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**Governmental  
Contracting and Purchasing**

**By**

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GOVERNMENTAL  
CONTRACTING AND PURCHASING

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## INTRODUCTION

Public interest focuses intermittently on government contracting activities, an area of government peculiarly susceptible to waste, inefficiency, and corruption. Dramatic exposes have highlighted investigations at every level of government in this field of public life, so important to the taxpayer's pocketbook. In Hawaii there have been two official investigations of alleged irregularities in expenditures of public moneys within the past year. One investigation explored the operation of purchasing by the City and County of Honolulu, resulting in "The Cates Report." The other investigation, into competitive bidding practices incident to public works contracts in the County of Maui, and particularly the Wailuku War Memorial Convention Hall Gymnasium project, did not progress beyond a preliminary report.

Notoriety resulting from such investigatory probes leads naturally to the public sentiment, "There ought to be a law." Remedial legislation to govern public contracting, either in anticipation of or reaction to damage to the public interest, has been enacted in almost every jurisdiction in the United States. Many of the laws of Hawaii in this field date back a half a century. Additional enactments and amendments in the course of the years have contributed in a piecemeal fashion to the present statutory framework. Before contemplating the wisdom and necessity of further revision of the law relating

to public contracting it is important to understand the status quo.

The Legislative Reference Bureau was requested to examine and provide information on state and county purchasing and contracting operations in Hawaii. The emphasis in this report is on the state laws that govern these operations, for it is these laws and related legal principles, decisions, and rules which set the stage for purchasing and contracting operations. Descriptions of actual purchasing and contracting practices and procedures and of purchasing and contracting organizations are included in the report primarily to illustrate the impact of the law. Changes in the law, it should be noted, will not necessarily result in better operations; it is simply that antiquated and conflicting laws are unlikely to facilitate the employment of sound purchasing and contracting procedures.

## I. OBJECTIVES AND POLICIES

Many of the objectives and policies applicable to contracting and purchasing by private business apply with equal force to governmental contracting and purchasing. The ultimate objective of contracting or purchasing, whether it be governmental or mercantile, is to minimize costs by maximizing the utility received for each dollar spent in construction or in procuring goods. This objective in the case of government is subject to refinement by strictures imposed by law. Common law and constitutional and statutory rules preclude a strictly businesslike approach toward the goal of a high utility per dollar ratio. For instance, in the practice of employing the sealed-bid technique to determine the award of a contract, governments are generally required by statute to open the bids publicly, in the presence of any interested persons, and to keep a public record of the bids submitted. Private businesses, on the other hand, generally respect bidders' requests for confidential treatment of bids. Those business enterprises which desire to have their bids held in confidence will not respond to government calls for bids, and thus, potential low bids are sacrificed in the interest of public disclosure on public matters.

Another instance of foregoing the utility per dollar ratio in determining the award of a government contract is

found in the conflict of interest situation. A contract awarded by a governmental body is void if it presents a potential conflict of interest; although the award in question would result in saving public funds. Corporations are subject to a far lesser degree of restriction in order to protect shareholders' interests and to further corporate purposes.

A fundamental principle accounts for the distinction between private and public contracts. The interest of a private business lies primarily in profit. Its officers and employees are responsible to the owners of the business, a limited group even in the case of a widely held corporation. The interest of government as it engages in contracting and purchasing lies primarily in protecting public moneys and in managing public expenditures with highest fiduciary care. Officers and employees of the government are responsible to the entire public.

#### Recommended Purchasing and Contracting Techniques

Within the constitutional and statutory framework and subject to policies particularly applicable to public bodies, governmental contracting and purchasing can be conducted with increased efficiency and economy if recommended techniques are adopted and practiced. Authorities, governmental and private, generally agree on the following approved practices and organization:

1. The organization of contracting and purchasing divisions should provide for a responsible, central

policy-making authority. The policies so formulated should then determine the actual practices to be followed.

2. The administration of contracting and purchasing activities should be sufficiently related to accounting and financial operations to make possible effective internal control over expenditures.
3. Pre-audit and post-audit functions should be sufficiently separated as to authority, responsibility and personnel to provide for objectivity and integrity.
4. Centralized and decentralized purchasing should be properly balanced to achieve savings through bulk purchases and lower administrative costs while simultaneously furthering expeditious procurement of essential materials and equipment.
5. Specifications and standards should be established with the cooperation of user agencies and should be continuously examined in the light of latest technical knowledge.
6. Contracts should be awarded on the basis of competitive bidding to achieve economy and ultimate efficiency.
7. Inspection and follow-up programs should be regular operations to verify performances of contractors and suppliers.
8. A perpetual inventory, with periodic physical inventory, should be carried on to assist in utilization of

existing property, including repair, maintenance, efficient use, inter-department transfers and disposal.

9. Contracting and purchasing manuals should be provided to present well-defined requirements and procedures in an orderly fashion for the use of bidders, buyers, contracting authorities, and using agencies.
10. Flexibility, where legally possible, should be within the discretion of the office in charge of contracting or purchasing, in order to accommodate to emergency situations, take advantage of bargains, and exercise administrative judgment in the best interest of the public.
11. Complete records should be maintained including all vital documents and forms.
12. Standards should be maintained which promote contracting on the basis of merit rather than personal influence.

Purchasing and contracting for construction work provide services that are basic to any organization's operations, routine and special. To the extent that these facilitating services serve the needs of the organization, they contribute to the achievement of program goals.

## II. CONSTITUTIONAL AND LEGISLATIVE PROVISIONS RELATING TO THE POWER AND AUTHORITY TO EXPEND PUBLIC MONEY

The Constitution of the State of Hawaii, as the fundamental organic law of the State, provides the basic power governing the expenditures of public moneys.

### Unenforceable Obligation

Section 6 of Article VI restates the familiar constitutional doctrine that public money can be expended only for public purposes. It follows, from this constitutional limitation, that public money cannot be expended by way of gift or gratuity. A problem that arises in connection with the public purpose doctrine is the authority of the legislature to appropriate money for a purpose which is not legally enforceable. A typical situation involves an appropriation to satisfy a claim for payment under a contract which is legally unenforceable for failure to comply with statutory requirements. According to a 1960 Hawaii Supreme Court decision (Koike et al v. Bd. of Water Supply, 44 H. 100 (1960)), not every expenditure of public money in the absence of a legal obligation constitutes a constitutionally forbidden gift. The Court, in holding that the legislature can authorize payment of a claim based upon a moral obligation, stated, "Whether a moral obligation exists in a particular situation is primarily a question of policy and ethics rather than one of law, and the legislature accordingly is vested with a broad

discretion in determining what shall constitute a valid moral obligation, subject to judicial control only when its actions are a clear and palpable abuse of this discretion." Since this case was decided upon a situation arising before statehood, the Court added a caveat, "Nor may we say what effect the provisions of the Constitution of the State of Hawaii will have, if any, on the powers of the legislative branch of our state government in the field under consideration." At the present time, therefore, it would seem that an appropriation by the legislature to satisfy a moral, as distinguished from a legal, obligation does not violate the constitutional limitation of an expenditure of public money for a public purpose.

In the absence of a legislative determination of moral obligation, an appropriation is not authorized, on the equitable theory of quantum meruit (compensation for benefit received) or otherwise, if it is in payment of a claim based upon a government contract which is void and unenforceable for failure to comply with statutory requirements. De Mello v. Auditor City & County, 37 H. 415 (1946) De Mello v. Bd. of Water Supply, 33 H. 285 (1934) Miehlstein v. King Mkt., 24 H. 540 (1919) Lucas v. Am. Haw. E. & C. Co., 16 H. 80, 91 (1905)

#### The Necessity for Strict Compliance

A public contract has been defined as one to which the state is a party, and which concerns all its citizens

(C.J.S. 17, Sec. 10, p. 330). A vivid judicial quotation is frequently cited to the effect that a government occupying the position of a contracting party is subject to the general principles governing contracts between private parties.

"A sovereign in the market place has left behind his royal robes and deals under the rules of commercial law."<sup>1</sup>

While both private and public contracts are controlled by the general principles of contract law, there are well-recognized distinctions between such contracts as respects the power, authority and duties of the contracting parties. The power and authority of governmental bodies to contract, express or implied, are found inherently in the corporate personality of the government as a sovereign, in the state constitution, and in the laws enacted pursuant to the constitution. The formalities required in the laws must be complied with. They are intended to protect the public and to ensure fair dealing; therefore, strict compliance with statutory and constitutional provisions is a prerequisite to the formation of a valid contract with the government. Since the limitations on the power of governmental bodies to contract are presumed to be known by parties entering into such contracts, they do so at their peril. It is said, "Men must turn square corners when dealing with the Government."

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<sup>1</sup>Bank of United States v. Planters Bank of Georgia, 22 U. S. (9 Wheat.) 904 (1824), Cf. Lynch v. United States, 292 U. S. 571 (1934).

(Rock Island, A. & L. R. Co. v. United States, 254 U. S. 141, 143 (1920); Federal Crop Ins. Corp. v. Merrill, 332 U. S. 380, 385 (1947)). The rationale for the "strict compliance" and "square corner" doctrines is obvious. If the requirements of the laws can be circumvented by invalid contracts subsequently ratified, the protection for the public sought by such laws is destroyed.<sup>2</sup>

#### Other Constitutional Provisions

Section 7 of Article VI of the Constitution of the State of Hawaii authorizes legislation to control expenditures of appropriated state moneys. Since this provision of the constitution is not self-executing, it calls for legislative action to carry it into effect. Chapters 9, 34 and 35 of the Revised Laws of Hawaii 1955 include the principal statutes in furtherance of the purposes of section 7 of Article VI.

Section 8 of Article VI of the Constitution of the State of Hawaii provides for an auditor, to be appointed by the legislature, charged with the duty of conducting post-audits of all transactions and accounts kept by or for all departments, offices and agencies of the State and its political subdivisions. Although Act 14, First Special Session of the Legislature 1959 (Part III, Chapter 2, Revised Laws of Hawaii 1955, as amended) provides the necessary enabling legislation to give effect to the constitutional provision, the function

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<sup>2</sup>Foster v. Honolulu Construction & Draying Co., 21 H. 689 (1913); Ramsey, Ltd. v. City & County, 29 H. 366 (1926).

of post-audit has never been instituted because the legislature has not appointed an auditor.

