

UNIVERSITY OF HAWAI'I SYSTEM REPORT



REPORT TO THE 2012 LEGISLATURE

Report on University of Hawai'i
Procurement Procedures

Act 82, Session Laws of Hawai'i 2010

December 2011

Annual Report to the 2012 Legislature Pursuant to Act 82, SLH 2010 University of Hawaii Procurement Procedures

Background

The Legislature, through Act 82, SLH 2010, provided the University of Hawaii flexibility, with certain exceptions, from the requirements of the Hawaii Public Procurement Code (HRS Chapter 103D), effective as of July 1, 2010. The intent of providing this limited flexibility to the University was to allow it to pilot innovative procedures to expedite procurement of goods and services, especially construction services while maintaining fairness and transparency. It is hoped that this will aid the economy while helping the University with its capital improvement needs at a time when costs are low and financing is favorable. And if successful and appropriate, the procurement processes piloted by the University may be adopted in the future by the legislature for other state agencies.

Implementation Actions by the University of Hawaii

Since Act 82 only provides the limited flexibility from July 1, 2010 through June 30, 2012, University administration proposed initial revisions to its procurement procedures to be effective July 1, 2010 on an interim basis while further revised processes are being developed for piloting. These initial revisions were approved by the Board of Regents at its meeting of June 28, 2010.

Following that meeting, the President of the University appointed a Procurement Task Group to review the interim procedures and develop further revised procedures for recommendation to the Board of Regents. Members of this Task Group included two members of the Board of Regents, the executive vice president of the General Contractors Association of Hawaii, a representative of the American Council of Engineering Companies of Hawaii, and two construction managers, one from the U.S. Army Corps of Engineers and one from the State of Hawaii Department of Education. After several meetings during which discussions focused on expediting construction projects while maintaining fairness and transparency, the Task Group recommended further revisions to the procedures for the procurement of construction. They proposed three new alternative procedures for qualification-based construction procurement in addition to the revisions previously approved by the Board. These additional revisions were approved by the Board of Regents at its meeting of September 16, 2010.

Subsequently, numerous outreach presentations on several islands were made to approximately 250 members of the General Contractors Association of Hawai'i, Kaua'i Contractors Association, and Hawai'i Island Contractors Association, the Building Industry Association, the Subcontractors Association of Hawaii, Construction Managers Association of America, and Painters and Decorating Contractors Association of Hawai'i.

For those general contractors that are interested in competing for UH construction projects procured under qualification-based construction procurement procedures which are described in Section A8.280 of the following section of this report, statements of their qualifications are required to be submitted electronically to www.hawaii.edu/oci. To date, 182 contractors have submitted their qualifications, of which 140 have been qualified, and the balance are in the process of completing their statements.

Since the adoption of the alternative construction procurement procedures in September 2010, the following major projects have been procured or are in the process of being procured using these new procedures:

- I. Section A8.280.1 (Primarily for Design-Bid-Build Construction Projects):
 - a. All interested contractors to be ranked after evaluation by a selection committee using established selection criteria. All interested contractors who timely submit a written expression of interest and statement of qualifications are ranked by a selection committee using selection criteria established by the selection committee and included in the notice of the construction project posted on a University website.
 - b. Top ranked contractors invited to submit sealed offers. Once the ranking is established, a minimum of the five highest ranked contractors (or all submitting contractors if the number is less than five contractors), are invited to submit sealed offers.
 - c. Contract award made to offeror submitting the lowest priced bid. Contract award is made to the invited contractor submitting the lowest priced offer, regardless of ranking among those contractors invited to submit sealed offers.
 - d. Used primarily for Design-Bid-Build construction projects. This new construction procurement procedure is intended for use for pre-designed construction of a general nature, including, without limitation, to Design-Bid-Build construction projects.

Projects procured or to be procured under this procedure include:

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| 1. UH Hilo New Hawaiian Language Classroom Building | \$31.0 million |
| 2. UHM Sinclair Library Renovations | \$6.0 million |
| 3. UHM BioMedicine Building Renovations | \$6.0 million |
| 4. UHM Snyder Hall Renovations | \$38.0 million |
| 5. UHM Snyder Hall Renovations, 4 th Flr. | \$1.3 million |
| 6. UHM Edmondson Hall General Repairs | \$17.0 million |
| 7. UHM Cagewash & Vivarium Improvements | \$2.9 million |
| 8. UHM HI Institute of Geophysics Bldg, | \$2.0 million |
| 9. UHM Gateway House General Repairs | \$6.2 million |

10. UHM Biomedical Sciences Bldg. Courtyard A& C Renov.	\$3.4 million
11. UHM Biomedical Sciences Bldg. Courtyard B Renov.	\$4.2 million
12. UHM Ching Athletic Complex	\$8.3 million
13. <u>UHM Dance Studio General Repairs</u>	<u>\$1.3 million</u>
Total	\$127.6 million

