
HOUSE CONCURRENT RESOLUTION

REQUESTING THE STATE PROCUREMENT OFFICE TO REVIEW HAWAII'S
PROCUREMENT LAWS IN COMPARISON WITH FEDERAL PROCUREMENT
LAWS.

1 WHEREAS, the Hawaii public procurement code under chapter
2 103D, Hawaii Revised Statutes, governs the procurement of goods,
3 services, or construction by state and county agencies; and
4

5 WHEREAS, chapter 103D, Hawaii Revised Statutes, was
6 originally based on the framework provided by the American Bar
7 Association's Model Procurement Code for State and Local
8 Governments and was enacted to increase competition, ensure
9 fairness, and establish greater uniformity in the public
10 procurement of goods and services; and
11

12 WHEREAS, the State's procurement laws have been amended
13 numerous times since the initial enactment of chapter 103D,
14 Hawaii Revised Statutes; and
15

16 WHEREAS, federal procurement laws, including the Federal
17 Acquisition Regulation, are not aligned with state procurement
18 laws; and
19

20 WHEREAS, Hawaii's procurement process could be improved
21 through a better understanding of the efficient and effective
22 ways in which the federal government conducts procurement
23 processes; now, therefore,
24

25 BE IT RESOLVED by the House of Representatives of the
26 Twenty-eighth Legislature of the State of Hawaii, Regular
27 Session of 2016, the Senate concurring, that the State
28 Procurement Office is requested to review Hawaii's procurement
29 laws in comparison to federal procurement laws; and
30



1 BE IT FURTHER RESOLVED that the review should include:

- 2
- 3 (1) A cost-benefit analysis of the current Hawaii public
4 procurement process with regard to construction
5 contracts;
- 6
- 7 (2) An examination of issues and concerns regarding the
8 Hawaii public procurement process that were raised by
9 the task force established pursuant to Senate
10 Concurrent Resolution No. 92, S.D. 2, Regular Session
11 of 2013, in its final report submitted to the
12 Legislature during the Regular Session of 2015;
- 13
- 14 (3) A review of federal procurement laws, particularly
15 Federal Acquisition Regulation Part 36-Construction
16 and Architect-Engineer Contracts, and a comparison of
17 the similarities and differences between the
18 construction procurement provisions of the Hawaii
19 public procurement code and federal construction
20 procurement laws;
- 21
- 22 (4) An analysis of whether closer alignment of
23 construction procurement provisions of the Hawaii
24 public procurement code to federal construction
25 procurement laws would be beneficial to the State;
- 26
- 27 (5) The length of time and the effort required by the
28 State to implement changes to better align the
29 construction procurement provisions of the Hawaii
30 public procurement code with federal construction
31 procurement laws; and
- 32
- 33 (6) Any costs, including personnel costs, to the State
34 should the construction procurement provisions of the
35 Hawaii public procurement code be amended to more
36 closely align with federal construction procurement
37 laws; and
- 38

39 BE IT FURTHER RESOLVED that the State Procurement Office is
40 requested to report its findings and recommendations, including
41 any proposed legislation, to the Legislature no later than



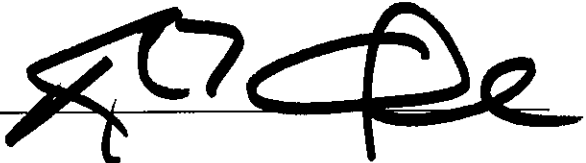
H.C.R. NO. 196

1 twenty days prior to the convening of the Regular Session of
2 2017; and

3
4 BE IT FURTHER RESOLVED that a certified copy of this
5 Concurrent Resolution be transmitted to the Administrator of the
6 State Procurement Office.

7
8
9

OFFERED BY:


Mark J. Hall
K. L. Ho
R. J. ...

MAR 11 2016



DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR

PAULA A. YOUNGLING
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**STATE OF HAWAII
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
ECONOMIC DEVELOPMENT & BUSINESS

March 17, 2016, 10:00 AM

HCR 196/HR 142

REQUESTING THE STATE PROCUREMENT OFFICE TO REVIEW HAWAII'S PROCUREMENT LAWS IN
COMPARISON WITH FEDERAL PROCUREMENT LAWS

Chair Kawakami, Vice-Chair Kong, and members of the committee, thank you for the opportunity to submit testimony on HCR 196 and HR 142. The State Procurement Office (SPO) opposes this resolution that does not appropriate or allocate any funding (e.g. minimum of \$450,000) to procure for outsourcing services to achieve this comprehensive analysis and review.