Article VII of the Constitution of the State of Hawaii pertains to local government. Section 1 provides for the creation of political subdivisions authorized to exercise powers conferred under general laws. Section 2 authorizes political subdivisions to adopt self-government charters within limits prescribed by law. These two sections of the constitution are the source of the authority for local and state legislation relating to local government contracting and purchasing.

#### Legislative Appropriations

The expenditure of public moneys pursuant to a government purchase or contract is ordinarily initiated or preceded by a legislative appropriation which authorizes the issue of money to meet expenditures and which prescribes the purposes for which the money shall be spent. There are exceptions to the usual method of initiating expenditures in the following cases:

- (1) emergency expenditures from general appropriations;<sup>3</sup>
- (2) contingent fund allocations by the governor;<sup>4</sup>
- (3) expenditures from revolving and trust funds and funds established to provide services to other state departments or political subdivisions;<sup>5</sup> and
- (4) contracts made by the governor if the government operates the stevedoring industry during an emergency.<sup>6</sup>

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<sup>3</sup>Hawaii, Revised Laws (1955), sec. 9-4.

<sup>4</sup>Hawaii, Revised Laws (1955), sec. 35-9, as amended.

<sup>5</sup>Ibid., sec. 35-28, as amended.

<sup>6</sup>Hawaii, Revised Laws (1955), sec. 92-4.

Department of Budget and Review. Every state appropriation, whether for operating expense or capital improvement is examined by the department of budget and review as to financial and funding aspects. Appropriations for departmental operating expenses are further reviewed in relation to departmental justifications for requests for appropriations. These appropriations are then allocated for expenditure on a quarterly basis in a manner that is consistent with the intent of the appropriation act and with the requirements of the department's operations. The director of the budget is authorized to modify an allotment upon application of the department concerned.

Department of Planning and Research. In the case of appropriations authorizing capital improvements, following a preliminary study by the expending department, as designated in the appropriation act, each project is considered by the department of planning and research in relation to the General Plan. Most state capital improvement appropriations are expended by the departments of accounting and general services, land and natural resources, and transportation. The department of planning and research establishes allotment schedules for capital improvement projects, apportioning appropriated funds to plans, construction, and equipment.

Department of Accounting and General Services - Pre-audit. Every voucher from an expending department is sent to the department of accounting and general services for pre-audit. The first step in the pre-audit process is a test check for correctness of computations on the face of the voucher. Then

each expenditure is reviewed for compliance with all laws and regulations (Sections 34-13, 34-33 and 34-34, Revised Laws of Hawaii 1955, as amended). After it has been determined that a proposed contract, or a purchase or contract is a legal and proper expenditure, a certificate of availability of funds is approved. The certification signifies that the contract is valid or that the voucher represents a claim qualified to be deducted from funds available and processed for payment by warrant.

Construction contracts are generally payable in progress payments, subject to certification as to workmanlike performance by a state inspector (Section 34-34). In addition, final settlement of construction contracts is subject to a tax clearance (Section 9-46) for the contractor, and final settlement may be withheld by the comptroller pending expiration of mechanics' and materialmen's liens.<sup>7</sup> Vouchers that do not conform to the requirements of law are returned unpaid to the expending department.

Department of Accounting and General Services - Post-audit.

Pending legislative appointment of an auditor, pursuant to section 8 of Article VI of the Constitution of the State of Hawaii, the audit division of the department of accounting and general services has been discharging the duty of conducting post-audits of all state offices, administrative, judicial and

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<sup>7</sup>Hawaii, Revised Laws (1955), sec. 193-20, as amended.

legislative. Due to lack of adequately trained personnel and the absence of uniform procedures, the post-audit operation is far behind schedule.<sup>8</sup> After an auditor assumes the post-audit function, the audit division will specialize in internal auditing.

#### Provisions Applicable in the Counties

Expenditures of public moneys by the counties are usually initiated by appropriations either from the city council or the county board of supervisors or the state legislature (Section 138-10, Revised Laws of Hawaii 1955). The chief exceptions to county expenditures pursuant to appropriations are authorizations to make expenditures out of funds borrowed from the State (Section 138-11, Revised Laws of Hawaii 1955) or received from the federal government (Section 138-11.5, Revised Laws of Hawaii 1955, as amended) or in cases of necessity (Section 144-34, Revised Laws of Hawaii 1955, as amended). The board of supervisors has general supervision and control over expenditures of county funds (Section 144-33, Revised Laws of Hawaii 1955, as amended), except in the case of the City and County of Honolulu where this responsibility is exercised by the director of finance (Articles 5 and 9, Charter of the City and County of Honolulu). In addition to

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<sup>8</sup>According to an interview with the State Deputy Comptroller.

the restrictions imposed by statute relative to county administration, county expenditures are also subject generally to the provisions of Chapter 9 (Revised Laws of Hawaii 1955, as amended), entitled Expenditure of Public Money.

### III. ORGANIZATION AND PROCEDURES FOR PURCHASING AND CONTRACTING

Purchasing and contracting in Hawaii as practiced by the counties and by state agencies are subject to many statutory provisions. In spite of the common legal framework within which these operations function, some significant differences are found. Organization and procedures are described below.

Purchasing in the State. The present system of government purchasing presents several variations, some of them justified on the theory of peculiar departmental operations. All materials and equipment that are not centrally contracted for by the state purchasing agent and, in some instances, items that are within the centralized purchasing program, are purchased directly by user departments and institutions. In general, state purchasing may be characterized as "selectively centralized."

Central Purchasing Office. The purchasing agent, assisted by two purchasing clerks and one typist, in the department of accounting and general services is in charge of the State's centralized purchasing program, which, at the present time, arranges purchasing for the following eleven categories of items: food supplies, gasoline and oil, office supplies, ditto and mimeograph paper, tires and tubes, tire recapping, printed letterheads and envelopes, standard forms, incandescent and

fluorescent light bulbs, automotive equipment, and miscellaneous printing. It has been estimated that the centralized purchasing operation, amounting to more than a million and a half dollars annually, covers approximately twenty per cent of the total purchases of all state offices.

Most centralized purchasing is effected according to this general sequence:

1. The state purchasing agent circularizes all state departments and institutions, requesting monthly, quarterly, semi-annual or annual estimated requirements of an item.
2. The programming personnel of divisions and branches within the using department estimate their respective needs of the item for the period indicated. The estimate is detailed as to quantity, quality and description and is equivalent to a requisition. A standard form is employed and must be signed by an authorized employee.
3. The total estimate of the department is forwarded to the state purchasing agent after the business office of the user department checks for availability of funds and propriety.
4. The state purchasing agent awards a contract on the basis of the total estimated requirements received from user departments and institutions. The contract is let by negotiation and informal competitive bidding procedures or by formal competitive bidding procedures depending on whether the cost will be less than or exceed \$4,000.
5. The state purchasing agent then establishes a schedule of prices, including a description of items in the category, names of vendors and cost. The schedule is distributed to all user departments and institutions whose business offices are then responsible for issuing purchase orders, placing orders and arranging deliveries.
6. Four categories (ditto and mimeograph paper, tires and tubes, printed letterheads and envelopes, and automotive equipment) are centrally procured, as well

as contracted for, by the state purchasing agent. In these cases, the purchasing division of accounting and general services issues the purchase order based on firm departmental requests. The user departments and institutions are then informed of the contract vendor and cost for encumbering and other accounting purposes.

7. State agencies on the neighbor islands have participated in the centralized purchasing program to a limited extent (gasoline and oil, standard forms and automotive equipment). The limited participation will probably be further curtailed as a result of the year and a half old policy<sup>1</sup> directing purchase of all commodities (with certain exceptions) from vendors on the island where a state agency is located.

#### Limited Role for Central Purchasing

In 1950 the Legislative Reference Bureau prepared a report on Purchasing Services (Administrative Survey of the Territory of Hawaii, Preliminary Report Number 5). In the subsequent eleven years, four categories have been added to the centralized purchasing program: ditto and mimeo paper, tire recapping, light bulbs and automotive equipment. It was pointed out in the earlier report (p. 8) that the office supplies schedule listed 15 brands of letter size typewriter carbon paper, ranging in price from \$1.96 to \$4.50 per box, depending on brand and quantity purchased; 10 brands of letter size pencil carbon; 12 brands of typewriter ribbons; and 7 brands of legal size stencils. The current schedule lists 19 brands of letter size typewriter carbon paper, available from 15 vendors, ranging in price from \$2.25 to \$4.60 per 100 sheet box. The schedule lists 8 brands of legal size typewriter

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<sup>1</sup>Hawaii, Department of Accounting and General Services, Circular No. 11, June 29, 1960, as amended.

carbon paper, 11 brands of letter size pencil carbon, 8 brands of correction fluid, 20 brands of typewriter ribbons, and 9 brands of legal size stencils.

The responsibilities and powers of the central purchasing agent are to purchase or control the purchase of supplies, materials, equipment, or contractual service for all state departments. Machinery does not exist, however, to inform him of most purchases made by state departments. There have been instances of departmental purchases involving items in the centralized purchasing program. The limited nature of the state central purchasing office can be attributed to a number of factors: lack of money, lack of trained personnel, lack of interdepartmental cooperation, and lack of real enforcing authority. The office is small and the desire seems to be to retain it as a small operation employing relatively uncomplicated procedures.

Departmental Purchasing. Many departments have adopted a new purchasing policy whereby selection of certain goods to be procured is determined, not on the sole basis of low price quotation, but on the basis of a combination of factors: quality, cost, availability, life expectancy, and repair and maintenance costs.

Subject to variations in degree and kind, purchasing by user departments or institutions follows this general pattern:

1. An employee or officer of the user department contacts vendors by letter or telephone for price quotations. The person authorized to handle informal bidding may be a full-time purchasing agent, as at the University

of Hawaii, a public school principal, a clerk in the business office of a department or an employee in an operating division of a department. Most departments have a dollar limitation on purchases beyond which approval is required by a division or branch head.

2. Some departments operate storeroom or warehousing programs which supply most of the more commonly used material and equipment. These supply operations are financed from revolving funds. They can effect savings through limited bulk purchasing.
3. All purchase orders require approval within the issuing department for propriety and availability of funds before delivery from the vendor is arranged.
4. The follow-up function, to ascertain performance by the vendor, is the responsibility of the individual who acts as receiving clerk. Verification of vendor performance is a rather haphazard operation in many departments, sometimes performed by employees who lack essential information or instructions.

