



December 4, 2019

**Report**

**CLA – OHA & LLCs  
Contract and Disbursement  
Review – Report**

*Prepared by:*

**Ernie Cooper, CPA, CFF, CFE, JD**  
Ernie.Cooper@CLAAconnect.com  
Phone (626) 857-7300





**CliftonLarsonAllen**

December 4, 2019

Dan Ahuna, Trustee and Chair of the Resource Management Committee  
Robert K. Lindsey, Jr., Trustee and Vice-Chair of the Resource Management Committee  
Office of Hawaiian Affairs  
560 N. Nimitz Hwy, Suite 200  
Honolulu, HI 96817

**Re: CLA – OHA & LLCs Contract and Disbursement Review – Report**

Dear Trustees,

We have enclosed our final OHA & LLCs Contract and Disbursement Review Report dated December 4, 2019, which has been completed as per our agreement. Our work was performed in accordance with contract number 3284 executed between OHA and CliftonLarsonAllen.

We appreciate the opportunity to provide you with this service.

Respectfully,

Ernie Cooper CPA, CFF, CFE, JD  
Principal  
**CliftonLarsonAllen LLP**



## Table of Contents

I.	Executive Summary .....	2
II.	Background .....	19
III.	Professional Standards Followed by CliftonLarsonAllen LLP .....	21
IV.	Information about CliftonLarsonAllen LLP .....	22
V.	Scope of Work .....	24
VI.	Office of Hawaiian Affairs .....	30
A.	SUMMARY OF WORK PERFORMED .....	30
B.	TESTING CRITERIA .....	38
C.	TESTING METHODOLOGY .....	45
D.	RESULTS OF WORK PERFORMED .....	49
E.	ANNUAL REPORTS TO THE BOARD OF TRUSTEES .....	212
F.	RECOMMENDATIONS.....	214
VII.	Limited Liability Companies (LLCs) .....	225
A.	SUMMARY OF WORK PERFORMED .....	225
B.	TESTING CRITERIA .....	230
C.	TESTING METHODOLOGY .....	236
D.	RESULTS OF WORK PERFORMED .....	239
E.	QUARTERLY REPORTS TO THE BOARD OF TRUSTEES .....	285
F.	RECOMMENDATIONS.....	290
VIII.	Board of Trustees Oversight of OHA and the LLCs .....	294
IX.	CLA’s Suggestions for Implementation of Recommendations .....	303
X.	List of Attachments.....	304
XI.	List of Exhibits.....	305

## I. Executive Summary

CliftonLarsonAllen (CLA) is pleased to deliver this Report to the Resource Management Committee (RMC) of the Office of Hawaiian Affairs (OHA). This Report is prepared pursuant to the contract between OHA and CLA executed on September 4, 2018, OHA contract number 3284.

The overall scope of work and approach was conducted utilizing standards in accordance with the Statement on Standards for Consulting Services, *Consulting Services: Definitions and Standards* (codified as CS Section 100 in *AICPA Professional Standards*) of the American Institute of Certified Public Accountants (“AICPA”). In consulting engagements, the nature and scope of work is determined solely by the agreement between the practitioner (CLA) and the client (OHA).

This report does not constitute an audit, compilation, or review, in accordance with standards of the AICPA, the objective of which would be the expression of an opinion on any specified elements, accounts, or items. Accordingly, CLA does not express such an opinion.

Because of the unique nature of fraud, and because our engagement was limited to the matters described in the contract, fraud and/or financial irregularities may exist within the organization that we may not have identified during the performance of our procedures. However, if during the performance of our services other matters had come to our attention suggesting possible financial improprieties and/or irregularities, we would have communicated such matters to the Resource Management Committee of the Office of Hawaiian Affairs.

The professional standards promulgated by the AICPA prohibit CLA from rendering an opinion as to whether there has been any fraud or other criminal activity by anyone associated with this engagement. Therefore, CLA does not render such opinions.

### **Scope of Work**

The scope of work approved by OHA identified the period of review to be for five (5) fiscal years, specifically state Fiscal Year (FY) 2012, FY 2013, FY 2014, FY 2015, FY 2016 and to include both OHA and the LLCs. For OHA, the scope of work called for CLA to select eighty (80) contracts and fifty (50) other financial disbursements of funds for testing and review. For the LLCs, the scope of work called for CLA to select thirty (30) contracts and twenty-five (25) other financial disbursements of funds for testing and review. The scope of services specified all contracts and financial disbursements tested would be selected by CLA based on CLA’s understanding of the OHA’s and LLC’s policies and procedures and data analytics performed on the financial activity of the organizations.

### **Office of Hawaiian Affairs**

- For the OHA 80 Contracts, the scope of work specified that CLA will test for the following areas:<sup>1</sup>

---

<sup>1</sup> OHA and LLC contracts included vendor contracts, other contracts for professional services or goods, and grant agreements awarded by the OHA.

- Approval and execution in accordance with HRS Chapter 103D Hawai'i Procurement Code, and HRS Chapter 84 Standards of Conduct, and the OHA's applicable internal policies and procedures;
  - Sufficiency of contract oversight provided appropriately by the assigned contract manager/monitor;
  - Deliverables were met by the contractor; and
  - No fraudulent or wasteful disbursements were made.
- For the OHA 50 other financial disbursements of funds, the scope of work specified that CLA will test for the following areas:<sup>2</sup>
    - Compliance with HRS Chapter 103D Procurement Code and HRS Chapter 84 Standards of Conduct and the OHA's applicable internal policies and procedures;
    - Compliance with budget restrictions; and
    - No fraudulent or wasteful disbursements were made.
  - CLA will review the OHA annual reports to the Board of Trustees (BOT) and assess whether sufficient internal controls are in place to ensure the integrity of the performance indicators as reported in the annual report to the BOT.

### LLCs

- For the LLC's 30 Contracts, the scope of work specified that CLA will test for the following areas:<sup>3</sup>

- 
- Contracts reviewed did not include payroll related contracts, including employment contracts and contracts related to employee benefits.
  - Contracts reviewed did not include revenue-generating contracts of the OHA and the related LLCs.
  - A contract and its related amendments were counted as one contract to the extent that the contract and its amendments were identified by OHA as one contract number. Separate contracts with the same vendor will be counted as unique contracts if they are identified with a new contract number and not an amendment number.

<sup>2</sup> OHA and LLC other financial disbursements of funds, financial transactions is defined as disbursements (e.g., checks, wire transfers, electronic fund transfers, etc.).

- Financial transactions excluded revenue/income related transactions of the OHA and the related LLCs.
- And the selection of disbursements that were tested excluded disbursements already tested as part of the contract testing.

<sup>3</sup> Refer to footnote 1.

- Sufficiency of contract/grant oversight provided appropriately by the assigned contract manager/monitor;
  - Deliverables were met by the contractor/grant recipient;
  - Conflict of interest with LLC managers and directors; and
  - No fraudulent or wasteful disbursements were made.
- For the LLC's 25 other financial disbursements of funds, the scope of work specified that CLA will test for the following areas:<sup>4</sup>
    - Conflict of interest with LLC managers and directors;
    - Compliance with internal policies and procedures; and
    - No fraudulent or wasteful disbursements were made.
  - CLA will review the LLC's quarterly reports to the BOT and assess whether sufficient internal controls are in place to ensure the integrity of the performance indicators as reported in the quarterly reports to the BOT.

The scope of service is not an investigation. CLA's procedures were designed to detect and identify possible fraud, waste, or abuse; however, CLA has not made a conclusion as to whether fraud, waste, or abuse actually exists. Based on the totality of information gathered through the testing procedures performed, CLA has identified whether there are red flags or indicators of possible fraud, waste, or abuse.

In addition to documenting the results of testing, CLA has provided recommendations on organizational, structural and procedural improvement to strengthen the BOT's fiduciary oversight of the OHA and its LLCs.

### **Summary of Work Performed**

The OHA point of contact established by OHA was the leadership team of the RMC. In addition to the extensive review, analysis, documentation of work performed, and draft of this report, highlights of work performed by CLA include:

#### **1) Preliminary information gathering and document review**

In June 2018, while in negotiations with OHA regarding this contract, CLA visited OHA's offices in Honolulu, Oahu and the office of the LLCs' legal counsel, ES&A, Inc. These visits occurred from June 6, 2018 through June 8, 2018 with the purpose of gaining a better understanding of OHA and its LLCs, their operations, and financial activity. CLA used the information obtained through this process to determine the volume of transactions

---

<sup>4</sup> Refer to footnote 2.

