

ACT 8

S.B. NO. S3-93

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to improve and update the State's laws relating to government procurement.

It is the legislature's intent that there be a single source of public procurement policy to be applied equally and uniformly to the State and counties. This Act shall apply to the procurement practices of all entities created by the State's

and counties' constitution, charters, statutes, ordinances, administrative rules, or executive orders, including the office of Hawaiian affairs, and the departments, commissions, councils, boards, bureaus, committees, institutions, authorities, legislative bodies, agencies, government corporations, or other establishment of the State or its several counties.

It is the policy of the State to ensure the fair and equitable treatment of all persons who deal with the procurement system of the State and counties. Because public employment is a public trust, public employees must discharge their duties impartially to assure fair competitive access to governmental procurement by responsible contractors. Public employees shall conduct themselves in a manner that fosters public confidence in the integrity of the State procurement process. No comptroller, chief procurement officer, purchasing agency head, procurement officer, or employee whose duties include purchasing shall use or attempt to use one's official position to secure or grant unwarranted privileges, exemptions, or advantages or exhibit any favoritism or prejudice to any prospective bidder or contractor.

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. If any contract needs to be amended, compelling reasons must exist for making the changes.

It is the policy of the State to ensure fiscal integrity, responsibility, and efficiency in the procurement process. Goods, services, and construction shall be purchased at fair and reasonable prices. However, if there are any disputes regarding the bidding and awarding of contracts, it is the legislature's intent to encourage all parties to settle their differences quickly through established administrative procedures.

The purpose of this Act is to promote economy, efficiency, and effectiveness in the procurement of goods and services, and the construction of public works for the State and counties, by:

- (1) Simplifying, clarifying, and modernizing the law governing procurement;
- (2) Requiring the continued development of procurement policies and practices;
- (3) Making the procurement laws of the State and counties as consistent as possible;
- (4) Ensuring the fair and equitable treatment of all persons who deal with the procurement system of the State and counties;
- (5) Providing increased economy in procurement activities and maximizing to the fullest extent practicable the purchasing value of public funds;
- (6) Fostering effective broad-based competition within the free enterprise system;
- (7) Providing safeguards for the maintenance of a procurement system of quality and integrity; and
- (8) Increasing public confidence in the procedures followed in public procurement.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII PUBLIC PROCUREMENT CODE**

PART I. GENERAL PROVISIONS

§ **-101 Requirement of good faith.** All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith.

§ **-102 Application of this chapter.** (a) This chapter shall apply only to contracts solicited or entered into after the effective date of this chapter, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(b) This chapter shall apply to every expenditure of public funds irrespective of their source by a governmental body as defined herein, under any contract; provided that the expenditure of federal assistance moneys shall be in accordance with federal requirements. This chapter shall not apply to:

- (1) Grants, subsidies, or purchases of service made pursuant to chapter 42D;
- (2) Employment agreements or collective bargaining agreements; and
- (3) Grants or contracts between the State and counties or other governments except as provided by part VIII.

Nothing in this chapter or rules adopted hereunder shall prevent any governmental body from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(c) Unless other laws expressly exempt a governmental body from the requirements of this chapter or any of its provisions, this chapter and all rules adopted by the policy office pursuant to section -211 shall apply to all governmental bodies of this State; except that any county may rely on other provisions established by charter, ordinance, or rules adopted in accordance with chapter 91 provided that those provisions are consistent with the requirements of this chapter.

§ **-103 Retention of written determinations.** Written determinations required by this chapter shall be retained in the appropriate official files of the chief procurement officer or in the case of delegated authority, in the files of that purchasing agency.

§ **-104 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

“Change order” means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

“Construction” means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

“Contract” means all types of agreements, regardless of what they may be called, for the procurement or disposal of goods or services, or for construction.

“Contract modification” means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other

provisions of any contract accomplished by mutual action of the parties to the contract.

“Contractor” means any person having a contract with a governmental body.

“Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

“Data” means recorded information, regardless of form or characteristic.

“Employee” means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing services for any governmental body.

“Established catalogue price” means the price included in a catalogue, price list, schedule, or other form that:

- (1) Is regularly maintained by a manufacturer or contractor;
- (2) Is either published or otherwise available for inspection by customers; and
- (3) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the goods or services involved.

“Goods” means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

“Governmental body” means any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, government corporation, or other establishment or office of the executive, legislative, or judicial branch of the State, including the office of Hawaiian affairs, and the several counties of the State.

“Grant” means the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. The term does not include an award whose primary purpose is to procure an end product, whether in the form of goods, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

“Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

“Policy office” means the procurement policy office created in section -201.

“Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

“Procurement officer” means any person authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

“Professional services” means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional by the laws of this State.

“Purchase description” means the words used in a solicitation to describe the goods, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

“Purchasing agency” means any governmental body which is authorized by this chapter or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods, services, or construction.

“Request for proposals” means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

“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.

“Responsive bidder” means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

“Services” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

“Specifications” means any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

“Using agency” means any governmental body which utilizes any goods, services, or construction procured under this chapter.

§ **-105 Public access to procurement information.** Procurement information shall be available to the public as provided in chapter 92F. The policy office shall adopt rules governing requests for confidentiality made by a bidder or offeror to prevent the unwarranted disclosure of trade secrets or proprietary information.

§ **-106 Penalties.** Any person who intentionally violates this chapter or any rules adopted pursuant to this chapter shall be guilty of a misdemeanor, and in addition to the applicable criminal penalty, shall be subject to removal from office and shall be liable to the State or the appropriate county for any sum paid by it in connection with the violation, and that sum, together with interest and costs, shall be recoverable by the State or county.

§ **-107 Compliance audit unit; establishment and purpose.** There is established a compliance audit unit within the office of the auditor. The purpose of this unit shall be to:

- (1) Periodically review and audit procurement practices within government to ensure compliance with this chapter and all applicable rules; and
- (2) Advocate competition, fairness, and accountability in the procurement process.

Reports made by this unit shall be a matter of public record. This unit shall utilize as part of the review process, a review of records and activities specifically for trends and patterns of occurrence.

§ **-108 Compliance audit unit; duties and responsibilities.** The compliance audit unit shall:

- (1) Review and assess applicable innovations in procurement methods or processes in other governmental jurisdictions or as described in national or regional publications;
- (2) Review current or proposed statutes and rules to determine whether they promote fairness, efficiency, and accountability in the procurement process;

- (3) Review selected contracts awarded pursuant to section -304;
- (4) Conduct studies, research, and analyses, and make reports and recommendations with respect to existing and new methods of procurement and other matters within the jurisdiction of the policy office;
- (5) Establish and maintain a procurement library;
- (6) Report to the appropriate agency and the chief procurement officer stating the areas of noncompliance and recommendations for remedial action; and
- (7) Be present at legislative hearings and policy office meetings to present the findings of the unit.

§ **-109 Compliance audit unit; government officers and employees to cooperate.** The officers and employees of the State and of each county shall cooperate with this unit and furnish to them such information related to procurement activities as may be called for in connection with the research activities of this unit. The information shall be provided in a timely manner and shall be free of charge.

§ **-110 Education and training.** The department of personnel services, either alone or in cooperation with any governmental body, including the department of labor and industrial relations, or in cooperation with other states, the federal government, or other persons may:

- (1) Develop and maintain a comprehensive training and development program for procurement professionals of the State and the several counties;
- (2) Conduct or participate in procurement education and training for persons not employed by the State; and
- (3) Sponsor a purchasing certification program conducted by a voluntary organization of procurement professionals.

§ **-111 Applicability of chapter 103.** Any provisions of chapter 103 not inconsistent with this chapter shall apply to the procurement of all goods, services, and construction under this chapter.

PART II. PROCUREMENT ORGANIZATION

§ **-201 Creation and membership of the procurement policy office.**

(a) There is hereby created an autonomous state procurement policy office. The policy office shall be assigned, for administrative purposes only, to the department of accounting and general services.

(b) The policy office shall consist of a board of five members. Notwithstanding the limitations of section 78-5, the members of the board shall include:

- (1) The comptroller;
- (2) A county employee with significant high-level procurement experience; and
- (3) Three persons who shall not otherwise be full-time employees of, or contractors with, the State or any county; provided that at least one member shall be a certified professional in the field of procurement and at least one member shall have significant high-level, federal procurement experience.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy office. The initial and subsequent members of the policy office, other than the comptroller, shall be

appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy office members shall be subject to the requirements of section 26-34. No member of the policy office shall act concurrently as the chief procurement officer. The members of the policy office shall devote such time to their duties as may be necessary for the proper discharge thereof.

(c) The policy office shall be assisted by employees of the department of accounting and general services, which shall provide at least one full time support staff and funding necessary to support the policy office.

(d) Members of the policy office shall be reimbursed for any expenses, including travel expenses, reasonably incurred in the performance of their duties. During the first year of the existence of the policy office, members who are not otherwise employees of the State or a county shall be allowed compensation at a rate of \$100 per day for each day's actual attendance at meetings.

(e) The chairperson of the policy office shall be elected annually by a majority of its members from among all of its members; provided that the state comptroller shall not be eligible to serve as the chairperson. If the chairperson is not a county officer or employee, the chairperson shall be allowed an additional compensation of \$50 per day for each day of actual attendance at board meetings.

§ -202 **Authority and duties of the policy office.** Except as otherwise provided in this chapter, the policy office shall have the authority and responsibility to adopt rules, consistent with this chapter, governing the procurement, management, control, and disposal of any and all goods, services, and construction. All rules shall be adopted in accordance with chapter 91. The policy office shall consider and decide matters of policy within the scope of this chapter including those referred to it by a chief procurement officer. The policy office shall have the power to audit and monitor the implementation of its rules and the requirements of this chapter, but shall not exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto.