Emergency Purchasing. The policy of all departments is to discourage emergency purchasing. There is a lack of uniformity among departments on authorization of emergency purchases. In most cases, the authorized employee, in an emergency situation, is required to obtain permission by telephone from the business office or division office of the department. All departments require that emergency purchases be specifically justified before payment is authorized.

Petty Cash Purchasing. Petty cash purchases are permissible if a purchase order in a small amount is not acceptable to a vendor. Some departments do not have petty cash funds, and some maintain them only for the purpose of making change.

Purchases Involving an Expenditure of \$4,000 or More.

Purchases which amount to \$4,000 or more must be let on contract in compliance with competitive bidding requirements. The responsibility for executing these contracts is not consistent. Some departments refer the purchase to the department of accounting and general services; others retain the responsibility as a duty of a division head, business office, or departmental purchasing agent.

Purchases by Branches on the Neighbor Islands. Many departments have long been committed to a buy-local policy whenever possible in the interests of good will and of maintaining adequate, locally available supplies. No information is currently available to indicate the change, if any, which resulted from the establishment by the comptroller of a policy directing state agencies to purchase, with certain exceptions, only from vendors on the island where the agency is located.

Purchasing duties for units of state departments located on neighbor islands are handled locally, usually by a clerk in the business office or by employees of operating divisions and branches. Accounting, reviewing for propriety and availability of funds, and issuance of purchase orders are functions of the departmental business office in Honolulu.

Emergency purchases for branches on the neighbor islands are, in most cases, permissible in amounts greater than those applicable in Honolulu.

## Contracting for Construction of Public Works in the State

Three departments are principally responsible for public works construction: the departments of accounting and general services (public works division), land and natural resources, and transportation.

If the costs of a construction contract amount to less than \$4,000, it is let under informal bidding procedures. In some cases all of the formal bidding requirements are observed except advertising for bids. Bids are solicited from a list of reliable contractors on the basis of specifications, usually including a sketch of the structure to be built.

If the costs of a construction contract amount to \$4,000 or more, the head of the expending department or the division chief engineer is responsible for the observance of competitive bidding requirements and for determining the applicability of exceptions to competitive bidding requirements.

The attorney general's office approves every contract as to form. The approval includes a review of the certification by the comptroller of availability of funds, the contractor's bond for full and faithful performance, the affidavit of publication for bids, where required, specifications and instructions, general conditions of the contract, and the contractor's bid.

The attorney general also prepares formal opinions and gives informal advice in response to specific legal questions from state offices concerning purchasing and contracting.

### Expending Department Accounting

Some departments are converting to a mechanized accounting system in order to improve economy, accuracy, efficiency, and internal control. Some variance among departmental accounting procedures is attributed to the particular functions involved. The department of transportation follows the procedures of the American Association of State Highway Officials, the department of education conforms to standards required by the federal government, and the University of Hawaii follows standard university accounting procedures. Other departments rely on the procedures of the National Committee on Governmental Accounting. At the present time, a committee on uniform accounting system for the State of Hawaii, headed by the deputy comptroller and including representatives from the larger operating departments and from the department of budget and review, is working on a program that will provide for uniformity of accounting practices for the State. It is contemplated that the proposed system, to be fully mechanized, will be installed by 1963.

All of the departments operate a detailed cost accounting system, including monthly and quarterly appropriation expenditure ledgers for each account. Departmental approved purchase orders and contracts become encumbrance items prior to the issuance of vouchers and subsequent to a check of the purchase orders or contracts by the department business office against delivery receipts, vendors' invoices, and construction progress reports.

## Hawaii County

The Hawaii bureau of purchases and supplies exists pursuant to the Revised Laws of Hawaii, and in that respect Hawaii County is unique among the counties of the State. There is some sentiment among county officials that their county has been unreasonably singled out for special state legislation in an area of local government, and that they would prefer to enact "home-rule" purchasing and contracting law by county ordinance.

The bureau of purchases and supplies is staffed by six persons--the purchasing agent, assistant purchasing agent, administrative assistant, storekeeper, and an audit clerk whose work is primarily concerned with pre-claim procedures in processing claims. Of the approximately one and a quarter million dollars worth of goods purchased by the county in a year, the storeroom handles probably less than five per cent. There is a \$2,500 revolving storeroom fund. The inventory turns over rapidly so there is no problem of obsolescence. Because of the limited physical facilities (approximately 1,000 feet in a basement), the present fund is considered adequate.

All requisitions are approved by department heads, of which there are over twenty, and are sent to the bureau for procurement either through the storeroom or from suppliers. The policy of the bureau is to solicit informal bids for any purchase over fifty dollars, written price quotations for purchases between one hundred and five hundred dollars, and sealed letter bids for purchases between five hundred and

four thousand dollars. All negotiations with vendors are handled by the bureau although in the past there has been some difficulty with agents soliciting business from using departments. The practice of the bureau is to deal exclusively with local wholesalers who are able to fulfill most needs, aside from scientific and technical requirements of hospitals. Some hospital equipment purchases are made pursuant to bids solicited from Honolulu firms and listed registered scientific supply firms on the mainland.

It is estimated that savings from bulk purchasing in the storeroom operation amounts to between seven and a half to ten per cent. Although the bureau attempts to consolidate other requisitions semi-weekly, the variety of items requisitioned makes bulk purchasing and standardization apparently unfeasible, aside from storeroom items.

A recent impressive savings was made possible by purchasing gasoline and oil on a term contract basis. The county is saving approximately \$15,000 a year as a result of this single innovation.

Contracts for construction of public works are the responsibility of the board of supervisors; after contracts are awarded, the actual supervision is delegated to the public works department. Specific questions involving statutory provisions are referred to the auditor, the county attorney or both.

## Maui County

Governmental purchasing in Maui is decentralized, each department of the county making its own purchases in accord with internal policies and procedures. The largest using department is public works. All departments must conform to the requirements of formal competitive bidding for expenditures exceeding \$4,000; if a department is faced with difficult questions of legality of a proposed transaction, the county attorney is consulted.

Requisitions are frequently by brand name as it is considered important to satisfy preferences of those who are actually using materials and equipment. There is no consistent practice for expenditures below the \$4,000 figure although some sort of informal competitive bidding is usually employed. Awards are not always made to the low bidder; there is little bulk purchasing; and there is no standardization or specification program. In some cases, purchases are rotated among local suppliers as there is often little, if any, price differential. In 1962, for the first time, gasoline and oil requirements were consolidated and formal competitive bid contracts let, resulting in substantial monetary savings to the county. Competition is limited although almost all requirements are available through Maui or Honolulu vendors.

The board of supervisors is kept informed of all expenditures of county moneys; all requisitions are reviewed by the

finance committee. The public works committee is responsible for procedures and decisions relating to contracts for construction of public works. All "change orders" must now be referred to the board of supervisors for approval by the chairman of the public works committee.

#### Kauai County

Since 1955 Kauai's bureau of purchases and supplies has been functioning as a centralized purchasing office. The office is staffed by two men, a purchasing clerk and a cost-control clerk, and handles approximately a half million dollars worth of purchases annually. The Kauai bureau of purchases and supplies has reported that the approximate net savings achieved through quantity purchasing, on the basis of specifications and increased competition, for the four-year period 1956 to 1959 was approximately \$50,000. The bureau has not, because of limitation of personnel, been able to extend its program to include testing and follow-up to verify performance, standardization, or storeroom functions, although it has made studies and recommendations on these points. Most of the county's requirements are available from local vendors, except specialized requirements of hospitals and the board of water supply. Some of these are available only from mainland sources, others from Honolulu.

All bids, except for emergency purchases, are required to be solicited in writing and awards made to the lowest bidder who meets the specifications.

City and County of Honolulu

The purchasing administrator of the City and County of Honolulu is assisted by six buyers and a business office staff. He is instituting a system to enforce regular procedures that follow centrally determined policies. Most purchases are now handled by the purchasing administrator's office. Plans for the future include standardization and specification program, increased use of time-price contracts, installation of automation to process forms, and compilation of a purchasing handbook.

Purchases for city and county purposes amount to approximately eight million dollars a year.<sup>2</sup>

An advisory committee composed of the managing director, the finance director and the corporation counsel meets regularly and as required to consider any extraordinary purchase or contract, including cases involving awards to other than the lowest bidder, extra work or emergency purchases.

The finance director is responsible for all expenditures of city and county funds but delegates immediate supervisory and planning functions to the purchasing administrator, the chief engineer, the building superintendent, the traffic engineer, or the director of parks and recreation, who prepare plans, programs and specifications, recommend awards and approve performance.

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<sup>2</sup>Estimated during an interview with the Purchasing Administrator.

City and county officials and employees generally agree that the charter provision requirement that a contract involving \$500 or more be awarded on a written bid basis is an unwieldy and an unrealistic limitation.

### Centralized v. Decentralized Purchasing

Aside from the commonly used but vaguely understood term "centralized purchasing", centralized procurement policy can logically be considered from at least six different aspects, as briefly outlined below.<sup>3</sup> Following the description of each phase of centralization, there is an indication of its applicability in Hawaii.

1. Centralized policy on product choice directs requisitioners to order only items that are listed on schedules following commodity research and testing programs. Neither state nor county purchasing programs have standardization and specification programs except in terms of plans for the future.
2. Centralized policy on purchasing procedure directs government agencies to use standard procedures, specifications and forms consistent with laws and regulations which have been centrally interpreted. State and county purchasing programs employ standard forms. The state central purchasing office is preparing a Purchasing Procedure Manual. The Purchasing

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<sup>3</sup>Dickson Reck, Government Purchasing and Competition (Berkeley: University of California Press, 1954), pp. 192-208.

administrator of the City and County of Honolulu is preparing policy directives and mandatory regulations.