(contracts and disbursements) that could be tested within the budget established by OHA. CLA incurred all cost for this work.

## **2) Process interviews of OHA and LLCs staff**

During the weeks of October 8, 2018 and November 12, 2018, CLA was in Honolulu and conducted interviews of OHA staff. The purpose of these interviews was to gain a more in depth understanding of the processes and procedures pertaining to contracting and disbursements (including grants and sponsorships).

On October 11, 2018, CLA met with Richard Pezzulo, Hi'ipaka LLC's Executive Director, and Donna Mathes, Hi'ipaka LLC's Controller/Accountant. On November 13, 2018, CLA met with Mona Bernardino, Hi'ilei Aloha LLC's COO. The purpose of the interviews was to gain a more comprehensive understanding of the LLCs' functions and the policies and procedures used by the LLCs pertaining to contracting and disbursements for the period under review.

## **3) Document request**

On September 14, 2018, CLA submitted to OHA and the LLCs an initial document request list to obtain additional financial data and documents needed to perform data analytics and ultimately select a sample of contracts and disbursements for testing. The document request lists were updated throughout the term of the engagement and OHA and the LLCs provided the requested documents and information to CLA on an ongoing basis.

## **4) Data collection and analysis**

Throughout the term of this engagement, CLA continuously worked with OHA and LLC staff to obtain the requested documents and records which CLA requested in order to identify and select those OHA and LLC contracts and financial disbursements to be tested.

## **5) Selection of sample contracts and disbursements**

On May 10, 2019, CLA sent to OHA its sample selection for 75 contracts and 45 disbursements. CLA reserved five contracts and five disbursements to select after the visit to OHA in June 2019 for the initial round of testing. On August 2, 2019, CLA sent to OHA the remaining sample of five contracts and five disbursements.

On May 10, 2019, CLA sent to ES&A the sample selection for contracts and disbursements for the LLCs. The sample selection sent to the LLCs consisted of 23 contracts and 21 disbursements. CLA reserved seven contracts and four disbursements to select after the trustee interviews that occurred the week of July 22, 2019. On August 2, 2019, CLA selected the remaining sample of seven contracts and four disbursements for the LLCs and emailed this list to ES&A, Inc.

## 6) Interviews of OHA trustees

During the week of July 22, 2019, CLA was in Honolulu and conducted in-person interviews of all nine current OHA trustees. The purpose of the interviews was to allow the trustees the opportunity to meet with CLA and share with CLA any thoughts or concerns they had regarding OHA or the LLCs relative to the scope of work of this engagement.

## 7) Document production to CLA

OHA provided the supporting documentation to CLA in scanned PDF files. The initial production of supporting documents was provided by OHA beginning on June 3, 2019 and was completed on August 23, 2019. During the review of these documents, CLA identified various documents that appeared to be missing from the production and requested additional and/or missing documents be provided to CLA. OHA continued to provide available documents to CLA through October 17, 2019. In total, OHA provided to CLA approximately 870 scanned PDF files containing supporting documentation related to the sample of contracts and disbursements. As of the date of this report, OHA has communicated that it has provided to CLA all documents that it could locate related to CLA's requests.

For the LLCs, on July 3, 2019, CLA was informed that the LLCs had gathered the supporting documents for the contract and disbursement sample selection, and that the documents would be available in hardcopy at the respective LLC offices. The hard-copy documents identified were provided to CLA during its visit to Hi'ipaka the week of August 12, 2019, and during its visit to Hi'ilei Aloha the week of August 19, 2019. While on site, CLA identified additional documents needed and communicated the subsequent request to the respective LLC contact. All documents available were provided to CLA by October 15, 2019. In total, the LLCs provided to CLA approximately 122 supporting documents related to the sample of contracts and disbursements.

## 8) Inquiries with OHA and LLCs' staff

As part of the request to OHA for the sample contracts and disbursements, CLA requested that OHA provide the name of the contract manager for each contract selected. This would allow CLA to identify the OHA staff member to inquire concerning questions on a particular contract. CLA inquired with OHA contract manager/staff as appropriate if currently employed by OHA.

### Hi'ilei Aloha LLC

Inquiries were made with the COO for Hi'ilei Aloha LLC who has been with the entity since its inception and was familiar with most of the contracts and disbursement transactions selected for Hi'ilei Aloha, Hi'ipoi, and Ho'okōpaipai.<sup>5</sup>

---

<sup>5</sup> Hi'ikualono LLC, although established in 2010, according to the COO, has never had any activity.



### Hi'ipaka LLC

Inquiries were made with the Executive Director for Hi'ipaka who has been with the organization for the entire period under review and was familiar with all of the contracts and disbursements for the entity.

#### **9) Assessment of Board of Trustees Oversight of OHA**

In order to assess the Board of Trustees oversight of OHA and the LLCs, CLA conducted interviews of the current trustees, reviewed the State Audit reports issued in September 2013 and June 2018, reviewed board minutes to identify and understand current actions taken by the trustees pertaining to the Permitted Interaction Group on the Board Governance Framework, and researched general guidance and best practices pertaining to governance. Additionally, CLA considered the totality of the results from the testing of contracts and disbursements. The observations and recommendations pertaining to the trustee's oversight is included in Section VIII. Board of Trustees Oversight of OHA and the LLCs beginning on page 294.

#### **10) Status updates and communications with the Resource Management Committee**

Throughout this engagement, CLA maintained regular communication with the Chair and Vice Chair of the Resource Management Committee. As part of the communication protocol, CLA issued written status reports on the following dates:

- October 25, 2018
- November 27, 2018
- June 4, 2019
- August 6, 2019
- September 12, 2019

In addition, on March 12, 2019, shortly after Trustee Dan Ahuna was elected Chair of the Resource Management Committee, CLA met at OHA offices with the Resource Management Committee leadership to provide an update on the status of this engagement, the procedures performed to date, and the steps needed to complete the engagement. Additionally, CLA presented an updated timetable for completion of the project due to delays in receiving documents requested from OHA and the LLCs.

Finally, on October 24, 2019 a video conference was held with CLA and RCM Leadership where CLA provide a verbal briefing of the results of work performed. Recommendations included in this report were not discussed at that time.

## **Results of Work Performed**

The following Chart reflects the summary of the type of items tested by CLA. The body of this report provides detailed information concerning each specific item tested by CLA.

OHA		LLCs	
Category	Number Tested	Category	Number Tested
Contracts	80	Contracts	30
Disbursements	50	Disbursements	25
Total Tested	130	Total Tested	55
Contract Type	Contracts Tested	LLC	Contracts Tested
Grants	39	Hi'ilei Aloha	9
Competitive Sealed Proposals	9	Hi'ipaka	18
Professional Services	14	Ho'okipaipai	3
Small Purchase	1	Total	30
Exempt	17		
Total Tested	80		
Disbursement Type	Disbursements Tested	LLC	Disbursements Tested
Grant	10	Hi'ilei Aloha	7
Disbursements	34	Hi'ipaka	9
pCard	5	Hi'ipoi	3
Lease	1	Ho'okipaipai	6
Total Tested	50	Total	25

CLA made various observations based on the testing performed. An observation for the purpose of this report is defined as the instances in which the results of testing revealed occurrences of non-compliance with statutory requirements and/or internal policies as well as the instances that revealed indicators or red flags of waste, fraud, or abuse.

### **OHA**

#### *OHA: Highlights of Observations*

We noted some common themes concerning accounting and financial processes and procedures within all items tested. These include:

- Numerous examples where contracts had an effective date that predated the execution date of the contracts.
- The only approved Fiscal Procedures Manual (revised March 2, 2009) was outdated:

- The Accounting Checklist is no longer being used
- Titles referenced are outdated
- Certain steps/processes are no longer performed or are outdated
- The standard contract was not always used or was missing certain required sections.
- Required signatures were not always present on Procurement documents.
- It was not always clear from the Delegation of Authority who was supposed to approve/sign a purchase request, contract, or payment request (Program level, LOB level contracts – documentation didn't specify type of contract).
- OHA was unable to produce some or all of the deliverables required by the contracts; therefore, CLA was unable to determine whether fraudulent/wasteful disbursements were made for many items selected for testing and whether the deliverables were ever completed by the contractor or the evidence of deliverables were not kept by OHA.

