

Department of Commerce and Consumer Affairs
State of Hawaii

HCR 358 TASK FORCE MEETING

Date: Monday, June 30, 2008
Time: 1:00 p.m. – 3:00 p.m.

Place: The following State of Hawaii Video Conference Centers:

Big Island:
Hilo State Office Building
75 Aupuni Street, Basement
Hilo, HI 96720

Kauai:
Lihue State Office Building
3060 Eiwa Street, Basement
Lihue, HI 96766

Maui:
Wailuku Judiciary Building
2145 Main Street, First Floor
Wailuku, HI 96793

Oahu:
Kalanimoku Building
1151 Punchbowl Street, Room B10
Honolulu, HI 96813

The public may attend the meeting at any of the specified above locations.

AMENDED AGENDA

- I. Call to Order
- II. Introduction of task force members
- III. OIP Presentation of the Sunshine Law
- IV. Review of House Concurrent Resolution No. 358, H.D. 1 requirements
- V. State Procurement Office presentation of the Public Procurement Code
- VI. Public Comment**
- VII. Preparation for Next Meeting
- VIII. Adjournment

***Depending upon time considerations, each speaker may be limited to a specific time for public comment. Written comments may be emailed to cabletv@dcca.hawaii.gov or mailed to DCCA-CATV, P.O. Box 541, Honolulu, HI 96806, Attn: HCR 358 Task Force or faxed to 808-586-2625. Persons with special needs for this meeting may call CATV at 586-2620 by June 25, 2008 to discuss accommodation arrangements.*

HCR 358 TASK FORCE
MINUTES OF MEETING

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The agenda for this meeting was filed with the Office of the Lieutenant Governor.

I. Call to Order --The meeting was started at 1:00 p.m. by Clyde Sonobe. Notes were taken by the Facilitator; no verbatim transcript was made of the Meeting nor was it officially recorded.

A. Kick off meeting, Clyde Sonobe

B. Introduction of Facilitator, David Franzel

1. Ground Rules requested by Facilitator (should follow Agenda, one person speaks at a time, civility, no personal attacks, no interrupting a speaker, allow speakers to finish without interruption).
2. Jay April objected to use of this Facilitator and asked if he was selected by an RFP; Clyde Sonobe said that there was no RFP. DCCA retained David Franzel to facilitate task force meetings but since the matter of whether to have a facilitator and appointing a facilitator were not on the agenda, the Task Force took no action.
3. Facilitator mentioned that he understood from his retention that he was to submit a report for ultimate submission to the Legislature by early December. As such, the Facilitator indicated that he needed final input from the Task Force by the end of November because of the time required for drafting and Task Force Review in order to have the Report ready for the Legislature on time. One member of the Task Force indicated that the Task Force would consider the timing requirements for the Report.

II. Introduction of Task Force Members

A. Present

1. MaBel Fujiuchi Hoike
2. Eric Knutzen County of Kauai
3. Gil Benevides County of Hawaii
4. Jay April Akaku

5. Roy Amemiya Olelo
6. Muriel Taira CAC
7. David Lassner UH
8. Gerri Ann Hong DOE
9. Clyde Sonobe DCCA
10. Gregg Hirata City and County of Honolulu

B. Excused

1. Shelley Pellegrino County of Maui
2. Gerald Takase Na Leo

- i. Note: Akaku submitted notes that listed Excused/Not Approved for this section and included Members Pellegrino, Takase, and the CAC appointee; it needs to be confirmed that Akaku believed that CAC attendee Muriel Taira was not an approved member. Since that time, Muriel resigned and Keith Rollman took her place.

C. Facilitator read through each item on the Agenda, prepared and previously provided by DCCA to the Task Force.

1. Jay April and member of the public Lance Collins objected to the continuation of the meeting without first taking oral testimony from members of the public.
2. Jay April objected to the presentation by State Procurement Office staff person Aaron Fujioka who was not a Task Force member.
3. Jay April and Lance Collins objected to the Agenda item re presentation of HCR 358 requirements.
4. The Task Force indicated that it believed that it could take no action on the current Agenda prior to having a Chair and Vice Chair elected. DCCA counsel opined that public comment need not be taken until substantive items were discussed. As the Task Force determined that there could be no Task Force action on the Agenda at that time, the Task Force and the Facilitator continued on with the Agenda.

- III. OIP Presentation on the Sunshine Law -- Clyde Sonobe commented that it was not obligatory to follow the Sunshine Law according to OIP since OIP had withdrawn its initial opinion and went on to say that the Sunshine Law would be followed in principal, here. There was a comment in response indicating that the OIP ruling merely withdrew the earlier ruling and did not indicate that Sunshine did not apply. Jay April and Lance Collins maintained that the Task Force should adhere to the Sunshine Law.

- IV. State Procurement Office Presentation of the Public Procurement Code -- Aaron Fujioka gave a presentation on the Public Procurement Code. Task Force members asked for follow up on the Sole Source Exemption granted Hawai'i Public Television. Task Force members also asked for the AG opinion indicating that procurement was required for the designation of access organizations. Clyde Sonobe indicated that he believed that the AG opinion was confidential since it was covered by the attorney-client privilege. Task Force members requested more information on the Akaku lawsuit in the Second Circuit Court. Persons unknown present at one of the video locations repeatedly tapped their microphone throughout Mr. Fujioka's presentation making it extremely difficult to hear him and the follow up questions/answers posed by Task Force members.
- V. Review of House Concurrent Resolution No. 358, H.D. 1 Requirements -- Jay April and member of the public Lance Collins objected to the Facilitator reviewing the Resolution with Task Force members without first taking public comment. It was indicated that the Task Force could provide no guidance to the Facilitator on changing the Agenda to take public comment prior to this item as no Chair and Vice Chair were in place. The Facilitator continued on with the Agenda and read the Resolution sections to attendees.
- VI. Public Comment - Public comment was taken. A time limit of 3 minutes/person was requested by Task Force members present in the Oahu Center in order to ensure that all public present had an opportunity to speak with any time left over for additional comments. Notes of the public comments are attached.
- VII. Preparation for Next Meeting -- Eric Knutzen took over as Interim Chair of the Task Force to gain Task Force input for the Agenda for the next meeting which was set for Monday, August 4, 2008 and to conduct the discussion at the August 4, 2008 meeting regarding Chair/Vice Chair selection and a facilitator. The Agenda was separately transmitted and posted.
- VIII. Adjournment -- The meeting adjourned at 3:30 pm.

Task Force Meeting, June 30, 2008;
Public Comments

Notes of Public Comments

The public testified at the Meeting. Due to time constraints, Task Force members asked that each person testifying limit their testimony to three (3) minutes in duration with the potential for additional time should time be available once all attendees had an opportunity to testify. Once public testimony began, all present had an opportunity to speak with some taking quite a bit less than three (3) minutes and some taking more. A Court Reporter did not attend the meeting so the public comments noted were taken from the Facilitator's notes. Task Force Member April submitted revisions to the Public Comments which have been incorporated below. The Facilitator recommends that the Task Force record future meetings.

Degray Vanderbilt

Vanderbilt made a request that all information related to the failed procurement process with access organization designation be put on the DCCA website and copies given to the Task Force members. Vanderbilt recommended testimony be taken prior to issues being reviewed or discussed by task force members. Vanderbilt also suggested the testimony from the SB No. 1789 hearings be available to task force members. Vanderbilt opposes the use of the procurement process for access organization designation as best value/lowest price scheme is incompatible with community access television.

Lance Collins, Esq.

