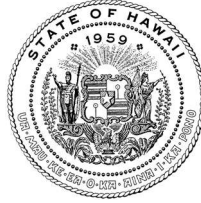


eFiled 2025 Oct 21 a 10:45

HEARINGS OFFICE



OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of

MIRA IMAGE CONSTRUCTION, LLC,

Petitioner,

vs.

DEPARTMENT OF ACCOUNTING AND  
GENERAL SERVICES, STATE OF  
HAWAII,

Respondent.

PDH-2025-006

HEARINGS OFFICER'S FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND DECISION ON REMAND

Administrative Hearings Officer:  
Natalia T. Chan

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION ON REMAND

I. INTRODUCTION

On June 23, 2025, MIRA Image Construction, LLC ("Petitioner" or "MIRA"), filed a request for administrative hearing to contest the Department of Accounting and General Services, State of Hawaii's ("Respondent" or "DAGS") denial of MIRA's bid protest in connection with the invitation for bids ("IFB" or "Solicitation") for DAGS Job No. 12-10-1046, State Capitol Building, Capitol Pools Improvements (Phase 3) ("Project").

On July 9, 2025, this matter came on for hearing. After considering the evidence, arguments, exhibits, records, and files in this proceeding, the Hearings Officer affirmed DAGS' denial of MIRA's bid protest in the Hearings Officer's Findings of Fact, Conclusions of Law, and Decision ("Decision") issued on July 30, 2025.

On August 8, 2025, Petitioner appealed the Decision to the Circuit Court of the First Circuit ("Court").

On September 8, 2025, the Court affirmed in part and reversed in part the Decision. The Court reversed the portion of the Decision “determining that the Hearings Officer lacked jurisdiction<sup>1</sup> to consider MIRA’s argument that cancellation of the Solicitation was not in the best interest of the State because it was premised on an unlawful plan for a new solicitation to require the winning bidder to purchase glass pedestals and other items for the Project that were originally to be furnished by the State from a sole source vendor.” (Final Judgment at 2, ROA Dkt. 46.) The Court remanded the matter to the Hearings Officer, ordering: “Specifically, on remand, the Hearings Officer shall determine based upon the administrative record, additional proceedings and/or additional briefing whether to sustain or deny the Sole Source Argument<sup>2</sup> and to enter an order accordingly. Based upon the determination of the Sole Source Argument, the Hearings Officer must also decide whether to uphold the State’s rejection of the Protest or to sustain the Protest and award the contract for the project to Mira.” (Order at 4, ROA Dkt. 42.)

On September 23, 2025, a remand hearing was held pursuant to Hawaii Revised Statutes (“HRS”) chapters 91, 92, and 103D and Hawaii Administrative Rules (“HAR”) title 3, chapter 126, to receive further evidence regarding the Sole Source Argument. Keith Y. Yamada, Esq., and Michael R. Soon Fah, Esq., appeared on behalf of Petitioner, and Deputy Attorneys General Yvonne R. Shinmura and Jose A. Vega appeared on behalf of Respondent.

Jonathan Johnson, former executive director of the Hawaii State Foundation on Culture and the Arts (“SFCA”), testified for Petitioner. Gordon Wood, DAGS public works administrator, testified for Respondent. No additional exhibits were admitted into evidence.

The Hearings Officer directed the parties to file closing briefs by September 26, 2025, and they did so.

Having considered the evidence and arguments presented at the hearing and the exhibits, records, and files in this proceeding, the Hearings Officer renders the following findings of fact,

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<sup>1</sup> The Hearings Officer determined that she lacked jurisdiction over Petitioner’s claim that DAGS violated sole source procurement laws, explaining: “In its post-hearing closing brief [filed on July 14, 2025], Petitioner argues for the first time that requiring the contractor to negotiate and contract with the German manufacturer would violate procurement laws and make cancellation unreasonable because in a sole source procurement, the procuring agency is the entity that must negotiate and contract with the sole source vendor. The Hearings Officer lacks jurisdiction over this claim because it was not previously the subject of a determination by DAGS and is not ripe for review, given that the Project does not currently require the contractor to negotiate and contract with a sole source vendor.” (Decision at 13.)

<sup>2</sup> The Court delineated the Sole Source Argument as: “MIRA’s argument that cancellation of the Solicitation was not in the best interest of the State because it was premised on an unlawful plan for a new solicitation to require the winning bidder to purchase glass pedestals and other items for the Project that were originally to be furnished by the State from a sole source vendor (the “Sole Source Argument”).” (Order at 3, ROA Dkt. 42.)

conclusions of law, and decision denying Petitioner's Sole Source Argument and affirming DAGS' denial of MIRA's protest.

## II. FINDINGS OF FACT<sup>3</sup>

1. Findings of Fact 1 through 13 in the Decision are incorporated by reference.
2. The SFCA is an independent agency administratively attached to DAGS and governed by its own board. (Test. of Johnson.)
3. Under the "works of art" exemption, the SFCA acquires works of art and commissions artists to create works of art for display in state buildings and other public sites. (*Id.*)
4. This process involves an art advisory committee reviewing proposals by artists and recommending its top choices to the SFCA Board, which then approves the selected artist. (*Id.*)
5. Under the "works of art" exemption, the SFCA Board commissioned artist Solomon Enos ("Enos") to design a large-scale mural, consisting of approximately 6,022 fabricated glass panels connected and supported by pedestals, to cover 55,000 square feet of two reflecting pools at the State Capitol ("Artwork"). (*Id.*; Test. of Wood; Ex. J-1 at P-000004-5 and P-000080.)
6. The panels and pedestals would cost approximately \$11 million and be fabricated by a German manufacturer that Enos collaborates and partners with.<sup>4</sup> (Test. of Johnson; Test. of Wood.)
7. It would be extraordinarily difficult to find a manufacturer, other than the German manufacturer, that could satisfy all the technical requirements of the panels and pedestals. (Test. of Wood.)
8. Typically, the SFCA awards the entire contract amount for the artwork, including materials, to the commissioned artist. (Test. of Johnson.)
9. In the case of the Artwork, however, the \$11 million cost of the panels and pedestals far exceeded the SFCA's budget ceiling, so the responsibility of furnishing these materials shifted from the SFCA to DAGS. (*Id.*; Test. of Wood.)
10. After bid opening, DAGS determined that directly contracting with the German manufacturer would expose the State to tremendous risk because the German manufacturer was

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<sup>3</sup> If any of the findings of fact are deemed conclusions of law, the Hearings Officer adopts those facts as conclusions of law.

<sup>4</sup> Enos "had partnered with a fabricator that is [an] artisan[] that he works with. So if you want a Solomon Enos glass piece, then you go with Solomon Enos and his fabricator." (Test. of Johnson.)

unable to provide sufficient surety or other contractual assurance to DAGS of its performance. (Test. of Wood.)