We also noted the following observations specific to each area tested as follows.

**a. OHA Contracts**

***Grants***

Contract Type	With Observations	Without Observations	Total	Report Page Reference
Grants	39	0	39	50

Conflicts of interest – CLA observed several potential financial conflicts of interest:

- Contract #2695 was a grant executed in September 2011 for \$150,000 to Young of Heart Workshop, whose Executive Director was Maile Meyer. Undisclosed in the grant file is the fact that OHA had an existing relationship with Maile Meyer by guarantying \$150,000 for her lease of retail space in Waikiki, which was signed in 2009. There does not appear to be a violation of HRS §10 or §84; however, there may be a violation of OHA's policies. (D-04)
- Contract #2726 and #2887 were two Community grants to I Ola Lāhui, Inc. for \$500,000 each for 12/1/2011 to 11/30/2013 and 7/1/2013 to 6/30/2015, respectively (Richard Pezzulo, Corporate Counsel, and Dr. Austin executed Contract #2726; Dr. Crabbe, Corporate Counsel, and Dr. Austin executed Contracted #2887). Both contracts were ultimately approved by the Board of Trustees (BOT). The Executive Director for I Ola Lāhui, Inc. was A. Aukahi Austin. Dr. Austin may have had an undisclosed professional relationship with Dr. Crabbe.
- Contract #2953 was a grant to Native Hawaiian Education Association (NHEA) for the World Indigenous People's Conference on Education (WiPC:E) for \$150,000.

The CEO of the Office of Hawaiian Affairs, Dr. Crabbe, was a keynote speaker at the WIPC:E event that OHA sponsored. CLA could not further determine if the grant award was a violation of HRS §84-14(2)(d).

- Contract #3026 was a grant in 2015 to Akamai Foundation on behalf of Na'i Aupuni for \$2,598,000 to facilitate an election of delegates and 'Aha process. One of the Na'i Aupuni board members is Pauline Namu'o, who is the wife of the former OHA CEO, Clyde Namu'o. Clyde Namu'o was the Executive Director of the Native Hawaiian Roll Commission during 2015. CLA could not further determine if the grant award was a violation of HRS §84-14(2)(d).
- Contract #2785 was a grant to 'Aha Kāne - Foundation for the Advancement of Native Hawaiian Males in 2012 for \$200,000 to convene a gathering June 15-17, 2012 for Native Hawaiian male leadership. The grant file does not disclose that Dr. Crabbe established 'Aha Kāne and was the Advisory Chair at the time of the convention. Dr. Crabbe filed a Short Form Disclosure with the Hawai'i State Ethics Commission in 2016 explaining that he was no longer the President of 'Aha Kāne and was the Advisory Chair. If Dr. Crabbe had filed a Short Form Disclosure before the grant award, then the grant would be in compliance with HRS §84-14(e) and §84-17. This would be an investigative step.

Other Observations:

- Several grantees did not have a complete grant application or letter requesting funding. Grant applications are a specific requirement of HRS §10-17(a).
- Several grant files did not contain sufficient evidence that OHA monitored or evaluated the grant activities, which is a specific requirement of HRS §10-17(d).
- Several grant files did not contain the BOT or ARM/BAE Action Item attachments that indicated that the BOT or ARM/BAE was specifically approving the application and the award amount.
- Several grant files did not contain evidence that OHA's procurement process was followed, including missing Purchase Requisitions, Procurement Document Checklists, and/or Proofs of Award.

**Competitive Sealed Proposals**

Contract Type	With Observations	Without Observations	Total	Report Page Reference
Competitive Sealed Proposals	9	0	9	76

Adherence to Public Procurement Code: All contracts had at least one Public Procurement Code criteria for competitive sealed proposals that was either not met or for which documentation was not located and provided that would enable CLA to make a

determination of adherence to the Public Procurement Code for competitive sealed proposals.

***Professional Services***

Contract Type	With Observations	Without Observations	Total	Report Page Reference
Professional Services	14	0	14	96

Conflicts of interest – No known financial conflicts of interest were identified. However, a former employee, within 12 months after termination of employment, may have represented a business for a fee or other consideration which may not be consistent with HRS §84-18(c). Sample Contract K-56: OHA Contract #3025 with Reed Smith LLP on May 2015, for \$200,000.

Other Observations – CLA’s testing of professional services contracts include the following observations:

- Several contracts had an effective date that predated the execution date of the contracts by three days to 120 days (average of 44 days).
- CLA did not receive evidence that Professional Services were solicited no later than May of each year, that the procurement notice was issued requesting proposals from the appropriate service providers, and that Notices were posted on the PINS (Procurement Notices System) and in major newspapers as requires by HRS §103D-304.
- CLA did not receive evidence that the solicitation was published.
- CLA did not receive evidence that steps were taken to ensure and document that review committee members would be impartial and independent in their review of professional services.
- CLA did not receive evidence that contracts of over \$5,000 or more awarded under HRS §103D-304 were posted electronically within seven days of the contract award and that they remained posted for one year.
- For several of the contracts, CLA did not receive evidence of a deliverable.

***Small Purchases***

Contract Type	With Observations	Without Observations	Total	Report Page Reference
Small Purchase	1	0	1	127

No significant observations identified.

**Exempt**

Contract Type	With Observations	Without Observations	Total	Report Page Reference
Exempt	17	0	17	133

- Qualification as exempt contract – Several contracts were for services that appear questionable as to whether they qualify as an exempt contract. HRS §103D-102 provides a specific list of contracts/services that are exempted from the requirements of HRS §103D. CLA also considered additional exemptions allowed under HAR 3-120-4 – Exhibit A.
- Missing deliverable(s) – For several contracts, OHA was unable to produce some or all of the deliverables required by the contracts. CLA was not able to determine whether the contractor completed the deliverable(s) required.

**b. OHA Disbursements****CEO Sponsorships**

Disbursement Type	With Observations	Without Observations	Total	Report Page Reference
CEO Sponsorships	10	0	10	161

Conflicts of interest – CLA observed the following potential financial conflicts of interest as follows:

- Check number 27638 was a CEO Sponsorship for \$25,000 to Supporting the Language of Kauai (SLK) for operational startup costs. The CEO Sponsorship was approved by the CEO, Dr. Crabbe, on December 31, 2012. Part of the documentation indicated that there was a “confidential” business plan that CLA requested but was not provided. There is no evidence of review or approval of this sponsorship. CLA was informed that Dr. Crabbe and a director of SLK were associated through an association of Native Hawaiian men called 'Aha Kāne.

Other Observations – The following observations were identified from CLA’s testing of grant disbursements:

- Grant Award Splitting: A CEO Sponsorship to the University of Hawai'i for the GEAR-UP Hawai'i program was paid on a single check in the amount of \$30,000. The Purchase Requisition splits the amount into two parts: \$24,950 is categorized as “Grants in Aid – Sponsorships”; and, \$5,050 is categorized as “Services on a Fee Basis.”
- Grant Intent: A CEO Sponsorship for \$24,999 to The Nature Conservancy for the Marine Fellowship Program was made. The intent of the grant was for

programmatic services occurring over a fiscal year, not an event, which is inconsistent with the purpose of CEO Sponsorships.

- **Missing Documents:** All ten of the CEO Sponsorships did not contain sufficient evidence that OHA monitored or evaluated the grant activities, which is a specific requirement of HRS §10-17(d). In addition, most of the grant files did not contain sufficient documentation to show that OHA verified the organization was eligible under HRS §10-17(c).

***Other Disbursement Types***

Disbursement Type	With Observations	Without Observations*	Total	Report Page Reference
Exempt Non Grant Small Purchases	22	12	34	177
Procurement Card	5	0	5	199
Lease Disbursements	1	0	1	207

\*Out of the 12 without observations, six had documents missing.

Potential waste of funds – One of the disbursements appears to be a potential waste of public funds. \$600,000 was paid to Hu'ena Power, Inc. for an investment purchase of 500 limited partnership units (5%) in Hu'ena Power, LLP, a consortium that submitted a proposal to Hawaiian Electric Light Company (HELCO) to develop two 25MW geothermal power stations on the island of Hawai'i. Hu'ena Power did not win the contract with HELCO; therefore, OHA lost its \$600,000 investment.

