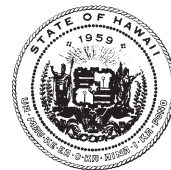

Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 09-07
April 2009



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. Financial audits attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. Sunrise analyses are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. Health insurance analyses examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. Analyses of proposed special funds and existing trust and revolving funds determine if proposals to establish these funds are existing funds meet legislative criteria.
7. Procurement compliance audits and other procurement-related monitoring assist the Legislature in overseeing government procurement practices.
8. Fiscal accountability reports analyze expenditures by the state Department of Education in various areas.
9. Special studies respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawai'i's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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OVERVIEW

Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies

Report No. 09-07, April 2009

Summary

We conducted this investigation in response to Senate Concurrent Resolution No. 212, Senate Draft 2 of the 2008 legislative session, calling for an investigation into the procurement and expenditure practices of the Department of Business, Economic Development & Tourism and the following specific attached agencies: High Technology Development Corporation, High Technology Innovation Corporation, and the Hawai'i Strategic Development Corporation. The investigation examined the procurement and expenditure practices, policies, and transactions of the department and included inquiry, analytical procedures, and inspection of relevant records and documents to assess the department's compliance with state procurement laws and regulations. The investigation covered four fiscal years, beginning July 1, 2004 through June 30, 2008.

Our investigation revealed a culture unconcerned with the directives of the Legislature and unconvinced of the importance of the Hawai'i Public Procurement Code. Department leadership was lacking. The "tone at the top" placed emphasis on expediency of job completion over the accountability necessary in state government. Moreover, there were no assurances that appropriate policies and procedures were in place, which contributed to an environment filled with internal control deficiencies. All of this resulted in transactions that are questionable and errors that are contrary to the Hawai'i Public Procurement Code.

We found that the department made use of appropriation transfer authority to fund projects denied by the Legislature. In FY2007 and FY2008, we noted two contracts in particular that had terms that mirrored bills that died during their respective legislative sessions. The department was able to locate "payroll savings" and redirect money in order to fund these projects. Because these contracts were entered into outside of the normal budgeting process, goals, objectives and measures of effectiveness for the particular projects were not reported to the legislature. Moreover, with no mechanism in place to either determine the impact of or reconcile the changes in funding levels, transparency in government is lost.

We also noted violations of procurement procedures, poor procurement practices, and inadequate training. Failure to comply with the procurement code is a violation of state law and could lead to the termination of awarded contracts and individuals can be held liable for moneys paid in connection with the violation. The department director is responsible for the agency's compliance with the law. But individual public employees are also responsible to act in good faith to ensure the fair and equitable treatment of all who deal with government procurement in



order to foster public confidence in the integrity of the procurement process, and to ensure the appropriate application of purchasing ethics.

Our findings raise questions about the department's awareness of, compliance with, and commitment to the requirements of the Hawai'i Public Procurement Code. Many of the exceptions and procedural errors resulted from a lack of understanding of the procurement laws, rules, and internal policies and procedures. The department's deficiencies in implementing the procurement code and its own procurement policies and procedures are the direct result of its lack of training, poor management oversight, and a weak control climate.

To ensure that the department's funds are well spent, it is critical that the department employ an effective procurement system grounded in the ideas of transparency, accountability, and competition consistent with the Hawai'i Public Procurement Code. This is an imperative, especially in these tough economic times. Without active participation from all stakeholders, well-intended changes will leave no lasting impact.

Recommendations and Response

We recommended that the department work to ensure greater transparency and accountability within its governance structure by developing clearly documented policies and procedures within the procurement process, maintenance of financial records, and in monitoring staff and contractor performance. The department director must set the ethical tone for the department by stressing the importance of training and adherence to rules and regulations to ensure that both staff and management understand that fraud, waste, and abuse will not be tolerated.

The department responded to a draft of the report disagreeing with both our findings. The department noted no findings in the report of non-compliance with the Hawai'i Public Procurement Code, completely missing the point on the numerous errors identified. Further, while the department complied with appropriation transfer requirements, it did so after the Legislature made clear that the specific programs discussed (International Affairs and the Creativity Academies) were not a priority. While the department disagreed with our findings, it accepted the recommendations made and identified both future actions and actions already taken in accordance with those recommendations.

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Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No. 09-07
April 2009

Foreword

This is a report on the investigation into procurement and expenditure practices of the Department of Business, Economic Development & Tourism and specific attached agencies in response to Senate Concurrent Resolution No. 212, Senate Draft 2 of the 2008 legislative session. We conducted the investigation pursuant to Section 23-4, Hawai‘i Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. Additionally, Chapter 103D, Hawai‘i Revised Statutes, requires the State Auditor to periodically audit procurement practices within the government.

We wish to express our appreciation for the cooperation and assistance extended to us by the director and staff of the Department of Business, Economic Development & Tourism, the specific attached agencies, and others whom we contacted during the course of the investigation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

Over the past five years, the Legislature has become aware of questionable procurement and expenditure practices by the Department of Business, Economic Development & Tourism (DBEDT). In a well-publicized example of this, the selection of a manager of the Hydrogen Investment Capital Special Fund stemmed from an apparent disregard of the procurement code and a poor understanding of the process requirements. In addition, instances of re-directed program funding have also concerned legislators. In these cases, department proposals that had been rejected by the Legislature were nevertheless funded by the department, irrespective of the Legislature's intent.

After it became aware of the department's disregard of legislative intent, the 2008 Legislature responded with Senate Concurrent Resolution No. 212, Senate Draft 2 (SCR 212, SD 2), requesting that the State Auditor conduct an investigation of the procurement and expenditure practices of the department and three specific attached agencies: High Technology Development Corporation, High Technology Innovation Corporation, and the Hawai'i Strategic Development Corporation. The Auditor was requested to investigate programs within the department that include, but were not limited to, strategic marketing and support, creative industries, energy and strategic industries, foreign trade zones, and general support for economic development. These programs are spread throughout four of the DBEDT's five divisions.

Background

The Department of Business, Economic Development & Tourism is Hawai'i's resource center for economic and statistical data, business development opportunities, energy and conservation information, and foreign trade advantages. The objective of the department is to make broad policy determinations with respect to economic development in the state and to stimulate through research and demonstration projects those industrial and economic development efforts that offer the most immediate promise of expanding Hawai'i's economy. Section 26-18, Hawai'i Revised Statutes (HRS), describes departmental responsibilities as:

To undertake statewide business and economic development activities, undertake energy development and management, provide economic research and analysis, plan for the use of Hawai'i's ocean resources,

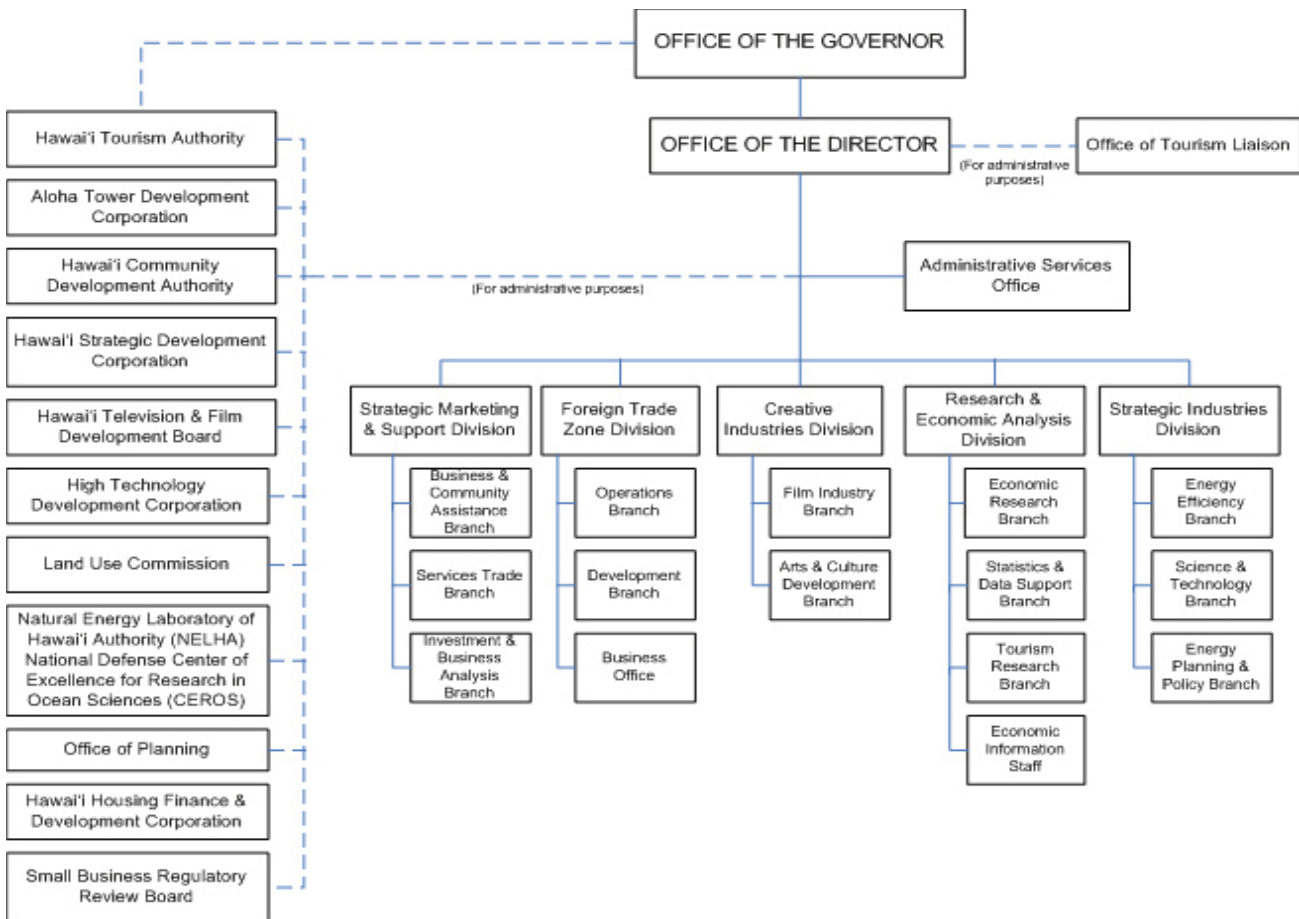
and encourage the development and promotion of industry and international commerce through programs established by law.

The department's goal is to increase the State's economic output to the point where Hawai'i ranks in the top 15 states for average gross domestic product (GDP) per capita by 2010. Currently, Hawai'i ranks 17th in this measure.

Organization

The director of business, economic development & tourism plans, organizes, directs, coordinates, and reports on the various activities of the department. The director is supported by one office, five divisions, and 13 administratively attached agencies. Exhibit 1.1 displays the department's organizational structure. The primary responsibilities of the units relevant to this investigation follow.

**Exhibit 1.1
Department of Business, Economic Development & Tourism Organization Chart**



Source: Department of Business, Economic Development & Tourism. Contrary to the organizational chart, the High Technology Innovation Corporation is administratively attached to the department.

The Administrative Services Office (ASO) provides general internal management, fiscal, budgetary, contractual, and personnel services in support of departmental programs and activities; it also provides advice and assistance to the director and staff in administrative matters. The ASO coordinates and provides technical review for program staff in the development, management, and execution of contracts and letters of agreement for the department. Specifically, the contracts specialist within ASO manages the system for reviewing, tracking, and coordinating contracts through all the required processes, providing technical expertise and knowledge about applicable laws, rules, regulations, and policies, and reviewing for compliance and consistency with the above.

The Strategic Marketing and Support Division (SMSD) promotes industry development and economic diversification in Hawai‘i by supporting existing and emerging industries; attracting new investment and businesses that can create more skilled, quality jobs in the state; and working to increase exports of Hawai‘i products and services. The business support division provides new and existing business direct loans; licensing and permit information and referral; business advocacy, planning and coordination of programs and projects aimed at specific business sectors or economically distressed areas. This division also houses the overseas offices and other international programs.

The Creative Industries Division (CID) promotes the development and growth of Hawai‘i’s creative economy, whose primary and core sector consists of copyright-based industries, with a focus on businesses that create and design exportable products and services and depend on the protection of their intellectual property in order to market to a global community. The creative economy sectors include producers and service providers in film, video and digital media production; commercial and applied design firms and a diverse range of creative and cultural outlets, such as museums, cultural councils, festivals, and parades in Hawai‘i.

The Strategic Industries Division (SID) supports statewide economic efficiency, productivity, development, and diversification by promoting, attracting, and facilitating the development of Hawai‘i technology-based industries that engage in the sustainable development of Hawai‘i’s energy, environmental, ocean, recyclable, and technological resources.

The Foreign-Trade Zone Division (FTZD) administers the federal grant issued to Hawai‘i by the Foreign-Trade Zone Board in Washington, D.C. The division’s mission is to increase the amount of international trading activity in Hawai‘i and to encourage value-added activities, stimulate capital investment, and generate employment opportunities by using the federal trade development program to reduce the costs associated with international trade. The Hawai‘i Foreign Trade Zone

No. 9 consists of a series of duty-free sites throughout the islands that are legally outside the customs territory of the United States. The Foreign Trade Zone provides users with a competitive advantage by minimizing U.S. Customs duties.

The High Technology Development Corporation (HTDC) was established by the Hawai‘i State Legislature in 1983 to facilitate the development and growth of Hawai‘i’s commercial high-technology industry. The HTDC helps develop and retain high technology in the state by creating business opportunities, marketing and promoting Hawai‘i’s technology assets. It also provides support to Hawai‘i’s technology industry through its three technology centers statewide: the Manoa Innovation Center, the Maui Research and Technology Center, and the Hawai‘i Innovation Center at Hilo. These sites serve as technology incubation facilities, assisting start-up ventures’ transition into commercial enterprises.

The High Technology Innovation Corporation (HTIC) was established in the 2005 regular Hawaii legislative session as a public, Internal Revenue Code 501(c)(3) not-for-profit organization. The purpose of the corporation is to facilitate the growth and development of commercial high technology in Hawai‘i. The HTIC performs this function by managing the High Technology Development Corporation’s assets and resources; assisting the High Technology Development Corporation in the promotion and marketing of Hawai‘i as a location for commercial high technology; and supporting the State’s technology-based economic development activities. The High Technology Innovation Corporation also is tasked with identifying and obtaining non-state funding and other resources in support of both organizations.