II. Section A8.280.2 (Primarily for Design-Build or Complex Construction Projects):

a. All interested contractors to be ranked after evaluation by the selection committee using established selection criteria. All interested contractors who timely submit written expressions of interest and provide statements of qualifications are ranked by a selection committee using selection criteria established by the selection committee and included in the notice of the construction project posted on a University website.

b. Top ranked contractors invited to submit sealed proposals. Once the ranking is established, a minimum of the five highest ranked contractors (or all submitting contractors if the number is less than five contractors), are invited to submit sealed proposals in a modified request for proposals (RFP) process.

c. Establishment of proposal selection criteria. Before such an invitation, the selection committee, together with the University's designated officer responsible for managing and overseeing the construction, establishes the proposal selection criteria that will be used to evaluate the submitted proposals. These proposal selection criteria are separate and apart from the selection criteria established to evaluate the qualifications of the interested contractors.

d. Notify contractors of the proposal selection criteria. As part of the invitation to submit proposals, the University's designated officer notifies the contractors invited to submit proposals of the proposal selection criteria that the selection committee will use to evaluate the proposals.

e. Contents of proposals. Each proposal submitted includes design plans and the proposal price.

f. Contract award. Regardless of initial ranking under b. above among those contractors invited to submit proposals, contract award is made to the invited contractor submitting the proposal that is determined to be the most advantageous to the University, considering price and the other selection criteria.

g. Used primarily for Design-Build construction projects. This new construction procurement procedure is intended for use primarily for Design-Build construction projects and other complex construction projects where proposal price should not be the sole determining factor among the top-ranked contractors.

Projects procured or to be procured under this procedure include:

1. UHM New IT Building	\$41.0 million
2. <u>UHM Campus Lighting Upgrades</u>	<u>\$15.0 million</u>
Total	\$56.0 million

III. Section A8.280.3 (Primarily for Design-Assist construction projects):

- a. Construction contract negotiated with the top ranked contractor. The construction contract is negotiated with the highest ranked contractor based on a purely qualifications-based evaluation (no priced offers or proposals are requested).
- b. All interested contractors to be ranked after evaluation by the selection committee using established selection criteria. The ranking of all interested contractors who timely submit a written expression of interest and statement of qualifications is conducted by a selection committee using the selection criteria established by the selection committee and included in the notice of the construction project posted on a University website.
- c. University's designated officer to negotiate the construction contract. The ranking of all such interested contractors is furnished to the University's designated officer who will manage and oversee the construction and will negotiate the construction contract with the highest ranked contractor.
- d. Contract awarded if negotiations are successful. Contract award is made to the highest ranked contractor if the University and the contractor can reach agreement on the terms of a negotiated contract at a fair and reasonable price.
- e. Used primarily for Design-assist construction projects. This construction procurement procedure is best suited for design-assist construction projects or highly specialized projects with unique requirements.

Projects procured or to be procured under this procedure include:

1. UHM Webster Hall Renovations for School of Nursing	\$8.0 million
2. UHH Student Housing	\$28.0 million
3. <u>UHH College of Pharmacy</u>	<u>\$38.0 million</u>
Total	\$74.0 million

Grand Total Procured by All Three Methods \$257.6 million

Pre-qualifying the interested general contractors has been of tremendous value to the University, thereby assuring high quality construction projects at competitive prices. The new prequalifying step may add up to two months to the procurement process in some instances, but the time is well spent and results in truly qualified general contractors competing for these projects. For each of the previously listed projects which have been procured, a total of between eight and fifteen general contractors responded, and the resulting contract prices have been generally substantially lower than the original construction cost estimates.

Furthermore, through the selection of better qualified general contractors, the University has experienced an acceleration of the construction process resulting in the overall shortening of the completion time for the projects. When compared with the traditional design-bid-build/sealed bid procurement method, such time savings have been quantified up to seven to eleven months, specifically for those projects procured under Section A8.280.3 for Design-Assist construction projects.

While accelerating the procurement process and obtaining low cost are important factors, obtaining the best value while maintaining fairness and transparency in the processes is the University's ultimate goal.

Upon awarding of each of the projects procured under these three methods, debriefing sessions have been provided to general contractors whenever requested. This has been very beneficial for both the University in improving the procurement process and general contractors in better understanding the process and better preparing for the process.

Pursuant to Act 82, the following additional information is being provided in this report:

I. Description of the University of Hawaii's Internal Procurement Process

The major revisions included in the interim procedures may be summarized as follows:

- A8.220 (General Principles)

Expands the categories of designated goods, services, and construction for which procurement through standard methods of source selection is impractical or disadvantageous, and is therefore exempt from such source selection requirements. These new categories include, among others:

-Subcontracts to organizations directed by the funding agency in an extramural contract or grant;

-Purchases made under cooperative purchasing agreements in which the University participates with other educational institutions;

-Procurement of goods and services from a University commercial enterprise under HRS 304A-2251; and

-Services to recruit international students.