**Other Observations:**

- Former OHA CEO approved payments while no longer an employee of OHA – Two disbursements were approved by the former OHA CEO, Clyde W. Namu'o, after he was no longer an employee of OHA.
- Qualification as Exempt Procurement – Certain disbursements were for services that appear questionable as to whether they qualify as an exempt procurement.
- Disbursements potentially Grants – Certain disbursements were cited as exempt purchases but appear to align with the purposes of grants and possibly should have gone through the grant approval process.
- Several of the disbursement files did not contain evidence that OHA's procurement process was followed, including missing Purchase Requisitions, Procurement Document Checklists, and/or Requests for Check Issuance.
- Several of the disbursement files for pCard purchases did not contain evidence that OHA's pCard process was followed, including missing receipts, documents justifying travel expenses, or a Statement of Completed Travel.

**LLCs****a. LLC Contracts*****Hi'ilei Aloha LLC***

LLC	With Observations	Without Observations	Total	Report Page Reference
Hi'ilei Aloha	9	0	9	239

Lack of Grant oversight – CLA observed lack of grant oversight in the following areas:

- For all contracts CLA observed that purchase requests are not completed, because the Fiscal Policies and Procedures manual is ambiguous and only appears to require them for purchase of supplies.
- For all contracts, the process of ensuring that all purchases comply with the budget is not documented (LLC COO communicated that this review is done but not documented).
- For all contracts, the Fiscal Policies and Procedures manual requires completed Request for Check Issuance forms to include a cost or price analysis. None of the contracts tested had this analysis attached (LLC COO communicated that price analysis is always done, but it was not documented).

Potentially wasteful disbursements – CLA identified the following potential wasteful disbursements:

- Contract Sample LK-26: The February 2016 contract for \$1,960 covered transportation and hotel costs for a vendor to provide training services (only transportation and hotel expenses were included as part of the contract). The payments to the vendor exceeded the contract amount by \$600.68. Payment of \$500 was issued to the vendor as a stipend that was not included in the contract, and travel costs exceeded the contract amount by \$100.68.
- Contract Sample LK-28: The March 2013 contract for \$10,000 was for capacity building services. The payments to the vendor exceeded the contract amount by \$406 for out-of-pocket expenses that were invoiced to Hi'ilei Aloha but for which no receipt was provided.

***Hi'ipaka LLC***

LLC	With Observations	Without Observations	Total	Report Page Reference
Hi'ipaka	18	0	18	246



Conflict of Interest – CLA observed a potential financial conflicts of interest as follows:

- Contract with OHA: A service agreement was executed with OHA for sublease of Waialua Courthouse property May of 2015, and one \$11,490 check issued in payment for this contract was not signed but was deposited by OHA and accepted by the bank. This contract has an inherent conflict of interest because the LLC managers for Hi'ipaka are also the executives for OHA so the LLC managers cannot act in an impartial way with this agreement.

Other Observations – The following observations were identified from CLA's testing of Hi'ipaka contracts:

- Contract approval process not updated: The SOP Admin Acct -004 first implemented May 7, 2009 stated that the LLC managers were responsible for signing contracts; however, per discussion with the Executive Director, it was understood that the process changed and the Executive Director was responsible for signing the contracts for Hi'ipaka. Only one contract, which was executed in early 2012, was signed by one of the LLC managers, the rest of the contracts tested were signed by the Executive Director.
- Missing Documents: Some of the contract files did not contain evidence that the Hi'ipaka procurement processes were followed, including missing Certificate of Goods Standing with the DCCA, vendor FEIN, vendor GET license, Certificate of Insurance, and/or Contractor's License.

#### ***Ho'okīpaipai LLC***

LLC	With Observations	Without Observations	Total	Report Page Reference
Ho'okīpaipai	1	2	3	255

No significant observations were identified for Ho'okīpaipai, although some documents were missing.

#### **b. LLC Disbursements**

LLC	With Observations	Without Observations	Total	Report Page Reference
Hi'ilei Aloha The 2 disbursements without observations had documents missing.	5	2	7	263
Hi'ipaka Of the 4 disbursements without observations, 1 had documents missing.	5	4	9	272
Hi'ipoi The 1 disbursement without observations had documents missing.	2	1	3	276

LLC	With Observations	Without Observations	Total	Report Page Reference
Ho'okipaipai Of the 6 disbursements without observations, 5 had documents missing.	0	6	6	282

Potentially wasteful disbursements – CLA observed three potentially wasteful disbursements concerning payments to Supporting the Language of Kauai/Lehua Poi Mill as follows:

- A \$10,000 grant paid from Hi'ipoi to Supporting the Language of Kauai on March 14, 2013. It appears that Hi'ipoi was still funding the operation of the mill even though it no longer held the asset.
- \$20,000 paid from Hi'ilei Aloha to Lehua Poi Mill on June 24, 2013 for an emergency loan to improve cash flow during the start-up months of business. Hi'ilei Aloha did not have established policies or business practices for issuing loans.
- A \$60,000 grant paid from Hi'ilei Aloha to Supporting the Language of Kauai on September 3, 2015 to offset financial losses of Lehua Poi Co. (owner Naukulu Arquette), operator of former Makaweli Poi Mill, through September 15, 2015. Hi'ilei Aloha did not have established policies or business practices for issuing grants.

Other Observations – Missing Documents:

- Several of the disbursement files did not contain evidence that the LLC procurement processes were followed, including missing invoices from vendors, purchase agreements or Purchase Orders, and/or Requests for Check Issuance forms.
- Four of the disbursements did not contain an invoice that had been stamped “Received By”, which would indicate that a staff member had determined the good or service was received and the purchase order was completely fulfilled.
- Five of the disbursements did not contain documentation that a price or cost analysis was conducted, which is required for Hi'ilei Aloha and Ho'okipaipai disbursements. Based on our discussion with Mona Bernardino, the program managers were responsible for conducting the price or cost analysis (usually by email or computer); however, the program managers did not keep documentation of the price or cost analysis in the disbursement package.

#### **OHA – Annual Reports to the Board of trustees**

CLA reviewed the OHA annual reports to the Board of Trustees (BOT) and assessed whether sufficient internal controls are in place to ensure the integrity of the performance indicators as

reported in the annual report to the BOT. Based on our observations, recommendations have been made to strengthen internal controls in this area.

We observed that reports and other information provided by the various departments is not kept by Community Engagement department for future reference. Additionally, the Director of Community Engagement could not indicate if the grants information reported was based on awards made or dollars disbursed. The plan for this coming year is to clarify this with the grants department for the upcoming report.

On a sample basis, CLA compared the specific grants and sponsorships listed in the June 30, 2016 annual report to the general ledger detail, grants tracking schedule, and audited financial statements provided to CLA. The purpose was to assess whether the financial information presented in the annual report to the BOT appeared accurate. The comparison of the grants listed in the annual report to the grants tracking schedule provided the following observations:

- Not all grants listed in the annual report were shown in the grants tracking schedule provided.
- When comparing the grant amounts in the annual report to the amounts disbursed as shown in the general ledger, it is evident that the amounts disbursed in the respective fiscal year are less than the amounts awarded. This seems appropriate and logical as the grant funds should not be disbursed until the activities have been performed and the grantee has submitted all required documentation

#### **LLCs - Quarterly Reports to the Board of Trustees**

CLA reviewed the LLC's quarterly reports to the BOT and assessed whether sufficient internal controls are in place to ensure the integrity of the performance indicators as reported in the quarterly reports to the BOT. Based on our observations, recommendations have been made to strengthen internal controls in this area.

We observed the finalized report for Hi'ipaka that was included in the Hi'ilei Aloha quarterly report was not reviewed by the Hi'ipaka's Executive Director prior to the report being finalized and sent to OHA.

Other observations include: neither the Budget Comparison Reports nor the Balance Sheets included in the quarterly reports disclose the fact that these reports are unaudited; the quarterly reports do not have a mechanism to communicate changes that may have taken place for a quarter that has already been previously reported; there were differences in the amounts communicated within the Hi'ipaka report between the Summary Financial Performance revenue and expense figures and the Budget Comparison Report revenue and expense figures; and mathematical errors were identified in the quarterly reports for Hi'ipaka due to the fact that these reports although downloaded directly from the financial system are finalized through a manual process using Microsoft Excel to calculate totals.