The Hawai‘i Strategic Development Corporation (HSDC) mission is to develop a sustainable venture capital industry in Hawai‘i which will stimulate the growth of new business. The Hawai‘i Strategic Development Corporation provides investment capital in order to stimulate economic growth, employment, and economic diversification consistent with Chapter 211F, HRS. With an emphasis on opportunities that further technological innovation, the corporation invests public moneys along with private funds in return for ownership in start-up and early-stage businesses. The Hawai‘i Strategic Development Corporation works to diversify the State’s economy by commercializing emerging technologies and providing skilled employment opportunities.

The budget process

Hawai‘i utilizes a planning, programming, and budgeting system to manage programs and provide for transparency in operation and accountability in execution. Programs are structured to ensure orderly

establishment and continuing review and revision to meet objectives and goals. Comparing resources provided to results obtained helps ensure efficient and effective use of state resources. Departments incorporate their divisions' and attached agencies' individual budget proposals into annual department operating and capital improvement project budgets that are reviewed by the governor, then approved by the Legislature to become law each year.

To support a given request, the department will include budget justification tables. These tables provide line-item detail for personnel, operations, equipment, and capital improvement expenses.

The proposed budgets identify the means of financing (MOF) from which funds are appropriated or authorized to be expended. These include, but are not limited to, general funds, special funds, general obligation funds, revenue bond funds, and federal funds. Based on the approved budgets, the Department of Budget and Finance (B&F) develops allocation ceilings for each department and agency as part of the governor's budget execution policies. The departments will then develop program expenditure plans upon receipt of appropriation information. Through the allotment system, the fiscal year is divided into four quarterly allotment periods. Funds will not be made available to a department for expenditure during an allotment period until an estimate is submitted to and approved by the director of finance of the amount needed to carry on the work for that period.

In developing the executive budget, the departmental and program mission, goals, and significant measures of effectiveness are identified. The measures of effectiveness establish performance benchmarks but do not necessarily reflect the size of the program needed to achieve results. Choosing unambiguous goals that reflect real, achievable objectives is one of the first steps towards positive outcomes.

In addition, provisos that allow the governor to transfer operating funds between program appropriations within an expending agency for operating purposes are often included in the specific budget act. These transfers must be reported to the Legislature, but occur outside the normal budgeting process when exercised.

Exhibit 1.2 details the Department of Business, Economic Development & Tourism's budget information by division and agency for fiscal years 2005 through 2007.

Exhibit 1.2**Department of Business, Economic Development & Tourism Budget Information per Division and Agency, FY2005-FY2007**

		Adjusted Appropriations		
General Funds		FY2005	FY2006	FY2007
BED 100	Strategic Marketing and Support Division	\$ -	\$1,823,176.00	\$2,022,568.00
BED 105	Creative Industries	\$ -	\$1,325,705.00	\$1,471,389.00
BED 120	Strategic Industries	\$1,133,795.00	\$1,185,167.00	\$1,396,028.00
BED 142	General Support for Economic Development	\$2,221,078.00	\$2,324,116.00	\$2,707,110.00
BED 143	High Technology Development Corporation	\$1,060,512.00	\$947,482.00	\$949,238.00
BED 145	Hawai'i Strategic Development Corporation	\$156,145.00	\$94,632.00	\$ -
Special and Revolving Funds				
BED 107	Foreign Trade Zone Special Fund	\$1,912,068.00	\$1,968,113.00	\$2,001,010.00
BED 143	High Technology Special Fund	\$2,227,094.00	\$3,880,056.00	\$3,874,109.00
BED 145	Hawai'i Strategic Development Revolving Fund	\$ -	\$4,238,125.00	\$4,270,631.00
BED 145	Hydrogen Investment Capital Special Fund	N/A	N/A	\$10,000,000.00

Source: Department of Business, Economic Development & Tourism annual reports. Above numbers do not reflect loan revolving funds, HTDC revolving fund, and federal, trust, and capital improvement appropriations. In addition, the Hydrogen Investment Capital Special Fund was established in FY2007.

Hawai'i Public Procurement Code

The Hawai'i Public Procurement Code, Chapter 103D, HRS, was originally enacted in 1993 to promote economy, efficiency, and effectiveness in the procurement of goods, services, and construction of public works for the State and counties. It applies to all procurement contracts made by governmental bodies, unless specifically exempted. The procurement process is meant to foster broad-based competition, providing best value to the State, and also ensure fiscal integrity, responsibility and efficiency.

The procurement code created an autonomous, seven-member, state Procurement Policy Board administratively attached to the Department of Accounting and General Services (DAGS). The Procurement Policy Board is authorized and responsible to adopt administrative rules, consistent with the procurement code, governing the procurement, management, control, and disposal of goods, services, and construction. The board has the power to audit and monitor the implementation of its rules and the requirements of the code, but it does not have the authority over the award or administration of any particular contract, or over any dispute, claim, or resulting litigation.

Chapter 103D, HRS, also establishes the State Procurement Office (SPO), administratively attached to the DAGS. The SPO advises governmental bodies on the procurement process. It serves as the central point for the distribution of procurement circulars, guidance, and directives to all jurisdictions. The procurement code further specifies that the administrator of the SPO is the chief procurement officer for the executive branch. The chief procurement officer is also responsible to perform a periodic review of the procurement practices of all governmental bodies; assist, advise, and guide in matters regarding procurement; develop and administer a statewide procurement orientation and training program; develop, distribute, and maintain a procurement manual for state officials and a guide for vendors.

While the administrator of the SPO is the chief procurement officer for the executive branch, the statutes identify the chief procurement officers for each of the following state entities and several counties, including: the administrative director of the courts for the Judiciary; the president of the Senate; the speaker of the House of Representatives; the chairperson of the board for the Office of Hawaiian Affairs; the finance directors for each of the counties; the president of the University of Hawai‘i; the superintendent of education; and designated individuals, typically the department directors, for the remaining departments of the executive branch. According to Section 103D-208, HRS, each chief procurement officer may delegate any authority or duty conferred upon them to any designated department, agency, or official within their respective jurisdiction. For the DBEDT, delegation of authority is included as Appendix A.

Some of the responsibilities of the chief procurement officers, for their respective jurisdictions, include the procurement or supervision over the procurement of all goods, services, and construction and exercise general supervision and control over all inventories; and establish and maintain programs for the inspection, testing, and acceptance of goods, services, and construction. In addition, the SPO administrator performs periodic reviews of the procurement practices of all governmental bodies; assists, advises, and guides in matters relating to procurement; develops and administers a procurement orientation and training program; and develops, distributes, and maintains a procurement manual for all state procurement officials. Operational procedures, consistent with the statute and Hawai‘i Administrative Rules (HAR), may be adopted within each jurisdiction to assist in the performance of these duties.

Procurement methods

The Hawai‘i Public Procurement Code establishes six procurement methods available for governmental bodies. They are: 1) competitive sealed bidding; 2) competitive sealed proposals; 3) professional services

procurement; 4) small purchase; 5) sole source procurement; and 6) emergency procurement.

Multiple expenditures created for a project, or artificially divided or parceled, so as to evade the procurement requirements, are not allowed.

Procurement by **competitive sealed bidding** requires the issuance of an invitation for bids detailing the particular needs and all contractual terms and conditions. Adequate public notice of the invitation for bids must be given prior to the opening of the bids. The specifications of the invitation for bid should identify minimum requirements to fulfill; allow for competition; list reproducible test methods to be used in testing for compliance with specifications; and provide for an equitable award at the best value. The contract will then be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose submission meets the requirements and criteria noted within the initial invitation for bids.

Competitive sealed proposals may be utilized to procure goods, services, or construction when it is not practicable or advantageous to the State to procure by competitive sealed bidding. Prior to the preparation of the request for proposals (RFP), the chief procurement officer will determine whether the chief procurement officer or an evaluation committee selected in writing must evaluate the proposals. The evaluation factors set forth in the request for proposals will serve as basis for the committee to numerically rate the submissions. A request for proposals will be issued with adequate public notice to allow a sufficient number of proposers to participate. Award will be made based on evaluation committee recommendation for the proposal that is determined in writing to be the most advantageous, taking into consideration price and the evaluation factors as defined by the request.

Contracts under the **professional services method** are awarded based on demonstrated competence and qualification for the type of services required, and at fair and reasonable prices. The chief procurement officer of the purchasing agency, prior to the start of a new fiscal year, publishes a notice inviting vendors providing professional services that the agency anticipates needing, to submit current statements of qualifications. The chief procurement officer will then designate a review committee for each type of professional service required. The review committee will evaluate submissions and prepare in advance a listing of qualified vendors to provide services. As professional services are needed, the chief procurement officer will designate a selection committee to evaluate the list of pre-qualified professionals. The selection committee will rank a minimum of three vendors based on experience and professional qualifications relevant to the project and other criteria relevant to the agency's needs, or necessary to ensure full, open, and fair

competition. The chief procurement officer negotiates a contract with the first ranked vendor, including rate of compensation established in writing, and based on the scope and nature of services to be performed.

Small purchase procurements are for those less than \$50,000 for goods, services, or construction, in accordance with Section 103D-305, HRS, and Chapter 3-122, Subchapter 8, HAR. The State maintains a price list of a group of common items or services that were competitively bid and contractually set prices for a specified time period. Unless otherwise exempt, purchasing agencies must comply with the state procurement office price or vendor lists, price schedules, or other chief procurement officer lists and schedules. Based on specifications and with adequate reasonable competition, a minimum of three quotes are required for expenditures between \$5,000 to less than \$50,000. Effective July 1, 2007, small purchase procurements of \$25,000 to less than \$50,000 are made through the Hawai‘i Electronic Procurement System (HePS). HePS is the electronic procurement system for the State, where solicitations can be issued, responses received, and notices of awards issued.

Sole source procurement is awarded for goods, services, or construction without competition when the chief procurement officer of a purchasing agency determines in writing that there is only one vendor available. Justification for a sole source must establish that the good, service, or construction has a unique feature, characteristic, or capability essential to the agency to accomplish its work and can be satisfied by only one vendor. This determination is reviewed and approved by the chief procurement officer. Sole source purchases of \$50,000 or more require SPO chief procurement officer approval; purchases less than \$50,000 may be delegated to the chief procurement officer of the purchasing agency. “Notice of sole source award” is posted by the chief procurement officer in an area accessible to the public at least seven days prior to any approval action. In this way, other vendors may file written objections, with the procurement policy board providing for the disposition of objections.

The **emergency procurement** method is used when the chief procurement officer of a purchasing agency determines that the following situations to purchase immediately arises: 1) where there is a threat to public health, welfare or safety; 2) where there is an immediate and serious need for goods, services, or construction; and 3) without the needed good, service or construction, the continued functioning of government or the preservation of irreplaceable property will be seriously threatened. This procurement process applies to all emergency procurement expenditures for goods, services, or construction, and may be utilized only to purchase what is necessary to address the emergency. Prior to the procurement, or if time does not permit, as

soon as is practicable thereafter, the chief procurement officer of the purchasing agency responsible for the emergency procurement must prepare a written justification requesting the approval from the SPO chief procurement officer.

Exemptions

Besides statutory exemptions that exclude applicability of the procurement code, the code itself allows exemptions from certain aspects of the above procurement methods. In some instances, while the procurement for some goods and services are available from multiple sources, it may not be practicable or advantageous to the State to procure competitively. Either the procurement policy board determines by rules or the chief procurement officer of the SPO determines in writing that a prior situation exists to justify an exemption from the procurement code. While an exemption may exist, governmental bodies are always encouraged to adopt the spirit of the procurement code and use provisions of the procurement code and its own rules as goods, services, or construction are obtained.

Payment methods

Agencies may use one of three methods to pay for goods, services, and construction: 1) petty cash held by each agency; 2) purchasing cards (pCards), issued to certain authorized personnel; or 3) check requested from and processed by DAGS. Petty cash payments are limited to a single disbursement not to exceed \$100. The purchasing card program, managed by the State Procurement Office, makes use of pCards similar to a major credit card. Payments made via pCard are subject to dollar threshold and transaction limits established by the agency. Checks processed by the DAGS require the preparation of a summary warrant voucher, accompanied by a purchase order and other supporting documentation (i.e., invoice). DAGS will then prepare the check and forward the payment to the vendor.

Ongoing department investigation

In the General Appropriations Act of 2007, Act 213, a proviso was included directing the Auditor to conduct an in-depth investigation of the Department of Business, Economic Development & Tourism with respect to: 1) internal controls over financial reporting and operations; 2) federal grant program management systems, including the community-based economic development program and the reallocation of moneys from the program to support non-CBED purposes; 3) incentive programs, including enterprise zone beneficiaries and the foreign investor programs; and 4) reallocation of funds between programs with different revenue sources. As of this report, the investigation is still ongoing.

Prior audits

There have been three audits relevant to procurement within the department since 1995. In the *Audit of Contract Administration and the Office of Space Industry in the Department of Business, Economic Development and Tourism*, Report No. 95-3, we found that the department did not perform pre-contract analysis prior to entering into a contract. Moreover, there was an inadequate system in place to ensure divisions were monitoring contracts uniformly. Additionally, DBEDT, with its weak justification over contracts, did not always work to ensure the interest of the State in its contracts. Recommendations included working with the chief procurement officer to develop policies and procedures to comply with the procurement law. Specific attention was to be given to contract formation and monitoring to ensure clearly outcomes were defined and then later achieved.

In the *Procurement Audit of the Department of Business, Economic Development and Tourism*, Report No. 97-12, we found that the department achieved a high degree of compliance with the Hawai'i Public Procurement Code and made progress in planning for and drafting contracts since the 1995 audit. However, the department still had no detailed procurement manual in place. We recommended that they develop a manual for use by all operating units. In addition, there were areas within contract management that still needed improvement. We recommended that the department also develop a contracting policies and procedures manual and ensure training and compliance remain priorities.

