important indicators that exists.
- 155) Something to take into consideration is new vendors. If they are new they will have no past performance with you. If that is the case you would need to make sure that no past performance does not look bad on new vendors. We lost a bid last year and i believe it was internal favoritism. We were the low bid but did not win since they hadn't purchased from us before. This was not directly with your program but another bidding site.
- 156) Thanks for seeking our input.
- 157) Get rid of low bid as a course of business.
- 158) Thanks for the opportunity to comment.
- 159) to avoid the low ball contractors that abuse the system - use an RFP. Some of these companies have the strategy: get the job and then blackmail them into accepting change orders or they sue and tie up the entire project. Some DBE 's are famous for this in some parts of the country - contact WMATA - they have horror stories - reference Sun Technical Services
- 160) This is my position NOT because we have failed to complete any IFB's. I feel that it is difficult if not impossible to create a objective evaluation system IE delays...There are delays on many projects we are currently on..while the owner may think it's the Contractor, most delays are caused by the Construction Manager's lack of ability to manage projects. We're seeing this more often where it is the Client's hired CM thats causing major problems on projects. Then they try to blame the Contractor for delays, COP(the COP's are usually the fault of the Designer who did not address everything prior to the bid process) The Contractor will end up being the scape goat.
- 161) none
- 162) A contract with a well written statement of work, a contractor who understands the statement of work, a contractor that meets or exceeds the statement of work, a contractor that communicates wth the stakeholders. If the above statements are true, past performance for IFB's are not required.
- 163) I think this is a very good idea, though will take some work to implement. But, I think it's important to do so.
- 164) The process is unfair, it's too based on personality than performance. I have five stories that will astound you, both illegal and immoral. People that told me about them were afraid of loosing their jobs. Please call me, this is affecting all of us. The good ones are starving for a few that take everything and get lazy. Competition needs to be created. Pleae call
- 165) I have seen sub-contractors do poor construction work and still get paid. The Prime contractor is responsible for checking the quality of the work done by his crew and subs, and yet it slips by until our inspectors catch it. I have seen the same subs. that do crappy work on other projects under a different Prime contractor because that sub had the lowest bid.

Past Performance Survey Results Summary

- 166) Offer your procurement training more often. How are we to use HiEPRO if we can't complete the training for it?? Hello, class 311 please. Also, and MOST importantly, I have NEVER been emailed the promised answers from questions issued during a training session. The prevailing perception is that you simply put the training out there and care nothing for our understanding. Only transferal of responsibility without proper transferal of knowledge.
- 167) Sometimes there are misunderstandings or lack of clarity in the specifications of what needs to be bid on. Also, sometimes availability of the items or service may not be readily available and substitutions are submitted. That may provide a challenge during the evaluation process.
- 168) Past performance criteria should also include feedback from participants if contract awarded to non-profit organizations for cultural events, as an example. The feedback from past performances in the form of a survey is a good indication of performance success.
- 169) getting compliant with the state department of taxation is a tedious process. Help with this would be appreciated.
- 170) The requirements should be adhered to prior to awarding a contract. An award for a contract was given to a company on Oahu that had no long standing or permanent office on Kauai without regard to the fact that the permanent office was a requirement of the award and only the low bid was considered. Also, it was perceived that personal feelings & animosities were prevalent as a part of the deciding factor when it came to the awarding of the contract. This should not happen but appears to more often than not!
- 171) No, thank you.
- 172) Without this information, poor performers can continue to be awarded contracts. This does not reward good performance.
- 173) I think it may be good to evaluate past performance, but it has to be done fairly and have the facts laid out before deciding whether a contractor may bid a project or not.
- 174) spending monies on low bids is not always the best way to provide quality work. Performance and quality in most cases the best and less costly.
- 175) What is the problem that needs to be addressed by this measure?
- 176) Rating system should be on internet, like awards, for public to also view. This would help keep it clean as the public will vocalize if something is "not right." If it is attached to compliance, although that would make it handy as it is already something we pull or connected to HiEPRO, it would limit the accessibility by the general public. Additionally, a value would need to be assigned to the rating. Sometimes there is more than 10% difference between the bids. A percentage, advisable or strict, should be utilized to assist in determining if the better service warrants the additional cost or if it is unjustifiably high (which may mean specs need revision.)
- 177) I cannot believe that this is not already something that is taken into account. Please pass this legislation.
- 178) Opening up to many lawsuits if low bidder deemed "not good enough". Current IFB calls for the lowest qualified bidder to do the work, cannot evaluate every bidder on every job. If you want the pick, cannot use IFB process.

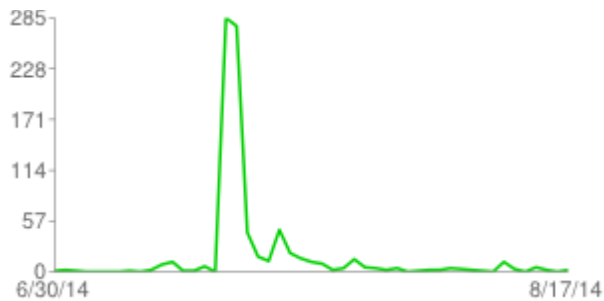
Past Performance Survey Results Summary

- 179) I think this is a good start on accountability for the Fed, state and vendors alike.
- 180) Put me to work
- 181) Government contracts are given to low a priority. They are used to fill in and not given reasonable priority. Usually provisions to diligently pursue projects are ignored by government inspections.
- 182) Do not allow IFB to be advertised until the IFB is 100% ready for bid. There are far too many time where the poor performance by design engineers and consultants result in project delays at huge cost increases to the contractor. Cost escalation, PCDs, Project shutdown are the main causes of poor performance by contractors.
- 183) I think incorporating these is a great idea.
- 184) That the evaluation process shall incorporate a resolution process to insure that its a learning process for everyone and that it shall not discourage venders to do business with the state. Only that the state may require a higher criteria to award an contract to the vender if the vender has not resolved issues in its last contracts.
- 185) The University of Hawaii at Manoa's procurement and purchasing team are irresponsible, unethical people.
- 186) Performance is not an issue that should be considers by the SPO. Poor performance should never happen as corrections can and should be made at the jobsite.
- 187) Tough nut to crack!
- 188) I would like to see a rule put in place that does not allow a contract to be awarded to a company who has not completed a job up to standards. This should include those who have been paid even if problems still exists. I would hope this would help in taking care of things that have not been done correctly or not completed .
- 189) If past performance is considered, measures must be put in place to re-consider the vendor - improvements should be identified and considered in the evaluation or subsequent evaluations.
- 190) Once a bidder has been notified that they have been awarded the contract, they must sign documents and return them by a specific date. However, the State does not seem to hold themselves to the same standard. It seems that it shouldn't take 30 to 90 days to have the signature process finalized. Better and more efficient administrative processes need to be put in place.
- 191) Not at this time.
- 192) None.
- 193) No way to see once awarded to see the other bids. Also need a data base of past awards. Not to be said of time of questions, but on the website. Thank you
- 194) See above
- 195) All factors must be considered. Quality and price do go hand and hand, however, not all quality companies will bid the lowest price because quality compliance costs money. Caveat Emptor (buyer beware)
- 196) Thank you for inviting us to participate in this survey.
- 197) Project performance should include the Contractor & Subcontractors evaluation of the administrating agency and to include timely information flow, payment on time, processing Change Orders, and Final contract Close Out time.

Past Performance Survey Results Summary

- 198) There must be a transparent way to see what your companies record is and an appeal process.
- 199) This is a great step!
- 200) Company's that name women os owners but rarely have any involvement with the contract but looking for preference
Check www.glassdoor.com for reviews on contractors Hawaii is isolated and should not particiapte in the WSCA-NASPO since it was geared for a vast area of wester states and will discourage many of Hawaii's smaller contractors
- 201) First time bidding for a public entity. Did not expect anything from it, but I also noticed that reputation, integrity, reliability, and trustworthiness are important factors. If course the monetary bid is important because money is money.

Number of daily responses



PURPOSE

In response to [House Concurrent Resolution 176](#) (S.L.H. 2014), the Hawaii State Procurement Office (“SPO”) invited about a dozen Invitation for Bid (IFB) procurement process stakeholders to participate in a focus group gather and share experiences, perceptions, opinions, and ideas on past performance accountability and implementation for all government contracts.

Individuals were able to either come in person or attend through a telephone conference call, with notes transmitted over internet connection through Adobe Connect. Those who were unable to join were invited to take a survey, provide comments, and follow-up with SPO directly if they have any further ideas or concerns.

PARTICIPANTS

In person:

- 1) SPO- Sarah Allen,
- 2) SPO- Mara Smith,
- 3) SPO- Robyn Pfahl,
- 4) SPO- Kenyon Tam
- 5) GCA –Lance Inouye
- 6) OHA-DHHL – Kamana`o Mills
- 7) BIA – Gladys Quinto-Marrowe
- 8) HART - Paula Youngling
- 9) Hawaii Building Trades – Kika Bukoski
- 10) LECET – Peter Lee
- 11) DAGS – Jolie Yee
- 12) PRP - Brooke Wilson

Online/phone participants:

- 13) PPB/ Maui County – Greg King + staff
- 14) Honolulu B&F – Michael Hiu
- 15) Hawaii County– Iris Oshiro
- 16) Hawaii County – Allan Simeoe
- 17) Hawaii County- Keone Thompson
- 18) DOT –Tammy Lee

PAST PERFORMANCE FOCUS GROUP
Facilitated by the Hawaii State Procurement Office ("SPO")
Friday, July 11, 2014
1:30 p.m. - 3:30 p.m.
Kalanimoku Building, Comptroller Conference Room 410, Honolulu

DISCUSSION

IDENTIFYING CURRENT PROBLEMS:

- A. Past performance evaluations are currently reactionary
- B. Different jdx can't communicate b/c no centralized database
- C. Delayed claims not being addressed
- D. Unknown when is responsibility checked in IFBs
- E. Lowest bidder often is expecting for changes to be awarded the IFB, cultivating "change order artists"

IDENTIFYING CURRENT SYSTEMS WORKING WELL:

- A. RFP process already allows for evaluating on how "good" someone already is
- B. IFB- Low bid technical proposals- provides for criteria evaluations

STRENGTHS & OPPORUTNITIES for Implementing Past Performance into all Government Contracts:

- 1) Increases transparency
- 2) Increases accountability
- 3) Create a process for information sharing between agencies
- 4) Objective information can be used to create metrics for future use
- 5) Developing evaluation strategies addresses contractor and state accountability issues
- 6) Defining specific terms are more useful, e.g. recency and relevancy
- 7) Creating a process that is less restrictive and demanding than debarment
- 8) Statute already includes necessary language with "responsible" bidder
- 9) Isolate some of the "bad eggs" without "grinding an axe" against everyone else
- 10) Defining a responsibility standard will facilitate implementation and understanding
- 11) Clarifying responsibility of due diligence for procurement officers
- 12) Ensure state employees are doing their due diligence of checking contractor responsibility
- 13) Creating metrics for evaluation will provide information for better procurement planning
- 14) Incoming ERP should be able to integrate information
- 15) Links past performance to responsibility

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CONCERNS, WEAKNESSES & THREATS to Implementing Past Performance into all Government Contracts:

- 1) Cutting-out new people
- 2) Subjectivity will slow down the process
- 3) Slows down procurement efficiency
- 4) Lack of resources to implement
- 5) Unreliable systems create more problems
- 6) Untrained employees create more problems
- 7) Is this inventing a problem?
- 8) Creating a process to argue about contractor evaluations sounds like protests
- 9) More protests
- 10) Keeping poor PP records too long difficult on contractors
- 11) Logistical timing for due diligence vetting "lowest responsible bidder"
- 12) How to address sub-contractors?
- 13) Accountability issues w/ state employees
- 14) ERP freak out!
- 15) Different types of contracting need different evaluations
- 16) Difficult to create objective evaluations
- 17) Ratings cannot be totally objective
- 18) Subjective evaluations are biased, eroding the integrity of open competition process
- 19) Unclear if PP can be objective or needs to be subjective
- 20) How to evaluate?
- 21) How do you rate?
- 22) Who does the rating?
- 23) Personalities affecting rating
- 24) IFBs are currently clean, to the lowest bidder- not a subjective process
- 25) How do you define poor past performance?
- 26) How to define "recency" & "relevancy"?
- 27) Educational issues- how to bring everyone up to speed
- 28) What belongs in the folder?
- 29) Adding more work creates State employee burnout
- 30) Evaluations at the end may suffer b/c they are so happy just to have the K over
- 31) Information database compatibility issues
- 32) Debarment already provides a process for accountability
- 33) Past performance evaluations are reactionary
- 34) No infrastructure
- 35) Delayed claims not being addressed
- 36) Recency and relevancy may not be good for IFBs, e.g. purchasing goods
- 37) How to define past performance is really the challenge

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BRAINSTORMING IDEAS

1. **TOOLS**

- Use appropriate procurement processes we have (RFP when appropriate, which allows for past performance consideration)
- Have multiple tools
 - 1) PP eval
 - 2) Connect internally between different procurement jurisdictions to see internal evals
 - 3) Self-reporting references

2. **MULTI STEP PROCESS FOR IFBs**

- Prequalify all contractors through a qualified bidder process, then go through second round to determine lowest bidder
- Clearance for all contractors

3. **PPB ACTION**

- PPB can issue directives on how contracting methods should be determined
- Mandating construction contracts be solicited in an RFP can address past performance issues with statutes and rules already in place

4. **PAST PERFORMANCE DATABASE**

- Connect all procurement jurisdictions to share information

5. **INFORMATION SHARING**

- Agree on standardized information sharing across the board
- Review process for contractor to address their information
- Address subcontractors responsibility in the process
- Public information? Or only used within the state

6. **METRICS**

- Develop standardized criteria to maximum amount possible
 - Budget
 - Quality
 - Coordination issues
 - Number of change orders
 - Keep metrics objective
- Room for objective & some subjective for explanation
- Allow for reasonable changes to impact performance, e.g. different cite conditions than expected
- Address timing issues- some job scopes should be considered longer

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- Budget
- Independent evaluator auditing agency metrics?

7. **THRESHOLDS**

- Don't want to slow down process for small contracts
- Define \$ thresholds when needing to review past performance

8. **TIMELINES**

- Define when to do reporting and when to evaluate
- Define how long agencies need to keep records
- Provide clear implementing timing:
 - On the front at source selection
 - At the back end at contract closeout

9. **INSURANCE**

- Including bonding?