§ -203 **Chief procurement officers.** The chief procurement officer for each of the following state entities and the several counties shall be:

- (1) The judiciary—the administrative director of the courts;
- (2) The senate—the president of the senate;
- (3) The house of representatives—the speaker of the house of representatives;
- (4) The office of Hawaiian affairs—its board of trustees;
- (5) The several counties—the respective finance directors of the several counties;
- (6) The University of Hawaii—the president of the University of Hawaii;
- (7) The department of education—the superintendent of education; and
- (8) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the procurement office of the department of accounting and general services.

For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, department of education, University of Hawaii, and

the several counties, unless otherwise expressly provided, "State" shall mean "judiciary," "state senate," "state house of representatives," "office of Hawaiian affairs," "department of education," "University of Hawaii," and "county," respectively.

§ **-204 Administrator of the procurement office.** (a) There shall be a procurement office within the department of accounting and general services, which shall be headed by the administrator of the procurement office. The administrator shall be the chief procurement officer for the governmental bodies of the executive branch other than the University of Hawaii and the department of education, and those governmental bodies administratively attached thereto. The administrator shall be a full-time public official. The administrator shall serve a term of four years, and shall be paid the salary established for deputies or assistants to department heads under section 26-53 without diminution during the administrator's term of office unless by general law applying to all deputies or assistants to department heads.

(b) The administrator shall be appointed by the governor from a list of no less than three and no more than five names submitted by the policy office. The appointment of the administrator shall require the advice and consent of the senate. The administrator may only be removed from office by the governor, provided the governor shall give prior notification of such removal to the chair of the policy office, the president of the senate, and the speaker of the house of representatives.

(c) The administrator shall have:

- (1) A minimum of five years experience in public procurement within twelve years preceding the date of appointment; and
- (2) Demonstrated executive and organizational ability.

(d) The procurement office shall be part of the office of the comptroller but the administrator shall operate independently of the comptroller and shall have final authority over all procurement operations. The comptroller shall provide appropriate support to permit the administrator to satisfy all of the administrator's responsibilities as the chief procurement officer.

§ **-205 Authority and duties of the chief procurement officer.** (a) For their respective jurisdictions and unless otherwise specifically provided in this chapter, each chief procurement officer shall serve as the central procurement officer and:

- (1) Procure or supervise the procurement of all goods, services, and construction;
- (2) Exercise general supervision and control over all inventories of goods;
- (3) Sell, trade, or otherwise dispose of surplus goods; and
- (4) Establish and maintain programs for the inspection, testing, and acceptance of goods, services, and construction.

(b) Consistent with the provisions of this chapter and rules adopted by the policy office to implement its provisions, the chief procurement officers may adopt operational procedures to assist in the performance of these duties and responsibilities.

§ **-206 Additional duties of the administrator of the procurement office.** In addition to the duties referred to in section -205, the administrator shall:

- (1) Perform periodic review of the procurement practices of all governmental bodies;
- (2) Assist, advise, and guide governmental bodies in matters relating to procurement;
- (3) Develop and administer a statewide procurement orientation and training program;
- (4) Develop, distribute, and maintain a procurement manual for all state procurement officials; and
- (5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties.

§ **-207 Centralization of procurement authority.** Except as otherwise provided in sections -208, -209, and -210, all rights, powers, duties, and authority relating to the procurement of goods, services, and construction, and the management, control, warehousing, sale, and disposal of goods, services, and construction now vested in, or exercised by, the governmental bodies of the State and counties are hereby transferred to the respective chief procurement officers.

§ **-208 Delegation of authority by the chief procurement officer.** Subject to the rules of the policy office, each chief procurement officer may delegate any authority or duty conferred upon the chief procurement officer by this chapter to designees or to any department, agency or official within their respective jurisdictions.

§ **-209 Authority to contract for certain services.** (a) For the purpose of procuring professional services, any governmental body of this State may act as a purchasing agency and contract on its own behalf for such service, subject to this chapter and rules adopted by the policy office. The purchasing agency shall consult with the chief procurement officer or the officer's designee when procuring these services.

(b) No department of the State, other than the attorney general, shall make any expenditure of public funds for the employment or retention by contract or otherwise of any attorney for the purpose of representing the State or such department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply:

- (1) To the housing finance and development corporation or the public utilities commission;
- (2) To any court or judicial or legislative officer of the State;
- (3) To the legislative reference bureau;
- (4) To such compilation commission as may be constituted from time to time;
- (5) To the real estate commission in any action involving the real estate recovery fund, the contractors license board in any action involving the contractors recovery fund, and the trustees in any action involving the travel agency recovery fund;
- (6) To grand jury counsel;
- (7) To the office of Hawaiian affairs;
- (8) To the department of commerce and consumer affairs; provided that its attorney shall be responsible for the prosecution of consumer complaints;

- (9) To the employees retirement system;
- (10) To the Hawaiian home lands trust individual claims review panel; or
- (11) In the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines representation or counsel, or approves a department's expenditures; provided that the governor thereupon waives the provision of this section.

For the purpose of this section the term "department of the State" means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full-time basis, except an attorney employed as a grand jury counsel, the department of commerce and consumer affairs in prosecution of consumer complaints, or the Hawaiian home lands trust individual claims review panel, shall become a deputy attorney general.

§ **-210 Exemptions.** Unless otherwise provided by rules of the policy office, the following goods, services, and construction need not be procured by a chief procurement officer, but shall nevertheless be procured by an appropriate purchasing agency subject to the requirements of this chapter and the rules adopted by the policy office:

- (1) Works of art for museum and public display, which are generally sole source procurements;
- (2) Published books, maps, periodicals, and technical pamphlets, which are generally small purchases;
- (3) Meats and foodstuffs for the Kalaupapa settlement; and
- (4) Goods purchased by the State for commercial resale to the public, which procurements shall also be exempt from the competitive source selection methods contained in part III of this chapter.

§ **-211 Procurement rules.** (a) The procurement policy office shall adopt all rules necessary to carry out the purposes of this chapter and to implement its provisions in accordance with chapter 91. The policy office shall not delegate its power to adopt rules.

(b) No rule shall change any commitment, right, or obligation of the State or of a contractor under a contract in existence on the effective date of such rule.

§ **-212 Collection of data concerning public procurement.** The chief procurement officer and the heads of all purchasing agencies shall cooperate in the preparation of statistical data concerning the procurement, usage, and disposition of all goods, services, and construction, and employ such trained personnel as may be necessary to carry out this function. All using agencies shall furnish such reports as the chief procurement officer may require concerning usage, needs, and stocks on hand, and the chief procurement officer may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of goods, services, and construction.

§ **-213 Procurement advisory groups.** (a) The chief procurement officer may appoint advisory groups to assist in the development of specifications or procurement in specific areas, and any other matters within the authority of the chief procurement officer.

(b) Members of procurement advisory groups may be reimbursed for expenses incurred in the performance of their duties, subject to such expenditure limitations prescribed by the policy office and applicable law.

§ **-214 Duties of the attorney general.** The attorney general, or such officer as the attorney general may designate, shall serve as legal counsel and provide necessary legal services to the policy office and chief procurement officer.

PART III. SOURCE SELECTION AND CONTRACT FORMATION

§ **-301 Methods of source selection.** Unless otherwise authorized by law, all contracts shall be awarded by competitive sealed bidding pursuant to section -302, except as provided in:

- (1) Section -303 (Competitive sealed proposals);
- (2) Section -304 (Professional services procurement);
- (3) Section -305 (Small purchases);
- (4) Section -306 (Sole source procurement); and
- (5) Section -307 (Emergency procurements).

§ **-302 Competitive sealed bidding.** (a) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section -301. Awards of contracts by competitive sealed bidding may be made after single or multistep bidding. Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is based on the criteria set forth in the invitation for bids.

(b) An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. Construction bids which do not comply with requirement may be accepted if the chief procurement officer or rules of the policy office conclude that acceptance is in the best interest of the public.

(c) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The policy office shall adopt rules which specify:

- (1) The form that the notice is to take;
- (2) What constitutes a reasonable interim between publication and bid opening; and
- (3) How notice may be published, including publication in a newspaper of general circulation, notice by mail to all persons on any applicable bidders mailing list, publication by any public or private telecommunication information network, or any other method of publication it deems to be effective.

(d) Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid and other relevant information specified by rule, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter or by rules adopted by the policy office.

(f) 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 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.

(g) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of invitations for bids, awards, or contracts based on such bid mistakes, shall be permitted in accordance with rules adopted by the policy office. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the chief procurement officer or head of a purchasing agency.

(h) 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 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 responsible and responsive bidder, in order to bring the bid within the amount of available funds.

(i) When it is not practicable to initially prepare a purchase description to support an award based on price, an invitation for bids, which requests the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation, may be used. If a multi-step sealed bidding process is used, the notice and the invitation for bids shall describe each step to be used in soliciting, evaluating, and selecting unpriced offers.

§ -303 Competitive sealed proposals. (a) When, under rules adopted pursuant to this chapter, the chief procurement officer, the head of a purchasing agency, or a designee of either officer above the level of procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals may be utilized for the procurement of specified types of goods, services, or construction without necessity for the written determination otherwise required by this subsection if the policy office provides by rule that it is either not practicable or not advantageous to the State to procure the specified types of goods, services, or construction by competitive sealed bidding. The policy office shall adopt rules pertaining to the acquisition of such services through the use of competitive sealed proposals.

(b) Proposals shall be solicited through a request for proposals.

(c) Notice of the request for proposals shall be given in the same manner as provided in section -302(c).

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules adopted by the policy office and shall be open for public inspection after contract award.

(e) The request for proposals shall state the relative importance of price and other evaluation factors.

(f) As provided in the request for proposals, and under rules adopted by the policy office, discussions may be conducted with responsible offerors who

submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) 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. The contract file shall contain the basis on which the award is made.

§ **-304 Procurement of professional services.** (a) Except as authorized under sections -305, -306, and -307, professional services shall be procured in accordance with section -303, unless:

- (1) The purchasing agency secures the approval of the chief procurement officer to utilize the procedures set out in subsection (e) through (g) before proceeding with the procurement; or
- (2) The head of the purchasing agency determines in writing that subsections (e) through (g) must be used because all of the provisions of section -303 cannot be satisfied within the time available to complete the procurement because of the urgency of the need to procure such services.