3. Centralized purchasing at agencies' request offers users the advantages of specialized personnel in cases of requisitions for unusually large quantities or special items. A few state departments refer some of their purchasing to the state central purchasing office. The new policy in the City and County of Honolulu requires that all purchasing (with certain exceptions) be executed by the purchasing administrator.
4. Centralized purchasing with uncentralized ordering (storerooms) combines the low prices of bulk purchasing with local availability of supplies. Some state departments, notably transportation, education, and health, have storeroom facilities that enable them to make some intra-departmental bulk purchases. Hawaii County operates a storeroom.
5. Centralized contracting with uncentralized ordering is usually effected for items in indefinite quantities. The users refer to supply schedules based on centrally executed contracts when placing orders for delivery. This is the system employed by the state central purchasing office in eleven categories.

6. Centralized purchasing of consolidated requirements for direct delivery probably offers the greatest prospect of price reductions, but it requires users to determine their needs well in advance of the time goods are needed. It has been recommended that this type of centralized purchasing be confined to durable goods of relatively high unit cost, such as automobiles and refrigerators, where price competition can be expected. This type of centralization is practiced in the State for purchases of automobiles.

There are obvious advantages to be gained through centralized purchasing of items commonly used by many government agencies, and the advantages, where realized, promote the ultimate goal of maximizing utility received for public dollar spent. Centralized purchasing is economical because purchasing in large quantities to supply the consolidated requirements of all users will usually result in lower prices; performance of purchasing duties by trained specialists is more efficient and therefore more economical than assigning purchasing duties to employees whose primary duties and qualifications are related to other fields of specialization; and the standardization program that is a concomitant to centralized purchasing will direct the use of scientifically selected material and equipment. Whatever the scope of a centralized purchasing system, its effectiveness is dependent upon proper standardization of items and satisfaction of users. These prerequisites in turn depend upon the cooperation of using agencies.

The obverse of the situation where centralized purchasing benefits the operation of the business of government occurs in the procurement of items not commonly used by many government agencies. Then there is little possibility of achieving economy through bulk purchases; the person who intends to use specialized material or equipment is often best qualified to make the selection; and the costs and time to develop standardization for special items are not justified for single or infrequent purchases.

#### Contracting and Purchasing Manuals

Probably one of the most noticeable deficiencies in the field of governmental purchasing and contracting in Hawaii is the lack of comprehensive, easily available manuals. Their absence is a symptom of lack of system. The wisdom of any given practice or statute is frequently debatable. There is little doubt, however, that a uniformly presented and followed procedure is valuable, both to the government and to those who would deal with government. If a system functions in an ad hoc fashion, if its various practices vary within or among agencies, and if responsible administrators of the activity rely on their personal interpretation for the establishment of policy, confusion and inefficiency are bound to result. A manual devised to cover government contracting applicable throughout a jurisdiction will include in a single, easily obtainable form all pertinent information for the use of government officials and employees, contractors and vendors. The formulation of such a manual will require the examination of presently employed procedures.

#### IV. SPECIFICATIONS DEVELOPMENT AND STANDARDIZATION

An organized purchasing system can reduce the variety of types, sizes, and grades of supplies and materials to the minimum variation actually needed without sacrificing quality. Once an item has been established as acceptable for all intended uses, it is a standardized item which can be described by objective specifications.

Specifications are ideally an objective definition of a commodity or undertaking which will enable bidders to make intelligent bids. The Hawaii Supreme Court in Lucas v. Am. Haw. E. & C. Co., 16 H. 80 (1905) stated, "Genuine competition can only result when parties are bidding against each other for precisely the same thing and on precisely the same footing." Other decisions of the highest court of the State support the position that specifications which are uncertain, which have been modified, or which are restricted to a name brand prevent real competition and so violate the objectives of competitive bidding legislation.

There is a divergence of opinion and practice among the various public contracting authorities in the State on the use of "brand name" or "tailor made" specifications. Most contracting offices add the phrase "or equal" if a specification is for a given brand of an item, but in some instances, these words are used merely as a formula to preserve legality

of form. The new purchasing administrator for the City and County of Honolulu, on the other hand, has established a policy to the effect that the use of a brand name in specifications is permissible only for the purpose of establishing a standard, except in cases of health or safety, and not to restrict competition.

An ever present problem of the "brand name or equal" specification is the question of how to evaluate offered substitutes in relation to the standard set by the brand name item. Some public agencies, such as the state departments of health and transportation and the department of public works of the City and County of Honolulu, have laboratories where qualitative and quantitative testing facilities are available. These laboratory facilities are used to a limited extent by other public agencies. There is no indication of inter-governmental or even inter-departmental cooperation in establishing objective specifications; rather, there is every indication that each public authority insists on the development of its own specifications within a minimal specification program. Limited progress in standardization is due in various degrees to scarcity of funds and qualified personnel and to lack of interest. Many specifications have been developed by the National Bureau of Standards, the American Standards Association and the American Society for Testing Materials; this information is widely used by other states and local governments.

Standardization through specification presents a potential danger to free competition, for, if carried to an extreme, it might tend to create monopolies for certain suppliers. Another caution that must be heeded in developing specifications is to refrain from preparing a specification that is so narrow as to eliminate items that would be acceptable or so technically described as to discourage bidders.

## V. COMPETITIVE BIDDING REQUIREMENTS

Foresight, in the form of statutory prescriptions and regulations, cannot encompass the multitude of perplexities that confront government employees and officers charged with the responsibility of public contracting and purchasing. In certain instances the perplexities are compounded by difficult questions of statutory interpretation and intent. Sections of the Revised Laws of Hawaii 1955, as amended, relating to bidding procedures, which present troublesome uncertainties, either expressly or implicitly, are discussed in this chapter.

### Section 9-7: Administrative Rules and Regulations

This section grants rule-making power to the comptroller to control and regulate the expenditure of public moneys. The resulting administrative rules are accorded the force of law when approved by the governor and published, and violations of the rules are subject to criminal sanctions of fine, imprisonment or both. Although there is no question that the legislature, pursuant to established policy and standards, may delegate rule-making power to the executive branch of the government, "The legislature may not authorize administrative officers to make regulations in conflict with or varying the provisions of a statute."<sup>1</sup>

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<sup>1</sup>16 C.J.S. Constitutional Law 138 (1956).

Central Purchasing Circular No. 11, amended by Circular No. 13, establishes a 15 per cent preference for government purchases in favor of vendors on the island where a state agency is located. The local preference policy might be deemed contrary to the spirit of competitive bidding as stated in a number of Hawaii Supreme Court decisions. "The object of all such statutory provisions is to prevent favoritism, corruption, extravagance and improvidence in the awarding of all public contracts." and "A fair competition among the bidders is the prime object of such statutory provisions, and anything which tends to impair this is illegal."<sup>2</sup>

In addition to considering the validity and wisdom of an administrative policy which modifies the judicially decreed objectives of competitive bidding statutes in general, the local preference policy established under the authority of section 9-7 should be considered in relation to section 9-38. Section 9-38 provides for a 5 per cent preference in government purchasing in favor of state vendors over mainland vendors. The two preferences applied in the hypothetical case of an item costing between 5 and 15 per cent less on another island and on the mainland than on the island where the item is needed would permit a purchase from a mainland

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<sup>2</sup>Lucas v. Am. Haw. E. & C. Co., 16 H. 80, 90, 91 (1905); Am. Haw. E. & C. Co. v. Territory, 16 H. 711 (1905); Wilson v. Lord-Young Engineering Co., 21 H. 87 (1912); Marshall Co. v. Bigelow, 29 H. 48 (1926); In Re Trotter, et Al., 30 H. 94 (1927).

vendor and prohibit a purchase from a vendor on another island. Conceivably, the anomaly would extend to authorize procurement from the mainland at a greater cost than procurement from another island.

The office of the comptroller presents no statistical data to justify the 15 per cent local preference but attributes the policy to three factors: availability and early delivery, continuity of service and good public relations, and improvement of local economy. The present practice of purchasing agents, notwithstanding the comptroller's rule, is to buy locally whenever possible. The 15 per cent differential might be construed by merchants as an authorization to increase "mark-ups" on merchandise to the maximum level.

Delegation by the legislature of rule-making power cannot be of unlimited discretion. If administratively enacted rules carry criminal penalties, minimum guarantees of fairness and due process are required. The Hawaii Administrative Procedure Act (Act 103 of the 1961 Legislature) supplies elements of fairness that section 9-7 possibly lacks standing alone.

Sections 9-21 and 9-22: Expenditures Involving \$4,000

Most people in the State who have occasion to refer to these sections are of the opinion that they are difficult to comprehend. Basically, section 9-21 requires that expenditures of public money in an amount of \$4,000 or more must be made under

contract let after public advertisement for sealed tenders, in the manner provided by law.

Exceptions. One exception to the formal competitive bidding requirements is the payment of subsidies. A search of the Revised Laws of Hawaii reveals no pertinent definition of subsidies; so this exception would seem to be a case of a "distinction without a difference." Other exceptions apply to intergovernmental (departments, bureaus, organizations, municipal or political subdivisions of federal, state, municipal or county governments) purchases or performance of public work or contracts. The difficulty posed by this exception is in interpretation of the word "performed." Is it limited to the physical work involved in, for example, constructing a building; or does it extend to the execution of a contract for construction where a private enterprise performs the actual work?

The exception to formal competitive bidding requirements for "purposes which do not admit of competition" has been considered by the Hawaii Supreme Court. In Lord v. City & County of Honolulu, 20 H. 175 (1910), the Court held that competitive bids were not required for the purchase of patented street pavement which had been selected properly within the discretion of the board of supervisors and which was obtainable only from the sole agent for the material in the Territory. The Court said that to advertise for competing bids would be useless and absurd. In West v. County of Hawaii, 24 H. 310 (1918), the Court held that the purchase of motor trucks is a

"purpose which admits of competition," notwithstanding the fact that the trucks contain many patented parts. The Lord case was distinguished in that motor trucks, unlike street pavement, are commercial commodities subject to resale without restriction. The sense of the exception for "purposes which do not admit of competition" is derived, then, from the facts of any particular transaction. Realistically, if to advertise for competitive bids would be a useless and absurd gesture, the exception should apply; however, if any competition is possible, the formalities of competitive bidding are mandatory. A recent example is the purchase by the State of a Cadillac automobile for the use of the governor. There are only two Cadillac dealers in the State, one in the City of Honolulu and one on the Island of Maui. There was no practical doubt that the Honolulu dealer would qualify as the lowest responsible bidder, but because there was potential competition, the contract was let in accord with the formal competitive bidding requirements. The costs for advertisements and the other formalities in such a case are approximately fifty-five dollars.