Collins noted that the Task Force is subject to the Sunshine Law and if not, should still comply with it voluntarily. Collins pointed out that parliamentary law should be followed except when altered by majority vote. Collins noted that whether to have a facilitator and who that facilitator should be must be approved by the Task Force. Collins urged the Task Force to review and consider written public testimony to the DCCA, Procurement Policy Board, and State Legislature on the issues of applicability of procurement to access organization designation and also the official RFP protests and transcripts of relevant public hearings and court proceedings. Collins encouraged the Task Force to seek the original AG opinion that started the controversy. Collins strongly endorsed the Task Force to put emphasis on its charge to solicit public input. (Akaku attorney)

Michael Duberstein

Duberstein opposes the application of procurement to access organization designation. Duberstein feels well enough alone and believes that the procurement issue diminishes and stifles free speech. Duberstein believed that the HCR 358 resolution and the Task Force would be a sham if it supported the inappropriate application of procurement.

Jimmy Conniff

Conniff supports Akaku Maui Community Television. Conniff gave some personal experiences with community access television. Conniff rejects the application of procurement to access organization designation.

Linda Puppolo

Puppolo reported that the procurement process interferes with regular operations and that an RFP would eliminate flexibility and security of Akaku's small budget. Puppolo pointed out that the procurement process eliminates public input from the process. Puppolo noted also that Akaku has been subject to three audits since 2005 and there has been no evidence of wrong doing. Puppolo didn't understand that if PBS was subject to procurement and given a sole source exemption, why wouldn't PEGs get sole source exemption. (Akaku employee)

Sara Tekula

Tekula reminded the Task Force that the DCCA is a government entity and public servant and works "for us." Tekula noted that Akaku is Maui's favorite non-profit. Tekula pointed out that access organizations do not use state or public funds – monies from cable operators go to access

Task Force Meeting, June 30, 2008;
Public Comments

organizations as a term of their franchise. Tekula noted that procurement process would force a community organization like Akaku into an inappropriate business model.

Tyson Saucier

Saucier demanded the Task Force follow the law and the constitution including the First Amendment. Saucier indicated he would be watching and the public would be carefully watching the Task Force's actions.

Nikhilananda

Nikhilananda was disturbed by the DCCA's attempt to force the Task Force to accept a facilitator and David Franzel's domination of the meeting. Nikhilananda supported the accommodation of public testimony. Nikhilananda opposes the application of the procurement process to access organization designation.

Ed Coll

Coll disputed the legitimacy of the Task Force because of the lack of independent members without ties to access organizations, government or education. Coll supports the application of the procurement process to access organization designation. Coll criticized commingling of funds and believes access organizations are robbing the public and are dysfunction.

Carol Bain

Bain noted that the task was incredible and questioned the challenge of ensuring a fair process. Bain believed a financial and performance audit should be conducted by the state.

Juergen Denecke

Denecke opposes the application of procurement process because it is inappropriate for the "market place of ideas." Denecke cited the Second Circuit Court decision of Judge Joel August. Denecke believes there is a better way. (Na Leo employee)

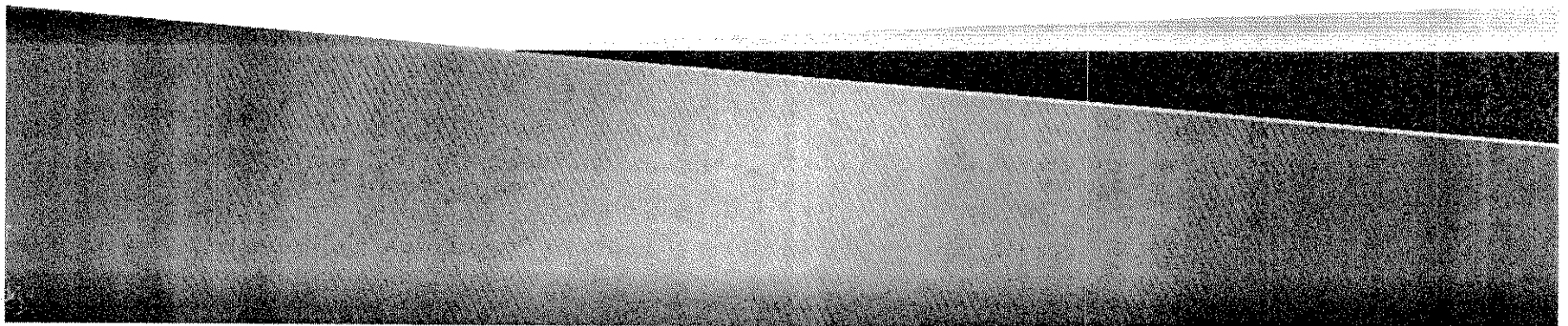
OVERVIEW

**HAWAII PUBLIC PROCUREMENT CODE
HRS CHAPTER 103D**

STATE PROCUREMENT OFFICE

Aaron Fujioka
Administrator

June 30, 2008

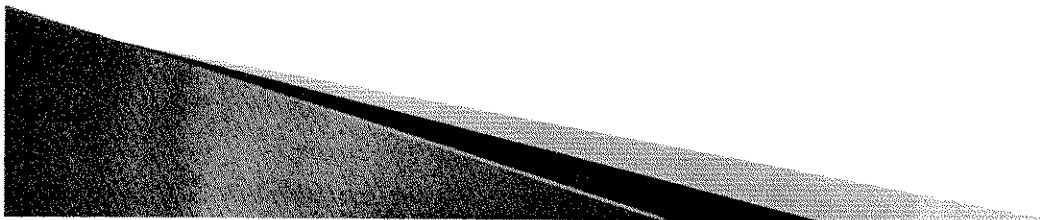


STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
“BC” – BEFORE the Procurement CODE

HRS Chapter 103, *Expenditure of Public Money and Public Contracts*:

- ▶ Advertisement of bids
- ▶ Dollar thresholds for formal bids was \$15,000
- ▶ Award to the ‘lowest responsible bidder’

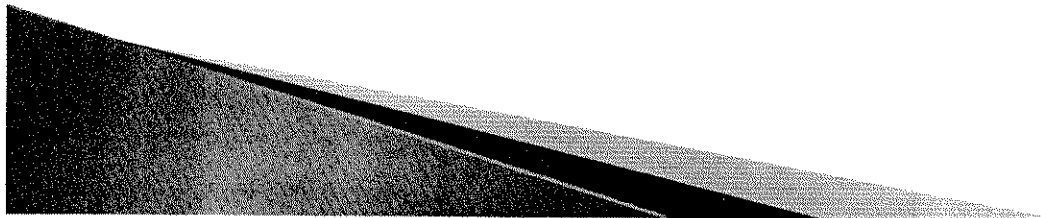
Did not offer ‘request for proposal’ nor ‘professional services’ processes.




**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
“In the beginning....”**

ACT 008, Sp SLH 1993, adopted the Model Procurement Code for State and Local Governments, recognized by:

- ▶ American Bar Association
- ▶ National Association of State Procurement Officials (NASPO)
- ▶ National Institute of Governmental Purchasing (NIGP)

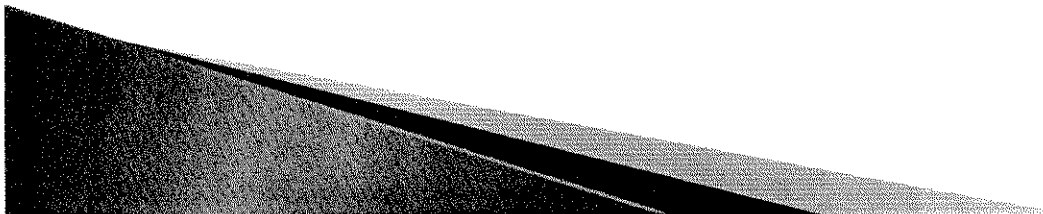


STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
PURPOSE AND INTENT

- ▶ The stated purpose of Act 8 was, “...to revise, strengthen, and clarify Hawaii’s laws governing procurement of goods and services and construction of public works.”
 - ▶ **Single source** of public procurement policy
 - ▶ Make procurement laws as consistent as possible
 - ▶ Ensure **fair and equitable** treatment of all parties
 - ▶ Foster **competition among vendors** while ensuring accountability, fiscal responsibility, and efficiency in the procurement process
 - ▶ Increase **public confidence**
- 

STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
APPLICABILITY OF THE CODE

- ▶ **Applies** to all procurements for the buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction. Includes inventory management and surplus property management.
- ▶ **Applies** to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, any of which is received or is owned, including in-kind benefits.