10. **MANDATORY**

- Require PP evaluation into a database before K close-out
- Require at least 1 government inspector (or CM) to include their info
- Accountability for state employees to complete

11. **EDUCATION**

- Training to educate employees on how to create objective reports

SPO UPDATE ON PAST PERFORMANCE INITIATIVES



Robyn L.K. Pfahl, Procurement Policy Specialist
Procurement Task Force Briefing
10/27/2014

Procurement Task Force

- Established by SCR 92, SD2 (SLH 2013)
- Comptroller to est. task force “to study the cost impacts that the procurement process has had *for public works construction projects* as well as the existing bid preferences in relation to promoting economy, efficiency, effectiveness, and impartiality in procurement”
 - Identify & propose amendments to code
 - Review bid preferences
 - Do admin. rules reflect intent of the legislature and statutes?
 - Solicit input from construction industry

Past Performance Study

HCR 176 (SLH 2014)

LEGISLATIVE REQUEST

- SPO “requested to conduct a study on the feasibility, necessary processes, and costs relative to requiring the consideration of past performance as a factor in awarding public contracts, *including low bid contracts.*”
- Submit finings and recommendations to the Legislature no later than January 1, 2015

SPO ACTION

1. HI RESEARCH: Applications of procurement statutes and rules ,compliance
2. BENCHMARK RESEARCH: Federal and select states’ past performance initiatives and implementation tools
3. STAKEHOLDER FOCUS GROUPS: identify specific concerns and brainstorm ideas
 1. Contractor and Government Focus Group ,07/11/2014
 2. Attorney Focus Group with HPI, 08/05/2014
 3. Ongoing discussions with stakeholders
4. SURVEY: Past Performance perception and experience survey was developed and distributed through posting on SPO website as well as email announcements to the following groups:
 1. All CPOs
 2. Legislators
 3. Offices of the Governor and Lieutenant Governor
 4. SPO Staff
 5. Educators
 6. Unions & Trade Organizations
 7. Vendors & Buyers Registered with Hawaii Compliance Express (8,878 individual emails)
5. WHITE PAPER: document research per HCR 176 requests; include individual experiences, perceptions, opinions, and ideas on past performance accountability; discuss feasibility of implementation options.
6. SPO INITIATIVES: SPO takes initiatives to clarify responsibility determinations and guidance
 1. Legislative Initiatives
 2. Administrative Rule Initiatives

Logistical Implementation Issues

1. GUIDANCE NEEDED

1. Developing “objective” past performance criteria
2. Developing a process for contractor to dispute claims
3. Addressing different contract type concerns
4. Implementation in each jurisdiction

2. RESOURCES NEEDED

- Developing accessible past performance information system

What SPO Can Do NOW

1. Work with current statute and administrative rules to better define and clarify expectations
2. Provide training & guidance on how to identify and utilize the best method of procurement for each project
3. Ask for guidance from the Procurement Policy Board
4. Ask for guidance from the Legislature

RESPONSIBLE BIDDERS

- **HRS §103D-104 (Definitions).**
- **"Responsible bidder or offeror"** means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

HRS §103D-310. Responsibility of offerors.

- (a) Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days prior to the day designated for opening offers, shall give written notice of the intention to submit an offer to the procurement officer responsible for that particular procurement.
- (b) Whether or not an intention to bid is required, the **procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work.** For this purpose, the officer, in the officer's discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board. Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the offeror applies for administrative review pursuant to [section 103D-709](#).

Government Verification of Good Standing

- **HRS §103D-310(c)** All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters [237](#), [383](#), [386](#), [392](#), and [393](#). Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to [section 103D-702](#). The **procuring officer shall verify compliance** with this subsection for all contracts awarded pursuant to sections [103D-302](#) (IFB), [103D-303](#) (RFP), [103D-304](#) (Professional Services), and [103D-306](#) (Sole Source), and for contracts and procurements of \$2,500 or more awarded pursuant to section [103D-305](#) (Small Purchases);...

Competitive Sealed Bidding (bid evaluation & award) :

HAR § 3-122-33

- (a) The award shall be made to the **lowest responsive, responsible bidder** and shall be based on the criteria set forth in the invitation for bids.
- (b) **Only objectively measurable criteria** which are set forth in the invitation for bids ...
- (d) The **invitation for bids** shall set forth any **evaluation criterion** to be used in determining product acceptability:
 - (1) The solicitation may require the submission of samples, descriptive literature, technical data, or other material to verify product acceptability;
 - (2) The solicitation may also provide for accomplishing any of the following prior to award:
 - (A) Inspection or testing of a product for characteristics as quality or
 - (B) Examination of elements as appearance, finish, taste, or feel; or
 - (C) Other examinations to determine whether the product conforms to any other purchase description requirements;
 - (3) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offer is acceptable as set forth in the invitation for bids;
 - (5) Any bidder's offering which does not meet the acceptability requirements shall be rejected as **nonresponsive**.

SPO LEGISLATIVE INITIATIVE

- PURPOSE: increase accountability and transparency in state procurement by clarifying the due diligence requirement for contractor responsibility determinations, clarifies responsibility determinations, and clarifies legislative intent to include past performance consideration

1. New Definition: “**Past performance**” means available recent and relevant performance by the contractor on state, federal, or private contracts to be considered as a responsibility determination within the relevance of the current solicitation”
2. **Responsibility Determinations**
 1. Clarifies the Procurement Policy Board is to adopt rules for **determination of responsibility**
 2. The procurement officer **shall** possess or obtain available information sufficient to be satisfied that a prospective offeror meets the applicable standards set forth by the policy board.
 3. The procurement officer **shall** consider available recent and relevant past performance of the offeror as it applies to a responsibility determination for the current solicitation

SPO ADMINISTRATIVE RULE INITIATIVE

PURPOSE: Clarify that **past performance is part of responsibility determination**, and procurement officers must consider relevant and recent contractor past performance information prior to an award for any state contract as part of their due diligence

1. Establish definitions of past performance, responsibility determination
2. Clarifies due diligence is a general provision requirement for making responsibility determinations
3. Clarifies responsibility determinations **may** include consideration of available relevant and recent past performance

Moving Forward

1. SPO Legislative initiative submitted through DAGS
2. SPO Administrative Rule Changes proposed to PPB
3. White Paper report due Jan.1, 2015
 1. Document current issues and procurement trends
 2. Document stakeholder comments, insights and positions
 3. Propose step-by-step implementation process
 4. Propose budgeted resources for proper development (human resources & technology needed)

CONTACT Info

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Procurement Policy Specialist

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WANTED



ALTHOUGH THE CIVIL WAR WARRIORS ENDURED BY JUNE 1945, THE CIVIL WAR
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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

September 23, 2014

Sent Via E-mail: robyn.lk.pfahl@hawaii.gov

Ms. Sarah Allen

State Procurement Chief

State of Hawaii Procurement Office

1151 Punchbowl Street

Honolulu, Hawaii 96813

RE: SPO Past Performance Survey & HCR 176 (2014)

Dear Ms. Allen,

Thank you for this opportunity to comment on the State Procurement Office's (SPO) Past Performance Survey (Survey) in response to House Concurrent Resolution 176 (2014) requesting SPO to conduct a study on the consideration of past performance in the awarding of low bid contracts for public works projects. The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

During the 2014 legislative session GCA requested deferral of HCR 176 because it was premature as the Procurement Task Force was created during the 2013 session and was scheduled to report to the 2015 Legislature on issues related to bad performing contractors. Furthermore, consideration of past performance in procurement is already permitted under 103D-302(f) under the invitation for bid process, what is commonly known as low bid, however for various reasons agencies choose not to use it. Under Section 103D-302(f), HRS an invitation for bid may set the requirements to determine qualifications and criteria for a project. In other words, the agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance, recent project history and any other qualifications an agency may find necessary.

GCA's Position on Past Performance in IFB ("low bid") contracts

While GCA understands that SPO's Survey and HCR 176 (2014) was initiated due to concern that some contractors qualifying for public work projects were poorly performing, GCA believes that mandating the use of past performance criteria in low bid public work contracts is not the solution to eliminating bad performing contractors. **The consideration of past performance for low bid contracts raises a number of concerns for GCA, including but not limited to; ensuring objective administration and evaluation processes for agencies in determining qualified past performance criteria; inability for a new contractor to bid public work due to lack of past performance qualifications; agency's lack of resources, including staff and funding for implementation and administration of past performance for low bid contracts;**

procedural due process concerns and appeal procedures; and ensuring efficiency, integrity and transparency in the procurement process of public works construction projects.

Hawaii's Procurement Code

Hawaii's procurement code was initially adopted in 1993 as Act 8, during the Special Session of the Hawaii State Legislature in response to an outdated procurement code, Hawaii's Procurement Code is based on the framework provided by the predecessor of the American Bar Association's *The 2000 Model Procurement Code for State and Local Governments*, (ABA Model Procurement Code) and was enacted to increase competition, ensure fairness, and establish greater uniformity in the purchase of goods and services by the State and counties.¹

In 1993 the legislature made its intent regarding the procurement code clear and said, it is the policy of the State to foster broad-based competition. Full and open competition shall be encouraged. With competition, the State and counties will benefit economically with lowered costs. Therefore, it is the legislature's intent to maintain the integrity of the competitive bidding and contracting process by discouraging the State and counties from making changes to contracts once the contracts are awarded. Act of October 4, 1993, No. 8, A Bill for an Act Relating to Procurement. §1 (1993)

In Section 3-201, Commentary Number 3 of the ABA Model Procurement Code, which Hawaii's HRS Section 103D-301 is modeled after, it captures the essence of the proper Methods of Source Selection and how an agency should be permitted to exercise adequate authority to conduct procurement transactions in a fair and open competition under varying market conditions , it says,

[f]air and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. Since the marketplace is different for various supplies, services, and construction, this Code authorizes a variety of source selection techniques designed to provide for the best competition for all types of procurements. It also permits less formal competitive procedures where the amount of the contract does not warrant the expense and time otherwise involved . . .”
THE 2000 MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS, §3-201, p. 22

In order to allow state and county agencies more flexibility in considering past performance, GCA supported the passage of Act 239 (S.L.H. 2013) which conformed to the ABA Model Procurement Code in “providing that the use of competitive sealed bids is [as] just one of several different methods of source selection, rather than the default method.” H.B. 1374, CD1 CONF. COMM. REP. NO. 175, 26th Sess. (Haw. April 26, 2013). Prior to adoption of Act 239, agencies felt as though they were obligated to use the low bid process under Section 103D-302 unless it could be “determined to be either not practicable or not advantageous to the State to procure by

¹ Marion Higa, State of Hawaii Auditor, *An Audit of Hawaii's Implementation of the New Procurement Law*, Report No. 95-8 (February 1995).

competitive sealed bidding.” TESTIMONY OF STATE OF HAWAII DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES TO SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING, February 25, 2013. Due to the adoption of Act 239 (S.L.H. 2013) agencies may identify particular projects that may bid with other criteria, including past performance, rather than just solely based on the low bid. However, the procurement code is set up to allow the agency the flexibility to determine the proper criteria set forth in the bidding procedure and ensure transparency and efficiency in the delivery of a publicly funded project.

GCA’s Response to Survey

Upon review of SPO’s Survey, the GCA was concerned about how some of the questions were worded, as they may not reflect the real views of the respondent. For example, question number five asks when one believes past performance should be evaluated in the IFB process. Selections (d) and (e) are puzzling as doing a past performance evaluation makes little sense after an award is made and after a contract is completed. Question Number six, that asks how far back past performance should be considered, depends highly on what kind of past performance is being requested. GCA’s concern is that too often, contracting agencies require past performance too specialized for local contractors to compete when the particular solicitation does not require the sophistication being asked. Unsophisticated supporting structures or infrastructure for something like rail come to mind if experience in building rail is a past performance criterion. Also, requiring past performance in a relatively unsophisticated type of structure in a recent past may limit highly qualified contractors who are well qualified to do the work but did not do such a project in the recent past.

GCA would like to suggest that some discussion take place within the report regarding the survey questions and responses that may address any shortcomings that may not be apparent from reading the raw survey responses. Furthermore, GCA would prefer that the draft report be circulated among stakeholders prior to final submission to the legislature to allow interested stakeholders an opportunity to comment on items that may mislead members of the legislature.

Thank you for the opportunity to respond to the Survey and for considering our items of concern.

With best regards,

A handwritten signature in black ink, appearing to read "Peter Landry", with a stylized, cursive script.

Peter Landry, CHST
Chair, Legislative Committee

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

September 26, 2014

VIA E-MAIL: procurement.policy.board@hawaii.gov

Honorable Gregory King, Chair
Policy Procurement Board
c/o State Procurement Office
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

**RE: Request for Deferral in Adopting HAR changes on Past Performance
(HAR Section 3-122) & Comments on Proposed Legislative initiative
for Past Performance.**

Dear Chair King and Members of the Board,

On September 24, 2014, the General Contractors Association of Hawaii received notice of the Policy Procurement Board's (PPB) consideration of the State Procurement Office's proposed administrative rule changes and has not had the opportunity to adequately review the proposals; understand how it would be administered; nor request input from our members on the potential impact such a mandate would have. Therefore, GCA is writing to respectfully request deferral of any consideration to adopt any interim administrative rules regarding past performance.

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest. The GCA sent a letter to the SPO regarding SPO's survey regarding past performance and was anticipating further conversations with stakeholders and SPO on how the agencies were going to implement such a mandate for consideration of past performance.

GCA's Position on House Concurrent Resolution 176 (2014)

During the 2014 legislative session GCA requested deferral of HCR 176 because it was premature as the Procurement Task Force was created during the 2013 session and was scheduled to report to the 2015 Legislature on issues related to bad performing contractors. Furthermore, consideration of past performance in procurement is already permitted under 103D-302(f) under the invitation for bid process, what is commonly known as low bid, however for various reasons agencies choose not to use it. Under Section 103D-302(f), HRS an invitation for bid may set the requirements to determine qualifications and criteria for a project. In other words, the agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance, recent project history and any other qualifications an agency may find necessary.

GCA's Position on Past Performance in IFB ("low bid") contracts

While GCA understands that the proposed administrative rule changes and SPO's Survey pursuant to HCR 176 (2014) was initiated due to concern that some contractors qualifying for public work projects were poorly performing, GCA believes that mandating the use of past performance criteria in low bid public work contracts is not the solution to eliminating bad performing contractors. The consideration of past performance for low bid contracts raises a number of concerns for GCA, including but not limited to; ensuring objective administration and evaluation processes for agencies in determining qualified past performance criteria; inability for a new contractor to bid public work due to lack of past performance qualifications; agency's lack of resources, including staff and funding for implementation and administration of past performance for low bid contracts; procedural due process concerns and appeal procedures; and ensuring efficiency, integrity and transparency in the procurement process of public works construction projects.

For the abovementioned reasons, GCA is requesting deferral of any adoption of interim rules governing past performance on public works construction projects until SPO's report is distributed to the legislature and full consideration of statutory language, if appropriate, has been properly vetted among all government and county agencies and affected stakeholders.

Thank you for the opportunity to share our concerns and for considering our position.

With best regards,

A handwritten signature in black ink, appearing to read "Peter Landry", with a stylized, cursive script.

Peter Landry, CHST
Chair, Legislative Committee

AIA Hawaii State Council

A Council of The American Institute of Architects

September 27, 2014



Ms. Sarah Allen, State Procurement Officer
State of Hawaii Department of Accounting & General Services
1151 Punchbowl Street
Honolulu, Hawaii

Subject: Procurement Policy Board
Meeting of September 29, 2014
SPO Performance Survey and HCR 176 (2014)
Proposed SPO bill to revise HRS 103D-304

2014 Board of Directors

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Daniel Chun, FAIA

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Vacant

Secretary/Treasurer
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Robin Inaba, AIA (Hawaii)
Marie Kimmey, AIA ME (Maui)
Katie MacNeil, AIA (Oahu)
Scott Wilson, AIA (Oahu)

**AIA State Building Code
Council Representative**
Jim Reinhardt, AIA

Ex Officio
Amy Blagriff, Hon. AIA
Executive Vice President

AIA Hawaii State Council
Center for Architecture
828 Fort St. Mall, Ste. 100
Honolulu, HI 96813-4452

Dear Ms. Allen and Members of the Board,

The American Institute of Architects Hawaii State Council is very concerned regarding possible adoption of interim rules regarding past performance without adequate public notice, public hearing or gubernatorial approval. The rules have potential to overturn decades of practice in the design and construction industry in Hawaii and the United States, increase construction costs, add to paperwork burden of both private industry and agencies, and even possibly to public corruption. At this moment in time and with the HCR 176 Report yet to be published, AIA is in general agreement with General Contractors' Association of Hawaii comments as expressed in their letter to you.

With such important issues associated with use of past performance in the award of IFB contracts, the decision needs to be a subject for public policy makers and not public administrators. In other words, the legislature must make these kinds of decisions. AIA notes that there already is authority to use past performance as selection criteria in HRS 103D-303.