The chief procurement officer shall have ten days after receiving the request of the purchasing agency under paragraph (1) to act upon the request; if a determination is not made within that period, the purchasing agency may proceed with the procurement. The chief procurement officer's determination shall be based upon criteria established by rules of the policy office.

(b) All requirements for professional services shall be publicly announced and contracts for such services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(c) At least once annually, the chief procurement officer shall give written public notice to invite persons engaged in providing professional services to submit current statements of qualifications and expressions of interest to the head of each purchasing agency requiring such services. Additional notices may be given if the response to the initial notice is inadequate or does not result in adequate representation of available sources. The chief procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements by filing a new statement prior to the date designated for submission.

(d) At least annually, the head of each purchasing agency shall form an initial review committee consisting of a minimum of three employees from the agency or from another governmental body, with sufficient education, training, and licenses or credentials for each type of professional service which may be required. The committee shall review and evaluate all submissions and other pertinent information, including references and reports, and prepare a list of qualified persons to provide such services.

(e) Contracts for professional services of \$10,000 or more shall be awarded only after a screening committee evaluates the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (d) along with any other pertinent information, including references and reports. The

screening committee shall be comprised of a minimum of three employees of the purchasing agency for the particular project with sufficient education, training, and licenses or credentials in the area of the services required. If the purchasing agency and using agency are different, the committee shall include at least one qualified employee from the using agency. The committee shall be designated by the head of the purchasing agency and, if appropriate, the head of the using agency. If qualified employees are not available from these agencies, the officers may designate employees of other governmental bodies. Unless fewer than three submissions have been received, the screening committee shall conduct discussions with at least three persons regarding the services which are required and the services they are able to provide. The screening committee shall evaluate each submission based on criteria established and published by the screening committee for the particular project. The committee shall provide the head of the purchasing agency with the names of the three persons who the committee concludes is the most qualified to provide the services required for the project, with a summary of each of their qualifications.

(f) The head of the purchasing agency shall evaluate the summary of qualifications for each of the three persons provided by the screening committee and may conduct additional discussions with any of them. The head of the purchasing agency shall then rank the three persons in order of preference. The procurement officer of the purchasing agency requiring the services shall negotiate a contract with the first ranked person, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If the procurement officer is unable to negotiate a satisfactory contract with the first ranked person, negotiations with that person shall be formally terminated. The procurement officer shall then undertake negotiations with the second person on the list. Failing accord with the second person, the procurement officer shall formally terminate negotiations. The procurement officer shall then undertake negotiations with the last person on the list. If the procurement officer is unable to negotiate a contract at a fair and reasonable price, the procurement officer may request that the screening committee submit the names of three additional persons for the head of the purchasing agency to rank, and resume negotiations in the same manner provided in this subsection.

(g) Contracts for professional services of less than \$10,000 may be negotiated by a procurement officer with any two persons who appear on the list of qualified persons established pursuant to subsection (d). Negotiations shall be conducted in the manner set forth in subsection (f) and the officer may determine the order in which negotiations are held.

(h) If professional services are procured pursuant to subsection (a)(2), within five working days after the vendor is selected, the head of the purchasing agency shall transmit a written report to the chief procurement officer detailing the bases for the determination that sufficient time was not available to procure the services in accordance with all of the requirements of section -303. If the chief procurement officer determines in accordance with criteria established by the rules of the policy office that sufficient time was available to procure the services in accordance with all of the requirements of section -303, the contract shall be terminated in accordance with -707.

- § -305 Small purchases. Any procurement of
- (1) Less than \$10,000 for supplies or services; or
 - (2) Less than \$25,000 for construction;

may be made in accordance with procedures set forth in rules adopted by the policy office which are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.

§ **-306 Sole source procurement.** (a) A contract may be awarded for goods, services, or construction without competition when, under rules adopted by the policy office, the chief procurement officer, the head of a purchasing agency, or a designee of either determines in writing that there is only one source for the required good, service, or construction. A contract may be awarded under this section only after the chief procurement officer has approved the sole source procurement in writing.

(b) The policy office shall adopt rules requiring the chief procurement officer and the purchasing agency to post, in an area accessible to the public, a notice of intent to issue a sole source contract. The rules shall provide for the posting of the notice sufficiently in advance of the issuance of the contract to allow a reasonable opportunity for objections to be filed, and shall specify the contents of the notice, including but not limited to the name of the party to be awarded the contract, the date on which the contract is to be issued, a statement indicating that any person may file written objections to the issuance of the contract, the name and address of the person or agency with whom the objections are to be filed, and the date by which the objections are to be filed. The rules shall also provide procedures for the disposition of objections.

(c) A purchasing agency shall submit a written request limited to evidence supporting the request for a sole source determination. The chief procurement officer may require the submission of cost or pricing data in connection with an award proposed under this section.

(d) The chief procurement officer may approve the cost or pricing data, or may negotiate with the sole source vendor for price, terms, and conditions that are in the State's best interest.

§ **-307 Emergency procurements.** (a) The head of a purchasing agency may obtain a good, service, or construction essential to meet an emergency by means other than specified in this chapter when the following conditions exist:

- (1) A situation of an unusual or compelling urgency creates a threat to life, public health, welfare, or safety by reason of major natural disaster, epidemic, riot, fire, or such other reason as may be determined by the head of that purchasing agency;
- (2) The emergency condition generates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods and the government would be seriously injured if the purchasing agency is not permitted to employ the means it proposes to use to obtain the goods, services, or construction; and
- (3) Without the needed good, service, or construction, the continued functioning of government, the preservation or protection of irreplaceable property, or the health and safety of any person will be seriously threatened.

(b) The emergency procurement shall be made with such competition as is practicable under the circumstances and, where practicable, approval from the chief procurement officer shall be obtained prior to the procurement. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

§ **-308 Cancellation of invitations for bids or requests for proposals.** An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the governmental body which issued the invitation, request, or other solicitation, in accordance with rules adopted by the policy council. The reasons therefor shall be made part of the contract file.

§ **-309 Contract not binding unless funds available.** (a) No contract awarded pursuant to section -302, -303, or -306, shall be binding or of any force and effect unless the comptroller, the director of finance of a county, or the chief financial officer of the University of Hawaii or the department of education, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that this section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded.

(b) In any contract involving not only state or county funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or county funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of federal funds to be received from the federal government. This subsection shall be liberally construed so as not to hinder or impede the State in contracting for any project involving financial aid from the federal government.

§ **-310 Responsibility of bidders and offerors.** (a) Unless the policy office, by rules, specifies otherwise, before submitting a bid, a prospective bidder, not less than ten calendar days prior to the day designated for opening bids, shall give written notice of the intention to bid to the procurement officer responsible for that particular procurement. The procurement officer shall then determine whether the prospective bidder has the financial ability to deliver the goods or perform the work required, and whether the bidder has experience and competence in delivering similar goods or performing similar work. For this purpose, the officer, in the officer's discretion, may require any prospective bidder to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy office, setting forth a complete statement of the experience of the prospective bidder and the bidder's organization in delivering similar goods or performing similar work and a statement of the equipment proposed to be used, together with adequate proof of availability of the

equipment. Whenever it appears to the officer, from answers to the questionnaire or otherwise, that the prospective bidder is not fully qualified and able to perform the intended work, the officer, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, shall refuse to receive or consider any bid offered by the prospective bidder. All information contained in the answers to the questionnaire shall be and remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not lawfully entitled thereto shall be fined not more than \$250. Questionnaires so submitted shall be returned to the bidders after having served their purpose.

(b) A written determination of nonresponsibility of a bidder or offeror based upon the information collected and the hearing conducted by the procurement officer shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy office. 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. The decision of the head of the purchasing agency shall be final unless the bidder or offeror applies for administrative review pursuant to section -709.

(c) Information furnished by a bidder or offeror pursuant to this section shall not be disclosed to any person not lawfully entitled thereto without prior written consent by the bidder or offeror.

§ -311 **Prequalification of suppliers.** (a) The policy office may adopt rules to prequalify prospective suppliers for particular types of goods, services, and construction or to limit a solicitation to prequalified vendors to meet statutory or licensing requirements applying to the solicitation or when the time necessary to verify vendor qualifications would jeopardize timely award of contracts.

(b) A prospective supplier may be prequalified for a particular type of goods or services. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, prequalified suppliers.

§ -312 **Cost or pricing data.** (a) A contractor, except as provided in subsection (c), shall submit cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of:

- (1) The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority, where the total contract amount is expected to exceed an amount established by rules adopted by the policy office; or
- (2) The pricing of any change order or contract modification that is expected to exceed an amount established by rules adopted by the policy office.

(b) Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the State, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that the price was increased because the contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

(c) The requirements of this section shall not apply to contracts:

- (1) Where the contract price is based on adequate price competition;

- (2) Where the contract price is based on established catalog prices or market prices;
- (3) Where the contract prices are set by law or rule; or
- (4) Where it is determined in writing in accordance with rules adopted by the policy office that the requirements of this section may be waived, and the reasons for the waiver are stated in writing.

§ **-313 Types of contracts.** (a) Subject to the limitations of this section, any type of contract that will promote the State's best interests may be used.

(b) Cost-reimbursement and cost-plus-a-percentage-of-cost contracts may be used only when the chief procurement officer determines in writing that such a contract is likely to be less costly than any other type of contract or that it is impracticable to obtain the goods, services, or construction required except by means of such a contract. Cost-reimbursement and cost-plus-a-percentage-of-cost contracts shall not be used if their use would jeopardize the receipt of federal assistance moneys or reduce the amount of such assistance under any applicable federal statute or regulation.

(c) In addition to the requirements of subsections (a) and (b), a cost-plus-a-percentage-of-cost contract may not be awarded unless:

- (1) Notice is given to the head of the compliance audit unit, president of the senate, speaker of the house of representatives, and the chairpersons of the senate ways and means and house finance committees; and
 - (2) Notice is conspicuously posted in an area accessible to the public in the office of the chief procurement officer and available for public inspection during normal business hours.
- (d) The policy office shall adopt rules to implement this section.