This resolution will require a detailed examination and meticulous side-by-side comparison of the Hawaii public procurement environment, procurement related statutes and rules with the federal procurement laws (particularly the Federal Acquisition Regulation (the FAR)), and the challenges thereto that will need to be resolved. Attached for your consideration herein is FAR Part 52.301, a matrix of all FAR solicitation and contract clauses, including their alternatives and their associated instances for mandatory inclusion in solicitation and contracts. Furthermore, any resulting recommendations to amend the Hawaii public procurement code (the Code) to align with the FAR, will affect not only State agencies, but all CPO jurisdictions, who will need to do their own assessments of the logistical requirements and anticipated costs (monetarily and culturally, taking into account governance and infrastructure) of amending the Code to align with the FAR.

This resolution must provide the resources necessary for an analysis and review of this scope and magnitude. In fact, the mere exercise in cross-walking State terminology to equivalent federal terminology will be a herculean task that will be an extensive undertaking, requiring expertise, staffing, and funding resources in order to develop any new processes, procedures, templates, contract terms and conditions, and reporting requirements compliant with the Hawaii Code and the FAR, which will require resources that the SPO does not have.

The SPO also requests that page 2, lines 39 to 41, and page 3, lines 1 to 2, of the resolution be amended. The following amendment is provided for your consideration:

“BE IT FURTHER RESOLVED that the State Procurement Office is requested to report its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of ~~2017~~ 2018;”

Upon receipt of the requested funding for the report, the SPO will first procure for the respective consulting services which will reduce the time allocation and quality of the interim report. Therefore, in order for the SPO to initiate and complete the study in a specified timeframe, the SPO recommends that the report be due in the regular session of 2018.

The SPO is committed to working with State Legislature and Agencies to develop the best policy and procedures for procurement that allow for streamlining, efficiencies, innovation, cost control, and fair and equal contracting opportunities across the State of Hawaii.

The SPO does not have adequate resources to conduct the research and analysis, of this magnitude, required for this resolution. The cost of analyzing and reviewing the differences and similarities between the Hawaii Code and the FAR in order to submit a report to Legislature is estimated to start at a minimum of \$450,000 for fiscal year 2016-2017. Therefore, should this resolution pass, the SPO would need the appropriate resources to meet this need.

Thank you.

52.301 Solicitation provisions and contract clauses (Matrix).

| | | | | | |
|--------------------------|---|--|--------------------------|---|--|
| Key: | | | | | |
| Type of Contract: | | | | | |
| P or C | = | Provision or Clause | DDR | = | Dismantling, Demolition, or Removal of Improvements |
| IBR | = | Is Incorporation by Reference Authorized? (See FAR 52.102) | A&E | = | Architect-Engineering |
| UCF | = | Uniform Contract Format Section, when Applicable | FAC | = | Facilities |
| FP SUP | = | Fixed-Price Supply | IND DEL | = | Indefinite Delivery |
| CR SUP | = | Cost-Reimbursement Supply | TRN | = | Transportation |
| FP R&D | = | Fixed-Price Research & Development | SAP | = | Simplified Acquisition Procedures (excluding micro-purchase) |
| CR R&D | = | Cost Reimbursement Research & Development | UTL SVC | = | Utility Services |
| FP SVC | = | Fixed-Price Service | CI | = | Commercial Items |
| CR SVC | = | Cost Reimbursement Service | | | |
| FP CON | = | Fixed-Price Construction | Contract Purpose: | | |
| CR CON | = | Cost Reimbursement Construction | R | = | Required |
| T&M LH | = | Time & Material/Labor Hours | A | = | Required when Applicable |
| LMV | = | Leasing of Motor Vehicles | O | = | Optional |
| COM SVC | = | Communication Services | ✓ | = | Revision |