Proposed bill to revise HRS 103D-304

AIA was one of the strongest proponents of the current language of HRS 103D-304 and worked closely with the legislature to craft good language based on the experience of the federal government and the other 45 states that have such laws. Based on our past actions, we **oppose** the proposed change to the number of ranked persons being sent from the selection committee.

HRS 103D-304 already has language to deal with less than three interested offerors. An agency is allowed to make a new notice for interested persons. In an industry like architecture it should be no problem to find more than three interested persons. Having a long listing of qualified persons sent to the head of an agency was a corrupting feature of design services procurement prior to passage of the carefully crafted language of 103D-304.

Sincerely yours,

Daniel Chun, FAIA
President

The objectives of the AIA Hawaii State Council are to represent AIA members on matters of state-wide interest, and to provide assistance to state, governmental and regulatory bodies regarding issues affecting the architecture profession and Hawaii's built environment. The AIA Hawaii State Council is incorporated as a 501(c)(6) tax-exempt organization in the State of Hawaii.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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Marshall Hickox

Homeworks Construction, Inc.

Michael Watanabe

JW, Inc.

Ryan Engle

Bays Lung Rose & Holma

Stephen Hanson

simplicityHR by ALTRES

October 30, 2014

Honorable Gregory King, Chair
Policy Procurement Board
Hawaii State Procurement Office
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Via email: procurement.policy.board@hawaii.gov

RE: Request for Deferral in Adopting Changes to the Hawaii Administrative Rules on Past Performance (HAR Section 3-122).

Dear Chair King and Members of the Board,

My name is Gladys Marrone, CEO for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii respectfully requests this Board defer any decision-making on proposed amendments to Administrative rules on past performance by interim rulemaking. During the 2013 Legislative session, the Procurement Task Force was created and is expected to present its report, relating to bad performing contractors, to the Legislature in 2015. Furthermore, consideration of past performance is already permitted by statute under 103D-302(f), under the invitation for bid process, what is commonly known as low bid. Under this Section, an agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance. However, it seems that agencies choose not to utilize it.

Based on the above reason, BIA-Hawaii respectfully requests this Board defer any adoption of interim rules on past performance until the report from the Procurement Task Force is presented to the Legislature.

We appreciate the opportunity to share with you our views.

PROCUREMENT POLICY BOARD

Meeting Minutes

Thursday, April 17, 2014, 1 p.m.

Conference Room 410

1151 Punchbowl Street

Honolulu, Hawaii 96813

Members Present

Howard S. Garval, MSW

Ronald N. Hirano

Greg King, Chair

David Langille

Dean Seki

Kathy Suzuki-Kitagawa, MBA, MPH, CHES

Staff

Stella Kam, Department of the Attorney General

Sarah Allen, State Procurement Office (SPO)

Ruth Baker, SPO

Corinne Higa, SPO

Bonnie Kahakui, SPO

Andrew Lum, SPO

Mara Smith, SPO

Donna Tsuruda-Kashiwabara, SPO

Others

Shannon Alivado, General Contractors Association of Hawaii

John Cheung, Building Industry Association

David Ching, Hawaii Procurement Institute

Kevin Vegas, Grainger

I. Call to Order

Chair Greg King called the meeting to order at 1:05 p.m.

II. Approval of Minutes of Meeting on September 9, 2013.

The PPB approved the minutes of its September 9, 2013, meeting (Attachment 1).

III. Introduction of State Procurement Office Administrator and Board Members

SPO Administrator Ms. Sarah Allen was formally introduced to the Board. Each member of the PPB was introduced to all in attendance.

IV. Board Vacancies and Activation of PPB Nominating Committee

The Nominating Committee of the PPB needs to be activated to fill an existing vacancy and two anticipated vacancies of boardmembers whose terms will end on June 30, 2014.

The SPO reported that Governor Neil Abercrombie, Senate President Donna Mercado Kim and House Speaker Joseph Souki are to submit names of potential candidates for the Nominating Committee to the SPO. Ms. Allen said it would be nice to have people with a procurement background serve on the PPB. Mr. Dean Seki said it would be appropriate for the PPB to show support for the reappointment of Mr. Garval and Ms. Suzuki-Kitagawa. Ms. Kam of the AG and Ms. Allen will confirm if Mr. Garval and Ms. Suzuki-Kitagawa can be reappointed since they are holdovers from last year.

V. Professional Services – Legislative change 2015

Professional Services source selection was created to ensure a fair process to procure “design professional services” provided by licensees, including architects, engineers, landscape architects and surveyors as defined in Hawaii Revised Statutes (HRS) §103D-304.

Ms. Tsuruda-Kashiwabara, Procurement Specialist of the SPO, informed the PPB that there are two issues regarding HRS §103D-304, which was created for 464 architects and engineers as defined by the HRS.

- 1) Some state departments are having problems with the 304 process and are using it improperly. Applicants are qualified, then ranked.
- 2) Some departments use a hybrid of 303, which uses price as evaluation, and 304, which is based on qualifications. In one instance, one department chose this method. It posted a notice, but instead of ranking, it used price as part of the evaluation process.

The SPO plans to train and guide departments through a procurement circular. Mr. Seki stated that although this is not in the scope of the PPB, it will work with SPO administration. Ms. Allen said that rule changes must go through the PPB, and that a change in the HRS is needed. The SPO needs to remove language in HRS §103D-304, highlighted in red (see Attachment 2), but re-insert that language after the statute is changed. The SPO will work with the AG.

Chair King asked when it needed to put out proposal. Ms. Tsuruda-Kashiwabara responded that this has to be done before the next legislative session.

VI. Past Performance

Ms. Allen reported that she receives complaints regarding the current acquisition regulation on past performance, specifically in regards to Invitations to Bid (IFBs). The complaints are due to the makeup of the Hawaii Revised Statutes, state departments and agencies are being forced to hire contractors who have shown time and time again that they are poor performers. The Office of the Governor set up a meeting between several department heads and the SPO to come up with a solution, and during the 2014 Session, the State Legislature introduced three bills pertaining to past performance and a resolution for a study on past performance.

Oregon and Virginia have in their respective state codes requiring bidders to complete a questionnaire on past performances.

Although, through examination, the Code and associated Rules talk to Responsiveness, there is perhaps some confusion in the reading and implementation thereof.

PPB discussion on this topic to determine if code/rules need to be changed or whether suitable procurement guidance is adequate.

VII. Health & Human Services Report

Corinne Higa of the SPO provided a report on Health & Human Services. HRS Chapter 103F, Purchases of Health and Human Services, is a single, standardized process for state agencies and providers to procure health and human services. It optimizes information sharing, planning, and service delivery efforts. By State agencies and private providers communicating and working together, the SPO believes that there can be refinement in how the State procures, contracts and administers contracts for health and human services.

As a result, the SPO is establishing the Health and Human Services Action Team (HHSAT) focus groups: Group I (State), Group II (Private Providers), Group III (State & Private Providers). The initial meeting for each group will be by invitation. Thereafter, the meetings will be open to all participating and interested health and human services parties. SPO communicated with HHS agencies and 103F-202 community council, which consists of private providers and has a maximum of nine members. This council advises the SPO on HHS matters.

Legislature had formed a task force to address prompt payment FT

Found other issues

TF submitted report to Legislature

SPO put together focus groups consisting of state, private providers

The HHSAT held a meeting, during which they shared ideas and acknowledged accomplishments Mr. Garval stated that he is glad that the HHST is now part of the process.

VIII. Piggy-Backing – Legislative change or Rule change

Bonnie Kahakui reported on the issue of “piggy-backing” on existing contracts, which is currently not permitted.

HRS 103D-802 allows cooperative purchasing, which occurs when one government procurement unit procures with one or more other government procurement units or qualified nonprofit agencies pursuant to HAR Chapter 3-128. Procurement units have the authority to procure and are of 2 types: internal, or within the State of Hawaii and external, located outside the State of Hawaii.

The focus of piggy-backing is on federal contracts procured by GSA, which manages and supports federal agencies to develop cost-minimization methods. GSA's Cooperative Purchasing Program allows state and local governments to benefit from pre-vetted vendors on a variety of products and services through specific GSA Schedule contracts. This program allows eligible entities to purchase from Cooperative Purchasing approved vendors, at any time, for any reason, using any funds available. Benefits for government agencies include pre-negotiated ceiling, access to local and global companies, and eTools.

Schedule contracts open under Cooperative Purchasing, include:

Schedule 70 - The largest and most widely-used acquisition vehicle in the federal government. Ms. Kahakui reported that there are 21 vendors on Schedule 70.

Schedule 84 - Used for the purchase of security and law enforcement equipment. Ms. Kahakui said that there are 2 vendors on Schedule 84.

Ms. Allen said that while the SPO has no or little experience in this area and doesn't have a pilot program, the SPO can overcome these challenges and conduct a pilot program.

Mr. Seki reported that the State Department of Defense wanted to use piggy-backing for disaster preparedness. The GAS movement will help disaster preparedness by preventing price-gouging.

SPO wants to have control until try it out, put it out in a conservative manner

Mr. Hirano shared his concern that global vendors will take jobs away from Hawaii. Ms. Allen responded that there needs to be a balance.

IX: Sunshine Law Reference

The SPO referred to a guide on the Sunshine Law, which allows boards to hold multi-site meetings where members at different sites are connected via audio- or videoconference, or another form of interactive conference technology, subject to requirements listed in Section 92-3.5 of the Hawaii Revised Statutes. One requirement is that if the next PPB meeting utilizes audio- or videoconference technology, the meeting agenda must list all the locations from which board members will be attending as public meeting sites.

X. Adobe Connect Demonstration

Andrew Lum, Management Analyst of the SPO, held a demonstration of Adobe Connect, which can be used as a tool to connect interactively with board members and the public from neighbor islands. Adobe Connect can be used for the next PPB meeting.

XI. Meeting Schedule

The SPO recommended that future PPB meetings be scheduled quarterly or as needed.

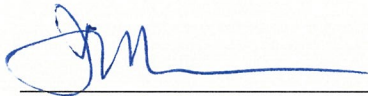
XII. Announcements

There were no announcements

XIII. Adjournment

The meeting was adjourned at 3:16 pm.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'D. Seki', written over a horizontal line.

Dean Seki, Secretary
Procurement Policy Board

Attachment: April 17, 2014, PPB Agenda

PROCUREMENT POLICY BOARD
1151 Punchbowl Street, Conference Room 410
Honolulu, Hawaii 96813

Regular Meeting
Thursday, April 17, 2014
1 p.m.

A G E N D A

	Agenda Item
I.	Call to Order
II.	Approval of Minutes – Meeting of September 9, 2013
III.	Introduction of State Procurement Office Administrator Sarah Allen and Board Members
IV.	Board Vacancies and Activation of PPB Nominating Committee
V.	Professional Services – Legislative change 2015
	Break
VI.	Past Performance – Legislative change 2015
VII.	Health & Human Services Report
VIII.	Piggy-Backing – Legislative change or Rule change
IX.	Sunshine Law Reference
X.	Adobe Connect Demonstration
XI.	Meeting Schedule
XII.	Announcements
XIII.	Adjournment

Please allow 2.5 hours for the meeting, which will include a 5-minute break.

Agenda and available agenda items may be viewed at <http://spo.hawaii.gov/procurement-policy-board/> (click on *Meeting Agenda and Minutes*).

Individuals requiring special assistance or services may call (808) 587-4700 by 1:00 p.m., Wednesday, April 16, 2014, to discuss accommodations.

PROCUREMENT POLICY BOARD
Meeting Minutes

Monday, August 4, 2014, 10:30 p.m.

Kalanimoku Building
1151 Punchbowl Street, Conference Room 410, Honolulu, Hawaii 96813

web-video conference connection with:
County of Maui Building
South High Street, Room 616, Wailuku, Hawaii 96793

Members Present

Ronald Hirano
Greg King, Chair (via Adobe Connect)
Dean Seki, Secretary
Kathy Suzuki-Kitagawa (via Adobe Connect)

Staff

Sarah Allen, State Procurement Office (SPO)
Stella Kam, Department of the Attorney General
Hōukūlei Lindsey, SPO
Dianne Matsuura, Department of Accounting and General Services
Michael Ong, SPO
Robyn Pfahl, SPO
Mara Smith, SPO
Donna Tsuruda-Kashiwabara, SPO

Others

David Ching, Hawaii Procurement Institute
Lance Inouye, General Contractors Association of Hawaii (GCA)
Melanie Martin, Department of Transportation
Ken Takenaka, GCA

I. Call to Order

Chair Greg King called the meeting to order at 10:34 a.m.

II. Approval of Minutes of Meeting on April 17, 2014.

- PPB approved the minutes of its April 17, 2014, meeting (Attachment 1).
 - Ronald Hirano motioned to approve minutes. Dean Seki seconded the motion. Motion passed unanimously.

III. Executive Session Pursuant to HRS §92-5(a)(2)

PPB met privately in an executive session pursuant to HRS §92-5(a)(2). After returning to regular session, Chair Greg King reported that the PPB discussed personnel compensation issues.

- PPB approved a motion to submit a letter to the Governor recommending an increase in the State Procurement Office Administrator's salary pursuant to the 2013 Salary Commission Memo.
 - Motion was made by Chair. Motion was seconded by Mr. Seki. Motion passed unanimously.

IV. Professional Services

The posted agenda for PPB's August 4, 2014, meeting included a typo in "Professional Services – Interim Rule Repealing Hawaii Administrative Rules § 3-122-69". The Professional Services subsection was intended to be § 3-122-66. The unintended consequences of the "-69" typo does not provide adequate public notice pursuant to Hawaii sunshine laws (HRS §92-1), which requires a six (6) day posting.

- PPB decision making will be postponed to the next PPB meeting to provide adequate notice.
- Discussion on Professional Services will be held under new business today.

V. Past Performance – HCR 176 (SLH 2014) Legislative Resolution Update

House Concurrent Resolution 176 (S.L.H. 2014) requested that the State Procurement Office ("SPO") conduct a study on the feasibility of requiring **past performance** as a factor in awarding *any* public contract, including low-bid invitation for bid ("IFB") contracts.

SPO Procurement Policy Specialist Robyn Pfahl has been researching past performance and implementation strategies for obtaining metrics and formulating recommendations as a response to House Concurrent Resolution 176 (S.L.H. 2014). Ms. Pfahl has also been working with government officials, contractors, and other procurement policy stakeholders to gather and share experiences, perceptions, opinions, and ideas on past performance accountability for the report. SPO's actions to respond to HCR 176 thus far have included:

- 1) Research on procurement statutes and rules applications and compliance;
- 2) Research on Federal and state past performance initiatives and implementation tools;
- 3) Stakeholder Focus Groups to identify specific concerns and brainstorm ideas;
 - a) Contractor and Government Focus Group held July 11, 2014
 - b) Attorney Focus Group Scheduled August 5, 2014 with the Hawaii Procurement Institute
 - c) Ongoing Discussions with Stakeholders and Lobbyists
- 4) Past Performance perception and experience survey SPO IFB Past Performance Survey LINK was developed and distributed through posting on SPO website as well as email announcements to:

- a) All CPOs
 - b) Legislators
 - c) Offices of the Governor & Lieutenant Governor
 - d) SPO Staff
 - e) Educators
 - f) Unions & Trade Organizations
 - g) Vendors & Buyers Registered with Hawaii Compliance Express (8,878 individual emails)
- 5) Drafting a white paper to include research outcomes, gathered stakeholder input, and recommendations on past performance accountability and implementation feasibility.

SPO is continuing to formulate the HCR report and record stakeholder meetings and survey responses, which totaled 807 as of August 4, 2014. SPO plans to have another update with recommendations to be considered by the next PPB meeting.