§ **-314 Approval of accounting system.** Except with respect to firm fixed-price contracts, no contract shall be used unless it has been determined in writing by the chief procurement officer, the head of a purchasing agency, or a designee of either officer that:

- (1) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

§ **-315 Multi-term contracts.** (a) Unless otherwise provided by law, a contract for goods or services may be entered into for any period of time deemed to be in the best interests of the governmental body, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(b) Prior to the utilization of a multi-term contract, it shall be determined in writing:

- (1) That estimated requirements cover the period of the contract and are reasonably firm and continuing;
- (2) That such a contract will serve the best interests of the governmental body by encouraging effective competition or otherwise promoting economies in procurement; and

- (3) That sufficient funds to pay for the initial term of the contract are available and the funds necessary for the remaining terms of the contract are likely to be available from sources which are identified in writing.

(c) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of goods or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

§ **-316 Right to inspect plant.** The State, at reasonable times, may inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of a contract awarded or to be awarded by the State.

§ **-317 Right to audit records.** (a) The purchasing agency, at reasonable times and places, may audit the books and records of any person who has submitted cost or pricing data pursuant to section -312 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless another period is otherwise authorized in writing.

(b) The purchasing agency shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. The books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless another period is otherwise authorized in writing.

§ **-318 Finality of determinations.** The determinations required by sections -302(g), -303(a), -303(g), -306, -307, -310, -312(c), -313, and -314 shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§ **-319 Reporting of anticompetitive practices.** When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

§ **-320 Retention of procurement records.** All procurement records shall be retained and disposed of in accordance with chapter 94 and records retention guidelines and schedules approved by the comptroller.

§ **-321 Record of procurement actions.** (a) The chief procurement officer shall maintain a record of all contracts made under sections -306 and -307 for a minimum of five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the goods, services, or construction procured under each contract.

(b) A copy of the record shall be submitted to the legislature on an annual basis. The record shall be available for public inspection.

§ **-322 Multiple awards.** The policy office may adopt rules authorizing the use and prescribing the manner in which goods, services, or construction may be procured through multiple awards.

§ **-323 Bid security.** (a) Unless the policy office determines otherwise by rules, bid security shall only be required for construction contracts to be awarded pursuant to sections -302 and -303 and when the price of the contract is estimated by the procurement officer to exceed \$100,000 or, if the contract is for goods or services, the purchasing agency secures the approval of the chief procurement officer. Bid security shall be a bond provided by a surety company authorized to do business in the State, or the equivalent in cash, or otherwise supplied in a form specified in rules.

(b) Bid security shall be in an amount equal to at least five per cent of the amount of the bid, provided that when the amount bid exceeds \$50,000, the bid security shall be in a sum not less than \$2,500, plus two per cent of the amount in excess of \$50,000. Notwithstanding the foregoing, if the contract is for construction, then the amount of the bid security shall be in a sum not less than \$3,500, plus two per cent of the amount in excess of \$100,000.

(c) Unless, pursuant to rules, it is determined that a failure to provide bid security is nonsubstantial, all bids required to be accompanied by bid security shall be rejected when not accompanied by the required bid security.

(d) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in section -302(g). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

§ **-324 Contract performance and payment bonds.** (a) Unless the policy office determines otherwise by rules, the following bonds or security shall be delivered to the purchasing agency and shall become binding on the parties upon the execution of the contract if the contract which is awarded exceeds \$25,000 and is for construction, or the purchasing agency secures the approval of the chief procurement officer:

- (1) A performance bond in a form prescribed by the rules of the policy office, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the purchasing agency, in an amount equal to one hundred per cent of the price specified in the contract;
- (2) A payment bond in a form prescribed by the rules of the policy office, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the purchasing agency, for the protection of all persons supplying labor and material to the contractor for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred per cent of the price specified in the contract; or
- (3) A performance and payment bond which satisfies all of the requirements of paragraphs (1) and (2).

(b) The policy office may adopt rules that authorize the head of a purchasing agency to reduce the amount of performance and payment bonds.

(c) Nothing in this section shall be construed to limit the authority of the

chief procurement officer to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (a).

(d) Every person who has furnished labor or material to the contractor for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefor after two months from the completion and final settlement of any contract, may institute an action against the contractor and its sureties, and have their rights and claims adjudicated in the action, and judgment rendered thereon; subject to the State's priority on its performance bond. If the full amount of the liability of the sureties on the bond is insufficient to pay the full amount of the claims, then, after paying the full amount due the State, the remainder shall be distributed pro rata among the claimants.

(e) Every suit instituted upon a payment bond shall be brought in the circuit court of the circuit in which the contract was to be performed, but no such suit shall be commenced after the expiration of one year after the completion and final settlement of the contract. The obligee named in the bond need not be joined as a party in any such suit.

§ **-325 Bond forms and copies.** (a) The policy office shall adopt rules specifying the form of the bonds required by this chapter.

(b) Any person may request and obtain from the State a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

§ **-326 Fiscal responsibility.** Every contract modification, change order, or contract price adjustment under a contract shall be subject to prior written certification by the appropriate fiscal officer for funding the project or the contract, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the fiscal officer discloses a resulting increase in the total project budget or the total contract budget, the procurement officer shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with this section.

PART IV. SPECIFICATIONS

§ **-401 Duties of the policy office.** The policy office shall adopt rules governing the preparation, maintenance, and content of specifications for goods, services, and construction required by the State.

§ **-402 Duties of the chief procurement officer.** The chief procurement officer shall prepare, issue, revise, maintain, and monitor the use of specifications for goods, services, and construction required by the State.

§ -403 Exempted items. Specifications for goods, services, or construction items procured under section -209, or those exempted pursuant to section -210, may be prepared by a purchasing agency in accordance with this chapter and rules adopted hereunder.

§ -404 Relationship with using agencies. The chief procurement officer shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

§ -405 Maximum practicable competition. (a) All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the State's needs, and shall not be unduly restrictive.

(b) Specifications, to the extent practicable, shall emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State.

(c) The State shall procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

(d) Outside contractors may be utilized to prepare specifications and work statements in the development of a solicitation. Contractors paid for those services shall be precluded from bidding on or receiving a contract when they participated in any way in the development of the solicitation package or any resulting contract.

§ -406 Specifications prepared by architects and engineers. The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and drafting professionals for public contracts.

PART V. MODIFICATION AND TERMINATION OF CONTRACTS

§ -501 Contract clauses and their administration. (a) The policy office shall adopt rules requiring the inclusion of contract clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

- (1) The unilateral right of the governmental body to order in writing:
 - (A) Changes in the work within the scope of the contract; and
 - (B) Changes in the time of performance of the contract that do not alter the scope of the contract work;
- (2) Variations occurring between estimated quantities of work in a contract and actual quantities;
- (3) Suspension of work ordered by the governmental body; and
- (4) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses established by these rules need not be included in a contract:
 - (A) When the contract is negotiated;
 - (B) When the contractor provides the site or design; or
 - (C) When the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) Adjustments in price permitted by rules adopted under subsection (a) shall be computed in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices specified in the contract or subsequently agreed upon;
- (3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (4) In such other manner as the contracting parties may mutually agree; or
- (5) In the absence of agreement by the parties, by a unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the rules adopted under section -601 and subject to the provisions of part VII.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section -312.

(c) The policy office shall adopt rules requiring the inclusion in contracts of clauses providing for prompt payment by contractors to subcontractors. The rules shall provide that:

- (1) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- (2) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

(d) The policy office shall adopt rules requiring the inclusion in contracts of clauses providing for appropriate remedies and covering the following subjects:

- (1) Liquidated damages as appropriate;
- (2) Specified excuses for delay or nonperformance;
- (3) Termination of the contract for default; and
- (4) Termination of the contract in whole or in part for the convenience of the governmental body.

(e) The chief procurement officer or the head of a purchasing agency may vary the clauses which may be required to be included in contracts under the rules adopted under subsections (a), (c), and (d); provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals when the contract is awarded under section -302 or -303.

PART VI. COST PRINCIPLES

§ -601 **Cost principles rules required.** The policy office shall adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

PART VII. LEGAL AND CONTRACTUAL REMEDIES

§ -701 Authority to resolve protested solicitations and awards. (a)

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or the head of a purchasing agency. The protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto.

(b) The chief procurement officer, the head of a purchasing agency, or a designee of either officer, prior to the commencement of an action in court concerning the controversy, may settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with rules adopted by the policy office.

(c) If the protest is not resolved by mutual agreement, the chief procurement officer, the head of a purchasing agency, or designee of either officer shall promptly issue a decision in writing. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protestor of the protestor's right to review as provided in this part.

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

(e) A decision under subsection (c) shall be final and conclusive, unless fraudulent, or any person adversely affected by the decision commences an administrative proceeding under section -709.

(f) In the event of a timely protest under subsection (a), no further action shall be taken on the solicitation or the award of the contract until the chief procurement officer, after consultation with the head of the using agency, or the head of the purchasing agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the State.

(g) In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

§ -702 Authority to debar or suspend. (a)

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer or the head of a purchasing agency, after consultation with the using agency and the department of the attorney general, may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The same officer, after consultation with the using agency and the department of the attorney general, may suspend a person from consideration for award of all public contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months. The authority to debar or suspend shall be exercised in accordance with the procedures prescribed by rules adopted by the policy office.

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

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) Conviction under state or federal statutes relating to embezzlement,

theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;

- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the chief procurement officer or the head of a purchasing agency to be so serious as to justify debarment action:
 - (A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (5) Any other cause the chief procurement officer or the head of a purchasing agency determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy office; and
- (6) Violation of the ethical standards set forth in chapter 84 and its implementing rules, or the charters and ordinances of the several counties and their implementing rules.