Parcelling of Expenditures. A recurring problem in interpreting section 9-21 is in deciding when an expenditure amounts to \$4,000 or more. Dividing or parcelling an expenditure to defeat or evade competitive bidding requirements is expressly prohibited by the statute and by judicial decision.<sup>3</sup>

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<sup>3</sup>Am. Haw. E. & C. Co. v. Territory, 16 H. 711 (1905); Contracting Co. v. Lord, 30 H. 966 (1929).

Specific questions that arise include: does the \$4,000 figure apply to single items or does it embrace combinations of items authorized within a single appropriation; if the \$4,000 figure embraces combinations of items and all of the items are not obtainable from any one vendor, can the expenditure be divided into homogeneous groupings in drafting invitations for bids; can the costs of a contract for the construction of public works be allocated between the costs of materials and costs of labor; and if an item is a regular requirement of a continuous operation, is the cost computed as each purchase is made, or is it computed on the basis of the annual requirement? Two corporation counsel opinions concern the last question raised. Op. 61-77 advises that the purchase of asphaltic concrete in individual transactions amounting to less than \$500 per job lot but exceeding \$4,000 in the aggregate must be submitted to competitive bidding. Op. 61-125 advises that the advertisements of legal notices, bills, and ordinances in newspapers is subject to competitive bid requirements on the basis of the foreseeable need over the course of a year.

Expenditures in Excess of \$4,000 Without Bid.

Section 9-22 contains additional exceptions to competitive bidding requirements for expenditures of public money in excess of \$4,000. Expenditures are authorized under these exceptions with the approval of the board of supervisors in the case of a county, of the governor, in the case of the State, or of its

board or other governing authority, in the case of any independent board or agency. The Reorganization Act of 1959 placed virtually all state governmental bodies within the major state departments, at least for administrative purposes. "Independent boards and agencies," as used in section 9-22, is, therefore, now a somewhat conjectural term. If independent boards or agencies are authorized to approve expenditures in cases of exceptions to competitive bidding requirements, these bodies should be more explicitly designated or defined. Specifically, does the term in question include boards of water supply, the Honolulu or Hilo redevelopment agencies, the University of Hawaii, or others unnamed?

The language of the first three exceptions listed in section 9-22 is relatively clear. Expenditures in excess of \$4,000 may be made with the proper approval and without formal bidding procedures in the following cases: repairs of roads, water works or buildings; although there is frequently a questionable decision as to whether a given contract is for construction or for repair; work whose extent and character cannot be known beforehand with reasonable certainty; and when no offer is received in response to advertisement for competitive bids.

The fourth exception of section 9-22 applies to the construction of new roads, water works or buildings in an amount up to \$15,000 either on behalf of the expending govern-

ment or for federal or state governments or any department thereof. This exception does not apply in terms to an expenditure by the State or by an independent board or agency and on behalf of a county; therefore, it would seem that an appropriation in an amount between \$4,000 and \$15,000 to be expended by the state department of transportation to construct roads on behalf of a county would be excepted by this provision from the requirements of competitive bidding. If such an expenditure (by the state department of transportation on behalf of a county) is considered in the light of section 9-21, it could be deemed within the exception applicable to inter-governmental contracts, depending on the interpretation of the word "performed" in that section. It is then possible to conclude that expenditures for new roads, water works, or buildings not in excess of \$15,000 by the State or by an independent body or agency and on behalf of a county may be made without contract after advertisement for sealed bids (inter-governmental exception of 9-21) and without approval by the governor or governing authority (not within the fourth exception of 9-22).

The fifth exception found in section 9-22 applies to expenditures for new roads, water works, and buildings in excess of \$15,000. This exception is stated as "such new roads . . .," evidently referring to the same "new roads . . ." indicated in the fourth exception, namely expenditures on behalf of the

expending government or for federal or state governments or any department thereof. Expenditures by the State or by an independent board or agency and on behalf of a county, similarly to those of the fourth exception, might, according to the interpretation of the statutes, be made without the formalities of competitive bidding (intergovernmental exception of 9-21) and without approval by the governor or governing authority (not within the fifth exception of 9-22).

In the case of expenditures in excess of \$15,000 for new roads, water works, or buildings on behalf of the expending division of government or for federal or state government or any department thereof, proper approval is required, and the expending division of government is required to advertise for sealed tenders. This exception provides for the expending division of government to do the work itself after advertisement for sealed bids, but it does not limit performance of the construction to this method if all bids are rejected. Therefore, the statute would seem to permit expenditures in excess of \$15,000 for new roads, water works, or buildings upon the approval of the appropriate governing authority after rejection of bids in response to advertisement.

Section 9-22 provides that the expending division of government shall keep a full and true account of the cost of the work, "if done by itself," and publish a full and true statement of costs and of the amounts of rejected bids. The statutes pertaining to the expenditure of public money

(chapter 9) do not explicitly require an expending division of government to "keep a full and true account of the cost of work" in any other instance.

Section 9-23: Preferences

This statute grants a preference for American products, materials and supplies in all expenditures of public money for public works or in the purchase of materials and supplies. Unlike the 5 per cent preference accorded to local businesses and local products (sections 9-37 to 9-43), this preference is not limited quantitatively. The statute has been interpreted in Attorney General Op. 58-151 (followed by Corporation Counsel Op. 61-122) to limit the preference qualitatively. Purchases of foreign products are permissible, notwithstanding the blanket preference, if there is no American product substantially comparable as to quality, character, price, availability, cost of maintenance and repair.

Section 9-24: Qualification of Bidders

Two questions arise in connection with this statute providing for qualifications of bidders. First, the pre-bid qualification requirements pertain only to potential bidders for construction contracts and are not prerequisites for prospective vendors. In practice, a supplier who has not previously dealt with government agencies and who wishes to be included on vendors' lists or to compete in competitive bidding transactions, will personally call on government

purchasing agents who question him informally as to his qualifications to do business with the government. This is the only statute pertaining to competitive bidding requirements which does not apply equally to contracts to purchase and to contracts for the construction of public works.

The second question involving section 9-24 is the omission, among the listing of bidders' qualifications, of a specific contractor's licensing requirement. Government officers and employees responsible for letting contracts rely on section 166A-8, Revised Laws of Hawaii 1955, as amended, which provides that all contractors must be licensed by the state board of contractors.

Section 9-25: Advertisement for Bids

This section provides the regulations for advertisements for competitive bids. The decisions in Lucas v. Am. Haw. E. & C. Co., 16 H. 80, 91 (1905) and In Re Trotter, et Al., 30 H. 94 (1927) held that statutory provisions prescribing the mode and time of advertising are mandatory and must be strictly construed. The section states that advertisement shall be "in a newspaper of general circulation printed and published within the State." The phrase quoted is difficult in application since there is speculation as to whether geographical boundaries are implied. Officers responsible for advertisement invariably place advertisements in a newspaper on the island where a contract is to be performed and, in the case of the neighbor islands, the advertisement is sometimes

published in a Honolulu newspaper as well. It may be pointed out that in section 9-35 pertaining to sale of security in case of default under a contract the requirement for publication specifies "in a newspaper of general circulation in the Territory printed and published in Honolulu or in the county in which the work was contracted to be performed."

Sections 9-26 and 9-30: Opening, Rejection, Awarding Bids

These sections provide the rules for opening, rejection, and awarding of bids. Several Hawaii Supreme Court decisions bear upon these matters. Wilson v. Lord-Young Engineering Co., 21 H. 87, 91, 94 (1912) defined a "responsible bidder" as "one who is not only financially responsible, but who is possessed of the judgment, skill, ability, capacity and integrity requisite and necessary to perform the contract according to its terms." The Court held, "The refusal to award a contract to the lowest bidder can be justified only when it has been made to appear upon a proper hearing and investigation that he is not a responsible bidder." In Foster V. Honolulu Construction & Draying Co., 21 H. 689 (1913) a bid was ruled to have been properly rejected for not complying with the requirements of the advertisement because of uncertainty resulting from discrepancy between the unit and total bid prices. Marshall Co. v. Bigelow, 29 H. 48 (1926) and 29 H. 641 (1927) decided the question of the authority to reject all bids under a former statute which provided for such rejection if the prices were too high, if the bids were products

of a combination to prevent competition, or if rejection would serve the public interest. The Court held that arbitrary or capricious rejection of all bids is not within the discretion of the awarding officer, and that if there is a palpable abuse of discretion, a responsible low bidder may ask for judicial relief. The second Marshall case ruled that the rejection of all bids was in the best interest of the public if the bids might exceed the amount of the legislative appropriation. To summarize the decisions of the highest court of the State on questions involving the opening, rejection and awarding of bids: A responsible bidder is one who satisfies criteria of responsibility in addition to financial responsibility; a low bidder who is not awarded a contract is entitled to a hearing on the issue of his responsibility; and a bid or all bids are properly rejected as a consequence of reasonably exercised discretion founded on facts such as noncompliance with requirements of an advertisement or excessive amounts of bid price quotations.

#### Informal Competitive Bidding Procedures

The requirement of formal competitive bidding applies specifically only to expenditures in the statutory amount. Many public purchasing and contracting authorities, however, use informal competitive bidding techniques in awarding contracts for lesser amounts. In some offices these informal procedures include telephone solicitation of price quotations

without subsequent verification, absence of safeguards to prevent disclosure of the terms of a bid, and lack of a routine to assure that solicitation of price quotations does not favor pre-selected bidders.

#### Awarding of Bids

The right of the awarding officer to reject "any or all" bids may operate to neutralize the requirement that contracts must be awarded to the lowest responsible bidder. The purpose of such a provision is to protect the public against the mandatory acceptance of a bid by the lowest responsible bidder if it is not the best obtainable bid. It should be noted that the rejection of insufficient "bids" is not in point, for these bids, not in accord with law or with specifications, are not actually bids at all but counter proposals. It has been suggested that the authority to reject bids should permit only the rejection of "all" bids to preclude the possibility of the awarding officer rejecting all bids except the one he wishes to select.

An additional precautionary provision is employed in some jurisdictions to strengthen the lowest responsible bidder statute. The awarding authority may be required to publish reasons for not making an award to the lowest responsible bidder.