11. The State's risk exposure for a \$11 million expenditure was a public interest concern, and DAGS was also required to provide a substantial downpayment for the panels and pedestals. (*Id.*)

12. Accordingly, after bid opening, DAGS determined that it was necessary to revise the Solicitation specifications to require the contractor, instead of the State, to furnish the panels and pedestals by providing a substantial prepayment to the German manufacturer and assuming responsibility for these materials. (*Id.*)

13. Enos had also worked with a lighting designer to use moving and interactive lighting to display the Artwork during non-daylight hours and to produce lighting effects on the Artwork, including one resembling the rippling of oceans surrounding Hawaii. (*Id.*)

14. After bid opening, DAGS determined it was necessary to revise the Solicitation specifications to dramatically expand the lighting scope of work and to require the contractor, instead of the State, to furnish the moving and interactive lighting by providing a prepayment to the lighting vendor and assuming responsibility for this material. (*Id.*)

15. DAGS informally discussed with the Hawaii State Procurement Office ("SPO") whether DAGS may require the contractor to furnish the Artwork panels, pedestals, and lighting through a restrictive specification. (*Id.*)

16. Due to the stay on the Project's procurement, these discussions have not continued, and the SPO has not issued any determination. (*Id.*)

17. The lighting issue is ongoing and unresolved. (Test. of Johnson.)

18. If DAGS issues a new solicitation in the future, it will be an IFB (i.e., competitive sealed bidding). (Test. of Wood.)

19. Previously, the SFCA furnished 5,000 or 6,000 square feet of art insulated glass units ("IGUs") for a contractor to install art glass windows at the Kapolei Judiciary Complex. (*Id.*; Test. of Johnson.)

20. The IGUs cost approximately \$700,000 and was within the SFCA's budget. (Test. of Johnson.)

21. This appeal was not frivolous or made in bad faith.

### III. CONCLUSIONS OF LAW<sup>5</sup>

#### **A. Jurisdiction of hearings officer and petitioner's burden of proof.**

The hearings officer has jurisdiction to review and determine de novo a determination made by a chief procurement officer pursuant to HRS § 103D-701. HRS § 103D-709(a). The hearings officer has jurisdiction and authority to act on a protested solicitation or award in the same manner and to the same extent as contracting officials authorized to resolve protests under HRS § 103D-701. *CARL Corp. v. State of Hawai'i, Dep't. of Educ.*, 946 P.2d 1, 26 (Haw. 1997). The hearings officer must decide whether the determination of the chief procurement officer was “in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract.” HRS § 103D-709(i).

The petitioner has the burden of proof, including the burden of producing evidence and the burden of persuasion, by a preponderance of the evidence. HRS § 103D-709(c); HAR § 3-126-56(c). To prevail in this case, Petitioner must prove by a preponderance of the evidence that DAGS' denial of MIRA's protest was not in accordance with the Constitution, statutes, rules, and terms and conditions of the Solicitation. Specifically, on remand, Petitioner must prove its Sole Source Argument as set forth in its July 14, 2025, post-hearing closing brief:

At the Hearing, Mr. Woods [sic] admitted that the Department's main reason for cancelling the Solicitation was because it wanted to shift the responsibility for obtaining certain glass tiles and lighting items from the State to the contractor. This justification fails as a valid and reasonable basis for cancelling the Solicitation because the Procurement Code and related administrative rules<sup>6</sup> do not allow the government to require contractors to obtain materials for a project from a sole source. The Procurement Code contains a limited exception<sup>7</sup> for sole source procurements, but even when that exception is invoked, it is the State that must negotiate and contract directly with the sole source.

(Pet.'s Br. at 17-18.) Petitioner argued:

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<sup>5</sup> If any of the conclusions of law are deemed findings of fact, the Hearings Officer adopts those conclusions as findings of fact.

<sup>6</sup> Petitioner cited to HRS § 103D-301 (methods of source selection), HRS § 103D-306 (sole source procurement), HAR § 3-122-81 (criteria for using sole source procurement), and HAR § 3-122-82 (approval of sole source procurement). (Pet.'s Br. at 18-19.)

<sup>7</sup> Based upon Mr. Wood's testimony in the July 9, 2025, hearing, Petitioner discussed HRS § 103D-102(b)(4)(B), which exempts “[w]orks of art for museum or public display” from the applicability of HRS chapter 103D. (Pet.'s Br. at 20.) Petitioner argued that “even if this exemption applied, this exemption is only for ‘contracts by governmental bodies’” and therefore “would not apply if the government shifted the responsibility to the contractor to be the entity that enters into the contract with the sole source vendor.” (*Id.*)

Where a sole source procurement method is used, the Hawaii legislature and the Policy board impose[] the responsibility on the government agency—and the government agency alone—to properly vet the sole source vendor and to enter into the contract with the vendor for the desired goods on terms acceptable to the State and in the public interest.

(*Id.* at 19.) Petitioner contended:

Since the Department's plan to transfer responsibility to the contractor to negotiate and contract with a sole source vendor is unlawful under the Procurement Code and Policy Board rules, it is axiomatic that this is not in the best interest of the State. Therefore, the cancellation of the Solicitation is not in the best interest of the State.

(*Id.* at 20.)

**B. MIRA has not proven by a preponderance of the evidence that it is unlawful for a new solicitation to require the winning bidder to purchase glass pedestals and other items for the Project that were originally to be furnished by the State from a sole source vendor.**

**1. If DAGS' future new solicitation is an IFB that requires the contractor to furnish the Artwork panels, pedestals, and lighting, sole source procurement laws will not apply to that IFB because the six methods of procurement are distinct.**

Procurement officials have the authority to choose the appropriate method of source selection to meet different contracting needs: (1) competitive sealed bids under HRS § 103D-302; (2) competitive sealed proposals under HRS § 103D-303; (3) professional services procurements under HRS § 103D-304; (4) small purchases under HRS § 103D-305; (5) sole source procurements under HRS § 103D-306; and (6) emergency procurements under HRS § 103D-307. HRS § 103D-301. These six methods of procurement have different procedures, bases for use, and bases for award. The rule implementing HRS § 103D-301 provides that:

Unless authorized by law, **all contracts shall be awarded by competitive sealed bidding** pursuant to subchapters 5 [competitive sealed bidding] and 6.5 [multi-step competitive sealed bidding], except as provided in:

- (1) Subchapter 4.5 - Source selection for federal grants;
- (2) Subchapter 6 - Competitive sealed proposals;
- (3) Subchapter 7 - Professional services procurement;
- (4) Subchapter 8 - Small purchases;
- (5) Subchapter 9 - Sole source procurements; and

(6) Subchapter 10 - Emergency procurements.

HAR § 3-122-16 (emphasis added). Competitive sealed bidding is thus the default method of procurement unless certain exceptions apply. HRS chapter 103D requires specific justifications and processes to use a different method, such as sole source procurement.