(c) The chief procurement officer or the head of a purchasing agency shall issue a written decision to debar or suspend. The decision shall:

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

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

(e) The chief procurement officer shall distribute a list to all governmental bodies containing the names of persons or firms debarred or suspended from consideration for award of all public contracts by the State.

(f) A decision under subsection (c) shall be final and conclusive, unless fraudulent, or the debarred or suspended person commences an administrative proceeding under section -709.

§ -703 Authority to resolve contract and breach of contract controversies. (a) This section applies to controversies between a governmental body and a contractor which arise under, or by virtue of, a contract between them, including, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(b) The chief procurement officer, the head of a purchasing agency, or a designee of either officer is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection (a). This authority shall be exercised in accordance with rules adopted by the policy office.

(c) If such a controversy is not resolved by mutual agreement, the chief procurement officer, the head of a purchasing agency, or the designee of either officer shall promptly issue a decision in writing. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the contractor of its right to initiate a judicial action as provided in this part.
- (d) A copy of the decision under subsection (c) shall be mailed or otherwise furnished immediately to the contractor.
- (e) The decision under subsection (c) shall be final and conclusive unless fraudulent, or the contractor commences a judicial action in accordance with section -711.
- (f) If the chief procurement officer, the head of the purchasing agency, or the designee of either officer does not issue the written decision required under subsection (c) within ninety days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

§ **-704 Exclusivity of remedies.** The procedures and remedies provided for in this part, and the rules adopted by the policy office, shall be the exclusive means available for persons aggrieved in connection with the solicitation or award of a contract, a suspension or debarment proceeding, or in connection with a contract controversy, to resolve their claims or differences. The contested case proceedings set out in chapter 91 shall not apply to protested solicitations and awards, debarments or suspensions, or the resolution of contract controversies.

§ **-705 Solicitations or awards in violation of law.** The provisions of section -706 and section -707 apply where it is determined administratively under sections -701, -703, and -709, or upon judicial review or action under sections -710 and -711, that a solicitation or award of a contract is in violation of the law.

§ **-706 Remedies prior to an award.** If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (1) Canceled; or
- (2) Revised to comply with the law.

§ **-707 Remedies after an award.** If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (A) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the State; or
 - (B) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (A) The contract may be declared null and void; or
 - (B) The contract may be ratified and affirmed if the action is in the best interests of the State, without prejudice to the State's rights to such damages as may be appropriate.

§ **-708 Interest.** Interest on amounts ultimately determined to be due to a contractor or the State shall be payable at the statutory rate applicable to

judgments against the State under chapter 662 from the date the claim arose through the date of decision or judgment, whichever is later.

§ **-709 Administrative proceedings for review.** (a) The several hearings officers appointed by the director of the department of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review and determine de novo any request from any bidder, offeror, contractor or governmental body aggrieved by a determination of the chief procurement officer, head of a purchasing agency, or a designee of either officer under sections -310, -701, or -702.

(b) Hearings to review and determine any request made pursuant to subsection (a) shall commence within twenty-one calendar days of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a written decision which shall be final and conclusive unless a person or governmental body adversely affected by the decision commences an appeal in the supreme court under section -710.

(c) The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. All parties to the proceeding shall be afforded an opportunity to present oral or documentary evidence, conduct cross-examination as may be required, and argument on all issues involved. The rules of evidence shall be strictly adhered to.

(d) The hearings officers shall ensure that a record of each proceeding which includes the following is compiled:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings of fact;
- (5) A recording of the proceeding which may be transcribed if judicial review of the written decision is sought under section -710.

(e) No action shall be taken on a solicitation or an award of a contract while a proceeding is pending, if the procurement was previously stayed under section -701(f).

(f) Hearings officers shall decide whether the determinations of the chief procurement officer or the head of the purchasing agency, or their respective designees were in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation or contract.

(g) The policy office shall adopt such other rules as may be necessary to ensure that the proceedings conducted pursuant to this section afford all parties an opportunity to be heard.

§ **-710 Judicial review.** (a) Any person or governmental body aggrieved by a final decision of a hearings officer under section -709 may apply for judicial review of that decision. The proceedings for review shall be instituted in the supreme court.

(b) An application for judicial review shall not operate as a stay of the decision rendered under section -709.

(c) Within twenty calendar days of the filing of an application for judicial review in the supreme court, the hearing officer shall transmit the record of the administrative proceedings to the supreme court.

(d) The review shall be scheduled as expeditiously as practicable. It shall be conducted on the record of the administrative proceedings, and briefs and oral argument. No new evidence shall be introduced in the appellate court, except that the court may, if evidence is offered which is clearly newly discovered evidence and material to the just decision of the appeal, admit the same.

(e) Upon review of the record the court may affirm the decision of the hearings officer issued pursuant to section -709 or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if substantial rights may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the chief procurement officer or head of the purchasing agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ -711 **Judicial action.** (a) A person aggrieved by a decision issued pursuant to section -703 by a state chief procurement officer or head of a purchasing agency may initiate an action under section 661-1.

(b) A person aggrieved by a decision issued pursuant to section -703 by a county chief procurement officer or head of a purchasing agency may initiate an action under, or by virtue of, the contract in controversy in the circuit court.

(c) A governmental body aggrieved by a decision issued pursuant to section -703 by a state or county chief procurement officer or head of a purchasing agency may initiate an action under, or by virtue of, the contract in controversy in the circuit court.

(d) To the extent the remedies provided in this part, including provisions for interest, differ from the remedies available against the State under chapter 661, the remedies shall be as provided in this part. Only the attorney general may settle and resolve a matter filed in the courts against the State pursuant to this section.

§ -712 **Time limitations on actions.** (a) Requests for administrative review under section -709 shall be made within seven calendar days of the issuance of a written determination under sections -310, -701, or -702.

(b) Requests for judicial review under section -710 shall be filed in the supreme court within ten calendar days after the issuance of a written decision by the hearings officer under section -709.

(c) Complaints to initiate judicial actions under section -711 shall be filed in the circuit court within six months of the issuance of a written determination under section -703.

PART VIII. INTERGOVERNMENTAL RELATIONS

§ -801 **Definitions.** As used in this part, unless the context requires otherwise: (added definitions to definitions section):

“Cooperative purchasing” means procurement conducted by, or on behalf

of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.

“External procurement activity” means any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit. An agency of the United States is an external procurement activity.

“Local public procurement unit” means any county of the State or public agency of any county, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction.

“Public procurement unit” means either a local public procurement unit or a state public procurement unit.

“State public procurement unit” means the office of the chief procurement officer and any other purchasing agency of this State.

§ **-802 Cooperative purchasing authorized.** A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction with one or more public procurement units or external procurement activities pursuant to an agreement entered into between the participants. The cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

§ **-803 Sale, acquisition, or use of supplies by a public procurement unit.** Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of part III and the supply management provisions of chapter 106.

§ **-804 Cooperative use of supplies or services.** A public procurement unit may enter into an agreement, independent of the requirements of part III and the supply management provisions of this chapter and the supply management provisions of chapter 106, with any other public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

§ **-805 Joint use of facilities.** Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

§ **-806 Supply of personnel, information, and technical services.**
(a) Any public procurement unit is authorized, in its discretion, upon written request from another public procurement unit or external procurement activity, to provide personnel to the requesting public procurement unit or external procurement activity. The public procurement unit or external procurement activity making the request shall pay the public procurement unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

(b) The informational, technical, and other services of any public procurement unit may be made available to any other public procurement unit or external procurement activity provided that the requirements of the public procurement

unit tendering the services shall have precedence over the requesting public procurement unit or external procurement activity. The requesting public procurement unit or external procurement activity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

(c) Upon request, the chief procurement officer may make available to public procurement units or external procurement activities, any of the following services, among others:

- (1) Standard forms;
- (2) Printed manuals;
- (3) Product specifications and standards;
- (4) Quality assurance testing services and methods;
- (5) Qualified products lists;
- (6) Source information;
- (7) Common use commodities listings;
- (8) Supplier prequalification information;
- (9) Supplier performance ratings;
- (10) Debarred and suspended bidders lists;
- (11) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
- (12) Contracts or published summaries of contracts, including price and time of delivery information.

(d) The State, through the chief procurement officer, may provide the following technical services, among others:

- (1) Development of product specifications;
- (2) Development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
- (3) Use of product testing and inspection facilities; and
- (4) Use of personnel training programs.

(e) The chief procurement officer may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (c) and (d).

§ **-807 Use of payments received by a supplying public procurement unit.** All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit as authorized by law.

§ **-808 Public procurement units in compliance with requirements of this chapter.** Where the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements of this chapter, any public procurement unit participating in the purchase shall be considered to have complied with this chapter. Public procurement units shall not enter into a cooperative purchasing agreement for the purpose of circumventing this chapter.

§ **-809 Review of procurement requirements.** To the extent possible, the chief procurement officer may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public procurement units. The chief procurement officer may also collect this information from local public procurement units. The chief procurement officer may make available all such information to any public procurement unit upon request.

§ **-810 Contract controversies.** Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with part VII.

PART IX. ASSISTANCE TO SMALL BUSINESSES

§ **-901 Definition.** As used in this part, unless the context clearly requires otherwise:

“Geographic bidding” includes the use of a competitive solicitation which provides for one or more contracts to be awarded on a regional or geographic basis with the State.

“Small business” means a United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation. The policy office shall adopt rules establishing a more detailed criteria for defining small business, including the number of employees and the dollar volume of business.

§ **-902 Small business assistance.** The policy office shall adopt rules to assist small businesses in learning how to do business with the State.

§ **-903 Duties of the chief procurement officer.** (a) The chief procurement officer may coordinate the implementation of this part with any similar programs offered by the department of business, economic development, and tourism or any other governmental body.

(b) The chief procurement officer may provide staff to provide service to designated state agencies to assist small businesses in learning how to do business with the State.