In the *Financial Audit of the Department of Business, Economic Development and Tourism*, Report No. 03-03, the public accounting firm of KPMG LLP issued an unqualified opinion on the financial statements. Some internal control deficiencies were identified. Most notably, the department failed to lapse unnecessary encumbrances, depriving the State of funds that could have been used elsewhere. We recommended that the department adhere to the established policies and procedures and periodically evaluate the propriety of encumbrances.

Objectives of the Investigation

1. To determine whether the Department of Business, Economic Development & Tourism, and the specific attached agencies of the High Technology Development Corporation, the High Technology Innovation Corporation, and the Hawai'i Strategic Development Corporation employ procurement practices that are in compliance with the provisions of the Hawai'i Public Procurement Code.

2. To determine whether the Department of Business, Economic Development & Tourism, and the specific attached agencies of the High Technology Development Corporation, the High Technology Innovation Corporation, and the Hawai'i Strategic Development Corporation expend funds consistent with departmental mission and legislative intent.
3. Make recommendations as appropriate.

Scope and Methodology

As relevant to our investigation, we evaluated responsibilities and functions of personnel. The investigation focused on procurements and expenditures from July 2005 through June 2008. In addition, we conducted interviews with legislators, department managers and representative officials of the affected divisions and attached agencies. Our investigation included a review of policies and procedures, reports, and other documents to assess management's compliance with the Hawai'i Public Procurement Code. We also conducted site visits to observe maintenance of procurement, contract, and expenditure files. We tested procurement and expenditure items on a sample basis, reviewing items to specifically note compliance with applicable laws, regulations, and contract provisions. Testing of procurement and expenditure items was limited to four out of five divisions and the attached agencies specifically named above.

Other expenditures such as grants-in-aid and investments were specifically excluded since they are, by definition, not procurement transactions subject to the Hawai'i Public Procurement Code.

This investigation was performed between July and December 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the investigation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our investigation objectives.

Chapter 2

DBEDT's Procurement Environment Lacks Transparency and Accountability

In the regular legislative session of 2008, Senate Resolution No. 2 established a Senate special committee to conduct an investigation into the Department of Business, Economic Development & Tourism's awarding of a contract to H2 Energy LLC to manage the Hydrogen Investment Capital Special Fund. The resolution noted that H2 Energy LLC was the lowest-ranked bidder among three proposals evaluated. In addition, informational briefings held by the Senate Committee on Tourism and Government Operations uncovered possible procurement improprieties.

Concerns arising from the informational briefing and the Senate investigation prompted the adoption of Senate Concurrent Resolution No. 212, Senate Draft 2 (SCR 212, SD2), which requested the Auditor to conduct an investigation into procurement and expenditure practices of the department. Legislators also expressly requested that our office examine the department's ability to fund or pursue projects that had not received approval from the Legislature.

In the two most recent fiscal years, the department entered into contracts with vendors to pursue programs that were previously denied by the Legislature using "payroll savings" from various divisions and attached agencies, exhibiting a disregard for legislative authority. This practice has become systemic, with the department also failing to stress the importance of the Hawai'i Public Procurement Code as evidenced by numerous errors, lack of training, and an outdated procurement/contracts manual.

The director, as head of the department, has the responsibility to carry out the mission of the organization and establish the tone of a compliant and ethical environment. The U.S. Government Accountability Office's *Standards for Internal Controls in the Federal Government* provides guidance on agency management. In particular, it identifies management as playing a key role in providing leadership in the control environment, especially in setting and maintaining the organization's ethical tone, providing guidance for proper behavior, and providing discipline when appropriate. However, in our investigation into the procurement and expenditure practices of the Department of Business, Economic Development & Tourism, we found a culture of ambivalence, which willfully ignores the laws, rules, and requirements of the Hawai'i Public Procurement Code.

Summary of Findings

1. The Department of Business, Economic Development & Tourism uses transfer authority to fund projects denied by the Legislature.
2. The department's flawed implementation of the Hawai'i Public Procurement Code has resulted in an apathetic procurement environment and numerous errors.

The Department Uses Transfer Authority To Fund Projects Denied by the Legislature

The State's budget process requires input from both executive and legislative branches, which often do not agree on where and how moneys are spent. This is especially the case in matters of business growth and development. Provisos within the general and supplemental appropriations act authorize the governor to transfer operating funds between appropriations and to allow for flexibility in operations within an expending agency. To do this, the governor is required to report the details of such approvals to the Legislature within five days of each use of this proviso and a summary report for each use of the proviso for the previous 12 month period from December 1 to November 30 no later than 20 days prior to the convening of the regular session. While the ability to maintain operational flexibility by transferring appropriations is needed, this ability should not be used to circumvent legislative intent.

The problems associated with the practice of transferring authority are myriad. It introduces a risk that existing programs could be crippled when appropriations are redirected. In addition, the resulting new program instituted during the fiscal year would not be subject to the same legislative program performance review, with little commitment of what needs are being addressed or what outcomes are expected. Without this input, the Legislature may not be able to make appropriate adjustments to baseline funding.

During the specific fiscal years that we examined, we found that the department made use of this ability to transfer funds six times. After careful review we found that such transfers were used as a means to install projects and programs originally excluded from legislative funding.

Transfers were used to fund programs not authorized by the Legislature

We reviewed two contracts in which the purposes were originally denied funding by the Legislature. Despite the denial, the department used the transfer authority described above and shifted funding with the governor's approval, and the transfer was later reported to the Legislature. While the ability to maintain operational flexibility by transferring appropriations is needed, this ability should not be abused to circumvent legislative intent.

Exhibit 2.1 FY2005-FY2008 Transfer Amounts

Fiscal Year	Amount	Description	Source
2005	\$114,640.00	Fund Tourism Liaison position and cover other current expenses	Gen. Fund transfer from Statewide Planning & Coordination and Business Development & Marketing
2005	\$1,493,513.00	Fund departmental reorganization	Gen. Fund transfer from Business Development & Marketing, Business Services, and Statewide Planning & Coordination
2005	\$30,000.00	Fund Land Use Commission for expenses through the end of fiscal year	Gen. Fund transfer from Strategic Marketing & Support and Strategic Industries
2006	\$77,000.00	Fund Office of Planning personal services requirements through the end of the fiscal year	Gen. Fund transfer from Strategic Marketing & Support and Strategic Industries
2007	\$241,000.00	Fund contract entered into with Pacific and Asian Affairs Council	Gen. Fund transfer of payroll savings from Strategic Marketing & Support, Creative Industries, Strategic Industries, Research & Economic Analysis, High Technology Development Corp., Office of Planning, and Hawai'i Community Development Corp.
2008	\$289,000.00	Fund contract entered into with UH-KCC for Creativity Academies	Gen. Fund transfer of payroll savings from Strategic Marketing & Support, Strategic Industries, Research & Economic Analysis, Departmental Administration, High Technology Development Corp., and Office of Planning

Source: Department of Business, Economic Development & Tourism

For the 2007 legislative session, the governor introduced a package of bills related to her innovation initiatives. Specifically, House Bill No. 1281 (HB 1281) and Senate Bill No. 1367 (SB 1367), relating to the Office of International Affairs, would have appropriated \$1,049,000 to be expended by DBEDT over the following two years to link Hawai'i's numerous Asia-Pacific focused international organizations through an International Affairs Council, fund the Office of International Affairs to catalogue and coordinate international activities, and support international student exchanges and study abroad programs. In February 2007, both bills died in committee. In halting the bills, the Legislature had made clear that this program was not a priority.

However, on May 7, 2007, soon after the Legislature's adjournment, the department requested authorization from the governor to transfer "payroll savings" in the amount of \$241,000 to implement the "Innovation in Linking Hawai'i to the Global Economy" policy. However, before receiving the governor's approval, the department issued a request for proposals (RFP) with a response time period between May 17 and June 15, 2007. The RFP established the following objectives to create the infrastructure for Hawai'i to play a lead role in the Asia-Pacific region, in areas to build on the state's competitive advantages to:

1. Enable the Office of International Affairs (OIA) to catalogue all international resources, activities, and programs within Hawai'i and the Asia-Pacific region;
2. Establish an International Affairs Council to support Hawai'i's existing international and Asia-Pacific related organizations;
3. Expand existing Hawai'i based international leadership training and education programs; and
4. Organize an "International Educational Links" program to provide Hawai'i middle and high school students opportunities to learn via excursions to countries in Asia-Pacific region, online sister school relationships, and school/teacher exchange programs.

Also included within the contract was a specific task to provide personnel services as the executive director of the OIA.

The evaluation committee determined that Pacific and Asian Affairs Council (PAAC) provided the winning proposal. With an effective date of June 29, 2007, PAAC officials signed the contract on June 26, 2007, and the DBEDT director signed on June 28, 2007. The department received approval from the governor authorizing transfer of moneys on June 25, 2007.

We also noted that the final contract language provided for PAAC to carry out functions similar to that proposed in HB 1281 and SB 1367. In fact, the provision in the final contract is very similar to the provision in the bills that died in committee. Exhibit 2.2 below compares the terms of services in the signed contract to sections in the governor's innovation initiative bills.

Exhibit 2.2 Comparison of Specific Language in Legislation to Services in Contract

Language in Bills that Died	Services in Contract
<p>[HB 1281/SB 1367]: There is appropriated out of the general revenues of the State of Hawai‘i the sum of \$531,000, or so much thereof as may be necessary for fiscal year 2007-2008, and the sum of \$518,000 or so much thereof as may be necessary for fiscal year 2008-2009, for the hiring of an executive director and administrative assistant and for operating and program expenses.</p>	<p>a. Provide personnel services as the Executive Director of the Office of International Affairs;</p>
<p>[HB 1281/SB1367]: Inventory existing international programs and develop a web-based information portal to make this information available to the public.</p>	<p>d. Develop a public calendar of international activities and work with State to post the information on DBEDT’s website;</p>
<p>[HB 1281/SB 1367]: Facilitate an international educational links program by increasing collaboration and coordination of international, educational business, and community organizations and providing funding for activities that shall include, but not be limited to:</p>	<p>e. Develop and implement plans to expand existing Hawai‘i-based international training and education programs such as home-stay and study abroad programs to include Hawai‘i’s high schools and private sector participants; and</p> <p>f. Develop and implement an “International Educational Links” program to expose Hawai‘i’s middle and secondary school students to international experiences. The program will support and build upon existing programs already being undertaken by various international organizations, schools, colleges, and universities.</p>
<p>i. School excursions from Asia to Hawai‘i schools, targeting middle and high school students from Japan, Taiwan, Korea, and China with special focus on Hawai‘i’s sister-states, utilizing the department and its overseas offices to market school excursions to Hawai‘i and match these overseas school visits with Hawai‘i schools;</p>	<p>i. Extend the language programs at universities to local schools;</p>
<p>ii. Study abroad programs, targeting middle and high-school students from Hawai‘i schools, utilizing the department’s overseas offices and focusing on Hawai‘i’s sister-states, that match Hawai‘i schools with overseas schools for school-to-school visits and hosting. The office shall fund, and encourage funding sources both public and private to help finance, the studies abroad.</p>	<p>ii. Develop on-line international “sister-school” relationships for local schools and teacher exchange programs that target Hawai‘i’s sister-state relationships.</p>

Source: Data compiled by the Office of the Auditor based on DBEDT provided contract details and legislation information.

Moreover, certain tasks outlined within the contract ultimately were not performed by the contractor, yet the contract administrator still approved payments reflecting charges to those line items.

Similarly, in the 2008 legislative session, the governor included as part of her legislative package a bill to establish Creativity Academies. Specifically, House Bill No. 3066 (HB 3066) and Senate Bill No. 2988 (SB 2988) called for \$1.6 million to be expended by DBEDT to establish a curriculum-based program that develops skills in animation, digital media, game development, writing, and publishing in state schools modeled after the successful Science, Technology, Engineering, and Math Academies. Both of these bills died in committee in late January 2008. Similarly worded House Bill No. 2587 continued on until late April 2008, where the bill died in conference as HB 2587, House Draft 1, Senate Draft 1. While legislators expressed support for the intent of the bill, they also raised concerns over DBEDT as the expending authority.

Despite the legislative outcome, the Creative Industries Division chief communicated via e-mail to all those working on the project that “in the final hours of the legislative session last night we were unable to attain the funding needed” but they “must now look to other creative ways to embark and continue on the plan” and scheduled meetings to discuss “as well as a potential timeline, funding sources and next steps towards implementation.” The department was subsequently able to locate funds to pursue this program to a lesser degree.

In a Request for Transfer of Funds, dated June 12, 2008, DBEDT asked the governor for permission to transfer \$289,000 of general fund payroll savings from various DBEDT programs to budget program BED105 for contract services related to implementing the Creative Academies Program. The request was approved on June 26, 2008 by the director of finance.

In a June 13, 2008 memo to the governor, the DBEDT director made a request to enter into a contract with the University of Hawai‘i, Kapi‘olani Community College (UH-KCC) for the creative academies pilot program with funds available from payroll savings from other divisions and attached agencies. The memo noted that the contract would not exceed \$450,000. The related request for transfer was made on June 12, 2008 for \$289,000. With an effective date of June 30, 2008, the contract between DBEDT and UH-KCC would develop a creativity academies curriculum module, complete with teacher training tools, and pilot-test the curriculum with UH community college and DOE system high schools and middle school students as resources allowed. The memo to enter into contract was approved by the governor on June 24, 2008. In a letter dated June 27, 2008, the governor notified legislators of the funding transfer.

The contract was deemed to be exempt by the department per Section 103D-102, HRS, and Chapter 3-120, HAR. Exhibit 2.3 below compares sections in the creativity academies bills to the terms of services in the contract.