VII. New Business

A. Professional Services

HAR §3-122-66 has been **invalidated** by the Hawaii Supreme Court in Asato v. Procurement Policy Board, Hawaii, 2014 (pending publication). The Court found that there was legislative intent to require a “minimum of three persons” to respond to a solicitation for procurement of professional services under the HRS §103D-304 process. The Court held that HAR § 3-122-66, Waiver to Requirement for Procurement of Professional Services is **invalid** because it is in direct conflict with the clear mandate of HRS 103D-304(g) which required that “[t]he selection committee shall rank a **minimum of three persons...**”, and therefore the Procurement Policy Board “exceed[ed] the scope of authority give by the legislature to [the Board].”

SPO issued **Procurement Circular No.2014-09** on July 17, 2014, explaining that the HAR §122-66 is no longer available to be utilized by procurement officers and providing guidance to conducting professional services method of procurement. SPO Purchasing Supervisor Donn Tsuruda-Kashiwabara, SPO Procurement Policy Specialist Robyn Pfahl, and SPO Administrator Sarah Allen provided background information.

- 1) SPO is recommending that the PPB **issue interim rules**, pursuant to HRS §103D-202, by a **Procurement Directive**, pursuant to HAR § 3-122-2, to **repeal HAR §122-66**.
- 2) Because of the clerical error on the August 4, 2014, agenda, PPB is deferring decision making until the next PPB meeting.
- 3) SPO also plans to submit a legislation request in 2015 that will allow HAR § 3-122-66 to be reinstated after legislative approval.

B. Inventory

SPO Inventory Specialist Michael Ong reported that the statute and rules are inconsistent, making inventory management very difficult. SPO is requesting PPB engage in rulemaking changes to align HAR §3-130 with the law stated in HRS §103D -1204 so that SPO can improve inventory management practices.

- HRS §103D-1204 places inventory responsibility with “**The head of the department, or the head of any board, commission, agency, bureau, or office of the State**” as responsible for the “accountability, protection, maintenance, and proper use of all state property pertaining to their office or department”
- HAR §3-130-3 places inventory responsibility with “**The chief procurement officer**, or the head of any state governmental unit that is not by law under the control of a chief procurement officer” for “all state property in the possession, custody, control, or use of the unit or jurisdiction, including the several counties, which the officer or head presides.”
- SPO is recommending that the PPB **issue interim rules**, pursuant to HRS §103D-202, by a **Procurement Directive**, pursuant to HAR § 3-122-2, to **amend HAR §130** to place inventory responsibility with the same language as the HAR “**The head of the department, or the head of any board, commission, agency, bureau, or office of the State.**”

Ms. Allen explained that, as a chief procurement officer (CPO), she and other CPOs have to sign-off on all of their jurisdiction’s approval of disposal applications. CPOs therefore must sign-off on disposals of inventory items that they do not touch or see because it is outside their logistical purview. This is a direct conflict of statute and administrative rules, creates confusion on duties and responsibilities, as well as creates excessive paperwork.

C. Source Selection

Ms. Allen discussed the difficult application of the current law and administrative rules in the source selection process of the request for proposal (RFP) process. Pursuant to HAR Subchapter 6, Complete Sealed Proposals, and specifically HAR §3-122-52, there may be no direct communications between procurement officers and offerors during the RFP process until after the creation of a “priority list.” Then, “discussions [are] limited to only “priority-listed offerors,” whom are “those responsible offerors who are selected for the priority list.” Because any type of direct communication is barred before creating the priority list, procurement officers don’t have any opportunity to clarify apparent mistakes in offers that prevent an offeror to become a “priority-listed offeror.”

SPO is creating language for administrative rule changes, which would allow for some type of clarifying communication before “discussions,” to make logical determinations of responsible offerors, to get the right offerors into the pool of potentially acceptable proposals, and follow into full “discussions” as needed.

D. Procurement Policy Board General Information

- 1) PPB MEMBERSHIP VACANCIES: Currently, there are three (3) vacancies on PPB.
 - a. Waiting on Governor to appoint two (2) individuals to the nominating committee.

- b. The Governor's Office of Boards and Commissions has authorized two current board members to remain on board as "holdovers" if those members agree.
- 2) PPB MEMBERSHIP QUALIFICATIONS: Mr. Seki expressed concern that the current specific membership qualifications are very restrictive, making finding new members very difficult. Chair King agreed and suggested that the PPB look at creating a new legislative initiative to expand the leadership and background qualifications of PPB members.
- 3) PPB OFFICE ELECTIONS: PPB is due for elections of officers, and will plan on holding office elections at the next PPB meeting.
- 4) PPB INTERNAL DOCUMENTS: SPO does not have any official bylaws. All government board are bound by statutes and administrative rules for operational procedures. SPO will pull together a PPB guide to statutory and administrative rule provisions governing the SPO, to create an internal reference working document for institutional memory.

XI. Meeting Schedule

The next PPB meeting will be scheduled as needed.

XII. Announcements

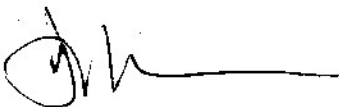
New SPO Assistant Administrator

Paula Youngling is the new Assistant Administrator and was introduced to the PPB. Ms. Youngling was previously the head of procurement of the Honolulu Authority for Rapid Transportation (HART). Paula's experience includes federal and state government procurement through the U.S. Air Force and various Department of Defense contractors.

XIII. Adjournment

The meeting was adjourned at 11:23am.

Respectfully submitted,



Dean Seki, Secretary
Procurement Policy Board

Attachment: August 4, 2014, PPB Agenda

PROCUREMENT POLICY BOARD

Kalanimoku Building
1151 Punchbowl Street, Conference Room 410 ♦ Honolulu, Hawaii 96813

County of Maui Building
200 South High Street, Room 616 ♦ Wailuku, Hawaii 96793

Regular Meeting
Monday, August 4, 2014, 10:30 a.m.

A G E N D A

	Agenda Item
I.	Call to Order, Public Notice, Quorum
II.	Approval of Minutes – Meeting of April 17, 2014
III.	Executive Session pursuant to HRS §92-5(a)(2) to discuss personnel matters
IV.	Professional Services – Interim Rule Repealing Hawaii Administrative Rules §3-122-69
X.	Past Performance – HCR 176 (SLH 2014) Legislative Resolution Update
XI.	New Business
XII.	Next Meeting
XIII.	Announcements
XIV.	Adjournment

Please allow 1 hour for the meeting.

Agenda and available agenda items may be viewed at www/spo.hawaii.gov/procurement-policy-board/ (click on *Meeting Agenda and Minutes*).

Individuals requiring special assistance or services may call (808) 587-4700 by 10:30 a.m., Friday, August 1, 2014, to discuss accommodations.

PROCUREMENT POLICY BOARD
Meeting Minutes

Monday, September 29, 2014, 1:30 p.m.

Kalanimoku Building
1151 Punchbowl Street, Conference Room 410, Honolulu, Hawaii 96813

web-video conference connection with:
County of Maui Building
South High Street, Room 616, Wailuku, Hawaii 96793

Members Present

Howard S. Garval, MSW
Chair Greg King, Chair (via Adobe Connect)
David Langille
Dean Seki, Secretary

Staff

Sarah Allen, State Procurement Office (SPO)
Ruth Baker, SPO
Corinne Higa, SPO
Bonnie Kahukui, SPO
Stella Kam, Department of the Attorney General
Hōukūlei Lindsey, SPO
Andrew Lum, SPO
Michael Ong, SPO
Robyn Pfahl, SPO
Mara Smith, SPO
Donna Tsuruda-Kashiwabara, SPO
Paula Youngling, SPO

Others

Shannon Alivado, General Contractors Association of Hawaii
David Ching, Hawaii Procurement Institute
Rina Chun, Hawaii State Legislature
Ken Takenaka, GCA

I. Call to Order, Public Notice, Quorum

Chair Greg King called the meeting to order at 1:35 p.m.

II. Approval of Minutes of Meeting on August 4, 2014.

PPB approved the minutes of its August 4, 2014, meeting.

- David Langille made the motion to approve the minutes. Dean Seki seconded the motion. The minutes were approved unanimously.

III. Procurement Policy Board Operations

A. Vacancies and Status of PPB Nominating Committee

Ruth Baker reported that the Governor recently named his two appointments to the PPB Nominating Committee (NC), Doug Murdock and Melissa Pavlicek, whose appointment is pending confirmation from the Governor. With these last two appointments, the NC can be activated to address PPB vacancies. The Boards and Commissions Office advised that both Howard Garval and Kathy Suzuki-Kitagawa are holdovers until the start of the 2015 Legislative Session and are eligible to serve another term, without needing to re-apply for their positions. Ms. Kam advises that holders may remain until the end of the legislative session, pursuant to HRS 26-34(b). Ms. Baker reported that Ms. Suzuki-Kitagawa has indicated interest in remaining on the PPB. Mr. Garval also stated his willingness to continue serving on the PPB. Ms. Baker stated that the NC will accept applications from individuals interested in serving on the PPB for all open vacancies, review qualifications, and make recommendations to the Governor.

Mr. Seki asked Ms. Kam of the Department of the Attorney General if the PPB can take up an initiative to amend the requirements of the board positions, 103D-201(b)(3), during the meeting or in new business. Mr. Seki asked if the SPO can make amendments to lessen the restrictions on the current PPB qualifications to open board membership up to more people. Ms. Allen said that the SPO and PPB can review and amend the positions descriptions, which can be reviewed at the next PPB meeting.

B. Election of Officers Pursuant to HRS §103D-201E

Ms. Pfahl stated that the PPB needs to vote on its slate of officers: Chair, Vice Chair and Secretary. She added that the PPB has a statutory requirement for a Chair, but a Vice Chair is also recommended, in case the Chair is unable to attend a meeting. Mr. Seki said the position of Secretary usually defaults to Comptroller.

Mr. Seki made a motion to nominate Mr. King as Chair. David Langille seconded the motion. Motion passed unanimously.

Mr. Langille made a motion to nominate Howard Garval as Vice Chair. Mr. Seki seconded the motion. Motion passed unanimously.

Mr. Garval made a motion to nominate Dean Seki as Secretary. Mr. Langille seconded the motion. Motion passed unanimously.

Ms. Alivado, from GCA, asked the PPB for clarification on the two Health and Human Services positions that Mr. Garval and Ms. Suzuki-Kitagawa fill. Mr. Garval confirmed that he and Ms. Suzuki-Kitagawa represent the Health and Human Services. He noted that he believes both of their terms expire at the same time – the day before the start of the 2015 Legislative Session – so there will be no representation from Health and Human Services on the PPB after January 21, 2015, and asked the PPB to consider staggering the terms in the future.

Mr. Seki asked if Mr. Garval and Ms. Suzuki-Kitagawa can remain on the PPB in a temporary capacity and expressed his concern about having a gap until they are confirmed. Ms. Kam does not believe there are restrictions beyond the limit of two terms and eight consecutive years, but she will report back to the PPB at the next meeting on this issue. Mr. Seki commented that historically, the Legislature does not confirm until the end of the session.

C. Procurement Policy Board Resources and Support

As requested by the PPB at its last meeting, Ms. Pfahl is developing an internal PPB/SPO working document of mandated requirements and resource references for PPB operations. The impetus for this PPB request was the lack of institutional memory from the previous SPO administration, and the difficulty of changing administrations to reference PPB processes. She found that the PPB does not have official by-laws; however, the PPB is guided by numerous sections found in HRS, as well as policies from the Office of Boards and Commissions.

Ms. Pfahl found two issues regarding PPB support and resources that were mandated in statute yet not implemented by the previous SPO administration. She found that per HRS 103D-201, relating to the creation of the PPB, provides for at least one designated full-time PPB support staff. The previous SPO Administrator had his private secretary handle tasks pertaining to the PPB. The SPO and Comptroller need to discuss whether to come up with that position or revise the statute.

1) DAGS/SPO Employee Designated to PPB Support

Ms. Allen reported that she spoke to Mr. Seki about HRS §103D-201 language that mandates the Department of Accounting and General Services (DAGS) to “provide at least one full-time support staff and funding necessary to support the policy board.” There is no established board administrator position. As with most boards, this position assists with logistics, events, planning and research, as well as preparing documents for board review and action. This position is usually filled by an attorney. Ms. Allen plans to request an immediate position creation and fulfillment of a Board

Administrator to support the PPB with skills and focused support to effectively carry out its policy making duties, and relieve the Board's increasing burden on the SPO's resources, freeing other SPO employees to focus on their individual positions. Ms. Allen reported that approximately 910 hours has been spent by numerous SPO staff on PPB support this year alone. Although the SPO is doing a wonderful job pulling together to serve the PPB, it can do an even better job with additional resources for a highly-specialized employee dedicated to the PPB.

Mr. Seki reported that Ms. Allen showed him the HRS about the position. He checked with DAGS Administrative Services Officer and informally with the Special Assistant to the Comptroller, who happens to be an attorney, who said that their interpretation of the language is that the SPO staff is DAGS staff, although there is no designated position. Mr. Seki said that as Comptroller he will support any budgetary requests for additional staff, if it falls within the budget instructions.

2) Compliance Audit Unit

Ms. Pfahl also found that per HRS, the Office of the Auditor is charged with established and maintaining a procurement compliance audit unit. Ms. Pfahl spoke with the Acting State Auditor, who confirmed although the compliance audit unit is in statute, it is an unfunded mandate and she has not been able to establish a designated unit per se. The State Auditor is meeting the minimum requirements of selected contract review by "risking procurement" in all their audits involving procurement projects. HRS §§103d-107, -108, and -109 mandates a long list of responsibilities and actions for a compliance audit unit, including: reviewing and auditing procurement practices; review and assess innovations in procurement methods; advocate competition, fairness, and accountability; review and assess applicable procurement innovations; review current or proposed statutes and rules; review selected contracts; conduct studies, research, and analysis, and make reports and recommendations; establish and maintain a procurement library; report on noncompliance and make recommendations; and participate in legislative hearings and policy board meetings. Ms. Pfahl shared that such analysis and data will be very helpful to provide metrics for the policies that the PPB is implementing. The SPO has a planned meeting with the Acting State Auditor, who is willing to discuss the matter and ways that her Office of the Auditor can help.

IV. Administrative Rules Overview

A. Overview of interim and permanent rulemaking procedures

Ms. Pfahl provided a resource guide outlining the difference between interim and permanent rulemaking processes for the PPB. She has been working with DAGS staff on this timeline and checklist. HRS §103D-202 authorizes the PPB to issue administrative rules with two different methods of rulemaking, requiring that "[a]ll

rules shall be adopted in accordance with chapter 91; provided that the [PPB] shall have the power to issue interim rules by procurement directives, which shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of Chapter 91. The interim rules shall be effective for not more than 18 months.”

Ms. Pfahl said that the PPB can decide to use the two processes in parallel. The interim rulemaking procedure allows the PPB to test, clarify and modify procurement policy while it considers making such rules permanent.

B. Electronic HAR upgrade initiative

Andrew Lum of the SPO reported that the Hawaii Administrative Rules on the SPO website are now searchable because of the use of optical character recognition (OCR) software. Users on the SPO website will be able to use the search command in large documents. The SPO will work on getting the HAR more user-friendly and more searchable. In the past, the HAR were scanned photocopy images and users could not use the search command.

Ms. Pfahl added that this will help the public in accessing, researching and understanding procurement process through more accessible rules. The Lieutenant Governor’s Office keeps the official, signed and time-stamped rules on file and the SPO is the custodian of the rules for the public, needing to have it available on its agency website. Ms. Pfahl explained that although the official HAR versions are the stamped originals, and SPO will continue to provide scanned versions, also posting “unofficial” clean word docs converted to PDFs will increase efficiency.

V. SPO Recommending HAR changes and Decision Making on Select Initiatives

The SPO has been working on a number of initiatives that either require or would benefit from the Procurement Policy Board engaging in Hawaii Administrative Rule changes.