Hawaii's statutes pertaining to the award of contracts do not specify the time within which awards must be made or all bids rejected following the opening of the sealed bids.

(The Charter of the City and County of Honolulu, Section 9-401, 3(d), provides, "Award shall be made with reasonable promptness . . .") If there is too great a delay in making an award, the factors on the basis of which competitive bids were offered may have changed to alter materially the soundness of the estimates. If a time limit were to be set within which either a contract must be awarded or all bids rejected, innate differences between contracts for purchases and contracts to construct public works would seem to necessitate particular treatment.

#### Security

The requirement that all bids be accompanied by a deposit of legal tender, certificate of deposit, or certified check in a sum equal to 5 per cent of the amount bid applies equally to bids for contracts to purchase and bids for contracts to construct public works (section 9-27). This deposit is for the purpose of temporary security (Lord v. Supt. Pub. Works, 16 H. 437 (1905)) and is not a part of the contractor's bond for full and faithful performance as required by sections 9-31 to 9-34. Inasmuch as the government is not required to pay for any purchase until satisfactory delivery in any case, it has been suggested that this requirement as applied to contracts to purchase might seem a needless burden to bidders and discouraging to competition.

## Preferential Purchasing and Contracting

Preferential purchasing and contracting can be expressed as the awarding of contracts to local bidders because they are local, regardless of whether or not they are the lowest responsible bidders. One study of this practice<sup>4</sup> points out that a monetary preference to in-state products or bidders is, in effect, equivalent to imposing a tax or tariff barrier on out-of-state products and businesses and might be in conflict with Article I, sections 8-10 of the United States Constitution. The report lists other evils of preferential statutes, including increased cost of government and encouragement of collusion and of retaliatory legislation.

Undoubtedly, preference provisions are based on a policy determination that the resultant increased costs of government are justified by the need to encourage economic development in the State. Some public officials have suggested that economic development would be more wisely encouraged by specific assistance, such as legislation to grant tax exemptions to new businesses.

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<sup>4</sup>Leiv N. Rydland, A "Buy-Michigan" Purchasing Policy? ("Papers in Public Administration," No. 18; Ann Arbor: Bureau of Government, Institute of Public Administration, University of Michigan, 1956).

## VI. CONTRACTUAL ARRANGEMENTS

Although public contracting in Hawaii is regulated by numerous statutes, uncharted areas remain. A few recent developments are discussed in this chapter.

### Term Contracts

Public purchasing cannot be intelligently considered abstractly, for it is decisively affected by geography, physical plant facilities, and various economic factors, such as degree of competition, availability of commodities, transportation and price fluctuations.

Most public purchasing officials in Hawaii recognize the disadvantages of large-scale warehousing operations, particularly on land-scarce Oahu. It is felt that much of the savings that might be achieved through bulk purchasing would be lost in the costs of acquiring property, constructing and maintaining facilities, staffing, internal controls, undetected misappropriations, inventory, and obsolescence. Most of the above factors are matters of concern in those state departments which presently maintain storerooms. For instance, the department of education, for whose purposes a storeroom is a necessity, is concerned about inefficiencies that stem almost entirely from the inadequacy of facilities.

The problems of limited competition and scarcity of commodities also detract from potential savings to be achieved

through competitive bidding for bulk purchases of items to be centrally warehoused.

The advisability of more extensive use of term contracts has been suggested as an alternative to a program of central warehousing. Term contracts are negotiated by a centralized purchasing office for indefinite but estimated quantities of an item of common usage. All of the responsibility for executing the contract lies with the central office, and users are restricted to the suppliers on the official supply schedule. During periods of rising prices, term contracts, which involve delivery of goods after the award of contracts, increase price savings. The opposite would be true in times of declining prices. The federal government includes a clause in its term contracts which requires government contractors to extend price reductions made to others to the government, regardless of the prices at which the contracts were awarded. Another refinement that is suggested to make term contracts acceptable both to the government and potential contractors is to include escalator clauses which would reflect significant market fluctuations.

Term contracts obviate maintenance of large stocks by agencies; however, if the supplier has maintenance costs, they will be passed on to the government. As a general rule, term contracts are most desirable when the users are near the point of original processing and distribution of an item, and the

supplier, in effect, provides warehousing at no extra cost.

The experiences of the Commonwealth of Puerto Rico<sup>1</sup> are of interest to Hawaii because of similarities in geography and certain economic factors. The PAS report lists three conditions necessary to overcome the disadvantage arising from the fact of distance between Puerto Rico and most sources of original supply. The conditions are (1) estimates of requirements should be reasonably accurate; (2) contracts should be for reasonably long terms to increase quantities and to make it economical for suppliers to maintain supplies on hand; and (3) definite terms should be indicated in contracts in order that suppliers can reduce handling of the materials.

#### Competition

Although some contracts for construction and some purchasing benefit from a high degree of competition, others are for goods and services offered by a single or very few suppliers and contractors. The lack of competition plus the local preferences established by law, regulation and custom place the government in a disadvantageous bargaining position. The extent of price reductions offered to government agencies is

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<sup>1</sup>Public Administration Service, Report on the Organization and Operations of the Service Office, Department of the Treasury, Commonwealth of Puerto Rico (Chicago: 1953).

largely speculative since there seem to be few price comparison schedules to indicate differences among special government price, wholesale price, "plantation price" or retail price.

An interesting operation of government purchasing in Puerto Rico is the maintenance of a New York procurement office which solicits competition for those items not available from a local dealer or available only under conditions of limited competition. The service office is also preparing an analysis of costs of commodity transportation to find savings through reduction of this element of costs. For instance, proper delivery instructions to suppliers will enable them to quote on the basis of actual transportation costs.

#### Collusive Bidding

Hawaii's Antitrust Act (Act 190, Session Laws of Hawaii 1961) is presently under study by the attorney general. No specific action has yet been taken to advise government contracting authorities of a regular procedure to follow in reporting evidence of violations of state antitrust provisions. The present practice, as stated by state contracting authorities, is hypothetical. If a bid were received that appeared suspicious, it would be rejected.

There is some information available indicating how other states are handling the problem of collusive bidding on public contracts. Louisiana Attorney General Opinion No. 9382, dated August 29, 1961, advises that the determination of whether an

arrangement tends to suppress competition is a question of fact to be decided by the contract awarding authority, in this case, the board of education. If the agreement does tend to suppress competition, all bids or the lowest bid may be rejected. If the lowest bid is rejected on this ground, the lowest bidder must be offered the opportunity for a hearing.

The National Institute of Municipal Law Officers has formed a "City Task Force on Bid-Rigging Damages".<sup>2</sup> The task force will be supported by contributions from cooperating cities, based on a formula relating purchases and the population of a city. The organization will pool information, coordinate preparatory efforts and expenses, and assemble facts to direct on a nationwide scale the joint efforts of cities to recover damages caused by illegal collusion in bidding on city contracts. The national director will be an experienced antitrust lawyer.

The federal government under General Services Administration (41 U.S.C.A.), which was established pursuant to recommendations of the Hoover Commission, requires agency heads to report bids evidencing violation of antitrust laws to the attorney general for appropriate action.

Some states specifically forbid collusive bidding on public contracts.<sup>3</sup> A device to provide against collusive bidding and which may be enacted either by statute or by

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<sup>2</sup>"Task Force on Bid Rigging," Public Management, XLIII, No. 9 (September 1961), 211.

<sup>3</sup>Arizona, Code (1939), sec. 74-108; Oregon, Revised Statutes (1959), sec. 279.032.

administrative regulation (Utah Purchasing Standardization Committee Ordinance No. 1, section 8 (D)) is to require every bidder to accompany each bid with a statement under oath that he has not been a party to an agreement to bid a fixed or uniform price, or otherwise in restraint of free competition.

## VII. CHANGE ORDERS

A survey of supreme court reports, attorney general opinions, corporation counsel opinions and county attorney opinions from recent years indicates many of the problems that prove troublesome in the area of governmental contracting and purchasing. Some of these problems can be traced directly to uncertainties of interpreting intricate statutes. Others are inherent in the nature of public contracting and purchasing.

One type of problem that turns up frequently relates to "change orders" or extra work not provided for in an original construction contract between a governmental body and a contractor. The specific question to be decided usually is to determine whether the extra work can be added to the contract as awarded or must be the subject of a new contract to be awarded to the lowest responsible bidder on a competitive basis. The determination in such a case depends on the surrounding facts. If the supplemental work is in an amount requiring competitive bidding and is outside the scope of the original contract, then it must be awarded in compliance with formal competitive bidding requirements. However, if the extra work is incidental to the main purpose of the existing contract, of minor importance, and unforeseeable at the time the contract was awarded, it may be added to the original contract regardless of the amount of money involved.

"Change orders" warrant special attention because their ~~mis-use~~ can easily undermine the protection and safeguards

sought by competitive bidding legislation. The theory behind legislation providing for competitive bidding procedures in awarding government contracts is threefold: to guard against favoritism, improvidence, extravagance, fraud and corruption; to afford all persons an equal chance to obtain government business; and to secure for the government the benefits arising from competition. The formal competitive bidding device, as established by law, can be described in five steps: (1) advertising for sealed bids sufficiently in advance of the opening to allow bidders to respond; (2) consideration of the bid of any bidder not debarred from bidding; (3) public opening and recording of bids at a date announced sufficiently in advance to permit bidders to be present; (4) definition of the commodity or work by objective specifications unless this is technically not feasible, in which case a commodity may be identified with a brand name, provided words such as "or equal" are added; and (5) award of the contract to the lowest responsible bidder.

There are obvious possibilities of mis-use of "change orders" to circumvent competitive bidding requirements. On the one hand, prospective bidders might be tempted to submit low bids in the expectation that a contract let on such a submission would be increased as a result of a later change order, justified as unforeseeable, incidental, extra work of a minor nature. On the other hand, a government body which has executed a competitive bid contract for an amount that is

less than the authorized legislative appropriation, might be tempted to grant a change order for extra work to exhaust the remainder of the appropriation. Evasion of competitive bidding requirements through the mis-use of "change orders" either by governmental bodies or by bidders is minimized by a rigorous application of the criteria which justify a valid change order for a valid purpose, i.e., the extra work must be incidental to the main purpose of the contract, of minor importance, and unforeseeable at the time the contract was awarded.