**Exhibit 2.3
Comparison of Specific Language in Legislation to
Services in Contract**

Language in Bills that Died	Services in Contract
<p>The creativity academies seek to integrate the teaching, learning and use of science, technology, engineering, and mathematics and new media arts-related skills throughout Hawai'i's education system by:</p> <ul style="list-style-type: none"> • Locally developing a turn-key creativity academies curriculum that is responsive to the educational and workforce development in Hawai'i; • Pilot-testing this turn-key curriculum for the University of Hawai'i, community colleges, and state department of education systems at Kapi'olani Community College and a neighbor island community college involving area high school students in the first year of the program; • Developing and pilot-testing "teacher training program in activities"; • Establishing an after-school program for middle school students in animation, game development, and creative publishing; and • Establishing an after-school program for at-risk youth in animation, game development, and creative publishing. 	<p>Contractor shall perform and provide ...:</p> <ul style="list-style-type: none"> • Develop a turn-key CA curriculum module complete with teacher training tools that is responsive to the educational and workforce development needs of Hawai'i. • Within the first year, pilot-test the CA curriculum for the University of Hawai'i community colleges, and the DOE system involving as many high school and middle school students as resources will allow. <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p>
<p>In order to engage, ignite, and sustain the interest of students in the core skills needed to gain the basic knowledge and skills necessary for the twenty-first century workforce, the creativity academies will infuse science, technology, engineering, and mathematics course curriculum with animation, game development, digital media, and creative publishing projects, blending art and science into a comprehensive lesson plan.</p>	<p>CA will infuse science, technology, engineering, and mathematics course curriculum with animation, game development, digital media, and creative publishing projects via a standards-based blended curriculum.</p>

Source: Data compiled by the Office of the Auditor based on DBEDT provided contract details and legislation information.

These reallocations of funds lack accountability and therefore pose a great risk for the State. For instance, the Legislature has not been informed of what these contract-created programs intend to accomplish. Goals and objectives are not specified through the legislative budget process. Also, since no budgets were available for discussion, no program performance measures are specified. Without detailing goals in advance, no outcomes can be subsequently measured for the created programs, making accountability difficult. In addition, there is no reporting based on Act 100, Session Laws of Hawai'i (SLH) 1999 requirements or the department's yearly activity plans (YAPs). Appropriation transfers such as these are not unique to this department. In the governor's report to the Legislature for the period of December 1, 2007 - November 30, 2008, transfers were made within 12 departments, amounting to \$82.5 million. This further raises concern that with no mechanism in place to either determine the impact of or reconcile the changes in funding levels, transparency in government is lost.

DBEDT's Flawed Implementation of the Hawai'i Public Procurement Code Has Resulted In an Apathetic Procurement Environment and Numerous Errors

During our investigation, we noted violations of procurement procedures, poor procurement practices, and inadequate training. Failure to comply with the procurement code is a violation of state law and could lead to the termination of awarded contracts and individuals can be held liable for moneys paid in connection with the violation. Hawai'i Administrative Rules further clarify that the head of the purchasing agency, in this case the department director, is responsible for the agency's compliance with the law. But individual public employees are also responsible to act in good faith to ensure the fair and equitable treatment of all who deal with government procurement in order to foster public confidence in the integrity of the procurement process and to ensure the appropriate application of purchasing ethics.

Our findings raise questions about the department's awareness of, compliance with, and commitment to the requirements of the Hawai'i Public Procurement Code. We noted that individuals responsible for the procurement of goods and services do not have a comprehensive understanding of the procurement code. The many errors we found were not individually significant, but when taken as a whole, illustrate a management environment that does not clearly emphasize the code's importance.

While adherence to the procurement code can be challenging and complicated, management is ultimately responsible to create an internal control environment necessary to ensure proper stewardship of state resources. Clear and comprehensive policies and procedures along with consistent compliance serve as important components of internal controls. According to the GAO *Standards for Internal Control for the Federal Government*, internal controls are an integral component of an organization's management that provides reasonable assurance

that the following objectives are being achieved: effectiveness and efficiency of operations; reliability of financial reporting; and compliance with applicable laws and regulations. Internal controls comprise the plans, methods, and procedures used to meet missions, goals, and objectives. They serve as the first line of defense in safeguarding assets and preventing and detecting errors and fraud. Internal controls help government program managers achieve desired results through effective stewardship of public resources.

One important factor that can influence the effectiveness of an internal control is the extent to which individuals or entities recognize that they will be held accountable. Accountability requires effective monitoring and detective controls that will identify noncompliance. Monitoring activities such as independent evaluations, supervisory reviews, and self assessments will help foster accountability. Recent updates to the Hawai'i Administrative Rules recognize these basic tenets, "Violations of Chapter 103D, HRS, which are normally inadvertent, and the result of administrative error, lack of knowledge, or simple carelessness, may be avoided through the implementation of better procedures, employee training, and progressive discipline."

In reviewing procurement and expenditure data, we found an environment lacking in effective internal controls. We noted numerous errors in our sample selections, with ignorance of the rules as the common defense for not following procedure. We reviewed contract files for the various divisions and specific attached agencies, noting that improvements are needed for documenting the procurement method used, justifications for contractor selections, rationale for not adhering to procedure, and overall document files maintenance. In addition, the overall management of contracts, including oversight on contract terms, contract deliverables, and payments needs to be strengthened. The GAO in its standards for implementing internal controls emphasizes the importance of the internal control environment:

Management and employees should establish and maintain an environment throughout the organization that sets a positive and supportive attitude towards internal control and conscientious management. A positive control environment provides discipline and structure as well as the climate which influences the quality of internal control.

An increasingly decentralized process increases the risk of noncompliant practices

In Report No. 97-12, *Procurement Audit of the Department of Business, Economic Development and Tourism*, we pointed out that the centralized process of procurement that was in place provided an environment that enhances compliance with the procurement code. However, this is no longer the case. The procurement and expenditure process as described

by the department's own policies and procedures is still consistent with a centralized procurement process, but based on discussions with the department's contracts and fiscal personnel, oversight has shifted with program and division personnel having greater authority over procurement.

According to personnel guidelines provided, the contracts specialist is described as having technical expertise over the whole procurement process. This includes the responsibility to ensure compliance with the procurement code. In Report No. 97-12, we commented that the contracts specialist reviewed all requests to determine adherence with the mission of the department and for compliance with the provisions of Chapter 103D, HRS. Or in cases in which a contract is not required, the fiscal officer would review the purchase order to ensure compliance with the procurement code. Based on discussions with the contracts specialist and fiscal officer, this is no longer consistently performed. Instead, needs are determined at the program level, and depending on the delegation of purchasing authority, it is now the division administrator who is responsible for the appropriateness of procurement. As a consequence of shifting these functions, delegating the authority and responsibility of procurement requires greater understanding of the underlying laws, which non-specialists may not possess.

Deficiencies in procurement processing are prevalent across divisions and attached agencies

In order to navigate the complicated procurement statute and rules, the department also provides a procurement/contracts manual. Despite the guidance available, we found a number of deficiencies in the individual procurement and expenditure items throughout the divisions and attached agencies we examined. Additionally, these errors were not detected in the normal course of the department's operations and only noted upon our investigation. When interviewed, personnel claimed they were not aware of specific requirements, despite the availability of the manual and the technical expertise within the department.

Because the department does not maintain a full listing of all procurements, we based our testing on the population of all expenditures, year-end encumbrances, contracts, and letters of agreement entered into for the period of July 1, 2004 through June 30, 2008. We judgmentally selected a sample of 78 items from expenditure listings, 36 items from contract/letters of agreement listings, and eight items from encumbrance listings. Included within this sample were 27 other items. These other items included transfers between funds and special fund assessments that were not "procurement items," but because of their inclusion within expenditure listings provided, they were included in our test work. We examined these items individually for propriety of transaction. We also reviewed the relevant expenditure documentation to determine reasonableness over total process. Due to the interconnected nature of

the samples selected from expenditure listings, contract/LOA listings, and encumbrance listings, there was some overlap, with the same items selected from the different populations. Exhibit 2.4 details the types of items reviewed in this investigation.

**Exhibit 2.4
Procurement and Expenditure Investigation Details**

Type of Procurement	Number of Contracts/ Purchases Reviewed	Percentage (%) of Total Procurement Sample
Exempt	35	40%
RFP	13	15%
Small Purchase	28	32%
Professional Service	2	2%
IFB	6	7%
pCard	2	2%
Sole Source	2	2%
Non-Procurement (such as Special Fund Assessments, Transfers to General Fund, Procurement Code did not apply)	27	N/A
Total	115	

Source: Data compiled by the Office of the Auditor.

Approximately 40 percent (35 of the 88) of the procurement items we reviewed did not follow the department's policies and procedures. In our 1997 procurement audit, we recommended the department needed to develop its own procurement manual to address issues specific to the department rather than rely on a State Procurement Office manual. A decade later, DBEDT issued its own Procurement/Contracts Manual in February 2007. While DBEDT's manual and the relevant State Procurement Office updates and memoranda from management are consistent with relevant laws and rules, the department fails to consistently follow its own policies and procedures governing procurement.

The tables below summarizes the number of contracts or purchases by procurement type that did not follow prescribed procedures:

Exhibit 2.5 Instances of Noncompliance With Procurement Procedures in Contracts and Expenditures Reviewed

Type of Procurement	Number of Deficiencies	Percentage Deficient
Exempt	13 of 35	37%
RFP	11 of 13	85%
Small Purchase	10 of 28	36%
Professional Service	1 of 2	50%
IFB	0 of 6	0%
Sole Source	0 of 2	0%
pCard	0 of 2	0%
Total	35 of 88	40%

Source: Data compiled by the Office of the Auditor.

Exhibit 2.6 Details of Noncompliance in Contracts and Expenditures Reviewed

Type of Procurement	Type of Deficiency
Exempt	<p>11 instances where the SPO Form-10 not found in file. Procurement lacking evidence of competition.</p> <p>2 instances where procured item/service is not clearly related to function of division.</p> <p>1 instance where dates not in logical order [contract was executed after services provided but approved by the Attorney General(AG)].</p> <p>5 instances where invoice details do not coincide with contract payment details, evidencing inadequate oversight.</p> <p>1 instance where SPO Form-7B [Notice of Amendment to Exemption] not found in file.</p>
RFP	<p>5 instances where evaluation committee formed after issuance of RFP, evidencing lack of evaluation committee participation in formulating project and evaluation specifications.</p> <p>1 instance where procured item/service is not clearly related to function of division.</p> <p>4 instances of shortened RFP period, with director approval. The justification did not note how adequate competition would be assured, evidencing lack of unfamiliarity of SPO administrative rules.</p> <p>1 instance of incomplete documentation of approval of evaluation committee members by the procurement officer evidencing unfamiliarity with guidance of Procurement/Contracts Manual.</p> <p>1 instance of missing documentation on the basis for selecting the offeror evidencing unfamiliarity with guidance of the SPO administrative rules.</p> <p>5 instances of lack of memos evidencing director's approval to begin RFP process.</p> <p>2 instances of no evidence of governor's approval to apply & expend funds.</p>
Small Purchase	<p>2 instances where dates not in logical order [quote obtained after service provided and purchase order (PO) dated after service provided].</p> <p>2 instances where SPO Form-10 not found in file; procurement lacking evidence of competition.</p> <p>1 instance where only one quote obtained on SPO Form-10; no justification of rationale.</p> <p>1 instance where procured item/service is not clearly related to function of division.</p> <p>3 instances of lack of three written/verbal quotes, evidencing lack of competitive procurement (no bid/response).</p> <p>1 amendment made to a letter of agreement (LOA) which was approved by the director after the LOA had expired. Subsequently, 2 more amendments made to the LOA were not approved by the director evidencing unfamiliarity with guidance of Procurement/Contracts Manual.</p> <p>1 instance where SPO-10A received after quotation request date, but was included in selection process.</p> <p>1 instance where invoice details do not coincide with purchase order details.</p>
Professional Service	<p>1 instance where BED-200 form not completed. Form should provide details of professional service needed.</p>

Source: Data compiled by the Office of the Auditor. Note that deficiencies found may have been across a single sample item and therefore, may not total exceptions as noted in Exhibit 2.5.

Exemptions lack proper authorization

The procurement code allows exemptions for cases when it is determined that procurement by competitive means would not be practical or advantageous to the State. In these situations, delegated authorities of the purchasing agency submit a “Request for Exemption from Chapter 103D, HRS” to the chief procurement officer. The chief procurement officer, as head of the SPO, evaluates the exemption based on the circumstances of each individual case and is responsible for posting the written justification. The items described above are separate from exemptions that have been determined by the Procurement Policy Board to be specifically exempt as noted in Section 103D-102(b)(4), HRS, and Exhibit A in Chapter 3-120, HAR.

We noted that 46 percent of the contracts and agreements during the past four fiscal years were exempt procurements. These figures include both clearly allowable exemptions and those that are not as clearly determinable. Exhibit 2.7 below details the various procurement methods and frequency used for contracts and letters of agreement (LOA) entered into during fiscal years 2005 through 2008.

**Exhibit 2.7
Contracts and Letters of Agreement (LOA) Entered Into, FY2005 Through FY2008**

	Comp. Sealed Bids	Comp. Sealed Proposals	Small Purchase	Sole Source	Emergency	Exempt	Other	Total
FY05-FY08 Contracts	18	28	5	4	-	65	31	151
FY05 Letters of Agreement	-	-	26	19	-	107	6	158
FY06 Letters of Agreement	-	-	34	27	2	57	12	132
FY07 Letters of Agreement	-	-	32	34	-	34	23	123
FY08 Letters of Agreement	-	-	36	22	-	43	2	103
Total, contracts and LOAs	18	28	133	106	2	306	74	667
	3%	4%	20%	16%	0%	46%	11%	100%

Source: Department of Business, Economic Development & Tourism as compiled by the Office of the Auditor. Note that “Other” items include agreements procured by the Department of Accounting and General Services, the Department of the Attorney General, grants, and memoranda of agreement or understanding.

In our sample of 88 procurement items, 35 were exempt procurements. Thirteen out of 35 contracts or purchases exhibited a breakdown in internal controls, primarily lacking in their justification for the exemption. Specifically, under Section 3-120-4, HAR, for exempt procurements, the rules require the legal reference for an exemption to be cited on the contract or purchase order. Further, per DBEDT’s Procurement/Contracts Manual, If the Good or Service being sought qualifies as a Procurement Exemption, complete the SPO Form-10

Section C and notate the applicable legal citation for the exemption. The manual further provides more stringent requirements, stating that the form must be completed for all exemptions on the pre-approved list regardless of amount.

The form should then be submitted to the Administrative Services Office/Contracts for DBEDT director's approval. The most prevalent deficiency, occurring in 11 out of 13 cases, was the failure to complete the SPO Form-10, Record of Procurement. By not completing these forms, DBEDT staff did not adequately justify exemptions. Moreover, the lack of forms and the appropriate approval from the director should have stopped the procurement, rendering the related expenditure inappropriate. These errors are the result of the director's heavy reliance on the division administrators, who lacked knowledge in this area.