Sole source procurement is a noncompetitive method that involves contracting without competitive bidding or competitive proposals. HRS § 103D-306. This method is used when only one source exists for the required good, service, or construction, and the contract will be awarded to an approved single source at an agreed-upon price. *Id.* The procedures, justification, and legal framework for sole source procurement in HRS § 103D-306 and HAR chapter 3-122, subchapter 9, are distinct from those for other methods of procurement. Accordingly, if a future new solicitation<sup>8</sup> for the Project is an IFB<sup>9</sup> that requires the contractor to furnish the Artwork panels, pedestals, and lighting, the laws of competitive sealed bidding (i.e., HRS § 103D-302 and HAR chapter 3-122, subchapter 5) will entirely govern that IFB. The laws of noncompetitive sole source procurement (i.e., HRS § 103D-306 and HAR chapter 3-122, subchapter 9) will not apply to the new IFB, including any specification requiring the contractor to furnish the Artwork panels, pedestals, and lighting. The contractor will obtain these materials just like any other materials for the Project, albeit probably through a restrictive specification, as discussed in section III.B.2 of this decision.

Petitioner reasoned that because HAR §§ 3-122-81 and -82 “contemplate that the **procuring agency** be the entity that negotiates with and enters into a contract with the sole source vendor,” “state that the **procuring agency** must provide a justification for the sole source purchase and undergo a vigorous approval process,” and “provide that ‘[t]he **procurement officer** should conduct negotiations with the sole source vendor to determine the factors as cost, quality, terms, and delivery,’” it is unlawful for DAGS to require the contractor to negotiate and contract with the vendors to obtain the Artwork panels, pedestals, and lighting. (Pet.’s Br. at 18-19, emphasis added.) This interpretation is erroneous. HAR §§ 3-122-81 and -82 identify the procuring agency as the only entity negotiating and seeking approval for the noncompetitive purchase because a

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<sup>8</sup> Currently, no new solicitation exists, and the Project does not require the contractor to furnish the Artwork panels, pedestals, and lighting. (Decision at 13.) Notwithstanding these circumstances, the Hearings Officer analyzes DAGS’ future new solicitation as an IFB, based upon Mr. Wood’s testimony in the remand hearing.

<sup>9</sup> An IFB is defined as “all documents, whether attached or incorporated by reference, utilized for soliciting bids under the competitive sealed bidding source selection method.” HAR § 3-120-2.

bona fide sole source procurement involves only two contracting parties: the procuring agency and the single vendor that can provide the good, service, or construction. Sole source procurement will not apply to one aspect of a larger project being procured through competitive sealed bidding, such as the Artwork aspect of the Project. Thus, Petitioner’s references to “procuring agency” in HAR §§ 3-122-81 and -82 bear no significance to whether DAGS may lawfully require the contractor to furnish the Artwork panels, pedestals, and lighting from vendors.

**2. DAGS may lawfully require the contractor to furnish the Artwork panels, pedestals, and lighting through a restrictive specification, approved by the chief procurement officer, in a future new solicitation.<sup>10</sup>**

Specifications are the basis for procuring goods, services, or construction adequate and suitable for the State’s needs in a cost-effective manner. HAR § 3-122-10. Specifications must seek to promote overall competition, must not be unduly restrictive, and must provide a fair and equal opportunity for every supplier able to meet the State’s needs. *Id.* Specifications should identify minimum requirements, avoid unique requirements to the extent practicable, and provide for an equitable award at the best value. *Id.*; HAR § 3-122-13(a); *see also* HRS § 103D-405 (specifications for maximum practicable competition).

Procurement officials have discretion to draft specifications reflecting the minimum needs of the agency because they generally “are most familiar with the conditions under which similar services have been procured in the past and are in the best position to know the government’s needs.” *Hinton v. State of Hawaii, Dep’t of Land & Natural Res.*, PCH-2005-3, p. 7 (June 22, 2005). In addition, the specifications may be restrictive as long as they are not unduly restrictive and “reasonably relate[] to the minimum needs of the agency.” *Id.* A restrictive specification, also known as a brand name specification, “may be used upon approval of the chief procurement officer after the purchasing agency makes a written determination that only the identified brand name item

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<sup>10</sup> Petitioner argues that “[t]he Hearings Officer lacks jurisdiction to expand on the Circuit Court Order and allow the Department to justify its actions in new, previously unexpressed ways” by considering Respondent’s arguments regarding a restrictive specification and the “works of art” exemption in HRS § 103D-102(b)(4)(B), which “are new arguments that were not asserted in the prior proceedings or the Circuit Court proceedings[.]” (Pet.’s Remand Br. at 3.) However, Petitioner discussed the “works of art exemption” on page 20 of its July 14, 2025, post-hearing closing brief. *See* FN 7 *supra*. Furthermore, the Court ordered the Hearings Officer to determine whether to sustain or deny the Sole Source Argument, which argues that cancellation “was premised on an unlawful plan for a new solicitation” to require the contractor to furnish the Artwork panels, pedestals, and lighting from vendors. (Order at 3-4, ROA Dkt. 42.) Determining whether DAGS’ plan is unlawful necessitates consideration of restrictive specifications and the “works of art” exemption, as these concern the remanded issue.



will satisfy the State's needs, and it is not practicable to use a less restrictive specification[.]” HAR § 3-122-13(b)(3).

DAGS informally discussed with the SPO whether it may prepare a restrictive specification requiring the contractor to furnish the Artwork panels, pedestals, and lighting. Although the stay has paused these discussions, it is appropriate for DAGS to consider using a restrictive specification because the Artwork is one of a kind and thus akin to a brand name item. Like any artist, Enos requires specific materials to create his Artwork: panels and pedestals from the German manufacturer and moving and interactive lighting from a separate vendor. These vendors will satisfy the materials' design and technical requirements<sup>11</sup> and, by extension, Enos' artistic intent. Consequently, requiring the contractor to furnish essential Artwork materials is not unduly restrictive and reasonably relates to DAGS' minimum need to have the Artwork created in the manner Enos intended. Furthermore, it is not practicable to use a less restrictive specification because the Artwork necessitates using Enos' preferred German manufacturer for the panels and pedestals, and it would be extremely difficult to find another manufacturer that could satisfy all the requirements for those materials. So long as DAGS provides a written determination and obtains approval in accordance with HAR § 3-122-13(b)(3), DAGS may require the contractor to furnish the Artwork panels, pedestals, and lighting through a restrictive specification in a future new solicitation.

Lastly, it is worth noting that any protest objecting to the terms, conditions, or requirements of a new IFB is a protest based upon the **content** of the solicitation, as distinguished from MIRA's instant bid protest. *See generally* HRS § 103D-701(a) (authority to resolve protested solicitations).

