

## **Resource Guide: Procurement Policies and Procedures**

### **Background**

Descriptions of the requirements for procurement policies and procedures are set forth in both state law (Hawaii Revised Statutes (“HRS”) §302D-12 and §302D-25) and in the State Public Charter School Contract (“Charter Contract”) (Section 6.8), provided below. Note that both state law and the contract stress that the procurement policies and procedures maintain consistency with the goals of public accountability and public procurement practices.

#### **State law**

**HRS §302D-12** Governing boards and charter schools shall be exempt from 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Governing boards and charter schools are encouraged to use the provisions of chapter 103D whenever possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school to any other provision of chapter 103D.

**HRS §302D-25(2)(b)** “Charter schools, the commission, and authorizers shall be exempt from 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Charter schools, the commission, and authorizers are encouraged to use the provisions of chapter 103D wherever possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school, commission, or authorizer to any other provision of chapter 103D. Charter schools, the commission, and authorizers shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public.”

#### **Charter Contract, Section 6.8**

Procurement. Pursuant to Secs. 302D-25(b) and 302D-12(d), HRS, the School and its Governing Board shall be exempt from Ch. 103D, HRS. The School’s Governing Board shall develop policies and procedures for the procurement of goods, services and construction consistent with the goals of public accountability and public procurement practices.

In addition to contractual and legal requirements, charter schools may want to consider the recommendations from the December 2011 Performance Audit of the Hawai'i Public Charter School Commission ("Audit") while developing and revising their procurement policies, available at <http://hawaii.gov/auditor/Reports/2011/11-03.pdf>.

The Audit recommended that charter school governing boards could reduce improper and abusive purchases and ensure operational efficiency by:

- 1) Incorporating the requirements of ethical public procurement and the State ethics code's conflict of interest provisions in compliance with Chapter 84, HRS, to ensure that employees conduct and participate in public procurement in an ethical manner;
- 2) Establishing and implementing stronger and more effective controls to reduce improper and abusive purchases to ensure operational efficiency is being achieved;
- 3) Reviewing and adopting internal procurement policies and procedures to meet the goals of public accountability; and
- 4) Ensuring that procurement reports are developed and presented on a recurring basis to each local school board.

The Audit also noted that although governing boards are exempt from HRS Chapter 103D,

"[T]hey are encouraged to conduct procurements in an ethical manner. According to Chapter 103D, HRS, public employees should ' . . . remain independent from any actual or prospective bidder, offeror, contractor, or business . . . encourage economic competition by ensuring that all persons are afforded and equal opportunity to compete in a fair and open environment. . . avoid the intent and appearance of unethical behavior . . . avoid social interactions with any actual or prospective bidder, offeror, contractor, business, or other interested parties during the procurement process . . . and identify and eliminate any conflicts of interest.'" (p. 50)

## **Procurement Policy and Procedures – Questions to Consider**

The following questions are offered as issues to consider when reviewing, developing and implementing procurement policies and procedures. The checklist is not mean to be prescriptive or regulatory in nature.

**Competitive bidding process.** *Is there a required competitive bidding process for purchases over a certain amount and/or of a certain kind?*

**Reviewing and approving bids.** *What are the procedures for reviewing and approving bids?*

**Authority.** *Who has the authority to authorize purchases? Does authorization level increase as purchase amounts increase?*

**Documentation.** *What types of documentation accompany the procedures for reviewing, approving, and authorizing purchases?*

**Management, control, and disposal.** *Does the policy address how goods and services will be managed, controlled, inventoried, and disposed of?*

**Conflicts of interest.** *How will the board identify and avoid real and perceived conflicts of interest?*

**Exception for federal purchases.** *Does the policy acknowledge that, as a condition of the receipt of certain federal funds, federal procurement requirements still apply?*