While the Procurement/Contracts Manual's instructions are explicit, program personnel were unfamiliar with the guidelines. For example, a \$698,000 University of Hawai'i contract to support the Experimental Program to Stimulate Competitive Research (EPSCoR) IMUA II Program, lacked a SPO Form-10. The program manager responsible for the contract claimed that a SPO Form-10 was not needed, because it was an exempt contract. However, after attending a procurement training session, the program manager revised the response and acknowledged that the form was in fact needed. In this case, DBEDT failed to adhere to the state rules and its own internal procedures.

Despite the division's failure to adhere to the department's more stringent procurement rules, the specific divisions suffered no negative consequence for non-compliant practices. It is not surprising, then, that we found errors and inconsistencies throughout the procurement process. The department's inaction implicitly authorizes those involved to proceed with "business as usual."

While this was the case with the department's internal divisions, the exemptions we reviewed in the attached agencies did not have these problems. For example, a large majority of the contracts entered into by the High Technology Development Corporation (HTDC), specifically as it relates to the Hawai'i Center for Advanced Transportation Technologies (HCATT) program, are exempt procurements. HCATT conducts vehicle and infrastructure technology demonstrations and evaluations at Hickam Air Force Base and due to specific funding agreements with the federal government, an exemption from the procurement code is clearly justified in all related contracts. These exemptions were clearly documented within the procurement files we reviewed.

However, it is important to distinguish between the exemptions obtained by the department's own divisions versus those of the attached agencies. Absent clearly documented evidence having appropriate justification, such as the specific conditions of federal funding guidelines, the practice of awarding non-competitive contracts may fuel public speculation that contracts with state entities are awarded unfairly. It is imperative that the department document justifications for exemptions to ensure transparency and accountability within the procurement process.

Shortened response time for RFPs decreased competition

Section 103D-303, HRS, governs the competitive sealed proposal method of procurement. Its use requires a determination, in writing, by the head of the purchasing agency. Proposals are solicited via a request for proposals (RFP). The Hawai'i Administrative Rules provide more detailed guidance, and in Section 3-122-16.02(a)(2), HAR, the minimum time period between the first date of public notice and the date set for the receipt of offers is 30 calendar days, unless a determination is made in writing by the procurement officer that a shortened time period will provide for adequate competition.

In our investigation, we reviewed 61 contracts and letters of agreements. Of the 61 contracts, 13 contracts were procured using the competitive sealed proposal method of source selection. We found four contracts in which the RFP notice response times were shortened by two days to 16 days from the minimum 30 calendar days as prescribed by the administrative rules. For two of these contracts, the decision to shorten timeframe was driven by the contracts' proximity to year's end and the resulting possible lapsing of funds. The other two contract files noted that the external deadlines forced the need to rush through the RFP process.

Two contracts reviewed, contracts 56057 with the Pacific and Asian Affairs Council (PAAC) and 57373 with ICF Consulting, LLC (ICF), were entered into following a truncated RFP period. The PAAC RFP time period was decreased by two days and the ICF by 15 days. According to a letter dated May 16, 2007, from deputy director to director, justification for the shortened period for the PAAC contract was due to the proximity to the end of the fiscal year. Similarly, in a letter dated May 28, 2008, from acting energy administrator to director, justification for the shortened period was due to the closeness to the fiscal year end and concern that the contracting process could not be completed in time to encumber the amount appropriated.

According to the administrative rules, the procurement officer should also document how the shortened time frame will provide for adequate competition. However, in both of the above instances, the justifications

did not include explanations for how additional proposals would be solicited in the shortened timeframe. Besides the PAAC proposal, only two other proposals were received. Only one other proposal was received to compete with ICF. While we cannot comment if the standard time period would have resulted in greater competition, absent a clearly documented rationale justifying these changes in procedure, the shortened timeframe will always be subject to speculation.

The loss of funds at the end of the fiscal year is occasionally used to justify rushing the RFP periods. While not specifically disallowed for competitive sealed bids for sole source and emergency procurement, this is not an applicable justification according to Sections 3-122-81(f)(4) and 3-122-88(c), HAR.

In a third situation for contract B-08-11 with CanAm Enterprises, LLC, the RFP response time was shortened to 14 days. According to an email memo dated June 6, 2007, from the Strategic Marketing and Support Division administrator to director, justification for the shortened period was the possible loss of "Regional Center" status under the federal EB-5 Immigrant Investor program. However, similar to the above examples, there was no written determination substantiating the procurement method or providing assurance of adequate competition, as required by the administrative rules. Also, only one other proposal was received.

In addition, documentation provided further evidence that problems within program management were the driving factor in this rushed procurement. On July 14, 2006, the U.S. Citizenship and Immigration Service (USCIS) requested specific information on work performed to date to determine compliance with federal regulations. The department responded in an August 28, 2006 letter that did not address any of the USCIS concerns or provide detailed information as requested. No communication was exchanged between the two entities until an April 4, 2007 USCIS letter was received by the department advising the department of USCIS's intent to terminate DBEDT's designation as a regional center and its participation in the pilot program. This letter also raised serious concerns regarding the department's program oversight. A deadline set within this letter drove the shortening of the RFP as discussed above.

Numerous setbacks within the related RFP—from not having any qualified proposals, conflicting approaches wherein the department sought to qualify proposals received and re-procure at the same time, and receipt of a protest—set the tone for a troubled process. While the RFP closed on June 28, 2007, the final contract was not signed until April 21, 2008.

Lastly, for contract 2008-01 between Enterprise Honolulu and the High Technology Innovation Corporation (HTIC), the department shortened the RFP period from the required 30 days to 20 days. The RFP sought a project manager to plan, organize, administer, and implement the National Governor's Association grant for STEM education projects. Documentation noted that a shortened timeframe was necessary because HTIC was already four months into the first year of the grant, and funding for the second year was dependent upon satisfactory progress towards the goals of the project. Again, justification did not note how adequate competition would be assured, and given that the program was already four months late, we fail to see how complying with the additional ten day requirement would have drastically impacted the process.

While these four examples cite some pressing time element in justifying reducing the solicitation period, the real causes stem from poor planning or performance problems. We cannot be certain that more competition would have been generated had the solicitation periods followed the required 30 days; however, we believe that these limitations are inconsistent with the spirit of the procurement code, which is designed to ensure best value is received by the State.

In addition, procedurally, both the PAAC and ICF contracts also had issues over the timing on their requests to the governor to enter into an agreement for services. Prior to entering into agreements, the department should receive approval from the governor, through the Department of Budget & Finance. The PAAC contract did not receive the governor's approval or the notice to release and expend appropriations until after the contractor was given notice of award. In contrast, despite having almost 11 months' lead time (the relevant act's effective date was July 1, 2007), the Strategic Industries Division did not begin the RFP process for the ICF contract until a year later. The division did not proceed with the RFP until it had the governor's approval. However, the initial request had been sent to the governor's office on December 3, 2007, with the governor not approving until April 29, 2008. At the same time, there was no evidence within the file indicating any follow-up was made in order to complete this task.

RFP procurements hampered by errors

As discussed above, once it has been determined that an RFP is the most practical and advantageous method of procurement, a memo should be submitted requesting the director's approval to begin the RFP process. Among the 13 contracts procured using the competitive sealed proposal method of source selection, we found four contracts that did not comply with this requirement, having no documentation evidencing the program's request for proposal. We also found one contract that did not

show evidence of director approval on the request for proposal memo. For the latter item, the division administrator overseeing the contract believes documentation may have been misplaced due to a filing system conversion; nevertheless, we cannot verify director's approval.

Many of these situations are the result of confusion over the process. The contracts specialist indicated that request memos are not consistently documented or retained, while a program administrator indicated that verbal requests, rather than a formal memo, are often allowed. However, the DBEDT Procurement/Contract Manual requires evidence of director approval of the RFP process. Misunderstanding of procurement code requirements can lead to inappropriately procured goods, services, and construction. This haphazard compliance with the procurement code cannot assure taxpayers that departmental moneys are being spent in a manner consistent with the tenets of transparency and accountability required in the public arena.

In addition, the department did not always understand evaluation committee requirements. Per the administrative rules, prior to the preparation of the request for proposals, the chief procurement officer will determine whether the chief procurement officer or an evaluation committee selected in writing must evaluate the proposals. The evaluation committee must consist of at least three governmental employees and may include private consultants, with sufficient qualifications in the area being procured. DBEDT's own guidance provides that the evaluation committee be involved with the preparation of the RFP. The evaluation factors set forth in the request for proposals will then serve as the basis for the committee to rate the submissions. As needed, a request for proposals will be issued with adequate public notice to allow a sufficient number of proposers prior to the opening. Discussions may be conducted with responding proposers who submit proposals for the purpose of clarification to ensure full understanding and responsiveness to solicitation requirements. The award will be made based on evaluation committee recommendation of the winning proposer whose proposal is determined in writing to be the most advantageous, taking into consideration price and the evaluation factors as defined by the request.

For example, for the \$204,329.37 PAAC contract noted previously, which implemented the governor's initiative on "Innovation in Linking Hawai'i to the Global Economy," the deadline for proposals to be submitted was June 15, 2007. The approval given by DBEDT's director for the evaluation committee was dated June 18, 2007—three days after the proposal deadline.

In five out of 13 RFP procured items, we noted that approval by the director for an evaluation committee was given after the RFP was

prepared and posted publicly for bidding. According to Section 3-122-45.01, HAR, the evaluation committee is to be formed prior to the preparation of the RFP. The request should include the names and positions of all proposed members of the evaluation committee. It must also include a brief summary of the proposed committee members' background and their qualifications to sit on the committee. A copy of the document identifying any committee members must be included within the contract file. Further, the department manual adds additional responsibilities for the committee which includes preparing the RFP and determining the evaluation criteria for proposals submitted. These procedures are in place to ensure propriety and provide transparency in the process. In a worst case scenario, unqualified individuals would serve on the evaluation committee for the purpose of awarding contracts for improper financial interests.

The division administrator responsible for the contract was not aware that the evaluation committee should provide input into the RFP. He said it is the division's practice to have one of the division's programs develop the RFP and then have the committee review the offers after the close of the RFP. However, both DBEDT's internal procedures and the State's rules contradict the division administrator's contention. Given this lack of understanding, it is clear that the RFP requirements are not consistently followed, giving further evidence of a compromised procurement environment.

In addition, we found one instance when HTIC failed to include in its procurement file an approved request of evaluation committee members by the procurement officer with their background information as required by Section 3-122-45.01, HAR, for competitive sealed proposals. An email communication to the chief executive officer that included an incomplete list of names and positions of the evaluation committee members was the only documentation found related to this requirement. Within this same procurement, the file did not contain documentation formalizing the basis for selecting the offeror as required by the administrative rules. Section 3-122-57, HAR, requires that the contract file include the basis for selecting the successful offeror. We were informed by HTDC's contract administrator that the required documentation relating to the selection of the offeror was not prepared. Although the contract was awarded appropriately to the contractor having the highest score and lowest bid, we could not readily determine this without tallying up the individual score sheets of all committee members. Recognizing that the procedural error did not affect the final outcome in this particular case, we must nevertheless point out that there was a risk of mistakenly awarding the contract to another vendor.

Small purchase procurements lack competitive pricing

We found that in 10 out of 28 small purchases the department failed to follow small purchase requirements. The most prevalent deficiency, occurring in seven out of ten cases, was the failure to properly complete the SPO Form-10, evidencing the solicitation of at least three quotations, a requirement of DBEDT's Procurement/Contracts Manual. In one example, a small purchase of catering services for \$2,750 for a China Basketball Association reception lacked SPO Form-10. In an email from the division administrator responsible for the event, he acknowledged that the form was not completed but said three quotes were obtained. However, without clearly documented evidence, competitive procurement cannot be guaranteed. The remaining six out of seven deficiencies found in the specific divisions and the attached agencies of HTDC and HSDC, also lacked clear evidence of pricing competition.

Expanding on the specifics as detailed within the rules, the State Procurement Office Procurement Circular No. 2006-07, Amendment 1, provides standardized procedures for all purchases less than \$50,000 (small purchases), with the exception of price/vendor list items, exempt purchases, and sole source purchases. In accordance with the DBEDT procurement/contracts manual, purchases of goods and services between \$2,500 to less than \$15,000 require the solicitation of at least three quotations. Verbal quotations must be obtained for purchases between \$2,500 and \$15,000, and written quotations must be obtained for purchases between \$15,000 and \$25,000. All quotations must be documented. The most advantageous quote is selected based on such various factors as quality, warranty, deliverability, and price. If the quote selected is not the lowest of those submitted, a written justification must be placed in the procurement file. If it is not practicable to solicit three quotes or when the minimum quotations are not obtained for reasons such as insufficient sources, this justification must be documented and placed in the procurement file.

We found two instances of letters of agreements, which are written agreements for services under the small purchase threshold, where the SPO Form-10 was not included within the procurement documentation. The contracts specialist indicated that because the SPO forms are used for internal documentation and not required by law, the programs are allowed to document the exemption details directly on the purchase order (PO). However, this is contrary to the department's own written procedures and illustrates again how haphazard compliance contributes to an error-filled environment.

In four separate instances for the department, HTDC, and HSDC, the SPO Form-10 was not completed appropriately for four items, lacking justifications for the inability to obtain three quotes or counting a

“no response” or “no bid” as a bid submission. Responsible parties within the respective agencies and divisions informed us that it was their understanding that as long as they attempted to obtain a quote it would satisfy the procurement code requirement. Conversations with SPO confirmed our understanding that “no response” or “no bids” did not fulfill this requirement and therefore the attached agencies are not following the noted requirements.

For small purchases, Section 3-122-73, HAR, defines adequate and reasonable competition wherein,

the amount of vendors solicited based upon the number of vendors available and the value or price of the goods, services or construction. Because of variations in circumstances, it is not possible to define what adequate and reasonable competition for every small procurement. However, in general, the more vendors there are that can meet the needs of the agency, or the higher the price of the goods, services, or construction, then a greater number of vendors should be solicited.