**3. HRS § 103D-102(b)(4)(B) exempts the contract between the SFCA and its commissioned artist from HRS chapter 103D and is not dispositive of whether DAGS may lawfully require the contractor to furnish the Artwork panels, pedestals, and lighting in a future new solicitation.**

HRS § 103D-102(b)(4) lists goods or services exempt from HRS chapter 103D in situations where competitive procurement is either not practicable or not advantageous to the State. In particular, HRS § 103D-102(b)(4)(B) provides:

(b) Notwithstanding subsection (a) [which requires that HRS chapter 103D apply to all procurement contracts made by

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<sup>11</sup> Per Mr. Wood, it would be extraordinarily difficult to find a manufacturer, other than the German manufacturer, that could satisfy all the technical requirements for the panels and pedestals.

governmental bodies], this chapter shall not apply to contracts by governmental bodies.<sup>12</sup>

[ . . . ]

(4) To procure the following goods or services that are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:

[ . . . ]

(B) Works of art for museum or public display[.]

HRS § 103D-102(b)(4)(B) (“works of art” exemption); *see also* HAR § 3-120-5 (procedures for requesting an exemption).

In this case, HRS § 103D-102(b)(4)(B) exempts the SFCA’s contract with Enos to design Artwork for public display at the State Capitol.<sup>13</sup> This is supported by Mr. Johnson, who testified that the SFCA uses the “works of art” exemption to acquire works of art, and to commission artists to create works of art, for display in state buildings and other public sites. The contract by a governmental body (SFCA) to procure a work of art for public display (Enos’ Artwork at the State Capitol) is exempt from the ambit of HRS chapter 103D and therefore not subject to administrative review. *See CARL Corp. v. State of Hawai‘i, Dep’t of Educ.*, 997 P.2d 567, 584-85 (Haw. 2000) (HRS § 103D-102(b) precludes administrative review of a chief procurement officer’s exemption determination); *see* HAR § 3-120-5(e) (exemption determinations are “final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law”). Because the laws of competitive sealed bidding will govern the new IFB, the “works of art” exemption is not dispositive of whether it is lawful for DAGS to require the contractor to furnish the Artwork panels, pedestals, and lighting in a future new solicitation.

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<sup>12</sup> “Governmental body” is defined as “any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, government corporation, or other establishment or office of the executive, legislative, or judicial branch of the State, including the office of Hawaiian affairs, and the several counties of the State.” HRS § 103D-104.

<sup>13</sup> Respondent argues that the Artwork panels, pedestals, and lighting are “essential elements of the Project’s artwork and are therefore exempt from the State Procurement Code requirements pursuant to HRS § 103D-102(b)(4)(B).” (Resp.’s Remand Br. at 4-5.) This argument is incorrect, as the laws of competitive sealed bidding will entirely govern the new IFB, including any specification requiring the contractor to furnish the Artwork panels, pedestals, and lighting. The “works of art” exemption will not apply to one aspect of a larger project being procured through an IFB, such as the Artwork aspect of the Project.

**4. The SFCA's process of acquiring artwork for contractors to install, including the IGUs for the Kapolei Judiciary Complex, does not preclude DAGS from using a different approach for this Project.**

The SFCA is attached to DAGS for only administrative purposes, and the two entities operate independently with different processes and procedures. Even if one considers the SFCA and DAGS more generally as "the State," the process of acquiring artwork and its materials varies according to the project's needs and complexity. Messrs. Johnson and Wood explained key differences between acquiring artwork for the Kapolei Judiciary Complex and for this Project. The SFCA's budget could cover the \$700,000 cost of the IGUs but not the \$11 million cost of the panels and pedestals. The SFCA's inability to cover this \$11 million expenditure, which is \$10.3 million more than the cost of the IGUs, is why the responsibility for the panels and pedestals shifted from the SFCA to DAGS and now, to the contractor. Contrary to Petitioner's argument at the hearing, the SFCA's process of acquiring artwork for contractors to install does not preclude DAGS from requiring the contractor to furnish the Artwork panels, pedestals, and lighting in this unrelated Project.

On this record, the Hearings Officer DENIES Petitioner's Sole Source Argument. As set forth in the Decision, the State's best interests were served by DAGS cancelling the Solicitation under HRS § 103D-308 and HAR § 3-122-96(a)(2)(B), (C), and (G), and the Hearings Officer AFFIRMS DAGS' denial of MIRA's protest.

**IV. DECISION**

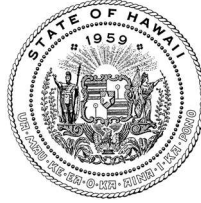
Based upon the foregoing findings and conclusions, Petitioner has not proven by a preponderance of the evidence that it is unlawful for a new solicitation to require the winning bidder to purchase glass pedestals and other items for the Project that were originally to be furnished by the State from a sole source vendor and that DAGS' denial of MIRA's protest was improper. Accordingly, the Hearings Officer DENIES Petitioner's Sole Source Argument and AFFIRMS DAGS' denial of MIRA's protest.

Pursuant to HRS § 103D-709(e), the Office of Administrative Hearings shall return the bond to Petitioner, and the parties shall bear their own attorney's fees and costs.

DATED: Honolulu, Hawaii, \_\_\_\_\_ October 21, 2025 \_\_\_\_\_.

A handwritten signature in black ink, appearing to read "Natalia", written over a horizontal line.

NATALIA T. CHAN  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs



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HEARINGS OFFICE

OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of

MIRA IMAGE CONSTRUCTION, LLC,

Petitioner,

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DEPARTMENT OF ACCOUNTING AND  
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Respondent.

PDH-2025-006

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OF FACT, CONCLUSIONS OF LAW,  
AND DECISION

Administrative Hearings Officer:  
Natalia T. Chan

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

On June 23, 2025, MIRA Image Construction, LLC ("Petitioner" or "MIRA"), filed a request for administrative hearing to contest the Department of Accounting and General Services, State of Hawaii's ("Respondent" or "DAGS") denial of MIRA's protest in connection with the invitation for bids ("Solicitation") for DAGS Job No. 12-10-1046, State Capitol Building, Capitol Pools Improvements (Phase 3) ("Project").

On July 9, 2025, the matter came on for hearing pursuant to Hawaii Revised Statutes ("HRS") chapters 91, 92, and 103D and Hawaii Administrative Rules ("HAR") title 3, chapter 126. Keith Y. Yamada, Esq., and Michael R. Soon Fah, Esq., appeared on behalf of Petitioner, and Deputy Attorney General Stella M.L. Kam appeared on behalf of Respondent.

Joint exhibits J-1 through J-15 and Petitioner's exhibits P-1 through P-4 were admitted into evidence.

Before either party presented its case, Petitioner orally moved for a directed verdict on the issue of whether DAGS' cancellation of the Solicitation was proper. According to Petitioner, cancellation was improper because Respondent refused to disclose the procurement file "that includes the documentation for the cancellation," in response to Petitioner's June 27, 2025, request for disclosure under HAR § 3-126-63. (Ex. J-12 at P-000551; Ex. J-11). Petitioner argued that Respondent's refusal violated the provisions in HRS § 103D-308 and HAR § 3-122-96(c) that require DAGS to document its reasons for cancellation in the procurement file and to make the procurement file available for inspection by the public, including MIRA.