Ms. Allen reported that the PPB has already discussed items A) Inventory Services, B) Professional Services, and E) “Etc.” The SPO is now requesting the PPB to review and consider approving the aforementioned items. The PPB is also being presented with SPO suggested changes to items C) Past Performance, D) Communication During Source Selection, and F) Exemption Language for discussion.

A. Inventory Services – amending HAR §3-130

The PPB was provided information about the proposal to amend HAR §3-130 to align inventory accountability designations with statute and make other inventory management clarification, through interim rulemaking and rulemaking pursuant to HRS Chapter 91. HRS §103D-1204 delegates inventory responsibility to the department heads, while HAR §3-130-3 delegates inventory accountability to the CPOs. The purpose of this HAR §3-130 amendment is to clarify that inventory

accountability is the responsibility of "the head of the department, or the head of the board or commission, agency, bureau, or office of the State."

Michael Ong, Inventory Specialist of the SPO, reported that the rules and the HRS need to be aligned. Several rules need to be revised and should name who is responsible and accountable for inventory in general. The SPO is also recommending changes, such as the repeal of rules that still mention inventory, and the streamlining of the management process.

Mr. Garval asked what the end result look like, and Mr. Seki asked how the SPO would be involved. Ms. Allen responded that if the HAR clearly reflects the legislative intention of the HRS, the department heads will be responsible for their own inventory and the SPO would remain involved in the overall Inventory system. Mr. Ong reported that the rules currently require all requests for inventory disposal be signed-off by the CPO. All executive agency disposals must receive the SPO Administrator's signature as the CPO, regardless of what department had control of the inventory item. The SPO's responsibilities are to maintain centralized inventory, enforce the rules and perform inventory reviews.

Mr. Seki proposed that the PPB vote on each item as it comes up. Mr. King and Mr. Garval voiced their agreement on the process. Ms. Pfahl clarified that the PPB will vote on authorizing interim rulemaking, which will be made through a procurement directive. Ms. Allen said that the PPB has been provided draft rules and is asked to vote to facilitate the propagation of interim rules, and then it can work on making this rule permanent.

Mr. Garval made a motion to authorize the propagation of interim rules for Inventory Services. Mr. Seki seconded the motion. Motion passed unanimously.

Ms. Pfahl stated that the procurement directive on this will be given to Ms. Kam for review, then to Chair King for signature and Mr. Seki as comptroller of DAGS.

B. Professional Services – repealing HAR §3-122-66

The PPB was provided information about the proposal to repeal HAR §3-122-66, "Waiver to requirement for procurement of professional services," which has been invalidated by the Hawaii Supreme Court in Asato v. Procurement Policy Board, Hawaii, 2014. The purpose is to align HAR with current law, clarifying that HAR §3-122-66 is no longer able to be utilized when procuring professional services,

Ms. Allen reported that this is to repeal the rule (HAR §3-122-66) that allows for an option in procurement of professional services pursuant to HRS §103D-304(g), for situations where a review committee receives less than three qualified persons' submittals to provide professional services under specific selection criteria. She added that repealing HAR §3-122-66 is through interim rules only. The SPO does not intend on making this a permanent rule change because the SPO is requesting the

legislature to review HRS §103D-304(g) and change the statute to specifically allow for the PPB to promulgate rules to address situations of less than three qualified submittals, which would then authorize the PPB to reinstate HAR §3-122-66.

The SPO has drafted this Legislative request through DAGS. If the Legislature does not approve the statutory change, the PPB will have to decide how to address this very specific issue in the event that there less than three qualified submittals. SPO Procurement Specialist Donn Tsuruda-Kashiwabara said that in the current situation, the proposal will have to be resolicited, as explained in a recent Procurement Circular.

Mr. Langille made a motion to authorize the propagation of interim rules regarding Professional Services, repealing HAR 3-122-66. Mr. Garval seconded the motion. Motion passed unanimously.

C. Past Performance - amending HAR §3-122

Ms. Allen reported that the SPO has been conducting research and a feasibility study, as requested by HCR 176 (Session Laws of Hawaii 2014), on requiring past performance to be a consideration factor in all public contracts. The SPO has conducted a survey, assembled focus groups, looked at benchmarking across the states, and reviewed what the federal government is doing to address past performance in procurement. The SPO recognizes that there are many issues of how to deal with past performance during procurement, and what kind of infrastructure is needed for collection of information in a fair method after a contract has been awarded.

Ms. Allen stated that the rules that are now being presented to the PPB for consideration clarifies that past performance is a part of responsibility and adds a definition of past performance. She added that this does not immediately affect request for proposal or invitation to bid processes because the SPO recognizes that they are more complex issues regarding implementation.

Ms. Pfahl added that this is part of a step-by-step process in addressing government and contractor accountability. She explained the proposed revisions as outlined in a handout provided to the PPB.

- 1) Amend HAR §3-122-1 -establishes definitions of: past performance, responsibility determination, and clarification communication;
- 2) Add HAR §3-122-9.03 -Clarifies that due diligence is a general provision requirement for making responsibility determinations;
- 3) Add HAR §3-122-52.1 - Allows for clarification communication during the initial evaluation process to address relevance issues of an offeror's performance information for responsibility determinations;
- 4) Amend HAR §3-122-108 -clarifies that responsibility determinations include consideration of relevant and recent past performance and creates opportunity

for clarification communication; through interim rulemaking and rulemaking pursuant to HRS Chapter 91.

Mr. Garval asked for clarification on the meaning of "responsibility." Ms. Pfahl explained that responsibility is outlined in the HRS and in the HAR, stating that a contractor has to be responsible and responsive. Responsibility of offerors is outlined in HRS §103D-310, requiring that "the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work." Ms. Allen added that a contractor is asked about responsibility with finances, tax payments, and labor laws. Procurement officers may also request financial statements for certain procurements to ensure that a contractor is financially strong so they don't fail the day that they are awarded a contract.

Ms. Pfahl pointed out the proposed language establishing a clear definition of "responsibility" in HAR § 3-122-9.03 "Responsibility determination. The procurement officer shall make a determination of responsibility for any awardees. In making a responsibility determination, the procurement officer shall possess or obtain information sufficient to be satisfied that a prospective offeror meets the applicable standards set forth in the solicitation and pursuant to the designated method of procurement. The procurement officer shall consider recent and relevant past performance of the contractor as it applies to a responsibility determination for the current solicitation."

Mr. Seki asked for the definition of "responsiveness." Ms. Tsuruda-Kashiwabara read the definition from HRS §103D-104 "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids." Ms. Allen added that while this definition is under invitation for bids, however, all types of procurements are to be responsive.

Ms. Kam pointed out that two statutes are worded differently. For bids, the definition includes "responsive" and "responsible," while in the request for proposals process, the statutes states that the award should be made to the "responsible" offeror. Ms. Kam reported that one of the hearings officers at the Department of Commerce and Consumer Affairs did address and include the issue of responsiveness in one of his decisions, stating that responsiveness is not a criterion is for disqualifying a proposal.

Ms. Pfahl stated that any criteria established for responsiveness in the Invitation for Bid (IFB) process has to be objective. The problem of including past performance in IFBs now is that it will never be viewed as objective. This is not a problem for Request for Proposals (RFP) because proposals can, and often do, create more detailed criteria that do not need to meet the same restrictions of IFB criteria. The SPO will work towards making proposed guidelines for past performance evaluation and application as objective as possible. Ms. Allen added that the SPO hasn't directly addressed this complex past performance issue yet because it has been conducting research, is now asking for PPB administrative guidance with current statutes, as

well as waiting for Legislative guidance to move forward with more past performance initiatives.

Mr. Garval commented that one of the issues is that the state agency doing the procurement doesn't evaluate contractors in terms of performance, they don't have information. He said that HRS §103F has almost nothing about past performance in scoring criteria, but experience can be counted in health and human services procurement.

Ms. Allen stated that some problems in past performance can be a combination of government delays and contractor problems. Without proper documentation, communication and a good process, procurement can unintentionally disqualify good contractors.

Shannon Alivado of General Contractors Association (GCA) submitted testimony on past performance. GCA cited that the report is yet to be released to the Legislature, and GCA doesn't know what the report includes. She voiced concern on the implementation, objectivity, funding and fairness in past performance. Others have proposed revisions to 103D to the Legislature in past sessions, and have had discussions about past performance with county and state agencies. She said that GCA would like to see what happens to SPO's proposed bill during the next Legislative Session. GCA asked that the PPB defer its decision on past performance until after the SPO's report is released. Written testimony from Peter Landry, Chair of the Building Industry Association's Legislative Committee is attached. The American Institute of Architects - Hawaii State Council also submitted written testimony about its concern of regarding adoption of interim rules regarding past performance without adequate public notice or public hearing.

Ms. Pfahl responded that the study requested by HCR 176 (SLH 2014), which will be finalized and delivered to the State Legislature and shared with as many people as possible, will make numerous recommendations with feasibility considerations. The report is comprehensive to serve as a resource with a current Hawaii analysis, benchmarking from other states and federal laws, feasibility considerations, contain comments from stakeholders, procurement community survey results, legislative history, as well as address the logistics on the implementation of an information system that can be easily accessed by CPOs. The implementation will require resources. Also, an interim process will be in place to allow contractors to review their evaluation after contract close-out.

Mr. Seki recommended that the PPB to consider holding off on making a decision on past performance until after the feasibility report is released and hold discussion at a future meeting.

Ms. Pfahl said that the PPB has the authority make rules to clarify and implement the statute as written.

Chair King supports past performance as long as it is implementable, and noted that its implementation will require tremendous resources. Ms. Allen said that it is difficult to implement objective past performance. She recalled that the state previously tried to include a comprehensive past performance calculation, but failed because it combined all relevant and non-relevant experience, and it became subjective.

Mr. Garval said the points are well-taken, and asked if there is an alternative that will allow the SPO to spend more time and energy on review of offerors. Ms. Allen said that other states are clearly implementing past performance, and supports finding a way that implementation can work in Hawaii.

Ms. Allen welcomes any input from the PPB.

This HAR revision issue to address Past Performance was being presented to the PPB for the first time. The PPB took no action on Past Performance.

D. Communication During Source Selection – amending HAR §3-122

The PPB was provided background information on the proposed rule changes to HAR §3-122. Ms. Allen explained that the impetus is that otherwise responsible offerors are omitted from the “priority list” pool of potential awardees because procurement officers are currently barred from any form of communications, even to resolve apparent mistakes or clarify information applicability for initial responsible and responsive determinations made during the Competitive Sealed Proposal procurement process.

The purpose of this rule change is to authorize creation of a limited form of communication during the competitive sealed proposal process and responsibility determination process through “clarification communication.” Steps in this change will:

- 1) Amend HAR §3-122-1 - establishes a definition for "clarification communication";
- 2) Adding HAR §3-122-16.10 - establishes a clarification communication process;
- 3) Add HAR §3-122-52.1 - Establishes a process for clarification communications during Competitive Sealed Proposal process;
- 4) Amend §3-122-108 - creates opportunity for clarification communication during determination of responsibility of offerors; through interim rulemaking and rulemaking pursuant to HRS Chapter 91.

Note: Legislative initiative has been started, to also clarify legislative intent that limited clarification communication may be utilized to increase effective and efficient procurement, amending HRS §§103-104 and -303.

Per Ms. Allen this creates an opportunity for communication if there are any questions or need for clarification. Ms. Kam noted that the draft HAR also says "bids," and should be revised to be limited to "proposals" only. Ms. Allen agreed and said it should be corrected to say proposals.

Ms. Kam questioned why this communication is necessary, because HAR §3-122-53 allows for communications during discussions. Ms. Pfahl said that those discussions and determination of responsiveness are not even allowable for anyone who makes mistakes in their proposal because "discussions" are only available to the "priority listed" proposals, and mistakes in proposals sometimes prevents offerors from getting to the priority list where communications are authorized. Ms. Kam suggested that the language be revised to follow language as in 103D-302.

Chair King wanted to check on the responsiveness issue, and said that PPB doesn't have to vote on this during this meeting now. Mr. Garval commented that it will be important that communication boundaries are narrow because we don't want to open up discussions to all offerors.

This HAR revision issue to address communication during source selection of Competitive Sealed Proposals was being presented to the PPB for the first time. The PPB took no action on communication during source selection.

E. "Etc." - amending HAR §3-120-4 and Exhibit A

The PPB was provided background information about the proposal to amend HAR §3-120-4 and Exhibit A, which provides and exemption for "New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc." Ms. Allen said that the impetus is that there is an unclear application of "Etc." in Exhibit A. This use of "etc." may be interpreted a number of ways, and has opened the door for expanding the scope of this exemption, creating confusion and uncertainty for procurement officers. The proposal is to delete the "etc." from Exhibit A's Exemption Number 6 description to avoid ambiguity and limit the exception to situations that "are advantageous and available on short notice through an auction, bankruptcy, or foreclosure."

The proposal is to amend HAR §3-120-4 and Exhibit A to delete "Etc.", through interim rulemaking and rulemaking pursuant to HRS Chapter 91.

Mr. Garval made a motion to authorize interim rules to remove of the word "Etc." in HAR §3-120-4 and Exhibit A. Mr. Langille seconded the motion. Motion passed unanimously.

F. Exemption Language - amending HAR §§ 3-120-4, Exhibit A, and HAR §3-122-14

Ms. Allen explained that there is a lack of accountability and transparency when items are "exempt" from the procurement-code pursuant to either board determinations (Exhibit A), or CPO determinations (through SPO form 007). She

noted that when departments know that they have an exempt contract, they often think that contract law and due diligence does not apply to them. The purpose of this rule change request is to clarify that, although a specific item may be "exempt" from the procurement code process, the procuring public employees are still responsible for procuring all items in a responsible and ethical manner pursuant to HRS §103D-101.

The means would be to amend HAR §§ 3-120-4, Exhibit A, and 3-122-14 with clarification language requiring responsible and ethical procurement for exemptions, through interim rulemaking and rulemaking pursuant to HRS Chapter 91.

The SPO wants to remind all public employees that they are still bound by ethical and contractual responsibilities, regardless if the procurement method is in 103D or exempted from the specific 103D processes.

Ms. Kam advised that referencing HRS §103D-101 is not possible because it is "exempt from the chapter." Ms. Pfahl read the ethical requirements of ethical public procurement language in HRS §103D-101, which includes 11 items: act as a fiduciary and trustee of public moneys; remain independent; act only in the public interest; abide by laws; identify and maximize efficiencies; encourage economic competition; avoid unethical behavior; avoid social interactions with any actual or prospective interested parties during the procurement process; maintain confidentiality; remain impartial; and identify and eliminate any conflict of interests.

Mr. Seki said that the intent is there, and the HRS §103D-101 language is clean, asked if they can approve a change in language that Ms. Kam approves, and the PPB vote on this today. Chair King agreed that it would be good to make a stronger point. Mr. Garval asked if the HAR can repeat the language without referring to the statute.

Ms. Pfahl said that the PPB can put specifications on the PPB's exemptions as the PPB wants. She explained that there are three methods of authorizing procurement exemptions: approval through the Legislature, PPB, or individually through CPOs. CPOs authorize exemptions through SPO Form 007. Exhibit A is the PPB's list of exemptions. Ms. Allen says that other states call exemptions "special procurement," which helps with the cultural understanding that there are still clear ethical and contractual guidelines to abide by

Mr. Seki repeated Mr. Garval's suggestion, that the rule change use verbiage from HRS §103D-101. Ms. Kam said that the PPB can do that. Ms. Pfahl said that the SPO will redraft the proposed rule change to reflect language options that convey the same idea.

This HAR revision issue to address ethical and contractual obligations of procurement exemptions was being presented to the PPB for the first time. The PPB took no action on exemption language.