Since the purchases in question included such widely available goods and services as catering, vehicles, and office furniture, the agencies' claim that they had difficulty soliciting quotes is unlikely and unreasonable.

Without obtaining the required number of verbal and written quotations, the agencies cannot ensure that pricing competition was achieved, nor that the state obtained good value. Proper completion of SPO Form 10 is critical to document the receipt of written and verbal quotes or the inability to obtain the minimum three quotations. The department personnel indicated that they were aware of the guidelines in the procurement code, but these instances were due to oversight on the part of the respective divisions' personnel. This lack of oversight contributes to the perception that adhering to the procurement code requirements is not a priority. Such errors undermine the department's ability to ensure that state funds are spent in the most cost effective and beneficial manner and that fair competition was encouraged.

In a separate instance, HTDC failed to obtain the DBEDT director's approval for amendments to a letter of agreement. Additionally, we found that the amendment was made to the letter of agreement after the LOA expired. The DBEDT's Procurement/Contracts Manual specifies that the director must sign all LOA amendments, even those LOAs that were originally signed by the person with delegated authority. The manual further states that the program is to submit a written request for the extension not later than 20 days prior to the termination of the LOA.

In this instance, the request was submitted to the director on January 23, 2007. The LOA had expired on December 31, 2006. Subsequent amendments were made to the LOA with no evidence of the director's approval. Effectively, both the original amendment and any subsequent amendments were invalid. However, because of HTDC's unfamiliarity with the requirements, there was no review outside of the corporation. Moreover, by not following procedure, the agency runs the risk of not having funding available for these services.

Problems are the result of vague and non-existent guidelines as well as a lack of training

The department addressed our major concerns in the 1997 audit by creating its own Procurement/Contracts Manual. However, the highly centralized procurement framework that was in place at the time has slowly been decentralized. In the centralized process, all procurements and related payments were directed to the ASO/Contracts or ASO/Fiscal for approval. In this way, those having the technical knowledge of the procurement code and fiscal procedures had final authority over the department's actions. Now, the responsibility for initiating and determining methods of procurement is with the individual programs and divisions, where the amount of technical knowledge of the procurement code and its policies and procedures is questionable. As a consequence, the department risks a greater likelihood that errors, abuse, and fraud will not be prevented nor detected.

In Managing the Business Risk of Fraud: A Practical Guide, a report jointly sponsored by the Institute of Internal Auditors, The American Institute of Certified Public Accountants, and the Association of Certified Fraud Examiners, staff and management are identified as having a shared responsibility over the system of internal controls. All levels of staff, including management should read, understand, and be familiar with the policies and procedures of the organization. Even so, the fraud guide asserts that management should participate in the assessment of risk and development of internal controls because ultimately, it is accountable for the effectiveness of the organization.

One way to prevent fraud is to enhance the operational skills and competencies of staff. This can be achieved through training and promoting the understanding of individual roles within the internal control framework as well as having effective policies and procedures in place.

Procurement/contracts manual must incorporate specific guidance to be useful

In Report No. 97-12, we recommended that the department supplement the SPO manual by creating its own manual. Prior to 2006, the department, on the initiative of the contracts specialist, began writing

a department specific procurement manual, which was finalized in early 2007. The contracts specialist provided a copy to the ASO, a purchasing specialist at SPO, the director, and the Department of the Attorney General for their review. However, we found no evidence to indicate a review by any of the above named parties. We were informed that the ASO approves all content within the DBEDT intranet. After it was posted on the DBEDT intranet, the manual was adopted as a departmental policy and was readily available to staff.

We reviewed the manual and confirmed that the basic content was consistent with the Hawai'i Public Procurement Code. However, much of the guidance was vague, subject to the interpretation of the different divisions or attached agencies. For example, the manual does not specifically outline the forms to complete, timeframes to complete tasks, or documentation necessary to maintain within procurement files. This lack of guidance contributed to the many errors we discovered.

According to the department's own policies, the contracts specialist should play a central role within the procurement process. However, we found that the specialist's role is inconsistent. During our investigation, we found the majority of the documents for contracts were filed with the ASO. However, we also had to review the respective division or program's folders for additional documents supporting the procurement. When we encountered instances of missing documentation, we were informed that the form must have been completed in order for the procurement to be processed. However, absent actual documentation, we cannot verify that procedures were followed as prescribed.

In Report GAO-07-159 of the Washington D.C. procurement system, the U.S. Government Accountability Office (GAO) stated that the objective of a public procurement system is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy goals. DBEDT fails to do this.

The contracts specialist indicated that the divisions and programs do not consistently provide her with the documents to review, because they may be working directly with the DBEDT director during the procurement process. This raises concerns about the responsibilities of the contracts specialist within the procurement process. According to the position description, the contracts specialist is to be a resource and technical person for the development, management, and execution of contracts and letters of agreement. The contracts specialist serves as a coordinator between the director's office and programs in the technical aspects of contracting. However, in our review of documents, there were instances when the contracts specialist was not utilized as intended. Procurement was left to the discretion of those within the department who may have had less training and technical knowledge of the

procurement code, another indication of a weak compliance environment in which management does not feel it necessary to seek the advice of the procurement specialist.

The GAO also pointed out that key to a good internal control environment is management's commitment to competence. All personnel need to possess and maintain a level of competence that allows them to accomplish their assigned duties, as well as to understand the importance of developing and implementing good internal controls.

Within the procurement environment, the GAO also identified best practices that are essential for an efficient and accountable procurement function. Some of these key characteristics include:

- Transparency – comprehensive procurement law accompanied by clear and written policies and procedures;
- Accountability – clear lines of procurement responsibility, authority, and oversight;
- Integrity – public confidence earned by avoiding any conflicts of interest, maintaining impartiality, avoiding preferential treatment for any group or individual, and dealing fairly and in good faith with all parties; and
- Competition – specifications that do not favor a single source and solicitations that are widely publicized to benefit from the efficiencies of the commercial market place.

Training sessions were inadequate and lacked management participation

As discussed in previous sections, many of the exceptions and procedural errors resulted from a lack of understanding of the procurement laws, rules, and internal policies and procedures. Division personnel, the contracts specialist, and the fiscal officer indicated that training over procurement and expenditure practices was not sufficient. For instance, training sign-in sheets attest to the infrequency of training. In addition, the Procurements/Contracts Manual has not been updated since its publication in February 2007. While the SPO consistently provides guidance on updates and changes to rules, the complicated nature of procurement coupled with a lack of training can contribute to a problematic procurement environment. It is then management's responsibility to emphasize the importance of understanding and adhering to the procurement code. Failing to do so exposes the department to greater risk of errors and noncompliance and erodes public confidence in the process.

Our discussions with the director confirmed this conclusion—his own formal training was limited to recent attendance (December 2008) of an SPO sponsored session. Thus, since his appointment as director in January 2003, the director had not received procurement training. Additionally, the director did not direct his division administrators to attend procurement training; the director assumed that division administrators had taken on this responsibility themselves. This lack of commitment to proper procurement training by the leaders of the department conveys to staff that training is not important.

From July 1, 2004 to June 30, 2008, DBEDT provided a total of three procurement training classes for the divisions and programs. Training sessions were presented as high-level discussions of procurement conducted in the course of a few hours out of a single work day. Any updates to the procurement code, such as the issuance of SPO circulars or directives, were distributed first to the ASO and filtered downward into the divisions. It then became the division administrator's responsibility to ensure that staff were aware of these changes. Given the numerous procedural errors and sometimes blatant disregard of what is written within the procurement manual, we conclude that these training lessons were not effective.

The first of these training courses had no sign-in sheets, and the individual conducting the course could recall only minimal attendance. DBEDT's "boot camp" was held on August 3, 2006. This session was scheduled for three hours and its agenda included such items as 1) Personnel – filling civil service and exempt positions and overtime; 2) Contracts – methods of procurement, procurement exemptions, and contracting; and 3) Fiscal – FAMIS and Datamart, the budget process, travel, and inventory. Given the complicated nature of contracts alone, we question the department's judgment in attempting to train staff on all of these topics in a single three-hour session.

Then in February 2007, following the finalization of the DBEDT Procurement/Contracts Manual, training was provided to all divisions and programs. Training attendance sheets indicate that the session was minimally attended with the noticeable absence of division administrators and program managers. Finally, in September 2007, a Hawai'i Electronic Procurement System (HePS) demonstration was provided to all division and program personnel, to supplement SPO's HePS basic training classes for buyers and approvers. Again, individuals heavily involved in the approvals of procurement, such as division administrators and project managers, were not listed as having attended the training.

Noticeably absent from these in-house training courses included the department director, division administrators, and program managers. These individuals are responsible for identifying needs of a program or

approving requests. If these individuals do not understand or further emphasize the importance of the procurement code within the division or program operations, how can the expectation be realistically applied to staff below them?

According to the GAO, human capital management is key to an effective procurement system. This means that a competent workforce must be in place that is responsive to mission requirements. Moreover, in keeping with the GAO internal control guidance, there should be continued review and training to improve individual and system performance. The above illustrates, yet again, that managers need to take responsibility for their part in a failed internal control environment.

Contract management still needs improvement

Our investigation included a review of overall contract management. We observed the contracts office and the physical upkeep of the files and reviewed policies as they related to physical file maintenance of the executed contracts. We reviewed specific contracts to test their compliance with procedures as laid out in the Procurement/Contracts Manual, agreement over contract terms, and approval process in place over the related expenditures.

The ASO Contracts section is responsible for executing and maintaining the files for all contracts of the department. We found that the office does not have formal, written contract maintenance procedures. There is no central filing system or formal contract log that lists all contracts, including amounts, status, modifications, and file location. In addition, it is the responsibility of the individual project manager to ensure that vendors are performing tasks in accordance with contract specifications. We found instances where contract terms were not being fulfilled, changes to contracts were allowed based on verbal discussions and not formalized via written amendment to contracts, and payments were being made to contractors for services not performed.

The lack of uniformity also made it difficult to account for and locate components for specific contract files. All files and documents requested were eventually located, except as discussed previously. However, the lack of a centralized, standardized filing system reduces operational efficiency and increases the risk that required contract documents are incomplete or lost. In addition, since only individual staff members know the status and location of contracts and files, this institutional knowledge can be lost over the course of normal employee turnover.

In our 1997 audit of the department, we recommended the development of a contracting policies and procedures manual for use by all project managers to ensure that all project managers are properly trained in

contracting policies and procedures. Management recognized the importance of documenting its policies and procedures and had begun drafting a project management section as a part of the departmental policies and procedures manual. However, no project management section exists in the 2007 Procurement/Contracts Manual. Based on our review, the project management problems still exist.

In our review of the contract management functions, we found that contract monitoring was not consistently performed. The National State Auditors Association's report on best practices in contracting for services identifies contract monitoring as an essential part of the overall process. Monitoring should ensure that contractors comply with contract terms and meet performance expectations. It should also identify problems and resolve them. Some of the tasks within an effective contract monitoring process would include: 1) assign a contract manager with the authority, resources, and time to monitor the project; 2) ensure that the contract manager possesses adequate skills and has the necessary training to properly manage the contract; 3) track budgets and compare invoices and charges to contract terms and conditions; and 4) ensure that deliverables are received on time and document the acceptance or rejection of deliverables.

We noted that with contract 56057 with Pacific and Asian Affairs Council there was no evidence of monitoring to ensure that the contractor is achieving the contract requirements. In another contract, we noted that there was minimal history of the Immigrant Investor Program documented for the years prior to 2008, which was attributed to staff turnover. This contributed to some of the difficulties described above for contract B-08-11 with CanAm Enterprises. Additionally, in discussions with two project managers, there was no indication that a contracting policies and procedures manual was available to provide project managers for the CanAm Enterprises and ICF Consulting contracts guidance on monitoring contracts.

Our 1997 procurement audit of the department also found weaknesses in its management of contracts due to a lack of a contract administration policies and procedures manual. Project managers did not have operational plans and a monitoring process to ensure that progress was made according to schedule and that quality of service conforms to established benchmarks. To ensure contract deliverables, the department developed a "Contract Administration Verification Report." This report was designed to track a project, with managers signing and dating the report as deliverables are provided by the contractor, and contract payments would then be based upon the receipt of the established deliverables. However, the 1997 audit found that only about half of the project managers used the Contract Administration Verification Report (CAVR), which resulted in poor accountability over the contractor and weak controls over incremental contract payments.

For the period during our current investigation, we found that the CAVR was still used, although DBEDT's contracts specialist says that the form is almost obsolete. The form was intended to be used to monitor the individual contractor's performance, tracking both work performed and payments made, and is completed at the end of the contract in order to make final payment. However, the programs and divisions use it to track payments and not necessarily to track the work being done.

For example, in the contract to implement the governor's initiative on "Innovation in Linking Hawai'i to the Global Economy," payments to the contractor, Pacific and Asian Affairs Council (PAAC), were made despite certain provisions of the contract remaining unfulfilled. The CAVR for the PAAC contract shows that the first three scheduled payments—\$81,731.75; \$40,865.87; and \$40,865.87—were approved for the full amounts. The division administrator responsible for the contract said that the division and contractor verbally agreed that contract provisions for executive director of the Office of International Affairs and the International Affairs Council would not be fulfilled even though the vendor billed and the department paid for these services.

These types of changes raise questions about the suitability of the original specifications. If the specifications of the original RFP were written as the work is being performed, how much would the procurement outcome have changed? Would additional and more qualified vendors have responded to the RFP? Would a better price and value have been provided to the State? This change in the scope of services with no amendment providing evidence of the change is contrary to contracting rule. Effectively, three of the six major tasks of the contract relate to these unfulfilled areas:

- Provide personnel services as the executive director of DBEDT's Office of International Affairs;
- Organize, convene, and hold regular meetings of an International Affairs Council; and
- Assist the International Affairs Council to guide and direct public and private resources to create the infrastructure for Hawai'i to play a leading role in the Asia-Pacific region.

Itemized expenditure reports from the vendor to DBEDT show no expenses related to the International Affairs Council, yet the State was billed for that portion of the contract. The itemized reports also show salary amounts for the executive director of the Office of International Affairs, yet comments from the division administrator indicate the position was never filled. This is contrary to best practices for contract management and shows a complete disregard for accountability.