The Hearings Officer stated that she was not authorized to compel disclosure of the procurement file in response to Petitioner's request for disclosure under HAR § 3-126-63, as HAR § 3-126-63(a)(3) requires Respondent to disclose only those exhibits that it intends to introduce at the hearing, and Respondent did not intend to introduce the procurement file as an exhibit. The Hearings Officer took Petitioner's motion under advisement.

Michael Gangloff, chief executive officer and chief financial officer of MIRA, testified for Petitioner. Gordon Wood, DAGS public works administrator, testified for Respondent.

The parties requested to file post-hearing closing briefs on July 14, 2025, and they did so.

Having considered the evidence and arguments presented at the hearing and the exhibits, records, and files in this proceeding, the Hearings Officer renders the following findings of fact, conclusions of law, and decision DENYING Petitioner's motion for a directed verdict and AFFIRMING DAGS' denial of MIRA's protest.

## II. FINDINGS OF FACT<sup>1</sup>

1. On January 16, 2025, DAGS posted the Solicitation for the Project, whose work consisted of:

[D]emolishing and rebuilding perimeter walkways, installing new railing on pools' makai side, reconstructing fountain walls, installing ADA ramps, installing concrete 'terrace' around pool perimeter, installing concrete 'collars' on columns and chamber wall perimeters, replacing column cladding, install[ing] drains and associated piping connecting to City and County storm drain system, removing and replacing chamber wall tiles, painting columns and their capitals, electrical and lighting improvements, landscape planting and irrigation improvements, and glass artwork paver panel

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<sup>1</sup> If any of the findings of fact are deemed conclusions of law, the Hearings Officer adopts those facts as conclusions of law.

installation on pedestals [for two reflecting pools at the State Capitol].

(Ex. J-1 at P-000004-5.)

2. Pedestals would connect and support approximately 6,022 art glass panels to create an art mosaic covering the two pool bottoms. (*Id.* at P-000080.)

3. The State would furnish the panels and pedestals shipped from Germany, and the contractor would be responsible for accepting, inspecting, storing, and delivering these items to the job site. (*Id.* at P-000080-83.)

4. For the “roof and deck insulation” work, section 07220 of the Solicitation specified installation of a drainage mat, 4" extruded polystyrene rigid board insulation, and a 1/8" protection board above a waterproofing membrane. (*Id.* at P-000270; Ex. J-3 at P-000366.)

5. On March 13, 2025, DAGS opened the bids of all three Project bidders. (Ex. J-2.)

6. After bid opening, DAGS determined that the Solicitation specifications required significant changes to ensure the success of the Project. (Test. of Wood.)

7. The changes significantly expanded the contractor’s scope of work and included: requiring the contractor, instead of the State, to furnish the 6,022 panels, pedestals, and lighting, to provide substantial prepayments to the manufacturers, and to be fully responsible for the purchase, delivery, storage, and inspection of the items; revising the scheduling, phasing, and sequencing of the Project; and revising the Project’s design and landscaping to satisfy five special district permit conditions imposed by the City and County of Honolulu after bid opening. (*Id.*)

8. On May 21, 2025, DAGS notified all three Project bidders that it had rejected their bids and was cancelling the Solicitation and intending to revise the specifications for rebidding. (*Id.*)

9. In its May 21, 2025, letter to MIRA, DAGS explained that it had rejected MIRA’s bid as nonresponsive for failing to list a C-42 roofing contractor in MIRA’s subcontractor listing to perform the “roof and deck insulation” work. (Ex. J-4 at P-000423.) DAGS also indicated that MIRA was not the lowest bidder because the second lowest bidder qualified for the apprenticeship agreement preference, and this shifted the bid tabulation order. (*Id.*) DAGS stated that it had nevertheless rejected all bids for the Project and was cancelling the Solicitation “in the best interests of the State,” “[d]ue to the changes needed to the required work for this project.” (*Id.* at P-000424.) DAGS stated that it intended to revise the Solicitation and rebid the Project. (*Id.*)

10. By letter dated May 28, 2025, MIRA protested DAGS' bid rejection and cancellation, explaining that: (1) the Contractors License Board ("CLB") had given MIRA an informal opinion approving the use of a C-1 acoustical and insulation contractor for the "roof and deck insulation" work; (2) MIRA qualified for the apprenticeship agreement preference; (3) DAGS cancelled the Solicitation without providing an explanation, as required by HRS § 103D-308 and HAR § 3-122-96; and (4) MIRA should be awarded the contract as the lowest responsive and responsible bidder. (Ex. J-5.)

11. On June 4, 2025, DAGS posted a notice of cancellation on the Hawaii Awards and Notices Data Systems ("HANDS") website, stating: "Cancellation Reason: The solicitation documents were inadequate and require significant revisions to achieve the goals of the project." (Ex. P-3 at P-000537.)

12. By letter dated June 17, 2025, DAGS denied MIRA's protest. (Ex. J-7.) Regarding the subcontractor listing issue, DAGS explained:

Since we have received two letters on this topic, each of which demonstrate differing opinions, we are aware that this is a contentious issue. We will not address the issue in this letter of response, because it is our intention to request an opinion from the Contractors License Board (CLB) on this matter in preparation for the re-solicitation of this project.

(*Id.* at P-000456.) DAGS agreed that MIRA qualified for the apprenticeship agreement preference.

(*Id.*) Regarding its cancellation of the Solicitation, DAGS explained:

The solicitation documents had been determined to be inadequate and significant revisions are required to achieve the goals of the project which may include, but are not limited to, schedule and phasing changes, landscaping changes, and the incorporation of requirements for bidders to provide items previously identified as State-furnished items to be installed by the contractor. . . . It is not in the State's best interest to make an award based on the original solicitation documents. Therefore, DAGS has cancelled the solicitation and intends to make substantive revisions to the solicitation documents and re-solicit this project. As part of its preparation of the revised solicitation documents, DAGS will be requesting an opinion from the CLB.

(*Id.* at P-000456-57.)

13. On June 23, 2025, Petitioner filed a request for administrative hearing with the Office of Administrative Hearings, requesting that the Hearings Officer rescind the cancellation



of the Solicitation and award the contract to MIRA as the lowest responsive and responsible bidder. (Ex. J-8.) This request for administrative hearing was not frivolous or made in bad faith.