| PROVISION OR CLAUSE | PRESCRIBED IN | P OR C | PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT | | | | | | | | | | | | | | | | | | | | |
|---|------------------------------|--------|---|-----|--------|--------|--------|--------|--------|--------|--------|--------|--------|-----|---------|-----|-----|-----|---------|-----|-----|---------|----|
| | | | IBR | UCF | FP SUP | CR SUP | FP R&D | CR R&D | FP SVC | CR SVC | FP CON | CR CON | T&M LH | LMV | COM SVC | DDR | A&E | FAC | IND DEL | TRN | SAP | UTL SVC | CI |
| 52.202-1 Definitions. | 2.201 | C | Yes | I | R | R | A | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R |
| 52.203-2 Certificate of Independent Price Determination. | 3.103-1 | P | No | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-3 Gratuities. | 3.202 | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-5 Covenant Against Contingent Fees. | 3.404 | C | Yes | I | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R |
| 52.203-6 Restrictions on Subcontractor Sales to the Government. | 3.503-2 | C | Yes | I | R | R | | | R | R | | | | | | | | R | | | | R | |
| Alternate I | 3.503-2 | C | Yes | | | | | | | | | | | | | | | | | | | | R |
| 52.203-7 Anti-Kickback Procedures. | 3.502-3 | C | Yes | I | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R |
| 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. | 3.104-9(a) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. | 3.104-9(b) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. | 3.808(a) | P | Yes | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-12 Limitation on Payments to Influence Certain Federal Transactions. | 3.808(b) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-13 Contractor Code of Business Ethics and Conduct. | 3.1004(a) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-14 Display of Hotline Poster(s). | 3.1004(b) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. | 3.907-7 | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-16 Preventing Personal Conflicts of Interest. | 3.1106 | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights. | 3.908-9 | C | Yes | I | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R |
| 52.204-1 Approval of Contract. | 4.103 | C | No | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-2 Security Requirements. | 4.404(a) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| Alternate I | 4.404(b) | C | Yes | I | | | | | A | | | | | | | | | | | | | | |
| Alternate II | 4.404(c) | C | Yes | I | | | | | | A | A | | | | | | | | | | | | |
| 52.204-3 Taxpayer Identification. | 4.905 | P | No | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper. | 4.303 | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-5 Women-Owned Business (Other Than Small Business) | 4.607(b) | P | Yes | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-6 Data Universal Numbering System Number. | 4.607(b) | P | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-7 System for Award Management. | 4.1105(a)(1) | P | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| Alternate I | 4.1105(a)(2) | P | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-8 Annual Representations and Certifications | 4.1202 | P | No | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-9 Personal Identity Verification of Contractor Personnel. | 4.1303 | C | Yes | I | A | A | A | A | A | A | A | A | | A | A | A | A | A | A | A | A | A | A |
| 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards. | 4.1403(a) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-11 [Reserved] | | | | | | | | | | | | | | | | | | | | | | | |
| 52.204-12 Data Universal Numbering System Number Maintenance. | 4.607(c) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-13 System for Award Management Maintenance. | 4.1105(b) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-14 Service Contract Reporting Requirements. | 4.1705(a) | C | Yes | | | | | | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts. | 4.1705(b) | C | Yes | | | | | | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-16 Commercial and Government Entity Code Reporting. | 4.1804(a) | P | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-17 Ownership or Control of Offeror. | 4.1804(b) | P | Yes | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.204-18 Commercial and Government Entity Code Maintenance. | 4.1804(c) | C | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |

| | | | | | | | | | | | | | | | | | | | | | | |
|--|--------------------------|---|-----|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 52.204-19 Incorporation by Reference of Representations and Certifications. | 4.1202(b) | C | Yes | K | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R | R |
| 52.207-1 Notice of Standard Competition. | 7.305(a) | P | Yes | L | A | | A | | A | | A | | A | | A | | A | | A | | | |
| 52.207-2 Notice of Streamlined Competition. | 7.305(b) | P | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.207-3 Right of First Refusal of Employment. | 7.305(c) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.207-4 Economic Purchase Quantity—Supplies. | 7.203 | P | No | K | A | A | | | | | | | | | | | | | A | | A | |
| 52.207-5 Option to Purchase Equipment. | 7.404 | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.208-4 Vehicle Lease Payments. | 8.1104(a) | C | Yes | I | | | | | | | | | | A | | | | | | | A | |
| 52.208-5 Condition of Leased Vehicles. | 8.1104(b) | C | Yes | I | | | | | | | | | | A | | | | | | | A | |
| 52.208-6 Marking of Leased Vehicles. | 8.1104(c) | C | Yes | I | | | | | | | | | | A | | | | | | | A | |
| 52.208-7 Tagging of Leased Vehicles. | 8.1104(d) | C | Yes | I | | | | | | | | | | A | | | | | | | A | |
| 52.208-8 Required Sources for Helium and Helium Usage Data. | 8.505 | C | No | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.208-9 Contractor Use of Mandatory Sources of Supply or Services. | 8.005 | C | Yes | I | A | A | | | | | | | | | | | | | A | | A | |
| 52.209-1 Qualification Requirements. | 9.206-2 | C | No | I | A | A | | | A | A | | | | A | | | | | | A | A | |
| 52.209-2 Prohibition on Contracting with Inverted Domestic Corporations—Representation. | 9.108-5(a) | P | Yes | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.209-3 First Article Approval—Contractor Testing. | 9.308-1(a)(1) and (b)(1) | C | Yes | I | A | O | | | | | | | | A | | | | | A | | A | |
| Alternate I | 9.308-1(a)(2) and (b)(2) | C | Yes | I | A | O | | | | | | | | A | | | | | A | | A | |
| Alternate II | 9.308-2(a)(3) and (b)(3) | C | Yes | I | A | O | | | | | | | | A | | | | | A | | A | |
| 52.209-4 First Article Approval—Government Testing. | 9.308-2(a)(1) and (b)(1) | C | Yes | I | A | O | | | | | | | | A | | | | | A | | A | |
| Alternate I | 9.308-2(a)(1) and (b)(2) | C | Yes | I | A | O | | | | | | | | A | | | | | A | | A | |
| Alternate II | 9.308-2(a)(1) and (b)(3) | C | Yes | I | A | O | | | | | | | | A | | | | | A | | A | |
| 52.209-5 Certification Regarding Responsibility Matters. | 9.104-7(a) | P | No | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. | 9.409 | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.209-7 Information Regarding Responsibility Matters. | 9.104-7(b) | P | No | K | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters. | 9.104-7(c)(1) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations. | 9.108-5(b) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.210-1 Market Research. | 10.003 | C | Yes | I | A | A | A | A | A | A | A | A | A | | A | A | A | A | A | A | A | A |
| 52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29. | 11.204(a) | P | No | L | A | A | A | A | A | A | A | | | A | A | | | | A | A | A | |
| 52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST). | 11.204(b) | P | No | L | A | A | A | A | A | A | A | | | A | A | | | | A | A | A | |
| 52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions. | 11.204(c) | P | No | L | A | A | A | A | A | A | A | | | A | A | | | | A | A | A | |
| 52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions. | 11.204(d) | P | No | L | A | A | A | A | A | A | A | | | A | A | | | | A | A | A | |
| 52.211-5 Material Requirements. | 11.304 | C | Yes | I | R | R | | | | | | | | | | | | | | | A | |
| 52.211-6 Brand Name or Equal. | 11.107(a) | P | Yes | L | A | A | | | | | | | | A | | | | | | | A | |
| 52.211-7 Alternatives to Government-Unique Standards. | 11.107(b) | P | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.211-8 Time of Delivery. | 11.404(a)(2) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| Alternate I | 11.404(a)(2) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| Alternate II | 11.404(a)(2) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| Alternate III | 11.404(a)(2) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| 52.211-9 Desired and Required Time of Delivery. | 11.404(a)(3) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| Alternate I | 11.404(a)(3) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| Alternate II | 11.404(a)(3) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| Alternate III | 11.404(a)(3) | C | No | F | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O | O |
| 52.211-10 Commencement, Prosecution, and Completion of Work. | 11.404(b) | C | Yes | | | | | | | | R | | | | | | | | | | | |
| Alternate I | 11.404(b) | C | Yes | | | | | | | | R | | | | | | | | | | | |
| 52.211-11 Liquidated Damages—Supplies, Services, or Research and Development. | 11.503(a) | C | Yes | I | O | | O | | O | | | | | O | | | | | | | O | O |
| 52.211-12 Liquidated Damages—Construction. | 11.503(b) | C | Yes | | | | | | | | O | O | | | | | | | | | O | |
| 52.211-13 Time Extensions. | 11.503(c) | C | Yes | | | | | | | | A | A | | | | | | | | | A | |
| 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use. | 11.604(a) | P | Yes | L | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.211-15 Defense Priority and Allocation Requirements. | 11.604(b) | C | Yes | I | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A | A |
| 52.211-16 Variation in Quantity. | 11.703(a) | C | Yes | F | A | | | | A | | | | | A | | | | | | | A | A |
| 52.211-17 Delivery of Excess Quantities. | 11.703(b) | C | Yes | F | O | | | | | | | | | O | | | | | | | O | |
| 52.211-18 Variation in Estimated Quantity. | 11.703(c) | C | Yes | | | | | | | | A | | | | | | | | | | A | |