The current practices for handling "change orders" are not consistent. Some public contracting authorities refer the "change order" problem to their respective legal departments, either as a standard operating procedure or when the problem appears particularly significant, for opinion before approving an agreement for extra work. A device sometimes employed under the pressure of exigency is to classify a change order on the basis of a quantitative percentage. In some instances a "rule-of-thumb" is applied. If the costs of an extra work order will amount to less than 25 per cent of the original contract, it will be added on and will not be the subject of a new contract. If the costs of the extra work will amount to 25 per cent or more of the original contract, the extra work will be let in accord with competitive bidding requirements. This expedient solution of the change order problem is justified in the interests of orderly progress of

public works construction. The decision is easily reached by on-the-spot consultation among the public engineer, public architect, and contractor.

In a situation of limited competition, a frequent justification for by-passing competitive bidding requirements for "change orders" is that an award of the contract in compliance with the statutes will often cost the government more than if the terms for additional work were negotiated informally with the contractor on the job site.

## VIII. PRESENT STATUS AND FUTURE DIRECTION OF GOVERNMENTAL CONTRACTING AND PURCHASING

This report has been concerned primarily with the law that governs public contracting and purchasing and secondarily with contracting and purchasing procedures and practices in the five jurisdictions of the State of Hawaii.

### Public and Private Contracting and Purchasing-- Distinctions and Similarities

The key to the distinction between public and private contracting and purchasing is that government must be concerned with its responsibility to the body politic while it is not subject to the demands of a profit motive. Governments employ procedures which are specifically designed to promote honesty, fairness and accountability. Many of these procedures are also sound profit-motivated business methods, for business and government have one goal in common. They both aim to receive the maximum return for each dollar spent in purchasing goods and services and in contracting for construction of facilities.

Contracting and purchasing operations of governmental bodies, however, must conform to legal restrictions--such as requiring advertisements for competitive bids and the disclosure of the terms of bids submitted--traditionally imposed to guard against irregularities in the awarding of contracts. Furthermore, public attitudes towards government contracts may

impose other deviations from a straightforward "business" approach, such as the policy of giving preference to local goods or local suppliers, even if prices are cheaper outside the jurisdiction. Such considerations seriously limit a business approach to the problems of government purchasing, although government, like business, has accumulated considerable expertise in contracting and purchasing procedures.

#### Contracting and Purchasing Procedures in Hawaii

There are differences in statutory requirements as they govern contracting and purchasing procedures in the five jurisdictions in Hawaii. Many provisions apply only in designated counties. Some provisions, applicable throughout the State, are accorded different force and effect from one jurisdiction to another. While there may be virtue in different treatment for different circumstances, the differences which exist do not appear to be the result of considered policy decisions reached by deliberate legislative and executive directive.

Contracting and purchasing procedures in the State appear to suffer from many sins of omission. The basic need is a systematic analysis of contracting and purchasing operations; without this analysis, improvement is likely to be uncoordinated and uneven. A successful analysis could lead to the statement of policy to guide the public officers responsible for contracting and purchasing in the following areas:

1. Development of standards.
2. Formulation of specifications.
3. Testing goods and the performance of contractors.
4. Consolidation of purchasing requisitions.
5. Authorization of change orders.

An immediate product of the analysis could be the preparation of a manual on contracting and purchasing, spelling out policy and procedures in each of the areas, which could be used by government agencies and the public throughout the State. A by-product might be the attainment of a considered balance between centralized and decentralized purchasing, seeking to maximize the advantages from each approach.

Many public servants, it should be noted, are aware of deficiencies in the present contracting and purchasing procedures and have recently initiated several improvements. However, a revision of the governing statutory provisions is necessary to establish basic reform in the contracting and purchasing methods of the State of Hawaii and its subdivisions.

#### Legal Requirements

Many of Hawaii's statutes would appear to hinder the development of sound contracting and purchasing because no one in the State is quite sure how to interpret them. The confusion that exists today concerning legal requirements governing competitive bidding is probably the single most serious problem in public contracting and purchasing. The "no man's land" of

the "exceptions" and "further exceptions" in sections 9-21 and 9-22, Revised Laws of Hawaii 1955, is a prime example of an area in which consideration might be given to revision of the present law.

Other puzzling questions of statutory interpretations which confound those who must administer the law concern the division or parcelling of contracts to evade statutory regulations as forbidden in section 9-21, and the granting of preferences where an administrative rule seemingly contradicts the legislative policy advocating competitive bidding.

#### Future Direction

A review of the law in the State as it is concerned with public contracting and purchasing will help to determine which matters should be covered by statute and which should be left to the discretion of executive bodies in the several jurisdictions. After a determination has been made of the proper scope of statutory coverage, it will be necessary to formulate specific provisions with the greatest possible clarity. Those responsible for actual contracting and purchasing operations can participate effectively in the review, for they are most aware of the problems involved.

Legislation, whether it be amendatory, curative, preventive, or initiative, is not in itself a sufficient guarantee of efficient and proper government operation. In each jurisdiction in the State procedures, consistent with legislative policy, must be developed and followed to implement the general law, taking into account the particular needs of that jurisdiction.

## Appendix A

### STATUTORY PROVISIONS RELATING TO GOVERNMENT CONTRACTING AND PURCHASING STATE AND COUNTY

Chapter 9 of the Revised Laws of Hawaii 1955, as amended, sets forth the basic statutory provisions which affect the expenditure of public money. Those sections pertaining to government contracting for construction of public works and to government purchasing are described below:

#### Sections 9-1, 9-1.1 and 9-36: Appropriations for Expenditures

General fund expenditures for financing government operations and services must be authorized by the legislature and must comply with laws and regulations. No contract is valid without an endorsement by the comptroller (state or county) certifying that there is an available appropriation to cover the amount of the contract.

#### Section 9-4: Emergency Expenditures

Emergency expenditures are authorized upon the approval of the Governor in cases of urgency when the legislature is not in session.

#### Section 9-6: Penalty for Unauthorized Expenditures

The penalty for unauthorized expenditure of public money, state or county, is a fine of not more than \$500, imprisonment not more than one year, or both.

#### Section 9-7: Rules of the Comptroller

Rules of the comptroller to control and regulate the expenditure of state moneys have the force of law after approval by the governor and publication. Violations of these rules carry the penalties applicable to unauthorized expenditures of public money: a fine of not more than \$500, imprisonment of not more than one year, or both.

#### Section 9-21: Requirements for Expenditures in an Amount of \$4,000 and Exceptions

This section provides the essential, procedural requirements for expenditures of public moneys in an amount of \$4,000 or more. Such expenditures must be: (1) under

contract, (2) after public advertisement and (3) for sealed bids. Division or parcelling of expenditures to defeat or evade these requirements is prohibited.

The exceptions to the requirements are as follows:

- (1) claims for which a fixed sum must be paid by law,
- (2) purposes which do not admit of competition and (3) inter-governmental purchases and contracts.

Section 9-22: Additional Exceptions for Expenditures  
in an Amount of \$4,000

Expenditures of public moneys in excess of \$4,000 may be made upon the approval of the board of supervisors (county), governor (state) or governing authority (independent board or agency) in the following cases:

- (1) Repairs of roads, water works, buildings;
- (2) When the extent and character of the work cannot be known beforehand;
- (3) When no bids are received in response to public advertisement;
- (4) Construction of new roads, water works or buildings in an amount up to \$15,000 on behalf of the expending government or for the federal or state government or any department thereof; and
- (5) Construction of new roads, water works, or buildings in excess of \$15,000 after advertisement for sealed bids, provided that a full account of the cost of the work, if done by the government, is kept and published.

Sub-contracts or special contracts for materials and supplies in furtherance of a contract referred to in this section must follow the requirements of public advertisement for sealed bids.

Sections 9-23, 9-37 to 9-43 and 9-45: Preferences

The following preferences apply in awarding contracts:

- (1) For American products, materials and supplies;
- (2) Bids by persons who have had an established place of business within the State for three months prior to the government purchase, unless the purchase

cannot be made within the State, the price is greater than the usual charge to private purchasers, or the price is more than five per cent higher than prices available without the State;

- (3) For goods manufactured or produced within the State, unless the price is more than five per cent higher than prices available for goods produced or manufactured without the State; and
- (4) For printing, binding and stationery work performed within the State, unless the price is more than five per cent higher than the price for the work without the State (amended by Act 55 of the 1961 legislature).

A purchase or contract in violation of the preferences in favor of established businesses within the State or in favor of goods manufactured or produced within the State is void.

#### Section 9-24: Qualifications of Bidders

A prospective bidder on a contract to construct public works must give notice of his intention to bid six days before the day for opening bids, and he must show financial ability, experience and competence, and proof of availability of necessary equipment. If an officer charged with letting a contract decides that a potential bidder is not qualified, the bidder is entitled to a hearing. After the hearing, if the bidder is still considered unqualified, his bid cannot be received.

#### Sections 9-25 to 9-30: Bidding Procedures

Advertisements for bids must be made five times over a period of nine days in a newspaper of general circulation printed and published within the State. Opening of bids must be at least five days after the last publication, in the presence of all interested bidders, and subject to inspection by any bidder. The officer in charge of bidding has discretion to reject bids and waive defects "for the best interest of the public." Bids must be accompanied by a deposit of security which is subject to forfeiture in the case of a successful bidder who does not perform. Contracts must be awarded to the lowest responsible bidder. If the lowest bid is rejected, the award may be to the next lowest responsible bidder, or another advertisement for bids may be made.

Sections 9-31 to 9-35 and 193-20: Contractors' Bonds

Contractors' bonds for full and faithful performance and for mechanic and materialmen's liens are required of successful bidders.

Section 9-44 (amended by Act 33, Session Laws of Hawaii 1961): Penalties for Preference and Bidding Violations

Violations of the preferences in favor of established businesses within the State or in favor of goods manufactured or produced within the State and violations of the competitive bidding requirements (sections 9-21 and 9-22) carry a penalty of a fine of not more than \$1,000, imprisonment, or both.

Section 9-46: Tax Clearance

A tax clearance is a prerequisite to final settlement of a government contract.

Section 9-47 to 9-49: Payment for Labor and Section 9-50: Citizenship of Public Works Employees

These sections provide for the time of payment and the minimum wages of employees working on government contracts.