The contract was to end on December 31, 2008, with a fourth and final payment of \$40,865.88, but it was extended to March 30, 2009. We found no indication that the deficiencies would be remedied prior to the contract's expiration. The contractor requested a contract extension to complete all planned projects and continue current services. Yet we fail to see how those unfulfilled tasks could be completed within a three-month time span. This contract's history provides a clear example of the need for strong contract management controls.

In another example, we reviewed an agreement to provide legal services to HSDC for advice and counsel on reviewing partnership agreements on venture capital investments. We found three instances where contract payments were inconsistent with the contract agreement. The contractor submitted invoices for various hourly rates and additional staff that differed from the agreement. The agreement specified an hourly rate of \$285.00, whereas the various invoices included hourly rates of \$185.00, \$325.00, \$350.00 and \$375.00. The development corporation approved and paid the three invoices, resulting in an overpayment of \$1,391.06. The HSDC acting president claimed that the improper contract payments were oversights. He further admitted that for one of the invoices he did not review the agreement to ensure that the proper hourly rate was charged.

Without sufficient contract management and evaluation, the efficient and effective use of state resources is not ensured. Today the department has a Procurement/Contracts Manual geared only towards contract formation and does not include guidance for proper monitoring and managing of contracts. In order to be truly effective, management and evaluation guidance must also be incorporated.

Conclusion

The department's deficiencies in implementing the procurement code and its own procurement policies and procedures are the direct result of its lack of training, poor management oversight, and a weak control climate. These errors and exceptions point to a larger issue of a lack of internal control within the whole procurement environment. In such an environment simple clerical errors, if not corrected, could lead to abuse and even fraud. These deficiencies must be addressed in order to maintain public confidence in the state procurement system.

To ensure that the department's funds are well spent, it is critical that the department employ an effective procurement system grounded in the ideas of transparency, accountability, and competition consistent with the Hawai'i Public Procurement Code. This is an imperative, especially in these tough economic times. Without active participation from all stakeholders, well-intended changes will leave no lasting impact.

Recommendations

We recommend that the Department of Business, Economic Development & Tourism strive for greater accountability and transparency in governance.

1. The department must create the proper balance of funding the projects legislatively mandated versus those with funding denied, while still focusing on its main objective to spur business development in Hawai'i. To address this, the department should:
 - a. Ensure that financial records are properly maintained and any deviations from standard procedure are appropriately documented;
 - b. Ensure that all individuals working within these areas are appropriately trained; and
 - c. Develop a monitoring function to ensure that procedures are being carried out appropriately. The department should also consider doing spot check audits as deemed necessary for high risk areas.
2. As the Legislature desires to be more aware of these funding vehicles and ensure greater transparency and accountability in government, the Legislature should:
 - a. Devise a reporting mechanism to incorporate transfers into future budgets. As "savings" are identified in one program, the savings should be carried over via decreasing base budgets for the following period; and
 - b. Require justification of transfer to also include impact on existing programs and to formalize new programs by establishing goals, objectives and performance measures.
3. The department should ensure that the Hawai'i Public Procurement Code is adhered to at all levels within the department and its attached agencies. To address this, the department should:
 - a. Ensure all staff and management dealing with the procurement of goods, services, and construction are familiar with and properly trained in the requirements of the Hawai'i Public Procurement Code;

- b. Revise the current Procurement/Contracts Manual to clarify procedure and roles and responsibilities of individuals within branches, divisions, and central support offices. Procedures should include detail such as forms to complete, time-frames, chain of command, retention policy, and how to address questions. Upon completion of Procurement/Contracts Manual update, a department wide training should be held to ensure all staff is aware of requirements;
- c. Clearly establish responsible parties within each division to ensure that policies and procedures are followed and that the maintenance of records related to procurement are closely adhered to;
- d. Develop procedures to ensure that procurements and subsequent resulting contracts are appropriately monitored, and as necessary, employ a process to audit compliance;
- e. If the procurement and contracting process continues to have a decentralized focus, develop procedures to ensure responsible parties are adequately trained and have technical expertise to conduct procurement for the State. As necessary, revise position descriptions in order to hold individuals accountable to the procurement choices made; and
- f. In instances where individuals procuring items have intentionally violated procurement requirements, the department should seek appropriate remedies, including disciplinary action, to ensure there is an understanding between staff and management that fraud, waste, and abuse will not be tolerated.

Issue for Further Study

The Hawai'i Strategic Development Corporation is tasked with developing a sustainable venture capital industry in Hawai'i to stimulate the growth of new businesses. The development corporation invests public funds alongside private sector investors in professionally managed venture capital investment partnerships. This investigation specifically excluded investments as they are not covered under the Hawai'i Public Procurement Code. However, as the hiring of fund managers requires a selection of vendors for service, this appears to be an area that can be open to abuse.

Although HSDC is responsible for overseeing an approximately \$16 million investment portfolio, little is known of its operations and performance. HSDC's board of directors is not involved with the daily operations of HSDC, relying instead on the HSDC president who is the only employee. This issue was raised in prior board meetings,

with minutes reflecting concerns over lack of current fund reports and investment losses not reflecting a regular accounting. This position has been vacant since April 2008, with a temporarily assigned individual serving as an interim acting president.

The current interim acting president has gone on record questioning the “sweet deals” the HSDC has entered into with some of its venture capital partners.

While we could not delve further into this topic during the course of the investigation, we would recommend this as an issue for further study.

APPENDIX A: DBEDT Delegation of Procurement Authority		
Source: Data compiled by the Office of the Auditor based on information provided by DBEDT.		
Position:	Effective Date:	Categories:
HTIC PRESIDENT	December 4, 2007	COMPETITIVE SEALED BIDDING; \$15,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$15,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$15,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$15,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$15,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTIC VICE PRESIDENT	December 4, 2007	COMPETITIVE SEALED BIDDING; \$15,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$15,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$15,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$15,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$15,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTIC CHAIR	December 4, 2007	COMPETITIVE SEALED BIDDING; \$15,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$15,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$15,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$15,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$15,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
DEPUTY DIRECTOR	April 18, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 AND ABOVE CONSTRUCTION COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, SMALL PURCHASES; UNDER \$25,000, Construction UNDER \$25,000.00 PROFESSIONAL Services; UNLIMITED SOLE SOURCE; \$25,000 AND ABOVE (WLTH CPO APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO APPROVAL) PREPARATION OF SPECIFICATIONS PURSUANT TO SEC. 3-122-11, HAR PROCUREMENTS EXEMPT FROM CHAPTER 1030, HRS, PURSUANT TO 3-120.5, HAR
OP PLANNING DIRECTOR	April 18, 2007	SMALL PURCHASES; UNDER \$25,000
OP PLANNING PROG ADMIN II	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
ADMINISTRATIVE SERVICES OFFICER	April 18, 2007	SMALL PURCHASES: UNDER \$25,000
FISCAL OFFICER	April 18, 2007	SMALL PURCHASES: UNDER \$25,000
ACCOUNTANT IV	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
FTZ ADMINISTRATOR	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
FTZ REPRESENTATIVE	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
FTZ BUSINESS MANAGER	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
FTZ OPERATIONS MANAGER	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
STRATEGIC MARKETING & SUPPORT DIV, ADMIN	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
CREATIVE INDUSTRIES DIV	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
STRATEGIC INDUSTRIES DIVISION ADMIN	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
Economic RESEARCH Administrator	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
HEAD OF TAIWAN OFFICE	April 18, 2007	SMALL PURCHASES: UNDER \$150
ALOHA TOWER DEVELOPMENT CORP. CHAIR	April 18, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA- CHAIR	April 18, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, Construction UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)

Position:	Effective Date:	Categories:
HCOA EXECUTIVE DIRECTOR	April 18, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA ADMIN SERVICES OFFICER	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
HAWAII HOUSING FINANCE & DEVELOPMENT CORPORATION- CHAIR	April 18, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE; ,CONSTRUCTIONS \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (With CPO AND DIRECTOR'S APPROVAL)
HAWAII HOUSING FINANCE & DEVELOPMENT CORPORATION EXECUTIVE DIRECTOR	April 18, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL Services; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HSDC CHAIR	April 18, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HSDC PRESIDENT	April 18, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL Services: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC - CHAIR	April 18, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000.00 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC EXECUTIVE DIRECTOR	April 18, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000.00 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC FEDERAL PROJECT MANAGER	April 18, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & . ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000.00 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC MANAGER of ADMIN & OPERATIONS	April 18, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
HTDC ACCOUNTANT	April 18, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
HTDC ACCOUNT CLERK	April 18, 2007	SMALL PURCHASES: UNDER \$15,000

Position:	Effective Date:	Categories:
LAND USE Commission CHAIR	April 18, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000; CONSTRUCTION UNDER \$25,000 PROFESSIONAL Services; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
LAND USE Commission EXECUTIVE OFFICER	April 18, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
NELHA EXECUTIVE DIRECTOR	April 18, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000; CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
NELHA CEROS TECHNICAL DIRECTOR	April 18, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE SMALL PURCHASES: UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO APPROVAL)
NELHA OPERATIONS MANAGER	April 18, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
NELHA FISCAL OFFICER	April 18, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
TOURISM LIAISON	April 18, 2007	SMALL PURCHASES; UNDER \$15,000
TED LIU (DEPARTMENT DIRECTOR)	January 1, 2007	1. Procurements exempt from HRS Chapter 1030 and HAR Chapter 3-120;* 2. Preparation of Specifications (HAR §3-122-11); 3. Protest (HRS §1030-701); 4. Contract Controversies (HRS §103D-703); 5. Procurement Violations (HAR Chapter 3-131)*; and 6. Source Selection Methods (HAR Chapter 3-122): • Competitive Sealed Bidding (Subchapter 5) • Competitive Sealed Proposals (Subchapter 6) • Small Purchases (Subchapter 8) less than \$50,000** • Sole Source (Subchapter 9)* • Emergency (Subchapter 10)* *Requires CPO written approval **Shall be in compliance with Procurement Circular 2006-07, - Guidelines for Small Purchase Procurements
OP PLANNING DIRECTOR	January 5, 2007	SMALL PURCHASES; under \$25,000
OP PLANNING PROG ADMIN II	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
Administrative SERMCES OFFICER	January 5, 2007	SMALL PURCHASES; UNDER \$25,000
FISCAL Officer	January 5, 2007	SMALL PURCHASES; UNDER \$25,000
ACCOUNTANT IV	January 5, 2007	SMALL PURCHASES; UNDER \$25,000
FTZ ADMINISTRATOR	January 5, 2007	SMALL PURCHASES; UNDER \$25,000
FTZ REPRESENTATIVE	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
FTZ Business MANAGER	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
FTZ OPERATIONS MANAGER	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
STRATEGIC MARKETING & SUPPORT DIV. ADMIN	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
CREATIVE INDUSTRIES DIV	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
STRATEGIC INDUSTRIES Division ADMIN	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
ECONOMIC RESEARCH ADMINISTRATOR	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
HEAD OF TAIWAN OFFICE	January 5, 2007	SMALL PURCHASES; UNDER \$150
ALOHA TOWER DEVELOPMENT CORP CHAIR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)

Position:	Effective Date:	Categories:
ALOHA TOWER DEVELOPMENT CORP EXECUTIVE OFFICER	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) Competitive SEALED PROPOSALS; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA -CHAIR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA EXECUTIVE DIRECTOR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA ADMIN Services OFFICER	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
HAWAII HOUSING FINANCE & DEVELOPMENT CORPORATION -CHAIR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE-(WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HAWAII HOUSING FINANCE & DEVELOPMENT CORPORATION EXECUTIVE DIRECTOR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL Services: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HSDC CHAIR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HSDC PRESIDENT	January 5, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S Approval) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC CHAIR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000; CONSTRUCTION UNDER \$25,000.00 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC EXECUTIVE DIRECTOR	January 5, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000; CONSTRUCTION UNDER \$25,000.00 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)

Position:	Effective Date:	Categories:
HTDC FEDERAL PROJECT MANAGER	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000; CONSTRUCTION UNDER \$25,000.00 PROFESSIONAL Services; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC MANAGER of ADMIN & OPERATIONS	January 5, 2007	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
HTDC ACCOUNTANT	January 5, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
HTDC ACCOUNT CLERK	January 5, 2007	SMALL PURCHASES: UNDER \$15,000
LAND USE COMMISSION CHAIR	January 5, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000; CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S Approval.) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
LAND USE COMMISSION ~ EXECUTIVE OFFICER	January 5, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
NELHA EXECUTIVE DIRECTOR	January 5, 2007	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000; CONSTRUCTION UNDER \$25,000 PROFESSIONAL Services; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
NELHA CEROS TECHNICAL DIRECTOR	January 5, 2007	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE SMALL PURCHASES; UNDER \$25,000; CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO APPROVAL)
NELHA OPERATIONS MANAGER	January 5, 2007	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
NELHA FISCAL OFFICER	January 5, 2007	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
TOURISM LIAISON	January 5, 2007	SMALL PURCHASES; UNDER \$15,000
Office of Planning Director	April 7, 2007	SMALL PURCHASES; UP TO \$25,000
OP PLANNING PROG ADMIN II	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
ADMINISTRATIVE SERVICES OFFICER	January 5, 2005	SMALL PURCHASES; UNDER \$25,000
FISCAL OFFICER	January 5, 2005	SMALL PURCHASES; UNDER \$25,000
ACCOUNTANT IV	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
FTZ ADMINISTRATOR	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
FTZ REPRESENTATIVE	January 5, 2005	SMALL PURCHASES; UNDER \$15,000
FTZ BUSINESS MANAGER	January 5, 2005	SMALL PURCHASES; UNDER \$15,000
FTZ OPERATIONS MANAGER	January 5, 2005	SMALL PURCHASES; UNDER \$15,000
STRATEGIC MARKETING SUPPORT DIV. ADMIN	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
ARTS, CULTURE, ENTERTAINMENT ADMIN	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
STRATEGIC INDUSTRIES DIVISION ADMIN	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
ECONOMIC RESEARCH ADMINISTRATOR	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
CHIEF MARKETING Officer	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
HEAD OF TAIWAN OFFICE	January 5, 2005	SMALL PURCHASES: UNDER \$150
ALOHA TOWER DEVELOPMENT CORP. CHAIR	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) Competitive SEALED PROPOSALS; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)