| | | | | | | | | | | | | | | | | | | | | | |
|--|--------------------|---|-----|----|---|--|---|--|---|--|---|--|---|---|---|---|---|---|---|---|---|
| 52.212-1 Instructions to Offerors—Commercial Items. | 12.301(b)(1) | P | Yes | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | R | |
| 52.212-2 Evaluation—Commercial Items. | 12.301(c)(1) | P | No | NA | O | | O | | O | | O | | O | O | O | O | O | O | O | O | O |
| 52.212-3 Offeror Representations and Certifications—Commercial Items. | 12.301(b)(2) | P | No | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | A | R |
| Alternate I | 12.301(b)(2) | P | No | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | A | A |
| Alternate II | 12.301(b)(2) | P | No | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | A | A |
| 52.212-4 Contract Terms and Conditions—Commercial Items. | 12.301(b)(3) | C | Yes | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | A | R |
| Alternate I | 12.301(b)(3) | C | Yes | NA | | | | | | | A | | | | | | | | | | A |
| 52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders— Commercial Items | 12.301(b)(4) | C | No | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | A | R |
| Alternate I | 12.301(b)(4)(i) | C | No | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | A | R |
| Alternate II | 12.301(b)(4)(ii) | C | No | NA | A | | A | | A | | A | | A | A | A | A | A | A | A | A | R |
| 52.213-1 Fast Payment Procedure. | 13.404 | C | Yes | | A | | | | | | | | A | | | | | | A | | |
| 52.213-2 Invoices. | 13.302-5(b) | C | Yes | | | | | | | | | | | | | | | | | A | |
| 52.213-3 Notice to Supplier. | 13.302-5(c) | C | Yes | | | | | | | | | | | | | | | | | A | |
| 52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). | 13.302-5(d) | C | Yes | | | | | | | | | | | | | | | | | A | |
| 52.214-3 Amendments to Invitations for Bids. | 14.201-6(b)(1) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.214-4 False Statements in Bids. | 14.201-6(b)(2) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.214-5 Submission of Bids. | 14.201-6(c)(1) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.214-6 Explanation to Prospective Bidders. | 14.201-6(c)(2) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.214-7 Late Submissions, Modifications, and Withdrawals of Bids. | 14.201-6(c)(3) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.214-10 Contract Award—Sealed Bidding. | 14.201-6(e) | P | Yes | L | A | | | | A | | | | | A | A | A | | | A | A | A |
| 52.214-12 Preparation of Bids. | 14.201-6(f) | P | Yes | L | A | | | | A | | | | | A | A | A | | | A | A | A |
| 52.214-13 Telegraphic Bids. | 14.201-6(g)(1) | P | Yes | L | A | | | | A | | | | | A | A | A | | | A | A | A |
| Alternate I | 14.201-6(g)(2) | P | Yes | L | A | | | | A | | | | | | | | | | | | |
| 52.214-14 Place of Performance—Sealed Bidding. | 14.201-6(h) | P | No | K | A | | | | A | | | | | A | A | A | | | A | A | A |
| 52.214-15 Period for Acceptance of Bids. | 14.201-6(i) | P | Yes | L | A | | | | A | | | | | A | A | A | | | A | A | A |
| 52.214-16 Minimum Bid Acceptance Period. | 14.201-6(j) | P | No | K | A | | | | A | | | | | A | A | A | | | A | A | A |
| 52.214-18 Preparation of Bids—Construction. | 14.201-6(l) | P | Yes | | | | | | | | A | | | | | | | | | | |
| 52.214-19 Contract Award—Sealed Bidding—Construction. | 14.201-6(m) | P | Yes | | | | | | | | A | | | | | A | | | | | |
| 52.214-20 Bid Samples. | 14.201-6(o)(1) | P | Yes | L | A | | | | A | | | | | A | | | | | A | | |
| Alternate I | 14.201-6(o)(2)(i) | P | Yes | L | A | | | | A | | | | | A | | | | | A | | |
| Alternate II | 14.201-6(o)(2)(ii) | P | Yes | L | A | | | | A | | | | | A | | | | | A | | |
| 52.214-21 Descriptive Literature. | 14.201-6(p)(1) | P | Yes | L | A | | | | A | | | | | A | | | | | A | | |
| Alternate I | 14.201-6(p)(2) | P | No | L | A | | | | A | | | | | A | | | | | A | | |
| 52.214-22 Evaluation of Bids for Multiple Awards. | 14.201-6(q) | P | Yes | M | A | | | | A | | A | | | A | A | A | | | A | A | |
| 52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding. | 14.201-6(r) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | | |
| 52.214-24 Multiple Technical Proposals. | 14.201-6(s) | P | Yes | M | A | | | | A | | A | | | A | | | | | A | | |
| 52.214-25 Step Two of Two-Step Sealed Bidding. | 14.201-6(t) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | | | |
| 52.214-26 Audit and Records—Sealed Bidding. | 14.201-7(a)(1) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | |
| Alternate I | 14.201-7(a)(2) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | |
| 52.214-27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding. | 14.201-7(b)(1) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | |
| 52.214-28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding. | 14.201-7(c)(1) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | |
| 52.214-29 Order of Precedence—Sealed Bidding. | 14.201-7(d) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | |
| 52.214-31 Facsimile Bids. | 14.201-6(v) | P | Yes | L | A | | | | A | | | | | A | A | A | | | A | A | A |
| 52.214-34 Submission of Offers in the English Language. | 14.201-6(w) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.214-35 Submission of Offers in U.S. Currency. | 14.201-6(x) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.215-1 Instructions to Offerors—Competitive. | 15.209(a) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| Alternate I | 15.209(a)(1) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| Alternate II | 15.209(a)(2) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.215-2 Audit and Records—Negotiation. | 15.209(b)(1) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | A |
| Alternate I | 15.209(b)(2) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | A |
| Alternate II | 15.209(b)(3) | C | Yes | I | | | | | A | | A | | | | | | | | | | |
| Alternate III | 15.209(b)(4) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.215-3 Request for Information or Solicitation for Planning Purposes. | 15.209(c) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.215-5 Facsimile Proposals. | 15.209(e) | P | Yes | L | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.215-6 Place of Performance. | 15.209(f) | P | No | K | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.215-8 Order of Precedence—Uniform Contract Format. | 15.209(h) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | A |
| 52.215-9 Changes or Additions to Make-or-Buy Program. | 15.408(a) | C | Yes | I | A | | | | A | | A | | | A | A | A | | | A | A | A |
| Alternate I | 15.408(a)(1) | C | Yes | I | A | | | | A | | A | | | | | | | | | | |