### III. CONCLUSIONS OF LAW<sup>2</sup>

#### **A. Jurisdiction of hearings officer and petitioner's burden of proof.**

The hearings officer has jurisdiction to review and determine de novo a determination made by a chief procurement officer pursuant to HRS § 103D-701. HRS § 103D-709(a). The hearings officer has jurisdiction and authority to act on a protested solicitation or award in the same manner and to the same extent as contracting officials authorized to resolve protests under HRS § 103D-701. *CARL Corp. v. State of Hawai'i, Dept. of Educ.*, 946 P.2d 1, 26 (Haw. 1997). The hearings officer must decide whether the determination of the chief procurement officer was “in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract.” HRS § 103D-709(i).

The petitioner has the burden of proof, including the burden of producing evidence and the burden of persuasion, by a preponderance of the evidence. HRS § 103D-709(c); HAR § 3-126-56(c). Accordingly, to prevail in this case, Petitioner must prove by a preponderance of the evidence that DAGS' denial of MIRA's protest was not in accordance with the Constitution, statutes, rules, and terms and conditions of the Solicitation.

#### **B. The Hearings Officer DENIES Petitioner's motion for a directed verdict on the issue of whether cancellation of the Solicitation was proper.**

The rule governing a motion for a directed verdict (i.e., a motion for judgment as a matter of law) in administrative procurement hearings provides: “After all evidence has been presented by the party initiating the proceedings in support of the underlying request for hearing, the **respondent** may move the hearings officer for an order denying or dismissing the claim or for similar affirmative relief.” HAR § 3-126-70(a) (emphasis added). As additional guidance, in civil actions, after “a party has been **fully heard on an issue** and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue,” the opposing party may bring a motion for a directed verdict against that party. H.R.C.P. Rule 50(a)(1) (emphasis added). In deciding a motion for a directed verdict, “the evidence and the inferences which may be fairly drawn therefrom must be considered in the light most favorable to the nonmoving party and [the]

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<sup>2</sup> If any of the conclusions of law are deemed findings of fact, the Hearings Officer adopts those conclusions as findings of fact.

motion may be granted only where there can be but one reasonable conclusion as to the proper judgment.” *Carr v. Strobe*, 904 P.2d 489, 500 (Haw. 1995) (citations omitted). Thus, “[w]here there is conflicting evidence, or there is insufficient evidence to make a one-way verdict proper, [the motion for a directed verdict] should not be awarded.” *Id.* at 501 (citation omitted).

Petitioner moved for a directed verdict on the issue of whether cancellation of the Solicitation was proper before either party presented its case (i.e., before opening arguments and/or examination of witnesses) and was fully heard on that issue. Petitioner based its motion solely on its contention that cancellation was improper because Respondent’s unwillingness to disclose the procurement file in response to Petitioner’s request for disclosure under HAR § 3-126-63 violated HRS § 103D-308 and HAR § 3-122-96(c).

Respondent maintained that under HRS chapter 92F, it would not disclose the procurement file to avoid frustration of a legitimate government function, such as revealing specific information about why the Solicitation “was inadequate for the project” or specific information “that would give MIRA an unfair advantage in responding to the new solicitation.” (Ex. J-12 at P-000551.) Respondent explained that DAGS provided the cancellation reasons in its letters to all three Project bidders, in its letter to MIRA dated June 17, 2025, and in a public posting on the HANDS website.

Drawing all inferences in the light most favorable to Respondent as the nonmoving party, the evidence was insufficient at the outset of the hearing to direct a verdict in favor of Petitioner. At the time Petitioner moved for a directed verdict, before any case presentations, there was more than one reasonable conclusion as to whether cancellation was proper. Therefore, the Hearings Officer DENIES Petitioner’s motion for a directed verdict.

**C. Cancellation of the Solicitation was reasonable and complied with applicable laws.**

HRS § 103D-308 governs the cancellation of solicitations:

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, **when it is in the best interests of the governmental body** that issued the invitation, request, or other solicitation, **in accordance with rules adopted by the policy board.**

*Id.* (emphasis added); *see also* HAR § 3-122-16.09 (cancellation of solicitations shall be pursuant to HRS § 103D-308 and subchapter 11 of HAR title 3, chapter 122) and HAR § 3-122-95 (solicitations may be cancelled pursuant to HRS § 103D-308). The procuring agency “generally

has broad discretion to cancel a solicitation” but must establish a reasonable basis for doing so. *Prometheus Constr. v. Univ. of Hawai‘i, Office of Procurement and Real Prop. Mgmt.*, PCH-2008-5, p. 7 (May 28, 2008). HRS § 103D-308 “reflects a policy of giving precedence to the government’s ability to cancel a solicitation over a bidder’s interest in having the solicitation go forward where the government’s ‘best interests’ would be served.” *Phillip G. Kuchler, Inc. v. State of Hawai‘i, Dep’t of Transp.*, PCH-2003-21, p. 9 (Mar. 18, 2004).

HAR § 3-122-96(a)(2) provides a list of reasons for cancelling a solicitation after bid opening but before contract award:

(a) A solicitation may be cancelled for reasons **including but not limited to** the following:

[ . . . ]

(2) Cancellation after opening but prior to award:

(A) The goods, services, or construction being procured are no longer required;

**(B) Ambiguous or otherwise inadequate specifications were part of the solicitation;<sup>3</sup>**

**(C) The solicitation did not provide for consideration of all factors of significance to the agency;**

(D) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(E) All otherwise acceptable offers received are at clearly unreasonable prices;

(F) There is reason to believe that the offers may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

**(G) A determination by the chief procurement officer or a designee that a cancellation is in the public interest.**

*Id.* (emphasis added). Generally, the cancellation “must be consistent with the underlying purposes of the Procurement Code, including, but not limited to, the providing for fair and equitable treatment of all persons dealing with the procurement process and maintaining the public’s confidence in the integrity of the [competitive sealed bidding] system.” *Kuchler* at p. 10. This is because a cancellation after bid opening “tends to discourage competition because it results in making all bidders’ prices and competitive positions public without an award.” *Id.* Cancellation “also means that bidders have expended labor and incurred costs” in preparing bids “without the possibility of acceptance.” *Prometheus* at p. 7.

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<sup>3</sup> “Specifications are inadequate when they do not state the government’s actual minimum needs.” *Kuchler* at p. 14.

**1. The Solicitation specifications were inadequate under HAR § 3-122-96(a)(2)(B).**

According to Mr. Wood, the Solicitation specified that the State would furnish the 6,022 panels and pedestals for the Project. However, during negotiations with the German manufacturer, it became apparent that the manufacturer would not be able to provide a surety bond or other contractual assurance to DAGS that it would fulfill this critical specification. Consequently, after bid opening, DAGS determined that the contractor, rather than the State, would need to furnish the panels and pedestals.

Mr. Wood testified that this change would significantly expand the contractor's scope of work specified in the Solicitation. In particular, the contractor would become fully responsible for the purchase, delivery, storage, and inspection of these items and would need to provide a substantial prepayment to the manufacturer.