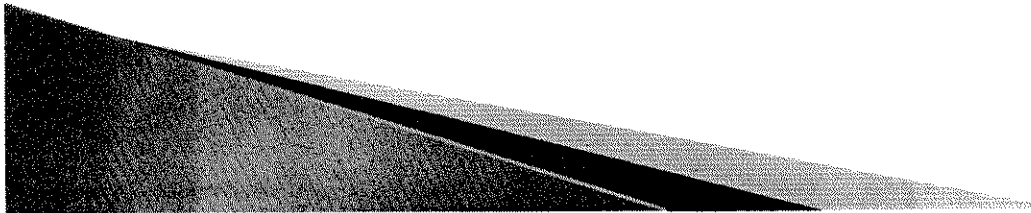


**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
ORGANIZATION**

- ▶ **Procurement Policy Board (PPB)**, a seven member board, is responsible to adopt Hawaii Administrative Rules (HAR) and establish policies/procedures for all jurisdictions.
- ▶ **State Procurement Office (SPO) Administrator**, responsible:
 - ▶ Review of procurement practices of all governmental bodies
 - ▶ Provide assistance and advice to all governmental bodies
 - ▶ Procurement training
 - ▶ Procurement Manual / Vendor Guide
- ▶ Procurement responsibility is with the **20 Chief Procurement Officers (CPO)** for each jurisdiction:
 - Judiciary
 - House / Senate
 - Executive: ▶ UH / DOE / OHA / HHSC
 - ▶ SPO for Exec. Dept.
 - Counties – Executive / Councils / Dept of Water

STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
PROCUREMENT DELEGATION

- ▶ The Chief Procurement Officer (CPO) serves as the central procurement officer for its jurisdiction, and may delegate this authority.
- ▶ For Executive Branch departments, the CPO (Administrator of the SPO) has delegated procurement authority to each Department Head.
 - Each Department Head may further delegate procurement authority.
 - The written delegation by each Department Head is on file with the State Procurement Office



STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
OVERVIEW: Methods of Source Selection

- ▶ ***Competitive Sealed Bids** or Invitation for Bids (IFB)
for expenditures \$50,000+
- ▶ ***Competitive Sealed Proposals** or Request for
Proposals (RFP) for expenditures \$50,000+
- ▶ ***Professional Services** for all dollar levels
- ▶ **Emergency** for all dollar levels
- ▶ **Sole Source** for all dollar levels
- ▶ **Small Purchase** for expenditure less than \$50,000
(Between \$25,000 to less than \$50,000, shall be on an electronic system.)

*Requires Procurement Notices posted on the internet at
<http://www4.hawaii.gov/bidapps/> .



**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
PURCHASES NOT SUBJECT TO THE PROCUREMENT CODE**

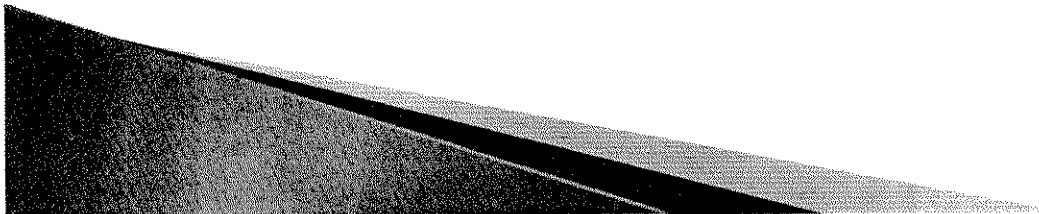
- ▶ **HRS Chapter 103D** provides for the applicability of the chapter, and when not applicable (exemptions).

See HRS Chapter 103D-102(b).

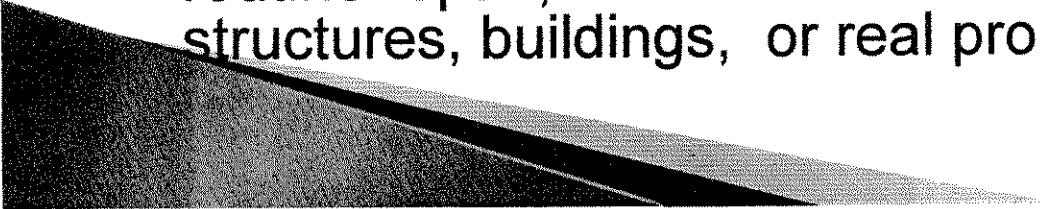
- ▶ **Hawaii Administrative Rules (HAR)** provides a list of exemptions, by Exhibit A, when not practicable nor advantageous to competitively procure.

See HAR Chapter 3-120 Exhibit A, list of additional exemptions determined by the Procurement Policy Board (PPB).

- ▶ **Chief Procurement Officer (CPO)** authority to approve exemptions, on a case-by-case basis; requires documentation and written approval.

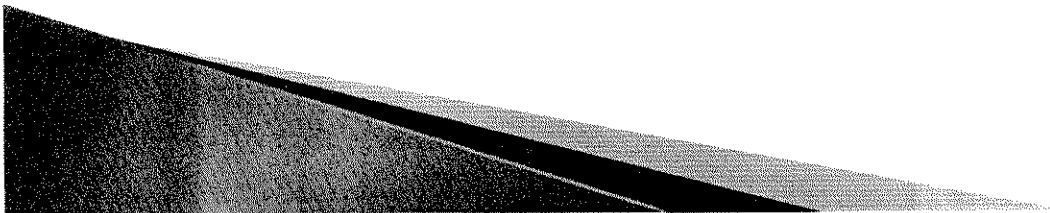


STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
DEFINITIONS

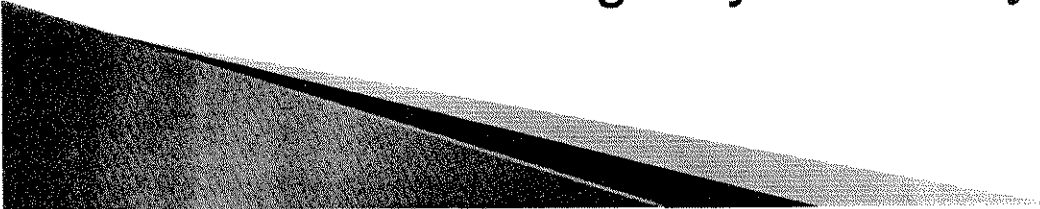
- ▶ “Goods” means all property, including but not limited to equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.
 - ▶ “Services” means the furnishing of labor, time, or effort by a contractor.
 - ▶ “Construction” means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. Includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- 

**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
PROCUREMENT CODE**

- ▶ All sources of funds are subject to compliance with the procurement code.
- ▶ Is flexible and responsive to need.
- ▶ Provides exemptions for special needs --- 'don't do procurement for the sake of procurement'.
- ▶ By competitive means, must be practicable or advantageous --- apply common sense.