| | |
|--|---|
| Note 1: The following clauses are prescribed for use in letter contracts: | |
| 52.216-23, Execution and Commencement of Work. | 52.216-26, Payments of Allowable Costs Before Definitization. |
| 52.216-24, Limitation of Government Liability. | 52.232-16, Progress Payments, Alternate II. |
| 52.216-25, Contract Definitization. | 52.244-2, Subcontracts. |
| 52.216-25, Contract Definitization, Alternate I. | |
| Further instructions concerning provisions and clauses for letter contracts are set forth in 16.603-4(a). | |
| Note 2: The following clauses are prescribed for use in Small Business Administration 8(a) contracts: | |
| 52.219-11, Special 8(a) Contract Conditions. | 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns. |
| 52.219-12, Special 8(a) Subcontract Conditions. | 52.219-18, Alternate I |
| 52.219-14, Limitations on Subcontracting. | 52.219-18, Alternate II |
| 52.219-17, Section 8(a) Award. | |
| Note 3: FAR provisions and clauses not identified on the matrix may be used in contracts for commercial items consistent with the procedures and limitations in FAR 12.302 | |
| Note 4: The following clause is prescribed for use in Information Technology Management Reform Act (ITMRA) contracts: 52.239-1, Privacy or Security Safeguards. "A" . | |

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STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
ECONOMIC DEVELOPMENT & BUSINESS
ON
MARCH 17, 2016

HCR 196/HR 142

REQUESTING THE STATE PROCUREMENT OFFICE TO REVIEW HAWAII'S
PROCUREMENT LAWS IN COMPARISON WITH FEDERAL PROCUREMENT LAWS.