In addition, DAGS determined that other specifications in the Solicitation were inadequate and needed revisions to achieve the goals of the Project. According to Mr. Wood, the scheduling, phasing, and sequencing specifications were inadequate because they were contingent on the State furnishing the panels and pedestals and the contractor working concurrently on both pools—conditions that are no longer feasible.

Mr. Wood also testified that the landscaping specifications, which required only the installation of new landscaping and irrigation in Hotel Street Mall planters, were inadequate because after bid opening, the City and County of Honolulu imposed five special district permit conditions that would require installing trees on Punchbowl Street, installing a guardrail and trees on Hotel Street, and changing the reflectivity of the panels.

Lastly, Mr. Wood testified that the lighting specifications were inadequate because DAGS would be dramatically expanding that scope of work, including requiring the contractor to furnish the lighting equipment, in accordance with a restrictive specification, and to provide a substantial prepayment to the manufacturer.

The Hearings Officer finds Mr. Wood's testimony credible. Requiring the contractor to furnish the 6,022 panels, pedestals, and lighting equipment and to incur additional responsibilities, including making substantial prepayments to and handling all logistics with the manufacturers, would fundamentally alter the Solicitation. This, combined with the changes needed for scheduling, phasing, sequencing, and landscaping, renders the specifications inadequate. Because

the Solicitation did not provide for DAGS' actual minimum needs or cover what DAGS would like to accomplish with the Project, DAGS had a reasonable basis under HAR § 3-122-96(a)(2)(B) to cancel the Solicitation.

**2. The Solicitation did not provide for consideration of all factors of significance to DAGS under HAR § 3-122-96(a)(2)(C).**

The Solicitation specified that the State would furnish the 6,022 panels and pedestals and the contractor would accept, inspect, store, and deliver these items to the job site. Mr. Wood acknowledged that DAGS had long been concerned about this arrangement and serving as the “middleman” between the German manufacturer and the contractor—two parties with no contractual obligation to each other. However, Mr. Wood plausibly testified that at the time of bid opening, DAGS was still “going down the road” of contracting with the German manufacturer. Therefore, this arrangement became untenable only after bid opening, when contractual negotiations failed between DAGS and the German manufacturer. The Solicitation did not consider DAGS' inability to procure the panels or the complexities of this arrangement, and these factors were significant to DAGS because the panels are a key aspect of the Project. Consequently, the Solicitation did not provide for consideration of all factors of significance to DAGS under HAR § 3-122-96(a)(2)(C), and this was a reasonable basis to cancel the Solicitation.

**3. Cancellation of the Solicitation was in the public interest under HAR § 3-122-96(a)(2)(G).**

According to Mr. Wood, contractors must be fully aware of the Project's expanded scope of work and increased responsibilities before they can properly bid on and commit to the Project. This awareness is imperative because the new solicitation would require the contractor to make, and attest that it can make, substantial prepayments to manufacturers. This requirement alone could impact a contractor's ability to bid on the Project. Given the material change in who would be furnishing the 6,022 panels, pedestals, and lighting equipment, and the myriad other changes to the Project's scheduling, phasing, sequencing, and landscaping, it was in the public interest to cancel the defective Solicitation and rebid the Project.

Mr. Gangloff testified that rebidding would be costly and that MIRA was significantly disadvantaged by its bid preparation costs and the public visibility of its bid documents after bid opening. Although these concerns are legitimate, cancelling the Solicitation and rebidding the

Project would ensure transparency, treat all bidders fairly and equitably, and provide all bidders with an equal opportunity to compete.<sup>4</sup>

Mr. Gangloff testified that change orders would sufficiently address all revisions required for the Project and that MIRA's bid already accounted for the cost of change orders. He asserted that MIRA could furnish the 6,022 panels, pedestals, and lighting equipment, given his experience in globally sourcing materials. However, relying on change orders to correct all of the inadequate specifications in the Solicitation would contravene the intent of HRS chapter 103D to ensure the fair and equitable treatment of all persons dealing with government procurement, to foster broad-based competition, and to increase public confidence in the procurement process. *See* HAR § 3-120-1(a)(4), (6), and (8). Per Mr. Wood, issuing one large change order for the numerous changes would increase the Project price by at least fifty percent, whereas issuing a multitude of individual change orders could bring DAGS under scrutiny for unlawful parceling, or "the artificial division or intentional division of a purchase of same, like, or related items of goods, services, or construction into several purchases of smaller quantities, in order to evade the statutory competitive requirements." HAR § 3-131-1. Mr. Wood also explained that issuing a change order for contractor-furnished items was not feasible because such a revision would substantially expand the contractor's scope of work. Given the extent of this change and the sheer number of other changes required for the Project, all of which would increase the Project cost by at least fifty percent, cancellation was appropriate. Lastly, it would be unfair and improper for DAGS to award a contract based on the defective Solicitation to MIRA and later require MIRA to execute changes of this magnitude through change orders. Accordingly, DAGS had a reasonable basis under HAR § 3-122-96(a)(2)(G) to cancel the Solicitation.

On this record, the State's best interests were served by DAGS cancelling the Solicitation under HRS § 103D-308 and HAR § 3-122-96(a)(2)(B), (C), and (G).

**D. DAGS gave adequate notice of its reasons for cancelling the Solicitation.**

The reasons for cancelling a solicitation "shall be made part of the contract file and be publicly posted, for a minimum of ten business days, on a purchasing agency's website, government electronic notification system, or by any other means the procurement officer deems effective for publicizing the cancellation notice." HRS § 103D-308. This statutory requirement promotes transparency in cancelling a solicitation; it also recognizes that bids may require

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<sup>4</sup> Generally, "the cancellation or rejection of all bids treats all bidders equally." *Kuchler* at p. 14.

considerable resources to prepare and submit and that vendors have a right to know the reasons for cancellation. S.B. 2387, 2022 Leg., 31st Sess. (Haw. 2022). In addition, “[d]ocumentation on the reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection.” HAR § 3-122-96(c).

Furthermore, the procuring agency must send a notice of cancellation to all businesses solicited that identifies the solicitation and provides a “[b]rief explanation of the reason(s) for cancellation” and “[w]here appropriate, an explanation that an opportunity will be given to compete on any resolicitation or any future procurements of similar goods, services, or construction.” HAR § 3-122-96(b). By making the cancellation reasons part of the contract file under HRS § 103D-308 and by providing a brief explanation of the reasons under HAR § 3-122-96(b)(2), the procuring agency gives the contractor “notice of the actual circumstances and facts leading to the cancellation of the solicitation.” *Phillip G. Kuchler, Inc. v. State of Hawai‘i, Dep’t of Transp.*, No. 26897, slip op. at 2 (Haw. Oct. 25, 2005).