## **Recommendations**

CLA has made the following recommendations for OHA to consider implementing:

- Seventy-three (73) recommendations based on the results of contracts and financial disbursements testing as well as measures concerning the internal controls in place to ensure the integrity of the performance indicators in the OHA annual report to the BOT.
- Six (6) recommendations pertaining to the BOTs general oversight and governance of OHA and the LLCs

CLA has made the following recommendations for the LLCs to consider implementing:

- Thirty (30) recommendations based on the results of contracts and financial disbursements testing as well measures concerning the internal controls in place to ensure the integrity of the performance indicators in the LLC's Quarterly reports to the BOT.

These recommendations serve many purposes including tending to: improve the overall financial internal control efficiencies and effectiveness of the financial processes of OHA; minimize the risk of fraud, waste, and abuse; and overall strengthen the BOT's fiduciary, general oversight and governance of OHA. The recommendations for both OHA and the LLCs comprise a few central themes, including, updating its written policies to align with current procedures and ensure best practices are followed; increasing documentation of the decision-making process, authorizations, and monitoring and oversight of contracts and grants; employee training and development; increasing transparency; and oversight and governance of the organizations.

CLA understands that the task at hand for the BOT, RMC, OHA, and LLC staff in addressing, assessing, and considering implementing these recommendations can be daunting. Therefore CLA strongly encourages the Trustees to delegate to OHA's Administration the development of a "Recommendations Implementation Plan" that includes the following activities and considerations: comparison of recommendations to the current processes for contracts and disbursements (e.g., policies, procedures, practices, training, documentation, etc.) and implementation actions, including accountability measures, timetables, monitoring, and reporting to the RMC and BOT.

## **Closing Statement**

CLA is very proud and honored to have been selected and provide our services to OHA and the LLCs. CLA is extremely appreciative of the outstanding efforts by the OHA and LLC staff throughout the course of this engagement. The staff of OHA and the LLCs were cooperative throughout this engagement, responsive to CLA's requests, and provided documents and information within the updated timetable requested by CLA in order to complete this engagement. CLA recognizes the increased demand and pressure this engagement has put on the staff in addition to their day-to-day duties and responsibilities.

## II. Background

On Tuesday, September 4, 2018, the Office of Hawaiian Affairs (OHA), a body corporate under the Constitution of the State of Hawai'i, engaged the services of CliftonLarsonAllen (CLA) to conduct a contract and disbursement review as described in OHA's contract number 3284 (**Exhibit 01**). The purpose of this review is to identify and quantify potential areas of waste, abuse, and fraud in the procurement of professional services as well as other disbursements of funds for fiscal years (FY) FY 2012, FY 2013, FY 2014, FY 2015, and FY 2016 for OHA and its LLCs.

### Information about OHA

Upon statehood in 1959, the federal government returned to the State of Hawai'i all ceded lands not set aside for its own use. Section 5(f) of the Admission Act, directing the state to hold the lands in trust, listed the following five purposes:

1. The support of public education
2. The betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920
3. The development of farm and home ownership
4. The making of public improvements
5. The provision of lands for public use

In 1978, a Constitutional Convention was called to review and revise the functions and responsibilities of Hawai'i's government. At the convention, the Native Hawaiian Legislative Package was considered by the delegates. Among provisions incorporated into the new state constitution was the establishment of the Office of Hawaiian Affairs as a public trust, with a mandate to better the conditions of both Native Hawaiians and the Hawaiian community in general. OHA was to be funded with a pro rata share of revenues from state lands designated as "ceded."<sup>6</sup> State law requires that OHA expend 20% of all funds derived from the trust. Most recently in 2006, OHA and the state agreed on Act 178 as an interim resolution and established OHA's temporary annual share at \$15.1 million "until the further action is taken by the legislature."<sup>7</sup>

OHA is a public agency with a high degree of autonomy governed by a Board of Trustees made up of nine members who are elected statewide to serve four-year terms setting policy for the agency. OHA is administered by a Chief Executive Officer (Ka Pouhana) who is appointed by the Board of Trustees to oversee a staff of about 170 people. Dr. Sylvia Hussey who was originally hired as the chief operating officer (COO) in November 2018 has been functioning as the interim CEO since July 1, 2019 following the departure of Ka Pouhana, Dr. Crabbe.<sup>6</sup>

---

<sup>6</sup> <https://www.oha.org/about/abouthistory/>

<sup>7</sup> <https://www.oha.org/2016OHAleg>

### Information about OHA's LLCs

The Office of Hawaiian Affairs Board of Trustees created nonprofit Limited Liability Companies (LLCs) to protect the OHA trust fund while taking advantage of opportunities that support OHA's strategic priorities. During the time period covered by this engagement (July 1, 2011 to June 30, 2016), there were five LLCs, each created with its own mission and purpose to support OHA's overall goal of improving the well-being of Native Hawaiians.

Based on operating agreements and statutes, the OHA Board of Trustees does not have control over the operations of the LLC organizations. Operational decision making is the responsibility of the LLC Managers. Operating agreements specify that each LLC should have three Managers which are required to be current employees of the Member organization, OHA. Typically, the three Managers have been OHA's current CEO, CFO, and COO. The OHA Board of Trustees is also limited in the information they receive from the LLCs. Such information is limited to corporate documents, financial reporting documents, list of members, and additional information, as deemed necessary, for OHA to perform its duties and exercise their rights.

#### Hi'iilei Aloha LLC

Hi'iilei Aloha LLC was formed September 26<sup>th</sup> 2007 initially to serve as an umbrella organization for the management of Waimea Valley and Makaweli Poi Mill. Its mission is to identify, promote, develop, and support culturally-appropriate, sustainable opportunities that benefit Native Hawaiians. Hi'iilei Aloha exists for the following purposes:

- To study the history and culture of the Hawaiian people
- To educate on the history and culture of the Hawaiian people
- To scientifically investigate, study, and preserve land and water resources, and their role in Hawaiian history
- To preserve, protect, enhance, develop and promote Hawaiian historical, archaeological, environmental, cultural, spiritual and religious values, customs, practices, resources, and sites
- To educate, train, assist, and prepare Hawaiians for leadership in government, business, and community affairs

#### Hi'ipaka LLC

Hi'ipaka LLC was created as a subsidiary of Hi'iilei Aloha in December of 2007 as a 501(c)(3) non-profit organization created to nurture and care for Waimea Valley and holds the title to the land. The Valley was purchased by a partnership between the Office of Hawaiian Affairs, the City and County of Honolulu, the Hawai'i State Department of Land and Natural Resources, Trust for Public Land, and the United States Army.<sup>8</sup> Hi'ipaka's mission is to preserve and perpetuate the human, cultural, and natural resources of Waimea Valley for generations through education and stewardship.

---

<sup>8</sup> <https://www.waimeavalley.net/about/view/hiiipaka-llc>

#### Hi'ipoi LLC

Hi'ipoi LLC was created as a subsidiary of Hi'ilei Aloha to hold and manage Makaweli Poi Mill. Makaweli Poi Mill was originally acquired by OHA and transferred to Hi'ipoi in 2008 with the intention to preserve, protect, enhance, develop and promote Hawaiian culture, customs and practices through the production of poi and/or other taro- and poi-related products and by supporting and encouraging the farming of taro in Makaweli Valley and surrounding communities on Kaua'i. The poi mill posed significant challenges and was eventually divested in 2012.

#### Ho'okele Pono LLC

Ho'okele Pono LLC was formed as a non-profit organization in January of 2010 with the purpose to engage in community economic development activity in the State of Hawai'i, including, without limitation, through education, training, counseling and other assistance to small businesses in the obtaining and implementation of government contracts and subcontracts by the operation of, or assisting the Member with operation of, a Hawai'i Procurement Technical Assistance Center (PTAC).

#### Ho'okīpaipai LLC

Ho'okīpaipai LLC was organized in May of 2010 as a subsidiary of Ho'okele Pono to provide economic development assistance. Ho'okīpaipai is the Procurement Technical Assistance Center (PTAC) whose operations are intended to support the purpose of its Member, Ho'okele Pono.