(c) In carrying out this part, the chief procurement officer may:

- (1) Give special publicity to procurement procedures and issue special publications designed to assist small businesses in learning how to do business with the State;
- (2) Compile, maintain, and make available source lists of small businesses for the purpose of encouraging procurement from small business;
- (3) Include small businesses on solicitation mailing lists;
- (4) Develop and conduct training programs to assist small businesses;
- (5) Reduce the level or change the types of bonding normally required or accept alternative forms of security;
- (6) Make special provisions for progress payments; and
- (7) Establish the goal that twenty per cent of the State’s annual purchasing expenditure be awarded to small business.

§ **-904 Geographic bidding.** The chief procurement officer may utilize geographic bidding in providing goods, services, and construction to best meet the needs of the State.

§ **-905 Reciprocal preference.** (a) To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the preference which would be applied by the state of the nonresident bidder exceeds any preference applied by this State.

In determining whether a bidder qualifies as a resident bidder, the definition which would be utilized by the other state in applying such a preference shall be applied.

(b) The policy office may adopt rules to implement this section.

(c) This section shall not apply to any transaction if the provisions of the section conflict with any federal laws.”

SECTION 3. Section 102-6, Hawaii Revised Statutes, is amended to read as follows:

“§102-6 Deposits of legal tender, etc., to accompany bid. (a) All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier’s check, treasurer’s check, teller’s check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum not less than five per cent of the amount bid, payable at sight or unconditionally assigned to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the deposit shall be in a sum not less than \$2,500 plus two per cent of the amount in excess of \$50,000.

[A bid deposit for a bid requiring a deposit may be in the form of a surety bond conforming to the requirements of section 103-31.] If the bid deposit is in the form of a surety bond, it shall be issued in accordance with subsection (b).

(b) A bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal and by any corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State to act as surety, and doing business in the State under the laws of the United States or of the State, if a foreign corporation, and under the laws of the State, if a Hawaii corporation, as surety, in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further time as the officer may allow, if the bidder is awarded the contract.”

SECTION 4. Section 103-9, Hawaii Revised Statutes, is amended to read as follows:

“§103-9 False certificates or approval; penalty. Any public officer or employee who falsely certifies or approves for payment any bill or voucher, or any claim against the State or any county; or who causes or authorizes the purchase of any materials or supplies or the performance of any service or labor on behalf or for the benefit of the State or any county, in the absence of any appropriations, or in excess of any appropriations made for such purposes, with the intent that the materials or supplies so purchased or the service or labor so performed shall be paid for by the State or county[, and any person who violates this chapter] shall be fined not more than \$500, or imprisoned not more than one year, or both.”

SECTION 5. Section 103-21, Hawaii Revised Statutes, is amended to read as follows:

“§103-21 Officer defined. The term [“officer”] “procurement officer” as used in [sections 103-22 to 103-38,] chapter _____ with respect to contracts entered into by a county or a board, bureau, or commission thereof authorized to contract in its own behalf, means the council of the county or the governing body of such

board, bureau, or commission as constituted by law, or such officer as is authorized by the county council or the board, bureau, or commission to act as its contracting officer.”

SECTION 6. Section 103-22.1, Hawaii Revised Statutes, is amended to read as follows:

“**§103-22.1 Services of the handicapped.** When a governmental agency contracts for or purchases services, five per cent preference shall be given to services to be performed by nonprofit corporations or public agencies operating sheltered workshops servicing the handicapped in conformance with criteria established by the department of labor and industrial relations pursuant to chapter 91; provided that service contracts awarded under this section shall be exempt from the wages provision of section 103-55. The [state comptroller] policy office shall adopt rules under chapter 91 to establish the preference for the services to be performed by nonprofit corporations or public agencies operating sheltered workshops consistent with this section.”

SECTION 7. Section 103-24.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§103-24.5] Procurement preference for recycled products.** In order to encourage the use of recycled products, contracts shall be awarded [to the lowest bidders.] in accordance with chapter _____, with preference given to the products containing recycled raw material. [The comptroller shall no later than January 1, 1992,] The policy office may establish rules in accordance with chapter 91 governing preference for recycled products. The rules shall establish percentages of preference and the method of determining the content of recycled raw material to qualify various products for preference.”

SECTION 8. Section 103-24.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The [department] policy office shall adopt rules pursuant to chapter 91 appropriate¹ to carry out the purposes of this section.”

SECTION 9. Section 103-40, Hawaii Revised Statutes, is amended to read as follows:

“**§103-40 Federal-aid highway contracts.** Anything in section [103-39] -309 to the contrary notwithstanding, any federal-aid highway contract shall be binding and of force if the director of finance certifies that the director anticipates the accrual of an amount in the highway fund sufficient to pay the State’s share of the contract before the performance contracted for is completed.”

SECTION 10. Section 103-42, Hawaii Revised Statutes, is amended to read as follows:

“**§103-42 Hawaii products list, bidding and [advertisements.] public notice.** The [state comptroller] policy office shall make rules [and regulations] for the establishment and administration of a Hawaii products list, including the various classifications of Hawaii products; for necessary procedures for qualifying and registering products for such list; for the annual revision of the list; and for

such other purposes as may be necessary to carry out the intent of the preferences provided for in section 103-43.

The [comptroller] chief procurement officer shall distribute copies of the list to the purchasing departments of the various governmental agencies.

The [comptroller] chief procurement officer shall have the authority to examine and review the financial statements and such other reports as may be necessary, of any person, who desires to have the person's products on the Hawaii products list, to determine whether the products meet the qualifications. All persons whose products are on the Hawaii products list shall be responsible for informing the [comptroller] chief procurement officer of any change in the classifications of their products which have been originally registered with the Hawaii products list within two months of the change. In any event, such persons shall file annually with the [comptroller] chief procurement officer such documents or information as may be required in determining any change in the classification of a Hawaii product under the rules [and regulations] to be established by the [comptroller,] policy office, within two months from the closing of their books, whether on a fiscal or calendar year.

[Advertisement for bids] Public notice of invitations for bids and requests for proposals by a governmental agency shall contain, if applicable, a notice referring to the preferences for Hawaii products and to section 103-43, and shall also contain a notice referring to the place where the Hawaii products list may be examined."

SECTION 11. Section 103-43, Hawaii Revised Statutes, is amended to read as follows:

"§103-43 Mandatory purchase of Hawaii products. In any expenditure of public funds, a governmental agency shall review purchase and design specifications of public works contracts including repair and maintenance requirements for products and purchase any required product from the Hawaii products list established under section 103-42 where such products are available, provided the products meet the minimum specifications and the selling price f.o.b. jobsite; unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; unloaded including applicable general excise tax and use tax of a similar non-Hawaii product by more than three per cent, where Class I Hawaii products are involved, or five per cent where Class II Hawaii products are involved, or ten per cent where Class III Hawaii products are involved.

Where a package bid or purchase contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a non-Hawaii product item shall be increased by adding thereto three per cent, five per cent, or ten per cent where similar Class I, Class II, or Class III Hawaii product items have been bid or offered by another party pursuant to the preferences stated above. The lowest total bid, taking into consideration the above preferences, shall be awarded the contract but the contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of such preferences.

Notwithstanding the provisions of the preceding paragraphs, an additional five per cent preference shall be applicable to Hawaii products manufactured by nonprofit corporations and public agencies operating sheltered workshops as certified by the department of labor and industrial relations for physically or mentally handicapped persons. The [state comptroller] policy officer shall adopt

rules under chapter 91 to require a governmental agency to give an additional five per cent preference to the purchase of products manufactured by nonprofit corporations or public agencies operating sheltered workshops consistent with this section.”

SECTION 12. Section 103-48, Hawaii Revised Statutes, is amended to read as follows:

“**§103-48 Penalty.** Any officer of the State or of any municipality, county, or other political subdivision thereof, or any person acting under or for such officer, or any other person who violates [any provisions of sections 103-22,] section 103-22.1, 103-23, 103-29, and 103-33] shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Any officer or employee of any governmental agency who violates any provisions of sections 103-41 through 103-47 shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Any person, or any officer or employee of any person, who violates any provisions of sections 103-41 through 103-47 shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and any person who is awarded a contract or given an order for purchase as a result of misrepresentation in the person’s bid or makes a claim in the person’s bid that the person will purchase Hawaii products, but fails to do so shall, in addition, be fined the difference between the price of the products actually used or supplied and the price the person would have paid for Hawaii products and shall not be awarded any contract or be given any order for purchase or be eligible for bidding until one year after the date when such person pays the fines levied under this section.”

SECTION 13. Section 103-49, Hawaii Revised Statutes, is amended to read as follows:

“**§103-49 Value engineering clauses; rules [and regulations].** The State and each of the respective counties shall insert clauses providing for value engineering incentives in all public works contracts for amounts in excess of \$100,000. The clauses shall provide:

- (1) That cost reduction proposals submitted by contractors:
 - (A) Must require, in order to be applied to the contract, a change order thereto; and
 - (B) Must result in savings to the State or county, as the case may be, by providing less costly items than those specified in the contract without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features.
- (2) That accepted cost reduction proposals shall result in an equitable adjustment of the contract price so that the contractor will share a portion of the realized cost reduction.

The [comptroller of the State or the treasurer or director of finance of each of the counties, as the case may be,] policy office shall [promulgate] adopt, pursuant to chapter 91, such rules [and regulations] as may be necessary and proper to implement this section, provide adequate incentives to contractors, realize savings for the State or counties, and to otherwise carry out the purposes of this section.”

SECTION 14. Section 104-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics for wages or overtime compensation due under this chapter, and the contractor has knowingly failed to pay such wages or overtime compensation, the contractor and the contractor’s sureties shall be liable to the laborers and mechanics in the amount of the unpaid wages and overtime compensation due and in an additional equal amount as liquidated damages. However, [any action against a surety or sureties shall be governed by and limited to section 507-17, and] any claim for liquidated damages, insofar as the surety or sureties is concerned, shall not be paid until the claims of all other creditors have been satisfied. Action to recover unpaid wages or overtime compensation may be maintained in any court of competent jurisdiction by any one or more laborers or mechanics for and in behalf of oneself or themselves and others similarly situated. No laborer or mechanic shall be a party plaintiff to the action unless the laborer or mechanic gives the laborer’s or mechanic’s consent in writing and the consent is filed in the court in which the action is brought. The court in the action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to be paid by the defendant, and costs of the action. It shall be no defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or overtime compensation or voluntarily made refunds.”