VI. Legislative Initiatives

The SPO has submitted first drafts of proposed statutory changes to be considered as part of the 2015 legislative administrative package. Because the SPO is administratively attached to DAGS, the first draft of any possible legislative initiative was due on September 16, 2014. Final drafts with revisions are due November 4, 2014. The PPB was provided proposed legislation language and justification explanations that will be attached to DAGS legislative package for consideration in the Governor's legislative package.

A. Professional Services (HRS §103D-304)

- Title: A BILL FOR AN ACT RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES
- Purpose: To specifically authorize the Procurement Policy Board to promulgate administrative rules to provide an effective procurement process for situations where a review committee receives less than three qualified persons' submittals to provide professional services under specific selection criteria.
- Means: Amend HRS §103D-304
- A procurement circular on the procurement of Professional Services has been posted. The final drafts after the AG comments will be circulated to the PPB for review.
- The PPB did not take a vote.

B. Past Performance – Response to HCR 176 (HRS §103D-104 and 103D-310)

- Title: A BILL FOR AN ACT RELATING TO RESPONSIBILITY UNDER THE STATE PROCUREMENT CODE
- Purpose: To increase accountability and transparency in state procurement by clarifying the due diligence requirement for contractor responsibility determination to be made prior to awarding any government contract under Chapter 103D, Hawaii Revised Statutes. Establishes a past performance definition. Requires recent and relevant past performance to be considered in all contractor responsibility determinations of capability, integrity, and reliability to perform contract requirements in good faith.
- Means: Amend HRS §§ 103D-104 and 103D-310

- The PPB did not take a vote.

C. Source Selection (HRS § 103D-104 and HRS §103D-313)

- Title: A BILL FOR AN ACT RELATING TO COMMUNICATIONS DURING PROCUREMENT
- Purpose: To provide a method for clarification communications between a purchasing agency and an offeror, to increase effectiveness and efficiency in the state procurement process during competitive sealed proposals by increasing the potentially acceptable list of responsible offers.
- Means: Amend HRS §§ 103D-104 and 103D-313
- Recommended Changes: Ms. Kam expressed similar concern with the need for clarification communication as previously discussed in SPO's recommended changes to HAR §3-122. Ms. Pfahl welcomed comments and explained that the SPO is still awaiting revision recommendations from the attorney general through the legislative coordinator process, and will work with Ms. Kam to make any changes
- The PPB did not take a vote.

VIII. Health and Human Services Report

Corinne Higa of the SPO reported that the SPO has held three meetings with representatives from various state departments and one meeting with providers. The initial meeting with both groups was to familiarize them with the Action Team's purpose and goals, and to develop and implement best procurement practices. The SPO asked both government and provider groups to talk about their challenges, which were compiled in a chart that was distributed to the PPB. The issues pertained to both 103F and crossed over to 103D.

Additional meetings with governmental officials were scheduled to provide time for addressing governmental challenges. The group also looked at acquisition life cycles and how payment processes differed between departments. A Health and Human Services meeting with providers has been scheduled for October 14, 2014. The SPO will continue its focus group meetings and will open up communication.

Mr. Garval asked for clarification on the meeting schedule, because the initial schedule included more provider meetings than a joint meeting. Ms. Allen explained that representatives from the state and representatives from health and human services engage very different, and the initial meeting schedule had to be modified for the SPO to accurately address the issues being raised. The SPO does not believe that a joint meeting with the two groups would be the best use of resources at this time, as there is more individual group work to be done before bringing both groups together. Mr. Garval said that while he is not

surprised, he voiced his concern of the providers' perception that this is setting up a barrier to collaboration between government and providers. He suggested that the SPO communicate with HANO and PHOCUS, which represent many of the non-profits in health and human services. Ms. Allen assured Mr. Garval that revising the SPO meeting schedule will be discussed in more detail during the upcoming provider meeting.

Mr. Garval then asked about the Community Council, which has been inactive. Ms. Allen said that the SPO has to determine how to dissolve the Council.

IX. New Business

Mr. Seki requested the SPO to make recommendations to the PPB that will loosen the current constraints on qualifications of board positions because it can be difficult to fill PPB positions. Ms. Allen asked the PPB members if there are any specific areas that may be too constraining to inform the SPO, and the SPO will present recommendations at the next PPB meeting. Chair King said he was fine with an investigation into this matter.

Mr. Seki asked Ms. Pfahl to check with Mr. Kerry Yoneshige, DAGS Administrative Officer, since he coordinates such issues for DAGS.

X. Next Meeting

The next PPB meeting will be scheduled for sometime in October. SPO staff will poll the members.

XI. Announcements

Small Business Initiative – Act 50 (SLH 2005)

At the request of community members, the SPO has begun looking into the small business set-aside mandated by Act 50 (Session Laws 2005), which charges the PPB with implementing administrative rules. The SPO is learning who the small business advocates are and is researching the past rules in the effort of making them fundamentally sound in the future. There are no current administrative rules to give effect to the law. There were previous interim rules promulgated by the PPB, which were reportedly difficult to implement and costly. They are researching small business set-aside and preference programs across the nation, have started speaking to stakeholders in Hawaii and are preparing to engage in a comprehensive process to make formal recommendations for new administrative rules for PPB consideration.

Chair King commented that his procurement office in Maui did not have a good experience in working with the small business rules previously adopted by the PPB, and it cost Maui County a lot of money without having the desired effect on local small business. Ms. Lindsey is researching what works across the country and what didn't work last time, investigating how the PPB can develop rules that get small business in a competitive pool for state procurement.

Ms. Pfahl added that the SPO is working on assembling a small business procurement advisory group pursuant to HRS §103D-213 and welcomes the PPB to refer people to Ms. Lindsey to participate in the advisory group.

XII. Announcements

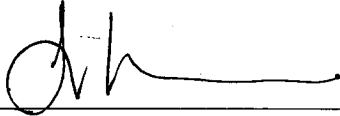
Mr. Seki announced that the Department of Accounting and General Services selected staff from the State Procurement Office as awardees for the Team and Employee of the Year. The HiePRO Team, led by Mara Smith, Bonnie Kahakui and Stacey Kauleinamoku, was named Team of the Year, and Ronnie Correa was named Employee of the Year. The awards were presented by Comptroller Dean Seki, and Governor's Chief of Staff Bruce Coppa, during a ceremony on Wednesday, September 10, 2014, in the State Capitol Auditorium.

Mr. Seki also presented Ms. Allen, Administrator of the SPO, with the Comptroller's Perpetual Trophy for the DAGS Team of the Year, for SPO's HiePRO Team, and the Comptroller's Perpetual Trophy for the DAGS Employee of the Year, for SPO's Ronnie Correa. These employees will be at the Governor's Awards Ceremony on October 3, 2014, to compete for the state awards.

XIII. Adjournment

The meeting was adjourned at 3:36 pm.

Respectfully submitted,



Dean Seki, Secretary
Procurement Policy Board

Attachment: September 29, 2014, PPB Agenda

PROCUREMENT POLICY BOARD

Regular Meeting

Monday, September 29, 2014, 1:30 p.m.

Locations:

Kalanimoku Building ♦ 1151 Punchbowl Street, Conference Room 410 ♦ Honolulu, Hawaii 96813
County of Maui Building ♦ 200 South High Street, Room 616 ♦ Wailuku, Hawaii 96793

A G E N D A

I.	Call to Order, Public Notice, Quorum
II.	Approval of <u>Minutes</u> – Meeting of August 4, 2014
III.	Procurement Policy Board Operations A. Vacancies and Status of PPB Nominating Committee B. Election of Officers Pursuant to HRS §103D-201E C. Procurement Policy Board Resources and Support
IV.	Administrative Rules Overview A. Overview of interim and permanent rulemaking procedures B. Electronic HAR upgrade initiative
V.	SPO Recommending HAR changes: A. Inventory Services – <u>amending HAR §3-130</u> B. Professional Services – <u>repealing HAR §3-122-66</u> C. Past Performance - <u>amending HAR §3-122</u> D. Communication During Source Selection – <u>amending HAR §3-122</u> E. “Etc.” - <u>amending HAR §3-120-4 and Exhibit A</u> F. Exemption Language - <u>amending HAR §§ 3-120-4, Exhibit A, and HAR §3-122-14</u>
VI.	HAR Decision-Making
VII.	Legislative Initiatives A. Professional Services (<u>HRS §103D-304</u>) B. Past Performance – Response to HCR 176 (<u>HRS §103D-104 and 103D-310</u>) C. Source Selection (<u>HRS § 103D-104 and HRS §103D-313</u>)
VIII.	Health and Human Services Report
IX.	New Business
X.	Next Meeting
XI.	Announcements A. Small Business Initiative – Act 50 (SLH 2005)
XII.	Adjournment

Please allow 2.5 hours for the meeting, which will include a 5-minute break.

Agenda and available agenda items may be viewed at www//spo.hawaii.gov/procurement-policy-board/ (click on *Meeting Agenda and Minutes*).

Individuals requiring special assistance or services may call (808) 587-4700 by 1:00 p.m., Friday, September 26, 2014, to discuss accommodations.

PROCUREMENT POLICY BOARD
Meeting Minutes
Thursday, October 30, 2014, 10 a.m.
Public Works Conference Room, Room 426, 1151 Punchbowl Street
Honolulu, Hawaii 96813

Members Present

Howard S. Garval
Ronald N. Hirano
Gregory L. King, Chair
Dean H. Seki, Secretary
Kathy Suzuki-Kitagawa

Members Absent

David Langille, Vice Chair

Staff

Sarah Allen, State Procurement Office (SPO)
Ruth Baker, SPO
Stella Kam, Department of the Attorney General
Hökūlei Lindsey, SPO
Andrew Lum, SPO
Robyn Pfahl, SPO
Mara Smith, SPO
Donna Tsuruda-Kashiwabara, SPO
Paula Youngling, SPO

Others

Shannon Alivado, General Contractors Association of Hawaii
J.R. Carino, Building Industry Association of Hawaii
Nicole Chapman, Honolulu Authority for Rapid Transportation
Daniel Chun, American Institute of Architects
Rina Chun, Hawaii State Legislature
Christine Erorita, Department of Water, County of Kauai
Mary Alice Evans
Susan Gray-Ellis, State Energy Office, Department of Business Economic Development and Tourism
Shellie Hee, Department of Budget & Finance, City & County of Honolulu
Michael Hiu, Division of Purchasing, City & County of Honolulu
Wendy Imamura, Division of Purchasing, City & County of Honolulu
Amy Kondo, Corporation Counsel, City & County of Honolulu
Melanie Martin, Department of Transportation
Jeff Masatsuga, Finishing Trades Trust Funds
Kamana'o Mills, Department of Hawaiian Home Lands
Eric Nishimoto, Public Works Division, Department of Accounting & General Services
Dan Purcel
Brooke Wilson, Pacific Resources Partnership
Sherman Wong, General Contractors Association
Jolie Yee, Public Works Division, Department of Accounting & General Services

I. Call to Order, Public Notice, Quorum

Chair Gregory King called the Procurement Policy Board (PPB) meeting to order at 10:11 a.m.

II. Approval of September 29, 2014 Meeting Minutes

Draft minutes of September 29, 2014 were discussed, including revisions that included Deputy Attorney General Ms. Stella Kam's comments for clarification. Shannon Alivado of the General Contractors Association (GCA) questioned details in an earlier draft, and was informed that the issues have been addressed in the revision draft. PPB Secretary Dean Seki clarified statements made at the previous meeting and gave an update that SPO's HlePRO Team was named the State of Hawaii's 2014 Team of the Year.

Mr. Seki made a motion to approve the revised minutes of the September 29, 2014, meeting. Kathy Suzuki-Kitagawa seconded the motion. Motion passed unanimously.

III. PPB Procurement Policy Board Operations

A. Vacancies and Status of PPB Nominating Committee (NC)

State Procurement Office (SPO) Administrator Sarah Allen reported that PPB application information for existing board vacancies have been posted on the SPO website, and that the NC has not been able to meet because of members' pending confirmation by the Governor's Office. She added that the NC can meet as soon as Governor's confirmation is received.

B. Statutory Requirements for Board Member Qualifications

The PPB asked the SPO to look at the Board composition for considering making the position qualifications less restrictive. Written background information on the current Board composition, its creation, legislative history, and nominating and appointment process was provided. SPO Procurement Policy Specialist Robyn Pfahl reported that per Act 8 (SLH Special Session 1993), all board members are to "demonstrate[] sufficient business or professional experience to discharge the functions of the policy board," with additional qualifications specific each of the seven (7) board positions. PPB's composition was changed in 1997 to add two (2) Health and Human Services professionals per Act 190 (SLH 1997), changing the board composition from five (5) to seven (7) members.

The NC reviews the applications, establishes criteria for the qualifications of each position, and provides a list of three top-qualified individuals to serve on each open position for appointment consideration by the Governor. Ms. Allen stated that the NC, not the SPO, has the authority to change the criteria for evaluating the statutory qualifications of each PPB position. The SPO finds that the statutory qualifications themselves are not overly restrictive, and that there is a pool of professionals in the community who would qualify for the positions.

The challenge in receiving new appointees to the PPB has been in the process. The time delay of getting the Governor's confirmation of NC members before the NC can be activated has been most troublesome, and is where the process currently remains to be stalled. Once the Governor confirms the NC members, the NC can meet and review applicants based upon criteria for the board positions. The PPB may suggest that the NC seek guidance from the PPB on the criteria, however the criteria for evaluating statutory qualifications is under the purview of the NC. An unidentified member of the audience commented that cancelling a meeting due to a lack of quorum provides a scheduling challenge for PPB members and the public. Chair King agreed that one of the questions for candidates is his/her availability and commitment to serve on the PPB.

IV. Administrative Rule Changes Procedures – Interim Rulemaking and Rulemaking Pursuant to HRS Chapter 91

Ms. Pfahl reviewed the interim rulemaking process, which applies to a number of items on the agenda. She reported that pursuant to applicable provisions of chapter 91, Hawaii Revised Statute (HRS), the

interim rules that were approved by the PPB on September 29, 2014, have been drafted in both Standard (STD) and Ramseyer (RAM) format. After review by the Department of the Attorney General, the interim rules are to be signed by the PPB Chair and Comptroller, and then the rules in Standard format will be filed at the Lieutenant Governor's Office. Ten days after filing, the SPO will issue procurement directive as official notification of the interim rules, which will be in effect for 18 months then will automatically sunset, unless repealed or replaced prior to sunset date.

Permanent rule-making pursuant to HRS chapter 91 is a much lengthier process, which includes public hearing, and will hopefully be completed prior to the interim rules sunset so that permanent rules will replace the interim rules. STD and RAM formatting for interim rulemaking will be presented to Chair and Comptroller for signature today. SPO will work with Department of Accounting and General Services' (DAGS) DAGS administrative rulemaking team to coordinate permanent rulemaking steps and timelines.

V. Inventory Services – amending HAR chapter 3-130

The PPB voted to promulgate changes to section 3-130, Hawaii Administrative Rules (HAR), as recommended by the SPO through interim rules pursuant to HRS §103D-202 on September 29, 2014. The change is to align the administrative rules relating to inventory management with HRS §103D-1204, and to make other clarifying amendments. The SPO requested that the PPB vote to promulgate permanent rulemaking, a process that can run simultaneously to the interim rules and provides process for public input. Deputy Attorney General Ms. Kam confirmed that the PPB's authority to issue interim rules pursuant to HRS §103D-202 makes rule changes effective immediately after promulgation.

The STD and RAM formatting to amend HAR chapter 3-130 through interim rulemaking will be presented to Chair and Comptroller for signature today.

Ronald Hirano made a motion to approve permanent changes to HAR §3-130 pursuant to HRS chapter 91. Dean Seki seconded the motion. The motion passed unanimously.