### **III. Professional Standards Followed by CliftonLarsonAllen LLP**

The overall scope of work and approach was conducted utilizing standards in accordance with the Statement on Standards for Consulting Services, *Consulting Services: Definitions and Standards* (codified as CS Section 100 in *AICPA Professional Standards*) of the American Institute of Certified Public Accountants ("AICPA"). In consulting engagements, the nature and scope of work is determined solely by the agreement between the practitioner (CLA) and the client (Office of Hawaiian Affairs). This report does not constitute an audit, compilation, or review, in accordance with standards of the AICPA, the objective of which would be the expression of an opinion on any specified elements, accounts, or items. Accordingly, CLA does not express such an opinion.

Because of the unique nature of fraud, and because our engagement was limited to the matters described in the engagement letter, fraud and/or financial irregularities may exist within the organization that we may not have identified during the performance of our procedures. However, if during the performance of our services other matters had come to our attention suggesting possible financial improprieties and/or irregularities, we would have communicated such matters to the Resource Management Committee of the Office of Hawaiian Affairs.

The professional standards promulgated by the AICPA prohibit CLA from rendering an opinion as to whether there has been any fraud or other criminal activity by anyone associated with this engagement. Therefore, CLA does not render such opinions.

#### IV. Information about CliftonLarsonAllen LLP

Established on January 2, 2012, as the nation's newest top ten accounting firm, CLA is well positioned with knowledge, insight, and industry-specific accounting, tax, and consulting services. CLA has a national forensic and governmental practice and is the result of a union between Clifton Gunderson and LarsonAllen, both established more than 60 years ago.

According to Accounting Today, CLA is the 8th largest accounting firm by revenue. With a nationwide network of experienced professionals, primary industries served include agribusiness, construction and real estate, cooperatives, dealerships, employee benefit plans, federal, state, and local governments, financial institutions, health care, education, manufacturing and distribution, nonprofit, and professional services and technology. The CLA Forensic Services team is a highly respected and sought-out authority in fraud prevention, detection and investigation. Our multi-disciplined team is comprised of Certified Public Accountants, Certified Fraud Examiners, professionals Certified in Financial Forensics, Certified Internal Auditors, and a Certified Information Technology Professional.

Ernie Cooper, CPA/CFF, CFE, JD, and former FBI Special Agent, is the lead principal overseeing this engagement and is a principal for the Forensic Services division of CLA. His practice at CLA involves expert witness consultation, forensic accounting, fraud investigations and examinations, training, and litigation support—serving law firms, commercial businesses, governmental agencies and law enforcement entities. His experience includes eight years with “Big 4” and small CPA firms as a professional accountant and auditor, over 20 years at the Federal Bureau of Investigations as a special agent, and nine years as a forensic accountant and financial crimes investigator in the private sector.

Linda Saddlemire, Ed.D. CPA/CFF, CFE, is a principal in the Forensic Services practice of CLA and assisted in this engagement. Dr. Saddlemire has over 37 years of professional experience encompassing numerous matters involving governmental agencies. Her experience includes managing hundreds of financial and compliance audits and overseeing investigations of government fraud, public corruption, and other white-collar crimes in governmental organizations, nonprofit entities, and commercial businesses.

Jenny Dominguez, CPA/CFF, CFE, is a signing director in the Forensic Services practice of CLA and was responsible for the oversight of this engagement. Her practice areas include accounting and auditing, fraud investigations and examinations, forensic accounting, internal control review and analysis, and litigation support. Her experience includes seven years with Ernst & Young as a fraud investigator and forensic accountant, three years with Kroll as a financial fraud investigator, and two years as an independent consultant in the field of forensic accounting and litigation support before joining CLA at a management position over nine years ago.

Ana Rodriguez, CPA, CFE, is a manager in the Forensic Services practice of CLA and conducted and supervised field work and helped manage the team throughout this engagement. Her practice areas include accounting and auditing, fraud investigations and examinations, forensic accounting, internal control review and analysis, and litigation support. Ms.



Rodriguez has over six years of experience in the forensic accounting and fraud investigation fields.

Kyle Shafer, CPA, CFE is a senior in the Forensic Services practice of CLA and conducted field work and analysis throughout this engagement. He has five years of experience in planning and supervising financial and compliance audits as well as conducting fraud investigations and providing litigation support. He specializes in community college districts, K-12 districts, nonprofit entities, and manufacturing and retail corporations.

Jennifer Stamm, MSA, is a second year staff associate in the Forensic Services practice of CLA and assisted the team in this engagement. She has experience in auditing community colleges and related foundations, special districts, and nonprofit entities.

## V. Scope of Work

Through negotiations between OHA and CLA from June 2018 through August 2018, the following detailed scope of work was approved by OHA's Board of Trustees.

### A. Detailed Scope of Work<sup>9</sup>

- 1) CLA shall develop and apply such audit procedures as necessary to identify and quantify potential areas of waste, abuse, and fraud in the procurement of professional as well as other disbursements of funds. Any applicable audit materiality limits will be determined in conjunction with CLA and specified within the contract.
- 2) The audit period of review shall be for five (5) fiscal years, specifically state Fiscal Year (hereinafter "FY") 2012, FY 2013, FY 2014, FY 2015 and FY 2016. CLA shall conduct an audit for the OHA and its LLCs in accordance with the standards established by the American Institute of Certified Public Accountants (AICPA) and Government Auditing Standards (GAS). The audit shall include procedures for the following:
  - a) Identifying potential areas of fraud, waste, and abuse, which are defined as such:<sup>10</sup>
    - i) Fraud—a type of illegal act involving the obtaining of something of value through willful misrepresentation. Whether an act is, in fact, fraud is a determination to be made through the judicial or other adjudicative system and is beyond the auditor's professional responsibility.
    - ii) Waste—involves not receiving reasonable value for money in connection with any government funded activities due to an inappropriate act or omission by actors with control over or access to government resources (e.g. executive, judicial, or legislative branch employees, grantees, or other recipients). Importantly, waste goes beyond fraud and abuse and most waste does not involve a violation of law. Rather, waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight.
    - iii) Abuse—involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement.

---

<sup>9</sup> As detailed in Attachment – S1 to the contract between OHA and CLA.

<sup>10</sup> The definitions of fraud, waste, and abuse were defined by OHA in the original Request for Qualifications and ultimately included in the contract between OHA and CLA.

- b) Inspecting financial transactions for compliance with all applicable statutory requirements and internal policies, and confirm that such transactions are free from fraud, misstatements, and misrepresentations; and
  - c) Providing recommendations on organizational, structural and procedural improvement to strengthen the BOT's fiduciary oversight of the OHA and its LLCs.
- 3) For the OHA, CLA shall develop and apply specific audit procedures to inspect transactions for the following areas:
- a) Contracts:<sup>11</sup>
    - i) Approval and execution in accordance with HRS Chapter 103D Hawai'i Procurement Code, and HRS Chapter 84 Standards of Conduct, and the OHA's applicable internal policies and procedures;
    - ii) Sufficiency of contract oversight provided appropriately by the assigned contract manager/monitor;<sup>12</sup>
    - iii) Deliverables were met by the contractor;<sup>13</sup> and
    - iv) No fraudulent or wasteful disbursements were made.
  - b) All other disbursements of funds, including but not limited to those disbursements made under the following OHA policies and funds: Hawai'i Direct Investment Policy, Native Hawaiian Trust Fund Spending Policy, and the Fiscal Reserve Withdrawal Guidelines, Trustee Sponsorship and Annual Allowance Fund; but excluding payroll and Native Hawaiian Trust Fund transactions of marketable securities:
    - i) Compliance with HRS Chapter 103D Procurement Code and HRS Chapter 84 Standards of Conduct and the OHA's applicable internal policies and procedures;
    - ii) Compliance with budget restrictions; and

---

<sup>11</sup> Contracts included vendor contracts, other contracts for professional services and/or goods, and grant agreements awarded by the OHA. Contracts excluded all payroll and employee benefit related contracts and/or agreements.

<sup>12</sup> In order to test this area, CLA requested interviews with the contract manager(s) responsible for each contract. To the extent a contract manager no longer worked for the OHA, CLA was limited in its ability to fully assess this area for each contract. Additionally, to the extent oversight procedures were not documented in writing, CLA was limited to relying on verbal statements made by the contract manager(s).

<sup>13</sup> CLA's analysis and conclusions for this area may be limited depending on the services or products being provided in each contract. CLA representatives are not subject matter experts for all goods and services; therefore, CLA was limited to verifying whether the vendor/contractor delivered a product based on the deliverables outlined in the contract. To the extent possible, CLA inquired with staff of the OHA to determine whether the deliverables met the expectation(s) of staff.