Chair Kawakami and members of the Committee, thank you for the opportunity to submit written testimony on HCR 196/HR 142.

The Department of Accounting and General Services (DAGS) supports this resolution and offers the following comments for your consideration.

DAGS supports a review of federal procurement laws, particularly Federal Acquisition Regulation (FAR) Chapter 36 and comparing it to State Procurement Code to determine best practices and make recommendations for adoption. It is important to note that the FAR is a complex system that requires extensive investment in training and resources to operate.

DAGS recommends that the comparison also include review of the American Bar Association (ABA) 2000 State Model Procurement Code and Model Procurement Regulations, which are updates to the version currently used by the state. The 2000 Model Procurement Code (MPC) addresses the full range of issues arising in the procurement of supplies, services, and

construction, including emerging models for long term procurement of so-called "Public Private Partnerships".

To specifically address the procurement and policy issues that arise when design, construction, operations, maintenance, and/or finance are merged into single procurements for public infrastructure, the ABA sections sponsoring the MPC project approved the 2007 Model Code for Public Infrastructure Procurement (MC PIP), which is a condensation of the 2000 Model Procurement Code.

While it may be necessary for the state to hire expert consultants to assist with the project, DAGS believes it is critical to fund more education and training of State employees in the FAR and MPC as part of this analysis.

Finally, we recommend that any review of procurement also consider changes to project management needed to improve or implement procurement changes.

Thank you for the opportunity to submit written testimony on this matter.

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GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

March 17, 2016

TO: HONORABLE DEREK KAWAKAMI, CHAIR, HONORABLE SAM KONG, VICE CHAIR, HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

SUBJECT: **SUPPORT OF HCR 196/HR142**
REQUESTING THE STATE PROCUREMENT OFFICE TO REVIEW HAWAII'S PROCUREMENT LAWS IN COMPARISON WITH FEDERAL PROCUREMENT LAWS.

HEARING

DATE: Thursday, March 17, 2016
TIME: 10:00 a.m.
PLACE: Conference Room 312

Dear Chair Kawakami and Vice Chair Kong and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. 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.

GCA **supports HCR 196/HR142** which would request the State Procurement Office to conduct review Hawaii's Public Procurement Code and its similarities to the federal procurement laws and regulations with regard to construction contracts. GCA has been actively working with agencies that administer public works contracts to improve the efficiency and delivery of public works along with safeguarding the funds of taxpayers. GCA believes the additional year to study this matter by the SPO and DAGS would provide sufficient time for them to provide sufficient information to report on such an analysis. GCA also supports H.B. 2544, HD2 which would require further study of Hawaii's Procurement code in conjunction with the federal procurement code.

Recent Procurement Related Legislative Initiatives

In 2013 this body initiated a Procurement Task Force pursuant to [Senate Concurrent Resolution 92 \(2013\)](#) which was tasked to study the State Procurement Code and identify amendments that would increase economy, efficiency, effectiveness and impartiality in the procurement of public works construction. The Department of Accounting and General Services recently issued the Task Force's Report on which identified four areas of concern that was addressed by participants including: Preferences, Protests, Subcontractor Listing and Identifying and Addressing Bad Contractors. In 2015 pursuant to [Act 182 \(2015\)](#) this body extended the 2013 Procurement Task Force to specifically identify and propose amendments, if any, to the procurement code affecting public works construction projects, specifically regarding statewide past performance standards and procedures. However, the Act 182 (2015) Task Force did not meet during the interim to address these issues and instead has just initiated meetings last month.

This Resolution requests an analysis and review of the Code and its correlation to the federal procurement laws and regulations, which will be a good continuation of the discussion in order to address ways to improve its efficiency of public works construction. It will be important for the State Procurement Office to gather input directly from the departments and agencies administering public works construction to identify areas of improvement and concern.

We respectfully request the Committee pass these companion Resolutions. Thank you for the opportunity to share our support for these Resolutions.