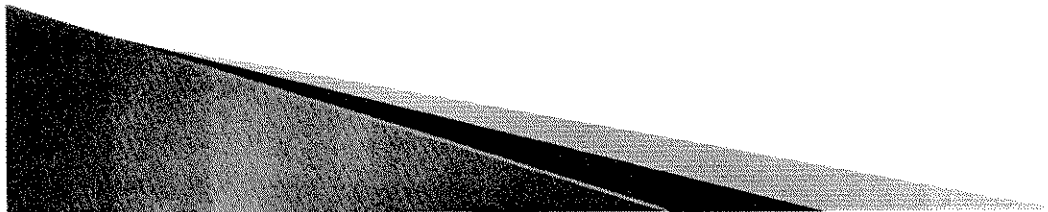


STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
PROCUREMENT CODE BENEFITS

- ▶ Increases efficiency in procurement activities and maximize best value to the fullest extent practicable.
 - ▶ Ensure fair and equitable treatment of all persons who deal with procurement --- vendors and purchasing agencies.
 - ▶ Foster broad based competition.
 - ▶ Provide safeguards for the maintenance of a procurement system of quality and integrity
 - ▶ Increases public confidence in the procurement process.
 - ▶ Protect against abusive practices.
 - ▶ Does not limit agency autonomy.
- 

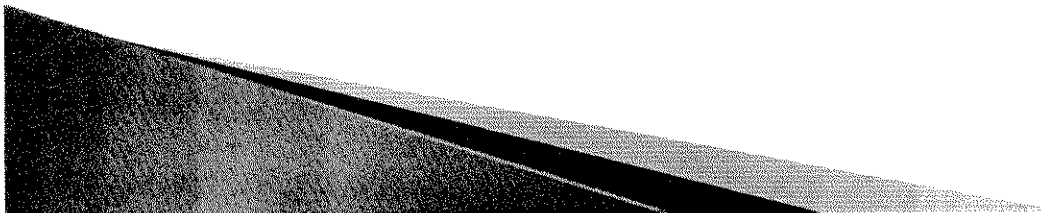
**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
KEYS TO A SUCCESSFUL PROCUREMENT**

- ▶ Good Planning
- ▶ Good Management
- ▶ Procurement Knowledge

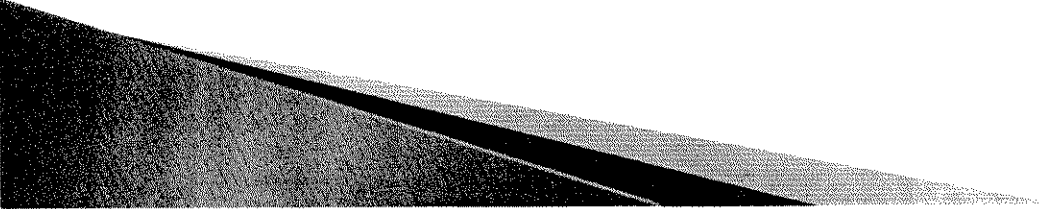


STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
COMPETING FORCES / CONTRADICTIONS

- ▶ Incumbent vs New Vendor/Contractor
- ▶ Small vs Large Companies
- ▶ Local vs Non-Local Companies
- ▶ Award Based on Highest Qualifications vs Equal Distribution
- ▶ Wanting Broad-Based Competition but limited to only Hawaii Companies

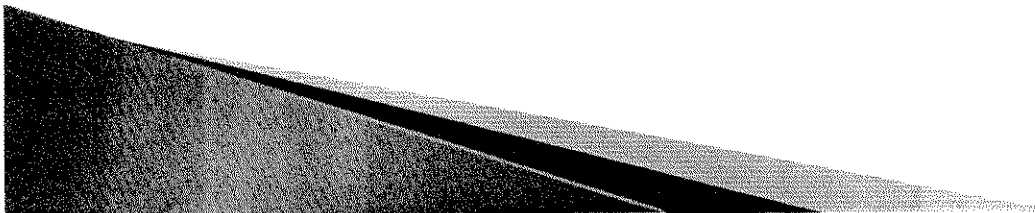


**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
“TROUBLE / HOT SPOTS”**

- ▶ Exceeding the scope of the solicitation
 - ▶ Exceeding small purchase threshold
 - ▶ Small purchase parceling
 - ▶ Using “emergency procurement” inappropriately
 - ▶ Avoid seeking after-the-fact approval
 - ▶ Failing to provide adequate/appropriate disclosure
 - ▶ Rendering services without an executed contract
 - ▶ Avoid retroactive contracts/failing to extend contracts on a timely basis
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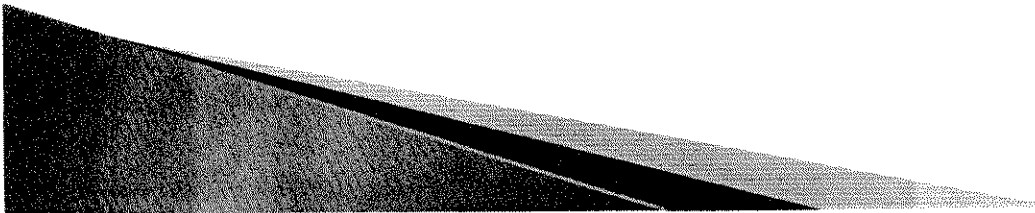
STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
SUGGESTIONS & HELPFUL HINTS

- ▶ Ask SPO for assistance / consultation
- ▶ Don't make it up as you go along
- ▶ Attend training, if needed
- ▶ Be clear on what you are buying
- ▶ Don't use the procurement process to determine your needs; identify your needs first



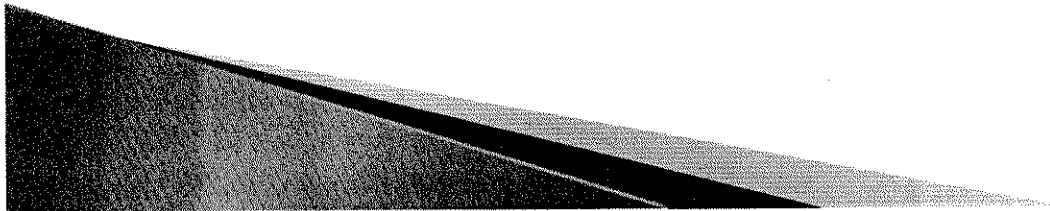
STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
SOURCE SELECTION METHODS

- ▶ Competitive sealed bidding; also referred to as an Invitation for Bids (IFB)
- ▶ Competitive sealed proposals; also referred to as a Request for Proposal (RFP)
- ▶ Professional Services
- ▶ Small Purchases
- ▶ Sole Source procurement
- ▶ Emergency procurement



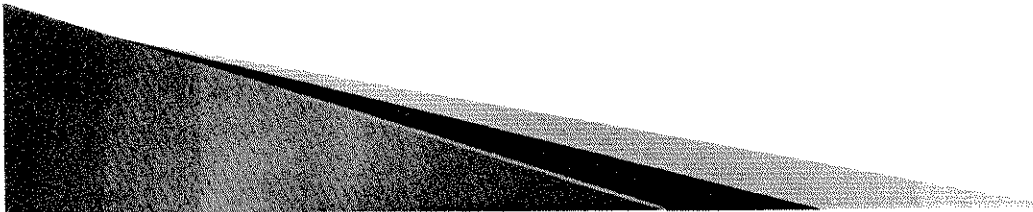
**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Competitive Sealed Bidding
HRS § 103D-302**

- ▶ Invitation for bids
- ▶ Pre-bid conference
 - For construction projects estimated >\$500,000,
15-days before bids due
- ▶ Public bid opening
- ▶ Relevant information, name, bid, open to public inspection
- ▶ Award to lowest responsive, responsible bidder



**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Competitive Sealed Proposals
HRS § 103D-303**

- ▶ Request for proposals
- ▶ Pre-proposal conference
 - For construction projects (design-build) estimated >\$100,000, 15-days prior to offers due.
- ▶ Written evaluation factors
- ▶ Best and final offer (BAFO) optional
- ▶ Award to the most advantageous offeror
- ▶ Debriefing, if requested, within 3-days