Provides that the Vice President for Budget and Finance may approve other exemptions on a case-by-case basis, as appropriate.

Provides that University decisions regarding complaints filed with respect to University procurement actions shall be final and conclusive (not subject to the automatic stay and DCCA appeal provisions in HRS 103D).

- A8.235 (Competitive Sealed Bidding)

Establishes the competitive sealed bidding threshold at \$250,000 for the purchase of goods, services, and construction.

Requires the University to hold pre-bid conferences for construction or design-build projects with a total estimated contract value of \$500,000 or more.

Requires bidders to submit listings of subcontractors who are to perform work with a value exceeding five percent of the total bid amount for construction contracts where the estimated contract value is \$1,000,000 or higher.

- A8.245 (Professional Services)

Provides that the professional services procurement procedure (pursuant to HRS 103D-304) must be used when acquiring design professional services (architecture, engineering, land surveying, and landscape architecture). Other types of professional services (e.g. legal, audit, etc.) may be acquired

by this procedure or other source selection methods (e.g. competitive sealed proposals).

- A8.250 (Small Purchases)

Provides that any procurement of goods, services, or construction less than \$250,000 shall be made through the small purchase process utilizing the University's electronic request for quotations system, except as otherwise provided therein.

- A8.255 (Sole Source Procurement)

Provides that the Vice President for Budget and Finance shall approve all sole source purchases of \$50,000 or more.

- A8.260 (Emergency Procurement)

Provides that the Vice President for Budget and Finance shall approve all emergency purchases of \$50,000 or more.

- A8.280.1 to A8.280.3 (Qualifications-Based Construction Procurement)

Establishes new alternative procedures for the procurement of construction utilizing the solicitation of statements of qualifications from interested contractors and selection based on qualification and performance based criteria. Construction may still be acquired through other source selection methods such as competitive sealed bidding or competitive sealed proposals as well.

The University's revised interim procurement procedures may be viewed in their entirety at www.hawaii.edu/apis/apm/a8200.php

II. Description of the University of Hawaii's internal procedures for handling protests of solicitations or awards of contracts

The University's procedures for addressing complaints regarding the solicitation or award of procurement contracts is set forth in Section A8.220(10) which provides as follows:

Procurement Complaints

- a. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may submit a complaint to the Procurement Officer.

- b. A complaint shall be submitted in writing within five working days after the aggrieved party knows or should have known of the facts giving rise thereto; provided that a complaint regarding an award or proposed award shall in any event be submitted within five working days after the posting of award of the contract. In no event shall a complaint based upon the content of the solicitation be considered if submitted after the date set for the receipt of offers. Complaints which are not timely filed shall not be considered
- c. To expedite handling of complaints, the complaining party should submit the written complaint in an envelope labeled "Procurement Complaint" and either served personally or sent by registered or certified mail, return receipt requested, to the Procurement Officer. The written complaint shall include at a minimum the following:
 - 1) The name and address of the complaining party;
 - 2) Appropriate identification of the procurement, and, if a purchase order or contract has been awarded, its number;
 - 3) A statement of reasons for the complaint; and
 - 4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the time provided for filing, in which case the expected availability date shall be indicated.
- d. The Procurement Officer shall render a decision on a complaint as expeditiously as possible after receiving all relevant information as requested. A copy of the decision shall be mailed or otherwise furnished promptly to the complaining party. The decision shall be final and conclusive.

III. Description and summary of any protests or litigation that have arisen during the period of time that the University of Hawaii has been exempt from HRS Chapter 103D pursuant to Act 82, SLH 2010

Since July 1, 2010, the effective date of Act 82, SLH 2010, a total of six procurement complaints and/or protests have been formally submitted to the University and all have involved construction related procurements.

One protest involved alleged ambiguities in the technical specifications for a small purchase of approximately \$50,000 which was processed through the University's traditional electronic SuperQUOTE request for quotation system.

Two procurement complaints involved construction projects processed through Invitations for Bids under the traditional competitive bidding process. One of these complaints involved the application of the apprenticeship bid preference set forth in Section 103-55.6, HRS, which the University has applied to construction procurements regardless of the exemption afforded to the University by Act 82. The other complaint involved a challenge to the listing of subcontractors included in the low bid for a construction project.

Three procurement complaints involved construction projects processed through the alternative qualifications-based construction procurement procedures implemented by the University pursuant to Act 82. Two of these complaints involved the same procurement which was processed under Section A8.280.1 for a pre-designed construction project. One of the complaints challenged the subcontractor listing of the contractor who submitted the lowest priced offer. The other complaint failed to identify specific errors or omissions on which its complaint was based. The third complaint involved another construction project processed under Section A8.280.1 and was submitted by an equipment supplier who maintained that a similar product of another supplier should not have been approved as an acceptable substitution for the project.

All of the foregoing complaints and/or protests were addressed in written decisions provided to the complaining parties, and were found to be without merit and dismissed. None of the complaints were pursued further by the parties through the filing of litigation or through other means.