Public works employees must be citizens of the United States and of the State, or eligible for citizenship, unless competent persons with this qualification are not available, in which case persons without the qualification may be employed upon the approval of the governor (state funds) or the mayor or chairman of the board of supervisors (county funds).

Further laws relative to employment under public contract are found in Chapter 9A of the Revised Laws of Hawaii 1955, as amended (Wages and Hours of Employees on Public Works).

Sections 9-54 to 9-56: Conflict of Interest

Contracts in violation of conflict of interest provisions are void, and violators of these provisions are punishable by a fine of not more than \$1,000, imprisonment of not more than one year, or both.

The prohibition applies to appointed or elected officers and heads of state departments or subdivisions having the power to make or award government contracts, if the contract

is more than \$50 and if (1) the officer is to be awarded the contract; (2) the contract is awarded to a corporation or partnership in which he is a member or stockholder; or (3) the officer gains an interest worth more than \$50. The prohibition does not apply in the following cases: (1) if the officer's interest is less than five per cent of the capital stock of a corporation; (2) if the contract is let pursuant to an award to the lowest responsible bidder after advertisement for sealed bids and the expenditure is \$1,000 or more; or (3) if the expenditure is between \$50 and \$100 and the contract was awarded to the lowest responsible bidder and requests were made to the principal competitors.

Appendix B

CHARTER PROVISIONS RELATING TO  
GOVERNMENT CONTRACTING AND PURCHASING  
CITY AND COUNTY OF HONOLULU

Section 3-109: Council and Procurement

The council and its employees are subject to charter provisions relating to procurement of materials, supplies, equipment and services and the disposal of personal property.

Section 3-115: Audit

The council is to provide for continuous verifications of receipts and expenditures of all agencies of the city and for independent post-audits.

Section 5-401 to 5-406: Department of Finance

The department of finance, headed by the director of finance, appointed by the mayor, is in charge of all expenditures, construction contracts, inventory, and accounts.

Sections 9-401 and 9-405: Contracts and Centralized Purchasing

The department of finance is responsible for the procurement of all supplies, materials and equipment. A five-man standardization committee is to prepare standards and specifications for materials, supplies and equipment commonly used. All purchases and contracts are to be made by advertising except for (1) emergencies; (2) purchases or contracts the aggregate amount of which is less than \$4,000, except that contracts involving between \$500 and \$4,000 must be awarded on the basis of written competitive bids; (3) for items for which it is impracticable to secure competition, such as proprietary or patented articles, animals and plants, and books and publications; and (4) certain technical equipment where standardization and interchangeability are necessary in the interest of economy.

Advertisements for bids are to be made a sufficient time before purchase or contract. Specifications and invitations for bids are to permit as full and free competition as is feasible. Bids are to be opened publicly and the award to be made with reasonable promptness to the "responsible bidder whose bid conforming to the invitation for bids will be most advantageous to the city, price and other factors considered."

All purchase orders and contracts involving financial obligations of the city must be approved by the director of finance as to availability and designation of funds. He is authorized to consolidate requisitions, and to the end of achieving economy through quantity purchases may cooperate with other public agencies when authorized by the council. He is authorized to provide for emergency purchases, petty cash funds and blanket purchases. He supervises the city store rooms.

All written contracts must be approved as to form and legality by the corporation counsel.

Section 12-104: Payments of City Funds

All disbursements of city controlled funds are made pursuant to procedures prescribed by the director of finance.

Appendix C

STATUTORY PROVISIONS RELATING TO  
GOVERNMENT CONTRACTING AND PURCHASING  
HAWAII, KAUAI AND MAUI

HAWAII, KAUAI AND MAUI COUNTIES

Section 144-34: Expenditures, Appropriations, Emergencies

No county money is to be expended until it has been previously appropriated by bill by the board of supervisors. In cases of great necessity officers and heads of departments may spend up to \$500 in any one case with the approval of the chairman of the board of supervisors.

Section 144-36: Segregation of Budget

Bills appropriating money must show the purpose and object (labor, materials, supplies, etc.) of each proposed expenditure.

Section 144-37: Penalty for Violation of Expenditure Sections

Officers or employees who violate sections 144-36 or 144-34 are subject to the penalty of a fine of not more than \$500, imprisonment not more than one year, or both.

Section 144-43: Chairman of Board of Supervisors; Contracts

The chairman of the board of supervisors has the right to take charge of public construction work.

Section 144-44: Duty of Supervising Contracts

All county officers and employees have a duty to report to the chairman knowledge that a contract of the county has been or is about to be violated.

Section 145A-8 (amended by Act 155, Session Laws of Hawaii 1961): Board of Water Supply; Contracts and Purchases

The county board of water supply contracts for work and purchases in the name of the board. Such contracts are signed by the chairman of the board. (Not applicable in Hawaii County).

## HAWAII COUNTY

### Sections 146-30 to 146-32: Hawaii Bureau of Purchases and Supplies; Organization

The Hawaii bureau of purchases and supplies is headed by the county purchasing agent who is appointed by the chairman of the board of supervisors with the approval of the board. He serves under the control and authority of the chairman. The purchasing agent purchases all supplies for all county departments and establishments.

### Section 146-33: Requisitions and Estimates

Using agencies must provide the purchasing agent with detailed estimates of their needs for periods to be prescribed by the purchasing agent. Purchases must be made only upon requisition of the using agency, except for those supplies in common use by more than one agency or used in large quantities which may be purchased for stock.

### Section 146-34: Open Market Purchases

Purchases of supplies and services must be made in the open market if the value is less than \$1,000, except for patented or proprietary articles and supplies and services from any federal, state or county agency. Open market purchases are to be based on at least two competitive bids and are to be awarded to the lowest responsible bidder. The purchasing agent is to solicit bids by mail, telephone and public notice on a bulletin board in his office. Records of purchase orders and bids are to be maintained and must be open to public inspection. The purchasing agent fixes the qualifications and definitions of lowest responsible bidder with the approval of the chairman of the board of supervisors. A list of patented or proprietary articles for which bids are not required is to be filed by the purchasing agent with the chairman and posted on the bulletin board in the office of the purchasing agent.

### Section 146-35: Inspection of Supplies; Warehouses

It is the duty of the purchasing agent to inspect or supervise deliveries of supplies and services to determine conformity with specifications set forth in the order or contract. A using agency may be authorized to inspect its own deliveries under rules and regulations established by the purchasing agent. The purchasing agent is to supervise all store rooms and warehouses under his control.

#### Section 146-36: Inventories

The purchasing agent is to keep all reports on all supplies and real property on hand. He may authorize inter-agency transfers of supplies on the basis of need and may sell on competitive bid basis surplus materials with the approval by resolution of the board of supervisors.

#### Section 146-37: Standardization

The purchasing agent, with the approval of the board of supervisors, is to classify all supplies used by county agencies. He must adopt minimum quality standards and prepare and enforce written specifications of standard commodities. After adoption, the standard specifications are to apply to future purchases and contracts.

#### Section 146-39: Payments for Purchases

The payment for purchases are to be out of funds appropriated for each transaction. When supplies are delivered to the using agency, the agency is to prepare and submit vouchers to the purchasing agent, and after his approval and the approval by the board of supervisors, the auditor issues warrants in favor of the supplier.

#### Section 146-40: Copy of Bids to Board of Supervisors

The purchasing agent must submit copies of all bids, formal or informal, to the board of supervisors.

#### Section 146-52: Recreation Property

Recreational property may be purchased and sold by the board of supervisors with the approval of the recreation committee, or in the absence of the committee, on the vote of five members of the board of supervisors. The recreation committee may contract or purchase in the name of the committee, and contracts shall be signed by the committee chairman.

#### Section 146-63: Hilo Hospital Expenditures

The managing committee of the Hilo Hospital has full control of the expenditure of all money made available for improvement, maintenance, supplies, and operation of the hospital.

Section 146-90: Hawaii Department of Public Works

The Hawaii department of public works, headed by a chief engineer who is appointed by the chairman of the board of supervisors, with the approval of the board, has jurisdiction over building construction, sewers and sanitation, road construction and maintenance, and plans and surveys.

Section 146-105: Hawaii Board of Water Supply

The Hawaii board of water supply may contract for work or supplies when the costs can be met by revenues or reserves of the water system or from proceeds of bonds authorized for the water system. Contracts are to be in the name of the board and signed by the chairman.

Section 146-142: Improvements by Assessment

Improvements by assessment are to be constructed under contract let to the lowest responsible and reliable bidder after public advertisement by the board of supervisors in a newspaper of general circulation in the county twice a week for two weeks, except as provided in sections 9-21 to 9-24 and as governed by the county purchasing bureau provisions.

KAUAI COUNTY

Section 147-21: Kauai Veterans Memorial Hospital

The managing committee of Kauai Veterans Memorial Hospital is authorized to contract and purchase for the operation of the hospital. Regular reports must be submitted to the board of supervisors, and the auditor of the county is to examine accounts of the committee annually.

Section 147-24: Samuel Mahelona Hospital

The trustees of the Samuel Mahelona Hospital are authorized to make expenditures for the maintenance and upkeep of the hospital.

Section 147-70: Department of Public Works

The department of public works is in charge of all matters pertaining to public improvements and public works. Expenditures are subject to approval by the board of supervisors.

Section 147-121: Improvements by Assessment

Improvements by assessment shall be constructed under contract let to the lowest responsible and reliable bidder after public advertisement by the board of supervisors in a newspaper of general circulation in the county once a week for two weeks.

MAUI COUNTY

Section 148-23: Maui Community Hospital

The administrator of the Maui Community Hospital is to sign vouchers for expenditures by the hospital under the authority of the board of trustees.

Section 148-25: Kula Sanatorium

The managing committee of Kula Sanatorium is authorized to operate the hospital and is required to make regular reports to the board of supervisors.

Section 148-80: Department of Public Works

The department of public works is headed by a county engineer who is appointed by the chairman of the board of supervisors. The department has charge of all matters relating to engineering, public construction and improvement and public works.

Section 148-131: Improvements by Assessment

Improvements by assessment are to be constructed under contract let to the lowest responsible and reliable bidder after public advertisement by the board of supervisors in a newspaper of general circulation in the county twice a week for two weeks.

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