COMPETITIVE PROCESS

- Invitation for Bids (IFB)
- Request for Proposals (RFP)

IFB

HRS §103D-302
HAR Chapter 3-122, Subchapter 5

- Detailed specifications
- Procurement Notice on PNS*
- Pre-Bid conference for construction or design-build project, total est. contract \$500,000 or more
- No discussions
- Award to low bidder
- Post award on PRS*
- Protest filed within 5 working days of the posting of the award

Multi-Step IFB

HRS §103D-302
HAR §3-122-22

Combination IFB/RFP:

Step 1:

- Procurement Notice on PNS*
- Unpriced technical Proposals
- Pre-Bid conference
(same as IFB process)

• Discussions

• Determine acceptable proposals

Step 2:


- Award to bidder offering lowest priced acceptable proposal
- Post award on PRS*
- Protest filed within 5 working days of the posting of the award

RFP

HRS §103D-303
HAR Chapter 3-122, Subchapter 6

- Solution to a problem
- Procurement Notice on PNS*
- Evaluations
- Discussions
- Pre-Proposal conference for construction or design-build projects, total est. contract \$100,000 or more
- Best and Final Offers (optional)
- Award based on various criteria – price may be a factor
- Protest filed within 5 working days of the posting of the award
- Debriefing of requesting non-selected offeror within 3 working days
- Protest filed within 5 working days after last debriefing

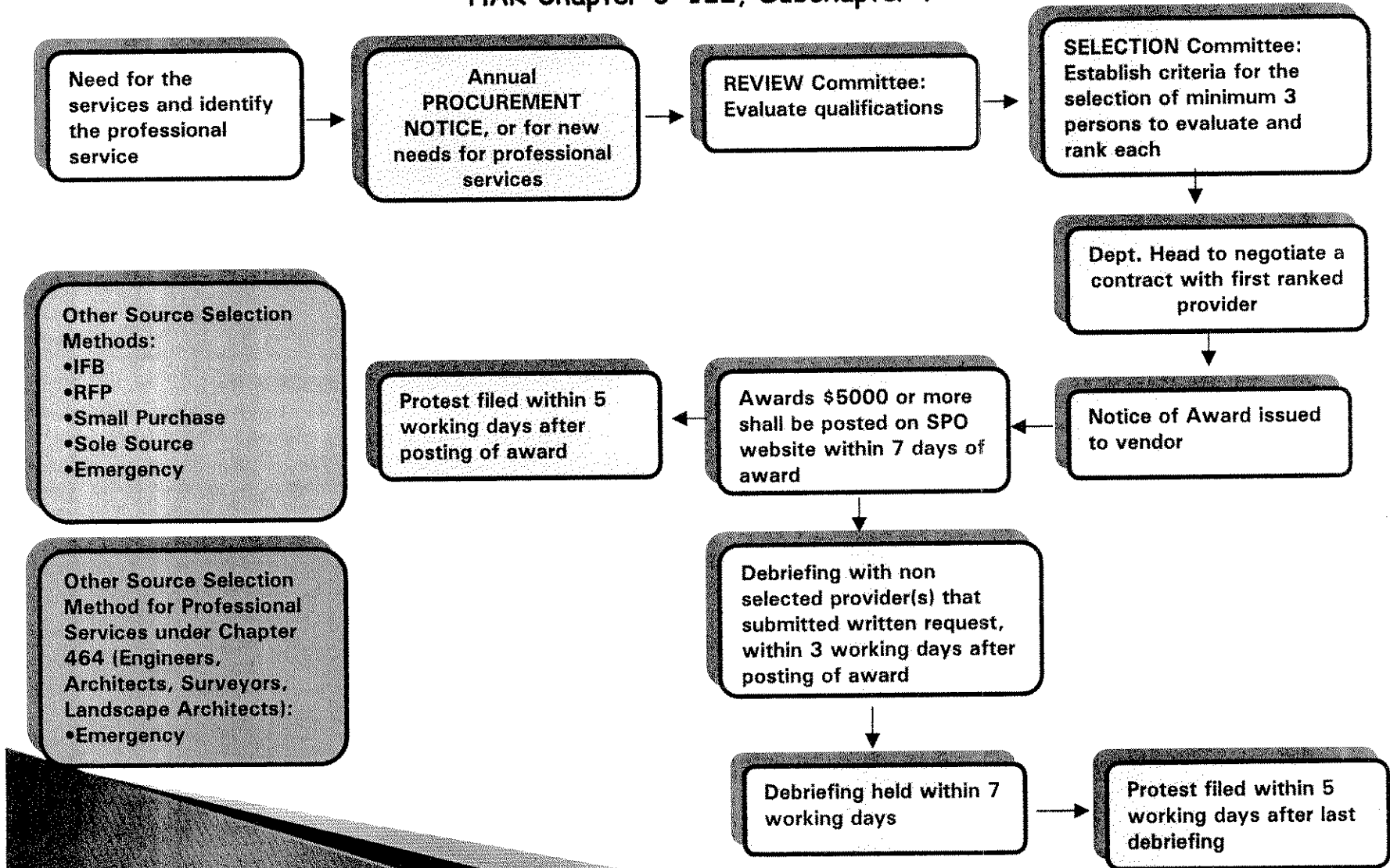
**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Professional Services
HRS §103D-304**

- ▶ Request for qualification & interest
 - ▶ Review committee of 3 or more
 - Compiles listing of qualified persons
 - ▶ Selection committee of 3 or more
 - Selection criteria: 1) experience; 2) past performance; 3) capacity; 4) additional criteria
 - Evaluates and ranks 3 or more
 - ▶ Head of purchasing agency to negotiate in rank order
 - ▶ Debriefing, if requested, in 3-days
- 

PROFESSIONAL SERVICES

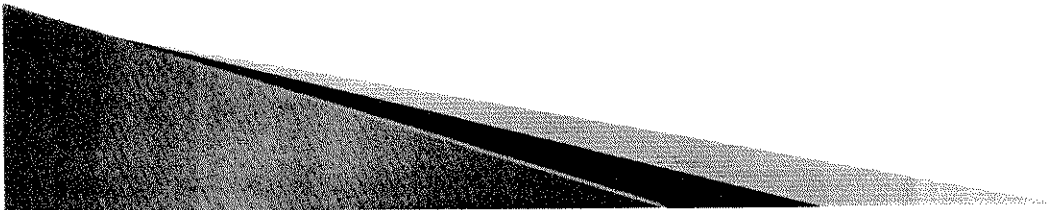
HRS §103D-304

HAR Chapter 3-122, Subchapter 7



**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Small Purchases
HRS §103D-305**

- ▶ Less than \$50,000
- ▶ In accordance with Procurement Policy Board (PPB) rules
 - Administrative simplicity
 - As much competition as practicable
- ▶ No parceling
 - “Parceling” means the artificial division or intentional division of a purchase of same, like or related items of goods, services, or construction into several purchases of smaller quantities, in order to evade the statutory competitive requirements.



SMALL PURCHASE

HRS Section 103D-305
HAR Chapter 3-122, Subchapter 8

**Goods, Services, and Construction
Under \$50,000**

Under \$5,000

- ▶▶ Competition is recommended
- ▶▶ SPO-10 and SPO-10A are optional
- ▶▶ Award to vendor offering lowest price, or best value

\$5,000 to less than \$15,000

- ▶▶ Obtain minimum three quotes
- ▶▶ Document: SPO-10, *Record of Procurement*
- ▶▶ Award to vendor offering lowest price, or best value

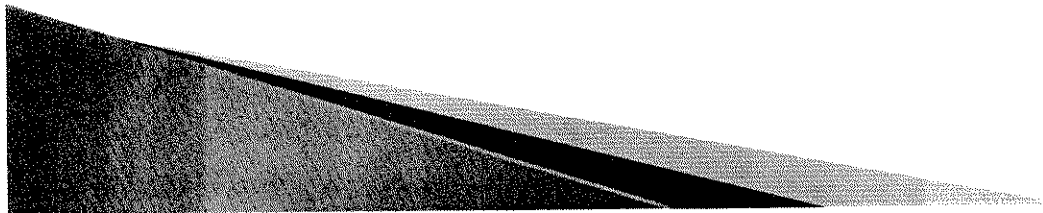
**Hawaii Electronic Procurement System (HePS)
\$15,000* to less than \$50,000**

- ▶▶ Solicitation shall be conducted on HePS
- ▶▶ Award to lowest quote, or best value
- ▶▶ Document: HePS Summary Report
- ▶▶ Obtain compliance documents (i.e. HCE)

*Required for Executive departments

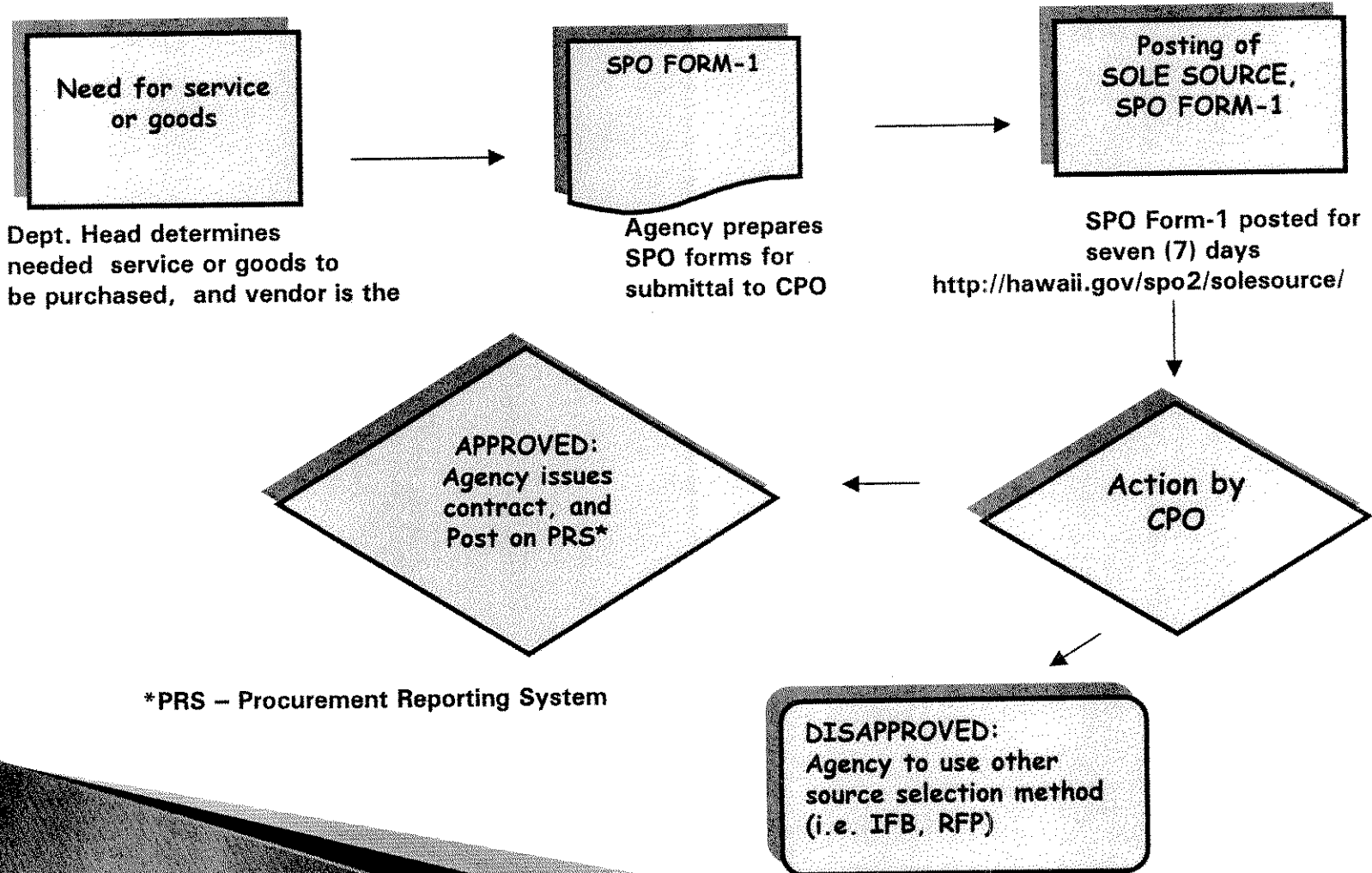
**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Sole Source
HRS §103D-306**

- ▶ When determined in writing that there is only one source
- ▶ Review and approval by chief procurement officer
- ▶ Procurement Policy Board to include list of sole source procurements

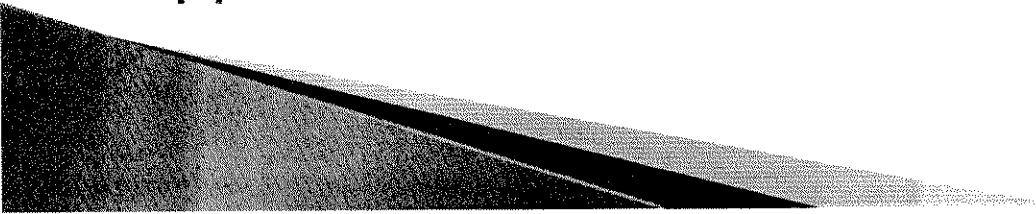


SOLE SOURCE PROCUREMENT

HRS§ 103D-306
HAR Chapter 3-122, Subchapter 9



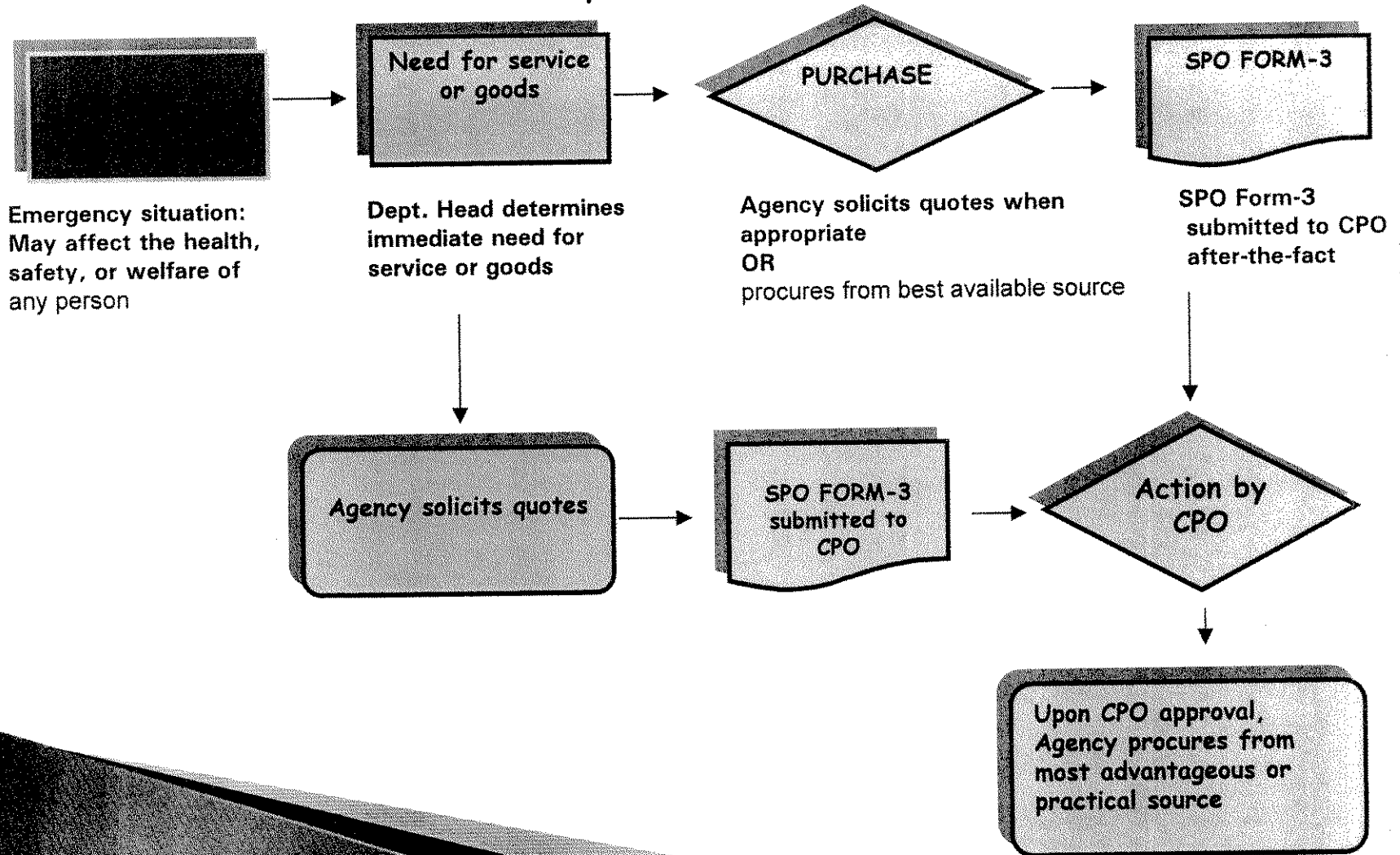
STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Emergency
HRS §103D-307

- ▶ Threat to life, public health, welfare, or safety
 - ▶ Cannot be met through normal procurement methods and government would be seriously injured
 - ▶ Continued functioning of government, preservation of property, or health and safety seriously threatened
 - ▶ Where practicable, chief procurement officer to approve
- 

EMERGENCY PROCUREMENT

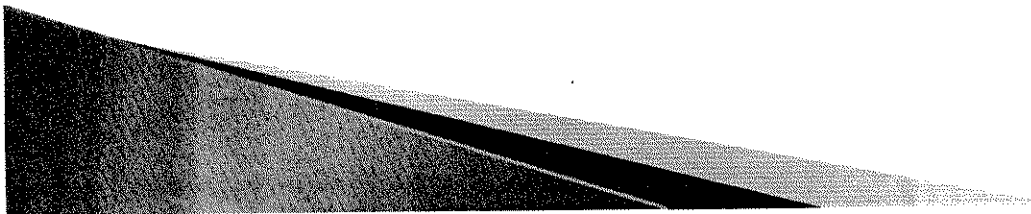
HRS §103D-307

HAR Chapter 3-122, Subchapter 10



**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Procurement Code Allows for Exemptions When Required**

- ▶ When procurement by competitive means is not practicable or not advantageous
 - Part of HRS Chapter 103D-102(b)(1)(5)
 - Procurement Policy Board determination by rules
 - = HRS Chapter 103D-102(b)(4)(L) and HAR Chapter 3-120-4
 - Chief procurement officer determination in writing
 - = HRS Chapter 103D-102(b)(4)(L) and HAR Chapter 3-120-5



EXEMPTIONS FROM CHAPTER 103D, HRS

HRS § 103D-102
HAR Chapter 3-120

Hawaii Revised Statutes
HRS Chapter 103D

- For the disbursement of funds
- Procurements from a governmental body
- Exempt by law/statutes—HRS §103D-102
- Expressly exempt from the requirements of HRS 103D

Hawaii Administrative Rules
HAR §3-120-4

Procurement Policy Board (PPB)
determines exempt procurements

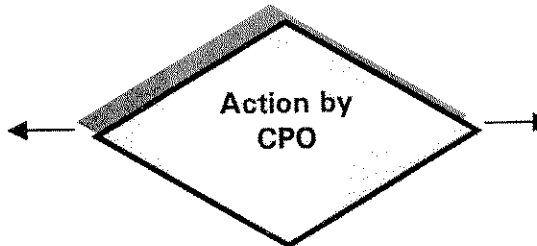
Exhibit of procurements that are exempt
by PPB

Chief Procurement Officer
HAR §3-120-5

CPO determines exempt procurement.

SPO FORM-7

Posting of NOTICE OF EXEMPTION, SPO FORM-7

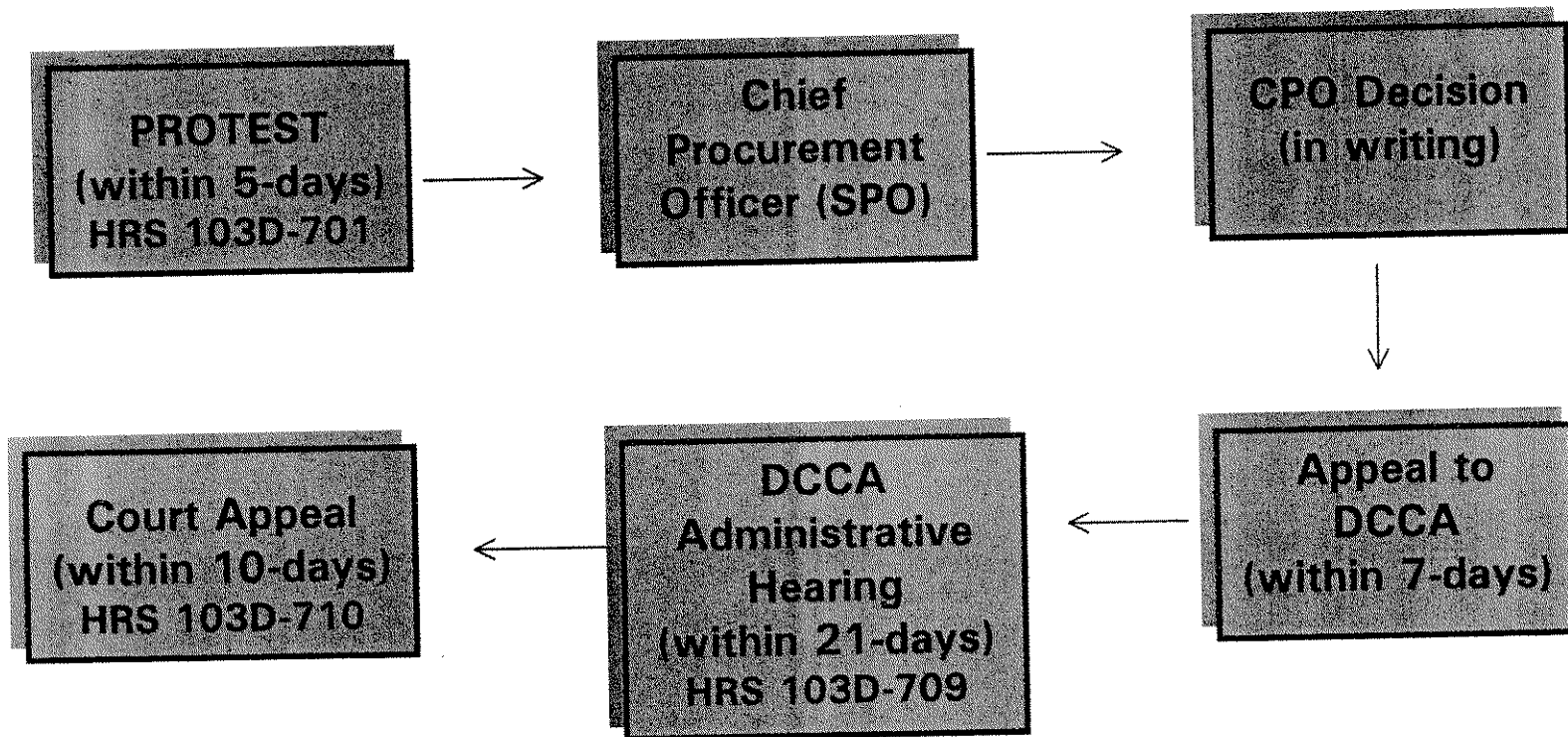


DISAPPROVED:
Agency to use other source selection method (i.e. IFB, RFP)