VI. Professional Services – repealing HAR §3-122-66

The PPB voted to repeal HAR §3-122-66 as recommended by the SPO through interim rules pursuant to HRS §103D-202 on September 29, 2014. This change was due to a Hawaii Supreme Court decision in *Asato v. Procurement Policy Board* (2014), which invalidated HAR §3-122-66. The Court found that there was legislative intent to require a "minimum of three persons" to respond to a solicitation for procurement of professional services under HRS §103D-304 process for procurement of professional services.

Ms. Pfahl reported that the interim rules provides immediate notice that HAR §3-122-66 is no longer able to be utilized, and the SPO has posted a Procurement Circular to provide guidance on professional services. The SPO is also proposing legislation through the DAGS legislative package which would clarify the PPB's authority to promulgate administrative rules to address the situation that HAR §3-122-66 previously addressed.

The STD and RAM formatting to repeal HAR §3-122-66 through interim rulemaking will be presented to Chair and Comptroller for signature today, and there was no request for further action on HAR §3-122-66.

VII. "Etc." - amending HAR §3-120-4 and Exhibit A

The PPB voted to promulgate changes to HAR §3-120-4 and Exhibit A as recommended by the SPO through interim rules pursuant to HRS §103D-202 on September 29, 2014. The SPO asked the PPB to make this a permanent rule change pursuant to HRS chapter 91 rulemaking process.

The purpose of this rulemaking is to avoid ambiguity from the previous inclusion of "etc." on Exhibit A's Exemption Number 6.

The STD and RAM formatting to amend HAR §3-120-4 and Exhibit A will be presented to Chair and Comptroller for signature today.

Kathy Suzuki-Kitagawa made a motion to approve permanent changes to HAR § 3-120-4 and Exhibit A pursuant to HRS chapter 91. Mr. Hirano seconded the motion. Motion passed unanimously.

VIII. Communications During Source Selection – amending HAR §§ 3-122-1 and 3-122-108; adding HAR §§ 3-122-16.10 and 3-122-52.1

The purpose of this amendment request is to provide a method for clarification communications between a purchasing agency and an offeror, and to increase effectiveness and efficiency in the state procurement process during competitive sealed proposals by increasing the potentially acceptable list of responsible offerors. Ms. Allen commented that this mirrors language in the Federal Acquisition Regulation and the Invitation for Bid process, and it reduces source selection and evaluation time. She added that clarification communications will also help address simple clerical errors in proposals.

The PPB, SPO and the Deputy Attorney General had a discussion about communication being part of responsibility and responsiveness. Comments were received from representatives from the City & County of Honolulu, the Honolulu Authority for Rapid Transportation, the Public Works Division of DAGS, and the General Contractors Association on the issue.

The PPB deferred this agenda item.

IX. Exemption Language - amending HAR §§3-120-4, Exhibit A, and 3-122-14

The SPO requested the PPB to promulgate amendments to HAR §3-120-4, Exhibit A, and 3-122-14 through interim rulemaking to clarify remaining ethical and contractual obligations of procurements exempted from HRS chapter 103D. The PPB previously heard this request at the September 29, 2014, meeting, and requested the SPO draft language that would be approved of by the Attorney General.

Ms. Pfahl offered three amendment versions to clarify remaining ethical and contractual obligations for procurements exempted from HRS chapter 103D.

- Version A inserts language under exempted items to provide "guidance" through referencing HRS §103D-101 and HAR §3-131-1.02, which are very detailed and clearly written for procurement: "However, all public employees must continue to conduct and participate in public procurement in a responsible and ethical manner with contracting integrity, guided by HRS §103D-101 and HAR 3-131-1.02."
- Version B includes language most relatively outlined in 103D-101: "However, all public employees must continue to conduct and participate in public procurement in a responsible and ethical manner with contracting integrity, acting as a fiduciary and trustee of public funds in the public interest, avoiding unethical behavior, maintaining confidentiality, remaining impartial in dealings with any actual or prospective interested party, and identify and eliminate any conflicts

of interest to conduct an alternative procurement in a responsible and ethical manner with contracting integrity.”

- Version C inserts reference to other ethics statutes Exhibit A: ",notwithstanding the ethical and contractual requirements to conduct all public procurement in a responsible and ethical manner and contracting integrity pursuant to HRS chapters 84 and 103:"

Ms. Allen cited that the impetus for the exemption language is to provide clarity in the HAR that regardless of being exempt from HRS chapter 103D, there is always ethical and contractual requirements, and that offerors still have to do their due diligence and be responsible. This clarification provides guidance on ethics throughout the acquisition life cycle (contract management, post- and pre-award, market research, and acquisition planning).

Deputy Attorney General Ms. Kam reviewed the three versions and proposed Version A with revised language: "Notwithstanding, remaining ethical to considerations in public procurement as guided by relevant subsections in HRS §103D-101 and HAR 3-131-1.02.”

Mr. Garval made a motion to amend HAR §§3-120-4, Exhibit A, and 3-122-14, to Version A, as amended to read “notwithstanding remaining ethical considerations in public procurement, as guided by relevant subsections in HRS §103D-101 and HAR §3-131-1.02” through interim and permanent rulemaking procedures. Mr. Hirano seconded the motion. Motion passed unanimously.

The STD and RAM formatting to amend HAR §§3-120-4, Exhibit A, and 3-122-14, will be presented to Chair and Comptroller for signature today.

X. Past Performance - amending HAR §§ 3-122-201 and HAR 3-122-108; Adding HAR §§ 3-122-9.03 and 3-122-52.1

Ms. Allen said that during the 2014 legislative session, she met with many State Senators, State Representatives, State department directors and members in the community who expressed their frustration with past performance not being considered when awarding State contracts. The SPO has been working through HCR 176 (SLH 2014)’s request that the SPO to conduct a study and propose legislation on past performance.

Ms. Allen emphasized that the issue of Past Performance was placed on the PPB agenda to promote a discussion, to elicit and record feedback from stakeholders in the community as part of the report in response to HCR 176 (SLH 2014), and to clarify where the PPB sees past performance as the Procurement Code is currently written in HRS chapter 103D. The SPO has been seeking input from stakeholders and holding focus groups, studying surveys, as well as researching and benchmarking federal and other states’ policies as part of its study in response to HCR 176 (SLH 2014). Ms. Allen thanked the community for showing-up to this PPB meeting and said that their input will be documented for the report.

Ms. Pfahl shared that the SPO submitted draft legislation as part of the DAGS’ legislative package for 2015 mid-October to meet internal departmental deadlines. SPO’s proposed legislation requests the legislature to make a clear determination that they intend past performance to be included in all procurement. The SPO is aware of other versions of more restrictive legislation drafted by other parties on past performance, and anticipates seeing multiple bills introduced in the 2015 legislative session.

Ms. Allen and Ms. Pfahl cited numerous issues about implementing past performance evaluations and the perception of poor past performers. SPO research has shown that past performance is complex and is interpreted differently across the State’s decentralized procurement jurisdictions. Gathering information about contractors, such as self-reporting references on a questionnaire, provides some

information on past performance, but there are many questions about applicability, objectivity, and subjectivity without any guidance. There was a previous attempt to use an “objective” computer program calculation that accumulated all information, but the information generated was not relevant and the idea has not been further pursued for many years.

Ms. Allen added that state departments and agencies reported that they are being forced to hire bad contractors who consistently show that they are bad performers, are “change order” or “low-bid” artists, or utilize low-quality materials that ultimately meet requirements set forth in Invitation for Bids (IFB)s as written. Ms. Allen sees a large part of the “past performance problem” as procurement officers utilizing the wrong method of procurement during the planning stages of the acquisition. If past performance is an issue for the job to be done, then there are clearly methods such as Requests for Proposals (RFP) which clearly allow for additional bidder criteria, including considering past performance.

SPO’s extensive research supports past performance falling under responsibility, which is applicable to all procurements under HRS §103D-. Ms. Pfahl cited HRS §103D-310, which addresses the responsibility of offerors: “Procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work.” Although some procurement jurisdictions interpret past performance as a matter of responsibility, already implementing their own past performance review process, other jurisdictions are not interpreting the current statutory language in the same manner. Additionally, there is no current infrastructure to support a statewide past performance review on contractors. Additional infrastructure and guidance are necessary to establish solid policy and procedures for past performance because the current infrastructure does not support information sharing between jurisdictions, which would be crucial for implementing past performance review of government contracts across the State.

Ms. Pfahl explained that the PPB’s role is to implement rules to provide guidance on procurement issues within the scope of their statutory authority, and then the SPO’s role is to implement policy guidance and training on these issues.

If the PPB currently sees past performance as part of the legislatively mandated procurement process, the SPO is requesting the PPB promulgate rules to start providing guidance on past performance, which identifies the government’s responsibility to collect and review past performance information as part of responsibility determination. The SPO acknowledged that there are more details to be addressed, such as additional language to define available information, and how to consider “recent and relevant,” and offered the following language to start the process: “The procurement officer may consider available recent and relevant past performance of the contractor as it applies to a responsibility determination for the current solicitation.”

The Building Industry Association submitted written testimony (attached) requesting that the PPB defer any decision-making on proposed amendments to the HAR on past performance. Various people representing various state and county departments, as well as trade organizations, shared their thoughts and concerns about past performance. Ms. Alivado of GCA and Daniel Chun of American Institute of Architects reported that they stand on their written testimony submitted for the PPB meeting on September 29, 2014, expressing concern about legislation and promulgating rules on past performance prior to reviewing the study.

Chair King voice his personal opposition to past performance legislation for IFBs. He said that the problem has to be clearly identified and past performance must be defined, and proposed legislation needs clarity.

The PPB tabled this issue until after the 2015 legislative session.

XI. Update on Legislative Initiatives

Ms. Allen provided an overview on the SPO's legislative initiatives that were submitted as part of the DAGS' legislative package.

- Professional Services (HRS§103D-304) - brings back option of alternatives if there are less than three bidders on a request for professional services.
- Past Performance – Response to HCR 176 (HRS §§103D-104 and 103D-310)
- Source Selection - Clarification Communications (HRS §103D-104 and HRS §103D-303)

Ms. Allen continues to meet with other agencies who have indicated that they are working on legislation that will be affecting procurement. The Office of Hawaiian Affairs is working on a bill for procurement of native plants. The Department of Agriculture is working on reinstating an exemption of foods from the procurement code. Other Departments and Agencies have also come to SPO requesting initial feedback on procurement initiatives. Ms. Allen is encouraged with the open communication from other Agencies and stated she welcomes anyone proposing legislation affecting procurement to come speak with SPO as soon as possible in their process.

XII. Small Business Initiative – Act 50 SLH 2005

Ms. Allen provided the PPB with an update on the small business initiative to promulgate administrative rules pursuant to HRS §§103D-901 through -906. Although Interim Rules were adopted beginning in 2006, permanent rules were not implemented and the interim rules expired in 2011 without further action on the small business set-aside law. The SPO is revisiting the issue, conducting focus groups and developing a survey in order to gather information for a successful initiative. A small business focus group that included small business representatives, from Department of Labor and Industrial Relations; Department of Business, Economic Development and Tourism; Building Industry Association and a variety of small business stakeholders and community leaders met October 29, 2014, to identify some major issues that should be addressed in a survey of the greater small business stakeholder community, and to identify possible survey participants and associations that may be willing to distribute a small business set-aside survey to their membership

Anyone interested in offering input on this small business initiative is asked to contact Hōukūlei Lindsey, SPO Procurement Policy Specialist, at ruth.h.lindsey@hawaii.gov, or 587-3355. The SPO will be submitting a report of its findings to the PPB for consideration on next steps.

XIII. Next Meeting

The next PPB meeting will be scheduled as needed.

XIV. Announcements

There were no announcements.

XV. Adjournment

Mr. Seki made a motion to adjourn the meeting. Mr. Hirano seconded the motion. Motion passed unanimously. The meeting was adjourned at 12:22 p.m.

Respectfully submitted,

Procurement Policy Board

Attachments:

October 30, 2014, PPB Meeting Agenda

Testimony from Building Industry Association dated October 30, 2014

PROCUREMENT POLICY BOARD

Regular Meeting

Thursday, October 30, 2014, 10 a.m.

Kalanimoku Building ♦ 1151 Punchbowl St. ♦ Public Works Conference Room, Room 426 ♦ Honolulu, Hawaii 96813

A G E N D A

I.	Call to Order , Public Notice, Quorum
II.	Approval of Minutes – Meeting of September 29, 2014
III.	Procurement Policy Board Operations A. Vacancies and Status of PPB Nominating Committee B. Statutory requirements for Board member qualifications C. Procurement Policy Board Resources and Support
IV.	Administrative Rule Changes Procedures – Interim Rulemaking and Rulemaking pursuant to HRS Chapter 91
V.	Inventory Services – amending HAR §3-130 A. PPB voted to amend HAR §3-130 as recommended by the SPO through interim rules on September 29, 2014 B. Vote to amend by rulemaking pursuant to HRS Chapter 91
VI.	Professional Services – repealing HAR §3-122-66 • PPB voted to amend HAR §3-122-66 as recommended by the SPO through interim rules pursuant to HRS §103D-202 on September 29, 2014
VII.	“Etc.” – amending HAR §§ 3-120-4 and Exhibit A A. PPB voted to amend HAR §3-122-66 as recommended by the SPO through interim rules pursuant to HRS §103D-202 on September 29, 2014 B. Vote to amend by rulemaking pursuant to HRS Chapter 91
VIII.	Communications During Source Selection – amending HAR §§ 3-122-1 and 3-122-108; adding HAR §§ 3-122-16.10 and 3-122-52.1 A. Vote to amend by interim rulemaking pursuant to HRS §103D-202 B. Vote to amend by rulemaking pursuant to HRS Chapter 91
IX.	Exemption Language - amending HAR §§ 3-120-4, Exhibit A, and 3-122-14 A. Vote to amend by interim rulemaking pursuant to HRS §103D-202 B. Vote to amend by rulemaking pursuant to HRS Chapter 91
X.	Past Performance - amending HAR §§ 3-122-201 and HAR 3-122-108; Adding HAR §§ 3-122-9.03 and 3-122-52.1 A. Vote to amend by interim rulemaking pursuant to HRS §103D-202 B. Vote to amend by rulemaking pursuant to HRS Chapter 91
XI.	Update on Legislative Initiatives A. Professional Services (HRS§103D-304) B. Past Performance – Response to HCR 176 (HRS 103D-104 and 103D-310) C. Source Selection (HRS §103D-104 and HRS §103D-303) D. Other Agency Legislative Initiatives
XII.	Small Business Initiative – Act 50 SLH 2005
XIII.	Next Meeting
XIV.	Announcements
XV.	Adjournment

- Please allow 2.5 hours for the meeting, which may include a 5-minute break.
- Agenda and available agenda items may be viewed at <http://spo.hawaii.gov/procurement-policy-board/> (click on *Meeting Agenda and Minutes*).
- Individuals requiring special assistance or services may call (808)587-4700 by 10 a.m., Wednesday, October 29, 2014, to discuss accommodations; participants may view the meeting through Adobe Connect at <https://spo.adobeconnect.com/ppb> with at least 24 hour notice.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

2014 Officers

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Group, Inc.

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SSFM International, Inc.

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Complete Construction Services Corp.

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BIA-Hawaii

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Gary T. Okimoto

Honolulu Wood Treating

Lili Shintani

Alan Shintani, Inc.

Mark Hertel

Inter-Island Solar Supply, Oahu-Maui-
Hawaii-Kauai

Marshall Hickox

Homeworks Construction, Inc.

Michael Watanabe

JW, Inc.

Ryan Engle

Bays Lung Rose & Holma

Stephen Hanson

simplicityHR by ALTRES

October 30, 2014

Honorable Gregory King, Chair
Policy Procurement Board
Hawaii State Procurement Office
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Via email: procurement.policy.board@hawaii.gov

RE: Request for Deferral in Adopting Changes to the Hawaii Administrative Rules on Past Performance (HAR Section 3-122).