Petitioner alleges that DAGS did not comply with HRS § 103D-308 and HAR § 3-122-96(b) and (c) because DAGS: (1) posted its cancellation notice on the HANDS website after notifying MIRA of the cancellation by letter dated May 21, 2025; (2) did not make the procurement file available to MIRA for public inspection; and (3) did not provide sufficient explanation of its reasons for cancellation. The record does not support these arguments. First, HRS § 103D-308 does not specify when the procuring agency must publicize its cancellation notice—only that it does so for at least ten business days. DAGS publicized its cancellation notice on June 4, 2025, and the parties did not dispute that the notice was posted for at least ten business days. Notably, DAGS’ May 21, 2025, letter to MIRA stated that DAGS “**is** cancelling the solicitation” (Ex. J-5 at P-000424, emphasis added), and the cancellation was formalized by DAGS publicly posting the cancellation notice on June 4, 2025.

Second, HAR § 3-122-96(c) requires that **documentation** on the reasons for cancellation be made part of the procurement file and be available for public inspection. Mr. Wood credibly testified that the procurement file contained documentation, including emails and DAGS’ June 17, 2025, letter to MIRA, on the cancellation reasons. MIRA received the June 17, 2025, letter, which elaborated on the reasons for cancellation noted in DAGS’ May 21, 2025, letter to MIRA. Respondent did not disclose the rest of the procurement file to Petitioner because that could give MIRA an unfair advantage in the new solicitation (i.e., MIRA could secure subcontractors and

materials and prepare estimates before other bidders). Importantly, HAR § 3-122-96(c) does not require that the entire procurement file be made available for public inspection. Accordingly, DAGS complied with this rule.

Third, DAGS sufficiently explained its reasons for cancellation. The procurement laws do not require the cancellation reasons to have any level of specificity, and DAGS' May 21, 2025, and June 17, 2025, letters to MIRA provided adequate explanation. The May 21, 2025, letter stated: "Due to changes needed to the required work for this project, DAGS is cancelling the solicitation in the best interests of the State, and intends to revise the solicitation documents, then re-bid the project." (Ex. J-4 at P-000424.) The June 17, 2025, letter elaborated further:

The solicitation documents had been determined to be inadequate and significant revisions are required to achieve the goals of the project which may include, but are not limited to, schedule and phasing changes, landscaping changes, and the incorporation of requirements for bidders to provide items previously identified as State-furnished items to be installed by the contractor. . . . It is not in the State's best interest to make an award based on the original solicitation documents. Therefore, DAGS has cancelled the solicitation and intends to make substantive revisions to the solicitation documents and re-solicit this project. As part of its preparation of the revised solicitation documents, DAGS will be requesting an opinion from the CLB.

(Ex. J-7 at P-000456-57.) DAGS also sent letters to the other two Project bidders, stating that it had rejected their bids and was cancelling the Solicitation and intending to revise the specifications for rebidding. On this record, DAGS gave adequate notice of its cancellation reasons in accordance with HRS § 103D-308 and HAR § 3-122-96(b) and (c) and gave notice of the actual circumstances and facts leading to cancellation of the Solicitation.

**E. The Hearings Officer lacks jurisdiction over Petitioner's claim that DAGS violated sole source procurement laws.**

In determining whether the chief procurement officer's determination was "in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract" under HRS § 103D-709(i), the hearings officer:

[C]an only make a decision about the "determinations" of the chief procurement officer, and the chief procurement officer can only make "determinations" about complaints brought before that officer. The statute literally leaves no room for the hearings officer to make



decisions about matters that were not previously the subject of a determination by the chief procurement officer.

*Kiewit Infrastructure West Co. v. Dep't of Transp., State of Hawai'i*, PCX-2011-2/PCX-2011-3, p. 39 (June 6, 2011). In addition, “an issue raised for the first time in [a] request for administrative review and/or during an administrative hearing fails to give the procuring agency timely notice of the disputed issue(s) and is therefore not properly before the Hearings Officer.” *Maui Kupono Builders, LLC v. Dep't of Transp., State of Hawai'i*, PDH-2019-006, p. 8 (Dec. 23, 2019); *see also Paul's Elec. Contracting, LLC v. City & County of Honolulu, Dep't of Budget and Fiscal Serv.*, PCY-2012-018, p. 15 (June 27, 2012) (submitting information, arguments, and/or documentation for the first time in a request for administrative hearing fails to exhaust administrative remedies).

In its post-hearing closing brief, Petitioner argues for the first time that requiring the contractor to negotiate and contract with the German manufacturer would violate procurement laws and make cancellation unreasonable because in a sole source procurement, the procuring agency is the entity that must negotiate and contract with the sole source vendor. The Hearings Officer lacks jurisdiction over this claim because it was not previously the subject of a determination by DAGS and is not ripe for review, given that the Project does not currently require the contractor to negotiate and contract with a sole source vendor.

**F. Given the propriety of cancellation, the issue of whether DAGS unlawfully rejected MIRA's bid as nonresponsive for failing to list a C-42 contractor to perform the Project's “roof and deck insulation” work is moot.**

On May 21, 2025, DAGS notified MIRA that it was rejecting its bid as nonresponsive for failing to list a C-42 contractor in its subcontractor listing to perform the “roof and deck insulation” work. On May 28, 2025, MIRA protested the rejection and provided an informal CLB opinion approving the use of a C-1 contractor for the “roof and deck insulation” work, based on the information MIRA provided.<sup>5</sup> On June 17, 2025, DAGS stated that its letter denying MIRA's protest would not address the subcontractor listing issue because DAGS received two differing opinions<sup>6</sup> and would be requesting its own opinion from the CLB on that issue. Mr. Wood testified that DAGS intends to inform the CLB about where the insulation would be installed, as that could

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<sup>5</sup> Mr. Gangloff testified that he gave the CLB the “roof and deck insulation” work specifications, a letter from the drainage composite manufacturer, and a description of the contractor licenses.

<sup>6</sup> Mr. Wood testified that MIRA and Nan Inc. gave DAGS differing opinions on the subcontractor sufficient to perform the “roof and deck insulation” work.

affect the subcontractor required. According to Petitioner, DAGS' refusal to conclusively address the subcontractor listing issue constituted a waiver of that issue because DAGS was required to either uphold or deny the protest and to state the reasons for the action taken under HRS § 103D-701(c).

Because cancellation was reasonable and complied with procurement laws, the issue of whether DAGS improperly rejected MIRA's bid as nonresponsive for failing to list a C-42 contractor to perform the "roof and deck insulation" work is moot.

IV. DECISION

Based on the foregoing findings and conclusions, Petitioner has not proven by a preponderance of the evidence that DAGS' denial of MIRA's protest was improper. Accordingly, the Hearings Officer AFFIRMS DAGS' denial of MIRA's protest.

Pursuant to HRS § 103D-709(e), the Office of Administrative Hearings shall return the bond to Petitioner, and the parties shall bear their own attorney's fees and costs.

DATED: Honolulu, Hawaii, \_\_\_\_\_ July 30, 2025 \_\_\_\_\_.



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NATALIA T. CHAN  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs