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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,

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

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 FACT¹

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

¹ 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 LAW²

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]

² 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;³

(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.

³ “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.⁴

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

⁴ 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 Kuponu 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.⁵ 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 opinions⁶ 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

⁵ 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.

⁶ 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.



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

Hearings Officer's Findings of Fact, Conclusions of Law, and Decision; *MIRA Image Construction, LLC v. Department of Accounting and General Services, State of Hawaii*; PDH-2025-006.