---

iii) No fraudulent or wasteful disbursements were made.

c) Annual reports to the BOT

Sufficient internal controls are in place to ensure the integrity of the performance indicators as reported in the annual report to the BOT.

4) For the LLCs, CLA shall develop and apply specific audit procedures to inspect contracts, and other financial transactions for the following areas:

a) Contracts:

i) Sufficiency of contract/grant oversight provided appropriately by the assigned contract manager/monitor;

ii) Deliverables were met by the contractor/grant recipient;<sup>14</sup>

iii) Conflict of interest with LLC managers and directors;<sup>15</sup> and

iv) No fraudulent or wasteful disbursements were made.

b) All other disbursements of funds, excluding payroll:

i) Conflict of interest with LLC managers and directors;

ii) Compliance with internal policies and procedures;<sup>16</sup> and

iii) No fraudulent or wasteful disbursements were made.

c) Quarterly reports to the BOT:

Sufficient internal controls are in place to ensure the integrity of the performance indicators as reported in the quarterly reports to the BOT.

---

<sup>14</sup> In order to test this area, CLA will need to interview the contract manager(s) responsible for each contract. To the extent a contract manager no longer works for the respective LLC, CLA may be limited in its ability to fully assess this area for each contract. Additionally, if oversight procedures are not documented in writing, CLA will be limited to relying on verbal statements made by the contract manager(s).

<sup>15</sup> CLA will use interviews and, to the extent allowable by Hawai'i state law, public record searches, to attempt to identify relationships that may present a possible conflict of interest between the LLC managers/directors and contractors. CLA will define a conflict of interest using the written policies and procedures of the OHA/LLCs that address conflict of interest (to the extent they exist), guidelines published by the Association of Certified Fraud Examiners (ACFE) and American Institute of Certified Public Accountants (AICPA), available legal authority within the state of Hawai'i, and best business practices.

<sup>16</sup> This step will include an analysis to assess compliance with the operating agreements between OHA and the related LLCs.

**B. Testing Parameters**

## 1) Contracts:

- a) CLA selected a sample of contracts to test based on a detailed understanding of the OHA's/LLC's policies and procedures and data analytics performed on the financial activity of the OHA/LLCs. The total number of contracts tested, for the five fiscal years combined, is as follows:
  - 1) OHA – 80
  - 2) LLCs - 30
- b) Contracts reviewed included vendor contracts, other contracts for professional services or goods, and grant agreements awarded by the OHA.
- c) Contracts reviewed did not include payroll related contracts, including employment contracts and contracts related to employee benefits.
- d) Contracts reviewed did not include revenue-generating contracts of the OHA and the related LLCs.
- e) A contract and its related amendments were counted as one contract to the extent that the contract and its amendments were identified by OHA as one contract number. Separate contracts with the same vendor will be counted as unique contracts if they are identified with a new contract number and not an amendment number.

## 2) Financial Transactions:

- a) CLA selected a sample of disbursements to test based on a detailed understanding of the OHA's/LLC's policies and procedures and data analytics performed on the financial activity of the OHA/LLCs. The total number of disbursements tested was as follows:
  - 1) OHA – 50
  - 2) LLCs - 25
- b) Financial transactions is herein defined as disbursements (e.g., checks, wire transfers, electronic fund transfers, etc.).
- c) Financial transactions excluded revenue/income related transactions of the OHA and the related LLCs.
- d) The selection of disbursements that were tested excluded disbursements already tested as part of the contract testing.

### C. Limitations on the Identification of Possible Fraud, Waste, and Abuse

The following limitations regarding the identification of possible fraud, waste, and abuse were included in the scope of work approved by OHA.

- 1) CLA's procedures were designed to detect and identify possible fraud, waste, and abuse; however, CLA cannot provide absolute assurance that all instances of possible fraud, waste, and abuse were identified. If indicators of potential fraud were identified, the scope of this engagement did not include investigative procedures into these matters. Rather, CLA will communicate such matters to you. Examples of investigative procedures, which were not performed as part of this engagement, may include, but are not limited to, undercover procedures, interviews of vendors or other third-parties/individuals external to the OHA/LLCs, review of vendor files solely in the possession of a vendor (such as payroll files), etc. To the extent that information was identified during the scope of this engagement that indicates a possibility of fraud, waste, or abuse, CLA has included in this report the information identified.
- 2) CLA's procedures were designed to detect red flags of fraud and transactions that appeared questionable. However, CLA cannot render an opinion as to the existence of fraud. Additionally, fraud and irregularities by their very nature are most often hidden, and no absolute assurance can be given that all such matters were detected. CLA's engagement cannot be relied upon to disclose any irregularities or illegal acts, including fraud, which may exist.

### D. Definitions and Acronyms

Table 1 provides a list of definitions and/or the purpose for the various documents discussed throughout this report.

**Table 1: Document Definitions and Purpose**

Document Name	Definition and/or Purpose
Contract	An agreement between two or more parties used to establish the agreement between the parties
DCCA Verification <sup>17</sup>	The purpose of the DCCA Verification is to demonstrate that the contractor is registered to conduct business in Hawai'i and to glean general information about the standing of the entity.
Procurement Document Checklist <sup>17</sup>	The purpose of the Procurement Document Checklist is to validate the procurement method used and supporting documentation.
Purchase Order	A document issued by an organization's purchasing department when placing an order with its vendors or suppliers. The document indicates the details on the items that are being purchased. <sup>18</sup>
Purchase Requisition <sup>17</sup>	The purpose of the Purchase Requisition is to temporarily reserve budgeted funds while the contract is under review.

<sup>17</sup> Purpose obtained from OHA's Fiscal Procedures Manual, revised March 2, 2009, on page 91 (**Exhibit 02**).

<sup>18</sup> <https://corporatefinanceinstitute.com/resources/knowledge/other/purchase-order/>

Document Name	Definition and/or Purpose
Request for Check Issuance	A form used to request a payment (not on a contract) that documents the requester, payee, amount, and approval signatures, amongst other things
Request for Payment on Contract	A form used to request a payment on a contract that documents the requester, payee, amount, and approval signatures, amongst other things
Tax Clearance <sup>19</sup>	The purpose of the Tax Clearance is to demonstrate a vendor is in good standing with the State Department of Taxation and IRS.

Table 2 provides a list of acronyms used throughout this report.

**Table 2: Acronyms and Definitions**

Acronym	Definition
ARM	Asset and Resource Management
ARM/BAE	Beneficiary Advocacy and Empowerment and Assets and Resource Management joint committee
BAE	Beneficiary Advocacy and Empowerment
BOT	Board of Trustees
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operating Officer
DCCA	Department of Commerce and Consumer Affairs
LOB	Line of Business
TOP	Time of Performance

---

<sup>19</sup> Purpose obtained from OHA's Fiscal Procedures Manual, revised March 2, 2009, on page 91 (**Exhibit 02**).

## VI. Office of Hawaiian Affairs

### A. SUMMARY OF WORK PERFORMED

In order to complete the scope of work outlined above, the following procedures and methodology was used by CLA to complete the contract and disbursement testing for OHA.

#### 1) Preliminary information gathering and document review

In June 2018, while in negotiations with OHA regarding this contract, CLA visited OHA's offices in Honolulu, Oahu and the office of the LLCs' legal counsel, ES&A, Inc. These visits occurred from June 6, 2018 through June 8, 2018 with the purpose of gaining a better understanding of OHA and its LLCs, their operations, and financial activity. During and subsequent to these meetings, CLA requested certain financial data from OHA and the LLCs to help understand the volume of contracts and disbursements for each. The information obtained from OHA included check registers, contract listing, sample general ledger data, and annual audited financial statements. The information obtained from the LLCs included, but was not limited to, check registers, internal policy and procedure documents, and audited financial statements. CLA used the information obtained through this process to determine the volume of transactions (contracts and disbursements) that could be tested within the budget established by OHA.

#### 2) Process interviews of OHA staff

During the weeks of October 8, 2018 and November 12, 2018, CLA conducted interviews of OHA staff as listed in Table 3. The purpose of these interviews was to gain a more in depth understanding of the processes and procedures pertaining to contracting and disbursements (including grants and sponsorships). Certain individuals listed below are no longer with OHA or they have changed positions within OHA. The "Title/Position" listed reflects their title or position at the time of the interview.