Position:	Effective Date:	Categories:
ALOHA TOWER DEVELOPMENT CORP. EXECUTIVE OFFICER	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) Competitive SEALED PROPOSALS; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA CHAIR	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000; CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA EXECUTIVE DIRECTOR	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 AND ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000 AND ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HCDA ADMIN SERVICES OFFICER	January 5, 2005	SMALL PURCHASES; UNDER \$15,000
HSDC CHAIR	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HSDC PRESIDENT	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC CHAIR	January 5, 2005	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S Approval) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC EXECUTIVE DIRECTOR	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000.00 PROFESSIONAL SERVICES: UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
HTDC PROJECT DEVELOPMENT MANAGER	January 5, 2005	SMALL PURCHASES: UP TO AND INCLUDING \$15,000
HTDC ACCOUNTANT	January 5, 2005	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
LAND USE COMMISSION - CHAIR	January 5, 2005	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES: UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S Approval.) EMERGENCY: \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
LAND USE COMMISSION EXECUTIVE OFFICER	January 5, 2005	SMALL PURCHASES; UP TO AND INCLUDING \$15,000

Position:	Effective Date:	Categories:
NELHA EXECUTIVE DIRECTOR	January 5, 2005	COMPETITIVE SEALED BIDDING; \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE (WITH DIRECTOR'S APPROVAL) COMPETITIVE SEALED PROPOSALS; \$25,000 & ABOVE, CONSTRUCTION \$25,000.00 & ABOVE (WITH DIRECTOR'S APPROVAL) SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL Services; UNLIMITED (WITH DIRECTOR'S APPROVAL) SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO AND DIRECTOR'S APPROVAL)
NELHA CEROS TECHNICAL DIRECTOR	January 5, 2005	COMPETITIVE SEALED BIDDING: \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE COMPETITIVE SEALED PROPOSALS: \$25,000 & ABOVE, CONSTRUCTION \$25,000 & ABOVE SMALL PURCHASES; UNDER \$25,000, CONSTRUCTION UNDER \$25,000 PROFESSIONAL SERVICES; UNLIMITED SOLE SOURCE; \$25,000 AND ABOVE (WITH CPO APPROVAL) EMERGENCY; \$25,000 AND ABOVE (WITH CPO APPROVAL)
NELHA OPERATIONS MANAGER	January 5, 2005	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
NELHA FISCAL OFFICER	January 5, 2005	SMALL PURCHASES; UP TO AND INCLUDING \$15,000
TOURISM LIAISON	January 5, 2005	SMALL PURCHASES; UP TO AND INCLUDING \$15,000

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Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Business, Economic Development & Tourism on April 13, 2009. A copy of the transmittal letter is included as Attachment 1. The response of the department is included as Attachment 2. The High Technology Development Corporation included a separate response which is also included in Attachment 2.

The department disagrees with our characterization of both findings within the report; however it generally agreed and accepted our recommendations and identified actions already taken and to be taken with regard to the report's recommendations.

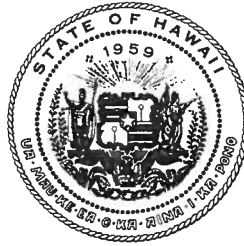
While the department complied with appropriation transfer requirements, it did so after the Legislature made clear that these programs (International Affairs and the Creativity Academies) were not a priority. The department ignores the fact that other programs were affected by the transfers; HTDC's response noted it was not even aware of funding reductions. Moreover, the department's equating of the introduction of legislation with legislative intent is incorrect. "Legislative intent" requires the completion of the entire process to enact legislation.

Contrary to the department's response of "...no finding in the Report of non-compliance with the Hawai'i Public Procurement Code[,]" we cited numerous instances of non-compliance. For example, our report highlights non-compliance in obtaining approvals, justifications in the shortened response times with RFPs, and evidence of competitive bid. This lack of acknowledgement of errors is consistent with the apathetic procurement environment we describe. The department's failure to abide by its own implementation of the procurement code as well as management's lack of emphasis is indicative of the poor control environment.

We stand by our findings.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

April 13, 2009

COPY

The Honorable Theodore Liu, Director
Department of Business, Economic
Development & Tourism
No. 1 Capitol District
250 South Hotel Street
Honolulu, Hawaii 96813

Dear Mr. Liu:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies*. We ask that you telephone us by Wednesday, April 15, 2009, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, April 17, 2009.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

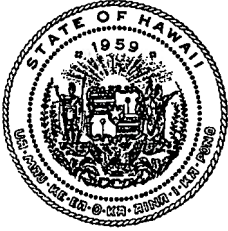
Sincerely,

A handwritten signature in cursive script, appearing to read "Marion M. Higa".

Marion M. Higa
State Auditor

Enclosures

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

April 20, 2009

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OFC. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813-2917

RE: Departmental Comments on Draft Report, Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies ("Report")

Dear Ms. Higa:

The department appreciates the thorough and exhaustive investigation conducted by the Office of the Auditor's staff.

With regard to the Report's first objective¹, the department notes that this exhaustive investigation resulted in a finding of "numerous errors"², but that the errors "were not individually significant"³. While the department disagrees with the Report's subjective finding of an "apathetic procurement environment"⁴ during the period under review, it takes seriously the finding that "taken as a whole, illustrate a management environment that does not clearly emphasize the code's importance"⁵.

The department has already taken steps⁶ to more clearly emphasize the procurement code's importance and accepts the Report's recommendations relating to procurement. Set forth below is the department's actions already taken and to be taken with regard to the Report's recommendations.

¹ "To determine whether the Department of Business, Economic Development & Tourism, and the specific attached agencies of the High Technology Development Corporation, the High Technology Innovation Corporation, and the Hawaii Strategic Development Corporation employ procurement practices that are in compliance with the provisions of the Hawaii Public Procurement Code", page 11

² Summary of Findings 2., page 14

³ 3rd paragraph, page 20

⁴ For example, the Report's many references to the department's own Procurement/Contracts Manual as being more strict or stringent than the Hawaii Public Procurement Code and the department's development of internal contracts management tools such as the Contracts Administration Verification Report, are inconsistent with the finding of an "apathetic environment".

⁵ 3rd paragraph, page 20

⁶ The Report covers a period July 2005 through August 2008. A recent letter from the State's chief procurement officer to Senator Donna Mercado Kim, dated April 17, 2009, states that DBEDT's recent procurement "actions ensure that their employees are aware of and comply with the procurement code and rules."

The department notes no finding in the Report of non-compliance with the Hawaii Public Procurement Code.

With regard to the Report's Second Objective⁷, the department disagrees with the Report's finding that it "uses transfer authority to fund projects denied by the Legislature."⁸

Six examples were cited, of which three were transfers to meet normal operating requirements of existing programs and three (two of which are extensively discussed in the Report) were not "denied by the legislature" but rather were not funded due to budgetary constraints.

Contrary to the Report's findings, the department believes there was clear legislative interest and support for these two programs. Both the International Affairs and the Creativity Academies programs were fully based on and reflect bills introduced by legislators.

In 2006, the Chair of the House Committee on International Affairs introduced the bill⁹ that established the Office of International Affairs (OIA). The 2006 Legislature passed this bill and the Governor signed it into law as Act 172.

In 2008, legislators introduced the bill "to support development of the creativity academies program"¹⁰. This bill was unanimously voted through all of the subject matter committees and moved into conference committee.

The legislative histories show widespread and near unanimous support for the both bills¹¹. In 2007, legislators criticized DBEDT for not implementing Act 172 and again introduced bills to fund the program. Following this clear legislative intent, DBEDT contracted with the Pacific Asian Affairs Council (PAAC) to implement the program required by Act 172.

As the Report notes in several sections, every Governor has had the authority to transfer operating funds between appropriations to allow for flexibility, provided that proper procedures were followed, including timely reporting of such transfers to the Legislature. In all of the six examples cited, these procedures were followed fully, including reporting the transfers to the Legislature as required by law.

⁷ "To determine whether the Department of Business, Economic Development & Tourism, and the specific attached agencies of the High Technology Development Corporation, the High Technology Innovation Corporation, and the Hawaii Strategic Development Corporation expend funds consistent with departmental mission and legislative intent," page 12

⁸ Summary of Findings 1, page 14

⁹ HB 1889, introduced by Representative Helene Hale

¹⁰ HB 2587, introduced by Representative Ryan Yamane and Representative Lynn Finnegan

¹¹ One committee report on Creativity Academies cited "strong support of innovative programs that will provide the most benefit to the students of Hawaii". See legislative history for HB 2587, 2008 Legislative Session.

As the Report notes, the executive and legislative branches “often do not agree on where and how moneys are spent ... especially in the case of matters of business growth and development”.¹² The Report takes these differences of opinion as the basis for a finding that infers wrongdoing that is not unsubstantiated by fact.

As to the Report’s Recommendations on procurement, DBEDT has already taken steps to address items noted and continues to undertake measures that are in accord with the recommendations offered. A report will be sent to the Legislature prior to the convening of the 2010 Session to update the members. Department staff continues to seek clarification from the State Procurement Office when there are areas of ambiguity in the procurement code as part of our process of improvement to the department’s procurement practices and procedures.

Set forth below are the Reports recommendations on procurement, the department’s actions taken thereon to-date, and proposed actions over the next six months.

Report Recommendation	Action Taken to-Date	Actions to be Taken
Ensure all staff and management dealing with procurement of goods, services, and construction are familiar with and properly trained in the requirements of the Hawaii Public Procurement Code.	All staff and management dealing with procurement have been required to receive formal procurement training from SPO. Delegation of authority for procurements is now made only upon confirmation by the SPO that the individual requesting delegation has received the required training.	The Department will follow all SPO requirements on procurement training. Additional departmental procurement classes will be offered, with support of the SPO.
Revise the current Procurement/ Contracts Manual to clarify procedure and roles and responsibilities of individuals within branches, divisions, and central support offices. Procedures should include detail such as forms to complete, time-frames, chain of command, retention policy, and how to address questions. Upon completion of Procurement/ Contracts Manual update, a department-wide training should be held to ensure all staff is aware of requirements.	Action was held pending outcome of the Report. DBEDT has adopted a document tracking system that will aid the department’s procurement and contracting process and contracts file-keeping and maintenance.	Per the Report, the Department is considering ending use of a DBEDT-specific Procurement/ Contract Manual. Instead DBEDT will adopt SPO procedures as department procedures. Develop an internal administrative directives memorandum, similar to B&F’s budget execution and policies, that will clearly define roles and responsibilities for internal procedures within the department.
Clearly establish responsible parties within each division to ensure that policies and procedures are followed and that the maintenance of records related to procurement are closely adhered to.	Delegation of authority for procurement was formally reissued in January 2009 based upon each person receiving delegation having received SPO training in the specific area of delegation.	DBEDT will develop a department check list for procurement files to be reviewed by SPO. DBEDT will also investigate using its document tracking system as a repository for required records.

¹² First full paragraph, page 14

Report Recommendation	Action Taken to-Date	Actions to be Taken
		Our internal administrative directives memo will clearly define individual's roles and responsibilities in procurement, contracting and other departmental procedures.
Develop procedures to ensure that procurements and subsequent resulting contracts are appropriately monitored and, as necessary, employ a process to audit compliance.	All staff and management dealing with procurement are now required to receive procurement training from SPO.	Our Contracts and Fiscal sections will work closely to perform post audit functions of departmental activities.
If the procurement and contracting process continues to have a decentralized focus, develop procedures to ensure responsible parties are adequately trained and have technical expertise to conduct procurement for the State. As necessary, revise position descriptions in order to hold individuals accountable to the procurement choices made.	All staff and management dealing with procurement are now required to receive procurement training from SPO.	This will be included in our annual administrative directives memorandum
In instances where individuals procuring items have intentionally violated procurement requirements, the department should seek appropriate remedies, including disciplinary action, to ensure there is an understanding between staff and management that fraud, waste, and abuse will not be tolerated.	The Department has followed SPO guidelines on reporting and taking action on fraud, waste, and abuse.	The Department will continue to follow SPO guidelines on reporting and taking action on fraud, waste, and abuse.

Thank you for the opportunity of making these comments.

Very truly yours,



Theodore E. Liu

- c: The Honorable Linda Lingle, Governor
- The Honorable Colleen Hanabusa, Senate President
- The Honorable Calvin Say, Speaker of the House

April 16, 2009

Marion Higa
State Auditor
State of Hawaii Office of the Auditor
465 S. King Street, Room 500
Honolulu, HI 96813-2917

Subject: Response to the Draft Audit Report per SCR 212, SD 2 of 2008 Legislative Session

Dear Ms. Higa:

HTDC sincerely appreciates the time and effort spent by the State auditors to review our procurement practices. While HTDC Board of Directors has not had the chance to review the draft of the audit report and discuss it as a group, HTDC would like to provide the following point of information to be included in the audit report:

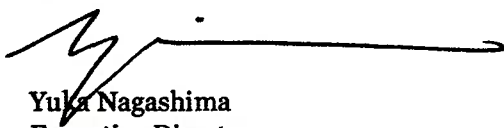
HTDC is listed as a source of funding for some of DBEDT's activities whose legislative approval was questioned by the auditors (page 15). HTDC would like to clarify that we did not approve the transfer of our payroll savings to fund these activities, nor did we have prior knowledge of DBEDT's intent to transfer these funds.

Further, HTDC respectfully offers the following observations:

The mistakes described in this audit resulted from errors in paperwork or from dutifully following procedures which the staff understood to be correct, and had reasons to believe they were correct. Many of the confusion seems to be rooted in the fact that DBEDT's policies at times differ from State Procurement circulars from which HTDC staff also refer to.

Although there was miscommunication of procedures, the report also showed no evidence of mismanagement of funds, reflecting the staff's dedication to use public funds responsibly. We look forward to minimizing these errors in the future by cooperating with and assisting DBEDT to put in place a consistent set of procurement procedures which can be implemented in a reasonable manner and timeframe to accomplish the tasks the community expects of HTDC.

Sincerely,



Yuka Nagashima
Executive Director