SECTION 15. Section 128-10, Hawaii Revised Statutes, is amended to read as follows:

“§128-10 **Other powers.** The governor further may irrespective of the existence of a civil defense emergency period:

- (1) Cooperation with federal agencies in civil defense matters, etc. Cooperate with the President and the heads of the armed forces, and the civil defense agency of the United States, and with the officers and agencies of other states in matters pertaining to the civil defense of the State and nation and the incidents thereof, and take any measures which the governor may consider proper to carry into effect any request of the President or the appropriate federal officers and agencies, for any action looking to civil defense.
- (2) Lend-lease. Lease, lend, or otherwise furnish, on such terms and conditions as the governor may consider necessary to promote the public welfare and protect the interest of the State, any real or personal property of the state government or its political subdivisions, to the President, the heads of the armed forces, or to the civil defense agency of the United States.
- (3) Agreements with the federal government and other states. On behalf of the State enter into mutual aid agreements or compacts with the federal government and with other states. The agreements or compacts shall be limited to civil defense. It may be provided in an interstate compact, and the governor with the advice and consent of the political subdivisions included within the scope of the compact, may agree on behalf of the State that:
 - (A) Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of the compact, the same powers

- (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in the state in which normally employed or rendering services.
- (B) Whenever any person holds a license, certificate, or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving this skill in any party state to meet an emergency or disaster and the state shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered.
 - (C) No party state or its officers or employees rendering aid in another state pursuant to the compact shall be liable on account of any act or omission on the part of the forces while so engaged, or on account of the maintenance or use of any materials, equipment, goods,¹ or facilities in connection therewith.
 - (D) As an alternative to paragraph (C), such other or modified form of immunity as the governor may find acceptable.
 - (E) Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of the forces in case the members sustain injuries or are killed while rendering aid pursuant to the compact, in the same manner and on the same terms as if the injury or death were sustained within the state.
 - (F) Any party state rendering aid in another state pursuant to the compact shall be reimbursed by the party state receiving aid, or by the United States government under plans approved by it, for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for all costs incurred in connection with requests for aid; provided that this paragraph shall not be deemed to preclude the State, if it is the aiding state, from assuming in whole or in part the loss, damage, expense, or other cost, or from loaning the equipment or donating the services to the receiving party state without charge or cost.
 - (G) Any party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items; the expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it.
 - (H) In the event of an evacuation, the party state of which the evacuees are residents shall, after the termination of the emergency or disaster, assume the responsibility for the ultimate support or repatriation of the evacuees.
- (4) Other mutual aid. Sponsor and develop mutual aid plans and agreements for civil defense between the political subdivisions of the State and between one or more political subdivisions and other public or private agencies, for the furnishing or exchange of food, clothing, medicine, and other materials; engineering services, emergency

- housing; police services; health, medical, and related services; fire fighting, rescue, transportation, and construction services and facilities; personnel necessary to provide or conduct these services; and such other materials, facilities, personnel, and services as may be needed. The mutual aid plans and agreements may be made with or without provisions for reimbursement of costs and expenses, and on such terms and conditions as are deemed necessary.
- (5) Control and utilization of government agencies. Order and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for law enforcement, medical, health, fire fighting, traffic control, warnings, and signals, engineering, rescue, construction, emergency housing, and other welfare, hospitalization, transportation, water supply, public information, training, and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request.
 - (6) Utilization of public property. Take possession of, use, manage, control, and reallocate any public property, state or county, real or personal, required by the governor for the purposes of this chapter, including, without limitation, airports, parks, playgrounds, and schools, and other public buildings. Whenever the property is so taken the governor shall have power to make such provision for the temporary accommodation of the government service affected thereby as the governor may deem advisable. Like provisions may be made at any time whenever it is necessary to relocate any government service because of any emergency condition.
 - (7) Utilization of existing private agencies. Utilize all services, materials, and facilities of nongovernmental agencies, relief organizations, community associations, and other civil groups and private agencies that may be made available.
 - (8) Contributions. Receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter; establish funds in the treasury for the deposit and expenditure of the moneys; procure federal aid as the same may be available, and apply the provisions of chapter 29 in cases of federal aid even though not in the form of money. The contributions or grants are appropriated for the purposes of this chapter, or for the special purposes.
 - (9) Maintenance and insurance of public property; restoration of vital facilities. Provide for the repair and maintenance of public property, whenever adequate provision therefor is not otherwise made; insure the property against any war risk, including without limitation damage or loss resulting from or arising out of an attack or action in resisting or combating an attack or apparent attack; provide for the restoration, renovation, replacement, or reconstruction of insured property in the event of damage or loss, and make temporary restoration of public utilities and other vital facilities in the event of an attack or other disaster.
 - (10) Procurement, etc. Purchase, make, produce, construct, rent, lease, or procure by condemnation or otherwise, transport, store, install,

maintain and insure, repair, renovate, restore, replace, or reconstruct, and distribute, furnish, or otherwise dispose of, with or without charges therefor, materials and facilities for civil defense and other emergency functions; procure federal aid therefor whenever feasible; and take any and all measures which may, in the governor's opinion, secure, stimulate, or increase similar activities by private or public persons or organizations. [Sections 103-21 to 103-57,] Chapter, sections 103-41 to 103-57, 105-1 to 105-10[, and 464-4 [and 507-17] shall not apply to any civil defense or other emergency functions if and to the extent that the governor shall find that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions. In cases of extreme urgency during a civil defense emergency period the governor may suspend the penal provisions of sections 46-45 and 103-9, except those provisions that concern falsification.

- (11) Personnel. Appoint, employ, train, equip, and maintain, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 77, and 79, part II of chapter 88 and section 78-1, such agencies, officers, and other persons as the governor deems necessary to carry out this chapter; determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, provide for and effect the interchange of personnel, by detail, transfer, or otherwise, between the State and any political subdivision, or among any agencies or departments of the State.
- (12) Charges. Make charges in such cases and in such amounts as the governor deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the government under this chapter; and make charges for licenses or permits to cover administrative expense connected therewith.
- (13) Contracts. Make such contracts as may be necessary to carry out this chapter.
- (14) Accounting. Establish special accounting forms and practices whenever necessary.
- (15) Other powers. Take any and all steps necessary or appropriate to carry out the purposes of this chapter and to provide for civil defense and other emergency functions.
- (16) Powers under this chapter are additional. The powers and authority conferred upon the governor by this chapter are in addition to any other powers or authority conferred upon the governor by the laws of the United States and of the State for the same or a like purpose, and shall not be construed as abrogating, limiting, or modifying any such powers, or authority."

SECTION 16. Section 128-13, Hawaii Revised Statutes, is amended to read as follows:

"§128-13 Power and authority of local organizations. Each political subdivision shall have the power and authority:

- (1) Deputy director's staff. To provide, for the deputy director of such political subdivision, an assistant or assistants whose appointment

shall be approved by the director of civil defense, and such technical, clerical, stenographic, and other personnel, office space, furniture, equipment, goods,¹ and funds as may be necessary to carry out the purposes of this chapter. Chapter 76 shall apply to the full-time deputy director or the deputy director's first assistant.

- (2) Appropriations, etc. To make appropriations and authorize expenditures for the purposes of this chapter, including the power to place under the control of the governor, for expenditure as matching funds for federal aid, or for any purpose within the powers of the governor, moneys appropriated by it; to make appropriations and authorize expenditures for the purposes of this chapter out of the normal revenues or fund balances or surpluses of the political subdivision, notwithstanding any legal restrictions upon the purposes for which the funds may be expended, except, that pension and retirement funds, funds set aside for the redemption of bonds or the payment of interest thereon, trust funds, loan funds, and funds received from the federal government or from any person for specific purposes shall not be affected.
- (3) Procurement, etc. To purchase, make, produce, construct, rent, lease, or procure by condemnation, or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace or reconstruct, and distribute, furnish or otherwise dispose of, with or without charges, materials and facilities for civil defense; and to procure federal aid therefor whenever feasible. [Sections 103-21 to 103-57, and] Chapter _____, sections 103-41 to 103-57, 105-1 to 105-10[,] and 464-4 [and 507-17] shall not apply to any civil defense functions of and to the extent that the mayor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions.
- (4) Personnel. To provide for the appointment, employment, training, equipping, and maintaining, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 77, 79, and 88[,] and section 78-1, of such agencies, officers, and other persons as it deems necessary to carry out this chapter; to determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, to provide for the interchange of personnel, by detail, transfer or otherwise, between agencies or departments of the political subdivision, or between political subdivisions.
- (5) Contributions. To receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter.
- (6) Charges. To make charges in such cases and in such amounts as it deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the political subdivision under this chapter.
- (7) Contracts. To make or authorize such contracts as may be necessary to carry out this chapter.
- (8) Mutual aid plans. To participate in and carry out mutual aid plans

and agreements or compacts, sponsored or developed by the state civil defense agency.

- (9) Continuity of government. To insure continuity of government during a civil defense emergency period, the legislative body of a county may by ordinance, unless otherwise provided by law, provide the procedure for the appointment and designation of stand-by officers for the legislative body and the elected chief executive of the county for the emergency period, who shall serve in the event of the unavailability of the officers for whom they stand by.”