APPROVED:
Agency issued contract and posts on PRS*

*PRS – Procurement Reporting System

STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code
Procurement Code Provides Fair and Efficient Due Process



**STATE PROCUREMENT OFFICE
CHAPTER 103D, HRS
Hawaii Public Procurement Code**

- ▶ Statutes, its administrative rules and policies are the single source that assures all purchasing entities utilize the same process and procedures
- ▶ Private sector, the businesses and vendors, have come to understand these processes and procedures, assuring fair and equal treatment
- ▶ SPO procurement information at www.spo.hawaii.gov

THANK YOU



-----Original Message-----

From: Clyde.Sonobe@dcca.hawaii.gov [mailto:Clyde.Sonobe@dcca.hawaii.gov]

Sent: Friday, July 25, 2008 1:49 PM

To: david@davidfranzel.com

Subject: Fw: Ruminations for Aug 4 PEG Task Force Meeting

----- Forwarded by Clyde Sonobe/DCCA on 07/25/2008 01:48 PM -----

David Lassner
<david@hawaii.edu
>

07/14/2008 09:53
AM

To

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Subject

Ruminations for Aug 4 PEG Task
Force Meeting

Colleagues -- I am really sorry that I can't attend our Aug 4 meeting, but I'll be out of town on business. Hae Okimoto will be attending on my behalf, and will only be able to participate or vote as you permit.

Since I can't be there in person, I thought I'd share some thoughts in advance that you can consider or ignore as you see fit. So at the risk of applying a layman's perspective to a process that is already lawyered-up, here are some personal thoughts on how we got here and where we are now. I have been advised by OIP on another Task Force that this kind of communication would not be proper if it had been determined that we are subject to the Sunshine Law or if we decide at our next meeting that we can only communicate in accord with that law. But for now, there seems to be no prohibition on using a tool like email for substantive communications within our Task Force.

Please note that I am not suggesting that I am "right" about any of of what follows, or that my suggested agenda below is better than anyone else's. I only hope this note will help stimulate thinking and discussion toward a next meeting that is more productive meeting than our last one.

Personal Perspective on How We Got Here:

* The AG opined that the selection of PEG entities is subject to the State

Procurement Code and that DCCA cannot simply renew the current contracts with Olelo, Akaku, NaLeo and Hoiike.

* In response to DCCA's request for an exemption from competitive processes (RFP or IFB), SPO/SPB determined that the selection of PEG entities is not exempt.

* Based on the AG opinion and SPO/SPB determination, DCCA put out an RFP (not "low-bid" IFB) for the selection of PEG entities.

* In a resulting court action, the judge ruled against the RFP process and ordered that DCCA must adopt Rules (under Ch 91) for PEG entities, whether they are selected competitively or otherwise.

* The PEG entities and their supporters asked the Legislature to exempt the selection of PEG entities from the State Procurement Code.

* Instead, the Legislature passed a Reso (non-binding) that requested DCCA to establish a Task Force to "solicit public input and examine methods other than the Public Procurement Code process to oversee PEG expenditures and ensure proper checks and balances," "examine the selection process for PEG advisory board members," and "submit a report of suggested policy changes to the Legislature no later than 20 days prior to the convening of the Regular Session of 2009." In so doing, "task force should take into account the first amendment rights of PEG."

Personal Perspective on the Current Lay of the Land:

* The current PEG entities and their supporters claim that selection of PEG entities does not admit of competition at all and believe that the current entities should retain their contracts.

* Critics of the current PEG entities variously believe that the current entities are complacent, not transparent, biased and/or not responsive or responsible to the true mission of Public Access. Some of these critics believe that a competitive process will result in PEG entities that provide improved Public Access. Current PEG entities disagree.

* Accredited Education is on public record with a longstanding position that the Educational Access objective of PEG (currently Channels 55 & 56) would be better achieved if structurally separated from the PEG entities, which place a greater focus on their Public Access missions. Current PEG entities and many P-producers disagree.

* There is currently no clear constituency around Governmental Access programming other than the County Councils and Legislature. Some have questioned why Governmental entities do not have access to Governmental Access funding out of the PEG programming resources but rather must pay separately to produce programming from Legislative and Council sessions.

* There is limited trust of any party by all other parties

* One way or another, it is clear that DCCA needs to issue rules.

* While we are engaged in this process, DCCA is also beginning the process for the next round of Franchise renewals.

In spite of my belief that the Sunshine Law is not supportive of collaborative processes, I firmly believe in practices such as published agendas, minutes and the invitation of public testimony that contributes to the Task Force's deliberations. So I offer the following thoughts for the next agenda and discussions. I hope these ideas can help lead you to begin a substantive discussion of the issues rather than a continuing focus on task force process, pre-existing agendas and allocation of blame for why we are where we are.

I would suggest that we try to allocate most of our time over the next months on conversations like the one suggested in agenda item 6 below or similar matters. We will need frank and substantive conversations about the actual issues, in a manner that is respectful of the diverse points of view that characterize PEG and our Task Force. Without that, no amount of attention to process and formality can help move either the Task Force or our communities forward and we will end up as yet another failed attempt to advance PEG.

Possible Agenda Items

- 1) Call to order, Introduction of Members/Substitutes
- 2) Discussion/Modification/Acceptance of Agenda
- 3) Approval of Prior Meeting's Minutes
- 4) Public Comment Period - limited to 3 mins per testifier with encouragement to submit remarks in writing
- 5) Discussion/Decision of Task Force Operations
 - a) What does it mean for DCCA to "establish" the Task Force?
 - b) Should there be a facilitator and if so, who selects her/him and how?
 - c) Who will manage/chair meetings - a facilitator? Chair/Vice-Chair? DCCA?
 - d) Status of substitutes for Task Force members - Authorized to speak? Vote?
 - e) Does the Task Force wish to impose strict adherence to the Sunshine Law on our operations? If so, will the Task Force have our own legal Counsel available to support this in the face of the varying interpretations that will inevitably arise?
 - f) Does the Task Force wish to impose strict adherence to Roberts Rules of Order? If so, will the Task Force have our own professional parliamentarian available to support this in the face of the varying interpretations that will inevitably arise?
- 6) Discussion of Actual Work of Task Force
 - a) What are the main questions about PEG we need to ask and then try to answer to be responsive to the Reso?
 - b) How can Task Force members each share our views on these questions in a non-confrontational and respectful manner?
 - c) How do we want to solicit public input on the specific questions?
 - d) Do we think we can get to a consensus position on some or all of the questions asked? Or if voting, would we issue Majority and Minority Report(s) or leave any dissenters to do that themselves? Or...?
- 7) Next Meeting(s)
 - a) Consideration of Agenda Items for Next Meeting(s)

b) Scheduling of Next Meeting(s)

8) Adjournment