Dear Chair King and Members of the Board,

My name is Gladys Marrone, CEO for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii respectfully requests this Board defer any decision-making on proposed amendments to Administrative rules on past performance by interim rulemaking. During the 2013 Legislative session, the Procurement Task Force was created and is expected to present its report, relating to bad performing contractors, to the Legislature in 2015. Furthermore, consideration of past performance is already permitted by statute under 103D-302(f), under the invitation for bid process, what is commonly known as low bid. Under this Section, an agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance. However, it seems that agencies choose not to utilize it.

Based on the above reason, BIA-Hawaii respectfully requests this Board defer any adoption of interim rules on past performance until the report from the Procurement Task Force is presented to the Legislature.

We appreciate the opportunity to share with you our views.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Telephone: (808) 587-4700
e-mail: state.procurement.office@hawaii.gov
<http://hawaii.gov/spo>

SPO 13-076

January 2013

To All Interested Parties

SUBJECT: Overview of Government Contracting

The State Procurement Office (SPO) administers, implements and ensures compliance with the Hawaii Public Procurement Code (HRS chapter 103D) and Purchases of Health and Human Services (HRS chapter 103F). Beyond these two chapters, government contracting involves numerous statutes, administrative rules, requirements, and processes that departments and agencies must meet to contract for goods, services or construction. The enclosed Government Contracting document provides an overview that delineates the numerous requirements that government agencies, including vendors, contractors and service providers, are tasked to follow resulting in a government contract.

Please take some time to review the enclosed document which reveals the processes that collectively results in a lengthy and complex government contracting process involving multiple statutory, departmental or agency requirements. Included in the enclosed document is Attachment A that illustrates the Department of Accounting and General Services' CIP construction or public works processes from inception to completion of a project is typically 20 to 40+ months. Within this time period the "procurement process" which includes the bidding period, obtaining building permits and compliance documents as highlighted in yellow, is 3-6 months. Any additional statutory requirements, will ensue administrative rules, and agency directives or requirements, that correspondingly affects resources and lengthens the contracting process.

This document is intended to illustrate that government contracting is complex and lengthy, and at times overwhelming to a lay person. Personnel must have the knowledge, expertise and experience to administer and manage the procurement process and contracts. The goal to strive towards is to simplify, clarify and modernize governmental contracting processes, enabling all parties to obtain needed goods, services and construction effectively and efficiently.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron S. Fujioka".

Aaron S. Fujioka

enclosure

State Procurement Office
OVERVIEW
CHAPTER 103D, HRS
Hawaii Public Procurement Code

January 2013

GOVERNMENT CONTRACTING

Government contracting is the process to obtain needed goods, services or construction to enable government operations to conduct and achieve its mission. However, the process can be lengthy and complex due to numerous related requirements or processes in the Hawaii Revised Statutes (HRS), applicable Hawaii Administrative Rules (HAR), and jurisdictional administrative requirements and approvals that require consideration and inclusion. HRS chapter 103D is only one of several processes that results in government contracts. Along with numerous contracts that are exempt or not subject to any statutory processes, governmental contracting processes available to departments and agencies such as:

Government Contracting	Lead Dept/Agency
HRS chapter 42F <i>Grants and Subsidies</i>	Legislature
HRS chapter 102 <i>Concessions</i>	All governmental entities
HRS chapter 103 <i>Expenditure of Public Money and Public Contracts</i>	Department of Accounting and General Services
HRS chapter 103B <i>Employment of State Residents on Construction Procurement Contracts</i>	All governmental entities
HRS chapter 103D <i>Hawaii Public Procurement Code</i>	State Procurement Office
HRS chapter 103F <i>Purchase of Health and Human Services</i>	State Procurement Office
HRS chapter 171 <i>Management and Disposition of Public Lands</i>	Department of Land and Natural Resources

The listed departments and agencies are involved in the process of contracting with the State.

Dept/Agency	Description	Reference
Legislature	Grants and Subsidies	HRS chapter 42F
All governmental entities	Concessions	HRS chapter 102
State Procurement Office (SPO)	Administers the Hawaii Public Procurement Code, HRS chapter 103D, for goods, services, and construction, and its Hawaii Administrative Rules (HAR). Requirements included in this chapter are: <ul style="list-style-type: none"> • Pre-bid and pre-proposal requirements for construction and design-build projects; • Due dates/preparation time for submittal of bid is minimum ten calendar days, and thirty calendar days for request for proposals from issuance of solicitation; • Bonding requirements for contract security and performance/payment bonding; • Preferences of Hawaii products for construction/soil amendment products (i.e. 	HRS chapter 103D HRS §103D-303.5 HAR §3-122-16.02 §§103D-323, 103D-324 §103D-1002

Dept/Agency	Description	Reference
	aggregates, sand, asphalt, cement, cement products, compost), and food, gas, plastic/foam products; <ul style="list-style-type: none"> • Preferences for printing in-state; • Preferences for recycled products (i.e. paving materials, paper products); • Preferences for software development using Hawaii businesses; • Small business set aside program; • Debriefing provisions for submittal within three working days after posting of notice of award; • Protest provisions for submittal within five working days after posting of award; and Administers the Purchases of Health and Human Services, HRS chapter 103F, and its Hawaii Administrative Rules (HAR).	§103D-1003 §103D-1005 §103D-1006 §103D-906 §§103D-303, 103D-304 §103D-701 HRS chapter 103F
Procurement Policy Board (PPB)	Promulgates the Hawaii Administrative Rules (HAR) for HRS chapters 103D and 103F, and issues Procurement Directives.	HRS chapters 103D and 103F
Department of Accounting and General Services (DAGS)	Oversees statutes on <i>Expenditure of Public Money and Public Contracts</i> , HRS chapter 103, including: <ul style="list-style-type: none"> • Legislature and Governor approval for CIP allotment of funds; • Requires wages, hours and working conditions of contractor's employees; • Requires wages and hours of employees on public works contracts; • Apprenticeship agreements for public works contracts pursuant to HRS §103-55.6; • Issued guidance on the HRS chapter 103B, <i>Employment of State Residents on Construction Procurement Contracts</i>; requirement for construction contracts to ensure Hawaii residents compose of not less than eighty per cent of the workforce employed to perform the contract. 	HRS chapter 103 §103-7 §103-55 §103-55.5 §103-55.6 HRS chapter 103B
Department of Business, Economic Development & Tourism (DBEDT)	Oversees: Hawaii Clean Energy Initiative Program	HRS §196-10.5
Department of Commerce and Consumer Affairs (DCCA)	Oversees: <ul style="list-style-type: none"> • Professional & Vocational Licensing (PVL) for Engineering, Architects, Surveyors and Landscape, and General contractor and subcontractor licensing requirements, responsible for licenses of 47 different professions and vocations; • Business registration (BREG) maintains the business registry for all corporations, limited liability companies, general partnerships, limited partnerships, limited liability partnerships and limited liability limited partnerships conducting business activities in the State. In addition, the registry contains trade names, trademarks and service marks; • Office of Administrative Hearings (OAH) for appeal process after a protest is denied. 	HRS chapter 464 HRS chapter 444

Dept/Agency	Description	Reference
	84, <i>Standards of Conduct</i> .	
County	<p>County: Construction permitting process, as applicable, includes but not limited to:</p> <ul style="list-style-type: none"> • Plan Reviews and Planning Permits, EIS/EA; • Zoning and Land Use Permits such as Cluster (Agricultural, Country, Housing), Conditional Use, Planned Development Housing, Shoreline Setback Variance, Street Tree Review, Zoning Variance; • Construction and Building Permits such as Inspections, Building Code Requirements (Housing/Electrical/Plumbing/Fire), Demolition Permit, Flood Hazard District; • Engineering and Subdivision Permits, includes Grading, Grubbing, and Stockpiling permit, roads, sewers, traffic, trenching permit. 	See Attachment A on permitting Time Requirements
Federal	<p>Federal Agency:</p> <ul style="list-style-type: none"> • Federal Environmental Protection Agency (EPA); • Federal Department of Homeland Security (DHS). 	

Other related administrative requirements such as:

Dept/Agency	Description
Office of the Governor	<p>Executive Memorandums available at http://hawaii.gov/budget, includes Budget Execution Policies requiring Governor's approvals for expending funds.</p> <p>Administrative Directives available at http://hawaii.gov/budget, such as AD 11-02 directing Executive Departments to obtain CIO/OIMT approval for all IT, IRM and TC services, facilities, equipment.</p>
Department of Budget & Finance (B&F)	Finance Memorandums available at http://hawaii.gov/budget/ , for B&F requirements.
Department of Accounting & General Services (DAGS)	<ul style="list-style-type: none"> • Comptroller Memorandums (CM) available at http://hawaii.gov/dags/cm, such as: <ul style="list-style-type: none"> ➢ Certificate of Insurance (Ref. CM 2010-39) on contractor's insurance policies; ➢ Act 68, SLH 2010 (Ref. CM 2010-38) on implementing Hawaii residents workforce of 80% for construction projects; ➢ Contract Execution Date (Ref. CM 2009-14) for retroactive contracts approval; ➢ Act 17, SLH 2009 Apprenticeship program (Ref. CM 2011-25); ➢ Gasoline and Diesel Fuel – Statewide (Ref. CM 2012-19). • Personal Services Contractor Procedural Manual at http://aarc.hawaii.gov/. • Contract certification of funds and encumbrance. • Pre-Audit review/approval request for payment processing/vouchering.

Dept/Agency	Description	
Department of the Attorney General (AG)	Contract forms for approval as to form available at <i>Internal Forms Database</i> , http://hawaii.gov/forms/internal	
	AG-001	Contract for Professional Services
	AG-002	Contract for Goods and Services: Exempt, Small Purchase, Sole Source, or Emergency
	AG-003	Contract for Goods or Services Based Upon Invitation for Competitive Sealed Bids
	AG-004	Contract for Goods or Services Based Upon Request for Competitive Sealed Proposal
	AG-008	General Conditions
	AG-103F01	Competitive Purchase of Services
	AG-103F02	Treatment Purchase of Service
	AG-103F03	Restrictive Purchase of Service
	AG-103F04	Crisis Purchase of Service
	AG-103F05	Small Purchase of Service
	AG-103F06	Transactions Exempt from Chapter 103F, HRS

To assist other jurisdictions, State and County agencies, vendors, contractors and service providers maneuver through this process as expeditiously as possible, the SPO website offers programs and services such as:

- Procurement Notices System (PNS) to locate available State and county notices at <http://hawaii.gov/spo/heps/general/procurement-notices-for-solicitations> ;
- Hawaii Electronic Procurement System (HePS) to receive notices and submit bids electronically at <http://hawaii.gov/spo/heps> ;
- Hawaii Compliance Express (HCE) is a single compliance document at <https://vendors.ehawaii.gov/hce/splash/welcome.html> ;
- Purchasing Card (pCard) program for payments made via a pCard at <http://hawaii.gov/spo/state-county-personnel-manual/pcard/pcard-purchasing-card> ;
- Contract Awards and Information posting to view thousands of awards posted at <http://hawaii.gov/spo2/> ;
- Procurement Directives and Procurement Circulars at <http://hawaii.gov/spo>;
- Price list and Vendor list contracts, preapproved, master contracts conducted using cooperative purchasing processes at <http://spo3.hawaii.gov/pvl/price-vendor-lists> ;
- Forms for State agencies at <http://hawaii.gov/spo/general/spo-forms> ;
- Forms for Vendors, Contractors and Service Providers at <http://hawaii.gov/spo/general/spo-forms> ;
- Training workshops for Vendors, Contractors, Service Providers available at <http://hawaii.gov/spo/general/training-and-informational-sessions> ;
- Variety of training workshops for State/County personnel on procurement and related topics at <http://hawaii.gov/spo/general/training-and-informational-sessions> .

Department of Accounting and General Services, Division of Public Works
Regular Time Requirements

Date: 10/10 SEE BELOW: TIME REQUIREMENTS BEFORE START OF PROJECT.

	ACTIVITY	TIME REQUIRED IN WEEKS/MONTHS										START MASTER PLAN, SITE SELECTION, E.A./E.I.S., PDR (For larger or more complex projects)		
		CONSTRUCTION COST IN THOUSANDS (PCL)												
		100	300	500	700	900	1,000	2,500	4,000	6,000	10,000			
Planning Project Initiation	PM REC'D DATE TO START	2	2	2	2	2	3	3	3	4	4			
	FEE NEGOTIATION	8	8	8	8	8	8	12	12	12	12			
Design	PRE-SCHEMATIC	0	0	2	3	3	3	4	4	6	6	START ENVIRONMENTAL ASSESSMENT (E.A.) (For smaller or non-controversial projects)		
	DAGS	0	0	1	2	3	3	3	4	4	4			
	(USER) _{1/}	0	0	(1)	(1)	(2)	(2)	(2)	(3)	(3)	(3)			
	SCHEMATIC	2	2	2	3	3	3	4	4	6	6			
	DAGS	1	2	2	3	3	3	3	4	4	4			
	(USER) _{1/}	(1)	(1)	(1)	(2)	(2)	(2)	(2)	(3)	(3)	(3)			
	PRELIMINARY	2	3	3	3	3	3	5	7	8	10	SUBMIT LAND USE PERMIT APPLICATION OR APPROVALS • Special Management Area • Conditional Use Permit • Conservation District Use Permit • Special Permit • Subdivision • Height Waiver or Variance • Etc.		
	DAGS	1	2	2	2	2	2	3	3	3	3			
	(USER) _{1/}	(1)	(1)	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(2)			
	PRE-FINAL	3	4	4	4	5	6	7	9	11	15			
	DAGS	3	3	3	3	3	3	4	4	4	4			
	(GOV & USER) _{1/}	(2)	(2)	(2)	(2)	(2)	(2)	(3)	(3)	(3)	(3)			
	FINAL	1	1	1	1	2	2	3	3	3	3	LAND USE PERMITS APPROVED		
	DAGS	1	1	1	1	1	1	1	1	1	1			
	TOTAL (CONSULTANT)	8	10	12	14	16	17	23	27	34	40			
	Building Permit	(DAGS)	6	8	9	11	12	12	14	16	16	16	SUBMIT BUILDING PERMIT APPLICATION • Typical approvals required (see PM Form 78)	
		TOTAL DESIGN TIME (WEEKS)	24.00	28.00	31.00	35.00	38.00	40.00	52.00	58.00	66.00	72.00		
		(MONTHS)	6.00	7.00	7.75	8.75	9.50	10.00	13.00	14.50	16.50	18.00		
Bid/Award Contract	BIDDING TIME (MONTHS)	1.50	1.50	1.50	1.50	1.50	1.50	2.00	2.00	2.00	2.00	BUILDING PERMIT APPROVED		
	B/O TO NTP (MONTHS)	1.50	2.00	3.00	3.00	3.00	3.00	4.00	4.00	5.00	6.00			
Construction	CONSTRUCTION _{2/} (MONTHS)	4.00	5.00	6.00	7.00	8.00	9.00	11.00	13.00	15.00	18.00			
	TOTAL PROJECT TIME (MONTHS)	13.00	15.50	18.25	20.25	22.00	23.50	30.00	33.50	38.50	44.00			
	PM REC'D DATE TO B/O (MONTHS)	7.50	8.50	9.25	10.25	11.00	11.50	15.00	16.50	18.50	20.00			
TIME REQUIREMENTS BEFORE START OF PROJECT														
• User Agency's request to initiate project														

NOTE: • For priority projects, time requirements should be adjusted accordingly.

_{1/} User and Governor reviews concurrent with DAGS review.
_{2/} Verify material long-lead items; includes 10% for inclement weather.

The Acquisition Life-Cycle