SECTION 17. Section 201-82, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§201-82]]~~ **Powers of the department.** The department, subject to the approval of the director of budget and finance, shall have the following general powers to operate out-of-state offices established:

- (1) To enter into contracts, leases, or cooperative agreements, or perform other transactions with any person, firm, partnership, association, company, corporation, or foreign nation, as may be necessary in the conduct of its business and on such terms as the department may deem appropriate, [notwithstanding the provisions of chapter 103;] using competitive procurement practices, to the extent practicable, in accordance with rules adopted by the policy office;
- (2) To establish operational bank accounts in out-of-state locations, including foreign denomination accounts, as may be necessary in the conduct of its business, notwithstanding the provisions of chapter 38;
- (3) To receive by gifts, grants, devises, bequests, or otherwise from private sources or a foreign nation, any property, real, personal, or mixed, intangible or tangible, absolutely or in trust, to be used and disposed of, either the principal or the income therefrom, in accordance with the conditions under which it was received;
- (4) To sell, lease, rent, hold, maintain, use, and operate any property, real, personal, or mixed, tangible or intangible, in accordance with the conditions under which it was received;
- (5) To hire such personnel as may be necessary in the conduct of its business and on such terms as the department may deem appropriate; and
- (6) To do any or all other acts reasonably necessary to carry out the objects and purposes of this part, provided that the department shall not obligate any funds of the State not appropriated to the department.”

SECTION 18. Section 206-8, Hawaii Revised Statutes, is amended to read as follows:

“**§206-8 Development of lands acquired.** Where lands are acquired by the board of land and natural resources with its own funds, it shall subdivide and develop the lands into residence lots, or dwellings and lots in a manner best designed to carry out the purposes of this chapter.

The board may contract with any private developer to provide for the financing of the acquisition of lands, the subdivision and development of

acquired lands, and the disposition of residence lots, or the construction of dwellings on the lots and the disposition of both. The contracts may be entered into after published advertisement for sealed tenders, setting forth the terms of the proposed contract, including necessary plans, specifications, and time schedules. The contract shall provide for the establishment of such sale prices of the residence lots, or dwellings and lots as will repay to the developer the amount of the actual cost or expense incurred in the acquisition and development of the land together with a reasonable developer's profit computed thereon as determined by the board. The contract shall also provide for the sale of residence lots, or dwellings and lots only to persons entitled to purchase from the board, upon the terms and conditions provided in sections 206-9 to 206-12 with respect to sales by the board. Every contract shall be made with the responsible bidder whose proposal complies with the requirements of the call for tenders and states the lowest rate of developer's profits; provided that the board may reject all tenders if it deems that the lowest rate of developer's profit is unreasonable. Publication of the call for tenders shall be made [as required by section 103-26, and the] by publishing a call for tenders not less than three times in a newspaper of general circulation printed and published within the State. No more than one of these publications shall be made on any one day or on two consecutive days. The time for opening of the tenders shall be not less than thirty days after the last publication."

SECTION 19. Section 227D-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The authority shall not be subject to any requirement of law for competitive bidding, including the requirements of [section 103-22] chapter _____ and section 103-42, for project agreements, construction contracts, or other contract unless a project agreement with respect to a project or research and technology park shall require otherwise."

SECTION 20. Section 264-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every agreement for the engineering or construction of federal-aid highways or for the acquisition of rights-of-way for these highways shall be made on behalf of the State by the director of transportation. [The provisions of section 103-39] Section _____ -309 shall [be applicable] apply only to that portion of the price that is payable out of local funds. As to that portion of the price that is payable out of federal-aid funds, the agreement is that the State will pay the contractor only out of federal funds actually received for that portion of the project and is not a general agreement on the part of the State to pay that portion out of any other funds. Each agreement shall be deemed to contain a provision to that effect whether specifically included or not."

SECTION 21. Section 264-33, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The work of the removal, relocation, replacement, or reconstruction may be performed in the following manner, subject to the following conditions:

- (1) The work shall be performed in accordance with standards of construction currently used by the utility; and

- (2) Such work may be performed by contract as provided in [section 103-22 and 103-25;] chapter _____; or after first calling for bids under [such sections,] that chapter, the director of transportation or other officer having power to award such contract, may contract with the public utility owning the utility facility to have the work performed by it, with the use of its own employees and equipment at not to exceed actual cost or in the amount of the lowest responsible bid (if such bids have been submitted), whichever is the lowest amount, with the adjustments hereinafter provided for.”

SECTION 22. Section 12 of Act 321, Session Laws of Hawaii 1986, as amended by Section 69 of Act 283, Session Laws of Hawaii 1987, as amended by Section 7 of Act 371, Session Laws of Hawaii 1989, as amended by Section 3 of Act 163, Session Laws of Hawaii 1991, as amended by Section 2 of Act 314, Session Laws of Hawaii 1993, is amended to read as follows:

“SECTION 12. This Act shall take effect on July 1, 1986, and be repealed as of June 30, [1994] 1998;¹ provided that on repeal sections 40-1, 40-2, 40-4, 40-6, and 40-81, [and 103-23,] Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986, and [sections] section 40-58 [and 103-39], Hawaii Revised Statutes, [are] is reenacted in the form in which [they] it read on June 30, 1991.”

SECTION 23. Section 331-1, Hawaii Revised Statutes, is amended to read as follows:¹

“§331-1 **Purchase of radium or other radioactive substances.** The department of health may purchase radium or other radioactive substances to be used for medical or surgical purposes out of any moneys appropriated therefor. The radium or other radioactive substances so purchased shall be such as are approved by the Bureau of Standards at Washington, D.C. [Such purchases may be made without regard to sections 103-22 to 103-25.]”

SECTION 24. Section 437-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) More than one bond may be furnished by the same applicant, provided they aggregate the full amount prescribed by this section. [If any bond is not (1) executed by a surety company authorized to do business in the State, or (2) secured by a deposit of cash with the board in lieu of surety, then sections 103-35 to 103-37 shall apply to the furnishing of the bond and the surety or sureties and the security thereof, with the substitution of the board hereunder or the awarding officer mentioned in sections 103-35 and 103-37 as appropriate.]”

SECTION 25. Section 103-3, Hawaii Revised Statutes, is repealed.

SECTION 26. Section 103-22, Hawaii Revised Statutes, is repealed.

SECTION 27. Section 103-23, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 103-23.2, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 103-23.5, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 103-24, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 103-25, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 103-26, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 103-27, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 103-28, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 103-29, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 103-30, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 103-31, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 103-32, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 103-33, Hawaii Revised Statutes, is repealed.

SECTION 40. Section 103-33.5, Hawaii Revised Statutes, is repealed.

SECTION 41. Section 103-34, Hawaii Revised Statutes, is repealed.

SECTION 42. Section 103-35, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 103-36, Hawaii Revised Statutes, is repealed.

SECTION 44. Section 103-37, Hawaii Revised Statutes, is repealed.

SECTION 45. Section 103-38, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 103-39, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 103-52, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 201E-34, Hawaii Revised Statutes, is repealed.

SECTION 49. Section 356-23, Hawaii Revised Statutes, is repealed.

SECTION 50. Section 507-17, Hawaii Revised Statutes, is repealed.

SECTION 51. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary for fiscal year 1994-1995, to carry out the purposes of this Act; provided that of the sum appropriated:

- (1) \$75,000 shall be expended by the department of personnel services for education and training programs provided in section -110; and

- (2) \$225,000 shall be expended by the department of accounting and general services; provided further that \$100,000 shall be expended for the salary and secretarial support for the administrator to the procurement office, and \$125,000 shall be expended to provide for the drafting and adoption of rules in preparation for the implementation of this Act.

SECTION 52. The department of personnel services shall immediately review the provisions of section 2 of this Act and redefine the qualifications, duties, and responsibilities of the chief procurement officer within the department of accounting and general services position and any other related positions, and reclassify those positions in light of the changes in qualifications, duties, and responsibilities for these positions. The department shall report its actions to the legislature prior to the convening of the regular session of 1994.

SECTION 53. Sections 11-193, 89-5, 180-2, 269-3, 368-3, 383-103, 392-76, 674-5, and 674-13, Hawaii Revised Statutes, are amended by substituting the term "section 209(b)" established in section 2 of this Act for the term "section 103-3" as it appears in those sections and the context requires.

SECTION 54. Sections 36-41, 41D-2, 42D-1, 46-56, 53-9, 103-32.1, 103-61, 104-7, 106-15, 201-85, 206-22, 206E-11, 206J-9, 266-2, 268-1.5, 299-3, 329-58, 354D-4, and 354D-8, Hawaii Revised Statutes, are amended by substituting the chapter designation for the new chapter in section 2 of this Act for the term "chapter 103" as it appears in those sections and the context requires.

SECTION 55. Sections 39A-32, 39A-72, 39A-112, 39A-152, 39A-192, 201E-202, 261-52, 266-52, 304-8.94, 307-4, and 356-15.5, Hawaii Revised Statutes, are amended by substituting a reference to the new chapter established in section 2 of this Act for the term "section 103-22" as it appears in those sections and the context requires.

SECTION 56. Sections 201E-33, 206-21, and 356-22, Hawaii Revised Statutes, are amended by substituting a reference to the new chapter established in section 2 of this Act for the term "sections 103-26 to 103-38" as it appears in those sections and the context requires.

SECTION 57. Section 382-3, Hawaii Revised Statutes, is amended by substituting a reference to the new chapter enacted in section 2 of this Act and the term "and sections 103-41 to 103-57," for the term "sections 103-21 to 103-57" as it appears in that section and the context requires.

SECTION 58. Section 437-18, Hawaii Revised Statutes, is amended by substituting a reference to the new chapter enacted in section 2 of this Act for the term "sections 103-35 to 103-37" as it appears in that section and the context requires.

SECTION 59. Statutory and session law material to be repealed is bracketed. New statutory material is underscored.²

SECTION 60. The repeal of section 507-17, in section 50 of this Act does not affect rights and duties that matured, penalties that were incurred or imposed,

and proceedings that were begun before the effective date of this Act, and the provisions of section 507-17 shall otherwise remain in effect and determine all rights, duties, penalties, and proceedings which matured, accrued, or were pending on the effective date of section 507-17's repeal.

SECTION 61. This Act shall take effect on July 1, 1994; provided that sections 51 and 52 of this Act and sections -110, -201, -202, -204, and -211 of the chapter established in section 2 of this Act shall take effect upon approval.

(Approved October 4, 1993.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.