**Table 3: List of Interviews Conducted**

No	Name	Entity	Title/Position	Interview Date
1	Lisa Victor	OHA	COO	10/8/2018
2	David K. Laeha <sup>20</sup>	OHA	CFO/Resource Management LOB	10/8/2018
3	Gloria Li	OHA	Controller	10/8/2018
4	Carmen Hulu Lindsey	OHA	Trustee	10/9/2018
5	Miles Nishijima	OHA	Land and Property Director	10/9/2018
6	Lisa Watkins-Victorino, Ph.D.	OHA	Research Director	10/10/2018
7	Phyllis Ono-Evangelista	OHA	Procurement Manager	10/10/2018
8	Maile Lu'uwai	OHA	Grants Manager	10/10/2018
9	Rowana Akana	OHA	Trustee	10/10/2018
10	Kawika Riley <sup>20</sup>	OHA	Chief Advocate	10/11/2018
11	Nicole Mehanaokala Hind	OHA	Community Engagement Director	10/11/2018

<sup>20</sup> No longer employed with OHA as of the date of this report.



No	Name	Entity	Title/Position	Interview Date
12	Kamana'opono Crabbe <sup>21, 22</sup>	OHA	CEO	11/14/2018

### 3) Document request

On September 14, 2018, CLA submitted to OHA and the LLCs an initial document request list to obtain additional financial data and documents needed to perform data analytics and ultimately select a sample of contracts and disbursements for testing. The document request lists were updated occasionally throughout September, October, and November 2018 as CLA identified additional documents or information needed.

OHA and the LLCs provided the requested documents and information to CLA on an ongoing basis. However, due to changes in the OHA Board of Trustees and the Resource Management Committee Chair, and concerns expressed by the LLCs related to the scope of this engagement, there were delays in getting the documents requested. By April 30, 2019, OHA had provided all documents on the request list or had provided an explanation for why a particular item was not available. On April 30, 2019, ES&A gave CLA access to a secure file share folder that housed certain documents of the LLCs. CLA downloaded additional financial data of the LLCs that allowed CLA to complete its data analysis of the LLCs in order to select a sample of contracts and disbursements.

### 4) Data collection and analysis

For the fiscal years 2011-12 through 2015-16, CLA obtained from OHA the following financial data:

**Table 4: Document Descriptions**

Document Title	Date Received	Description
General Ledger	October 2, 2018	The primary accounting record of OHA which contains the detailed transactions of all asset, liability, and equity accounts.
Trial Balance	October 2, 2018	A listing of all of OHA's accounts and the respective balances at a given point in time.
Chart of Accounts	October 12, 2018	A listing of all accounts used in the general ledger of OHA by number and name. This also contained the Division Title assigned to each of the Program Codes.
Check Register	June 19, 2018	All checks issued by OHA including the check number, payee name, date of payment, and the amount paid.
List of Voided and Canceled Checks	April 2, 2019	A listing of all checks that were voided or canceled by OHA.
List of Contracts	June 11, 2018	A listing of all contracts awarded by OHA. The list also included grants that were assigned a contract number. The listing included the number of contract amendments, Time of Performance (TOP) start and end, award amount, and the contract purpose.

<sup>21</sup> The interview with Dr. Crabbe was initially scheduled for October 10, 2018. Due to a last minute emergency, Dr. Crabbe was unable to meet with CLA as scheduled. The process interview was rescheduled with Dr. Crabbe for November 14, 2018.

<sup>22</sup> No longer employed with OHA as of the date of this report.

Document Title	Date Received	Description
List of ACH and Wire Payments	April 2, 2019	A listing of all payments made via ACH or wire, including the date of payment, payee name, and the amount paid.
Ki'i Data	March 29, 2019	All purchase and payment requests are requested and approved in Ki'i, an online tool used by OHA staff. The system captures purchase requisitions, creators and creation dates, approvers and approval dates, and comments. It also captures payments requests, payee names, amounts, creators and creation dates, approvers and approval dates, and check request descriptions.

a) Data Reconciliations

CLA performed two reconciliations to ensure that the financial transaction data provided was complete: a reconciliation of the General Ledger data to the audited financial statements and a reconciliation of the General Ledger data to the Check Register. Reconciling the General Ledger data to the audited financial statements ensures that the General Ledger data is complete, and CLA can analyze the data and select samples for testing without the concern of missing transactions.

- i) CLA reconciled the General Ledger data to the audited financial statements by comparing the sum of the expenses recorded in the General Ledger to the total expenses reported in the financial statements.<sup>23</sup> CLA identified the expense line items in the General Ledger data and summarized the transactions by Program, Division, and Account name for comparison to the expense groupings reported in the audited financial statement.<sup>24</sup>

Wherever possible, CLA noted which amounts matched to the audited financial statements; however, there were several instances for which the expenses did not match either in total or in detail to amounts reported in the financial statements. Gloria Li, OHA's Controller, assisted CLA by performing a reconciliation of the General Ledger data to the audited financial statements for each fiscal year from 2011-12 through 2015-16. CLA was satisfied that the General Ledger data reconciled with the audited financial statements with minimal differences.<sup>25</sup>

<sup>23</sup> CLA only reconciled the expenses in the General Ledger data to the audited financial statements because the scope of the engagement was limited to inspecting the financial transactions related to OHA's contracts and other disbursements of funds. Revenue and balance sheet reconciliations were not performed since these financial transactions were not within the scope of this engagement.

<sup>24</sup> OHA's expenses are reported in the audited financial statements under the Government Wide Statement of Activities.

<sup>25</sup> The reconciliations reported differences between the General Ledger Data and the audited financial statement expenses of \$3.28 for FY 2012, \$(0.25) for FY 2013, \$1.87 for FY 2014, \$(2.02) for FY 2015, and \$(1,971.24) for FY 2016, which was reported in the FY 2016 financial statements.

- ii) CLA reconciled the General Ledger data to the Check Register by comparing the expenses recorded in the General Ledger to the checks written and disbursed from OHA's funds. CLA utilized data analytic software to match the Check Register data to the General Ledger data by check number, vendor name (payee), and amount. The purpose of this was to identify the account to which each check was recorded so that CLA had a further understanding of the nature of the check disbursement. Additionally, this allowed CLA to identify specific checks issued for contracts and grants as the contract number was included in the description of the transaction in the General Ledger data. CLA was able to reconcile the General Ledger transaction data to the Check Register data with minimal differences.<sup>26</sup>

#### b) Data Analysis

Because the scope of this engagement excluded a review of payroll and payroll related costs, CLA identified the expense account codes assigned to payroll and employee benefits and removed these transactions from the data so that only non-payroll related disbursements remained. CLA reconciled the non-payroll expenses recorded in the General Ledger to the non-payroll expenses recorded in the Check Register with minimal differences.<sup>27</sup>

CLA performed a series of analyses to identify contracts and disbursements for consideration for the sample selection. Using the "vendor name" field within the Check Register portion of the data, CLA summarized the total disbursements by each vendor name and by fiscal year. Using the "vendor name" field within the General Ledger portion of the data, CLA summarized the total disbursements by each vendor name and by fiscal year.<sup>28</sup> CLA also analyzed the expenses by each Line of Business (LOB) and Program for each fiscal year. CLA summarized expenses by account and fiscal year and identified any expense accounts that increased or decreased by 50% or more between fiscal years. The results of these analyses were utilized to identify vendors, Lines of Business Departments, Line of Business Programs, Divisions, Programs, and expense accounts to review and use for selecting the sample.<sup>29</sup>

CLA also performed an analysis using the Ki'i purchase and payment request data. CLA reviewed the purchase request data by performing a keyword search for terms associated with the concerns presented to CLA during the course of interviews with OHA employees

---

<sup>26</sup> The General Ledger transaction data reconciled to the Check Register data with a difference of \$613.15. The difference was due to check reversals in the General Ledger that were not recorded in the Check Register.

<sup>27</sup> The reconciliation difference between the General Ledger Data and the Check Register was \$613.15.

<sup>28</sup> CLA reviewed the vendor names recorded in the General Ledger and Check Register separately because the name recorded in the General Ledger may have changed or varied when the check was recorded in the Check Register. Reviewing both sides of the data ensured that the vendor names were thoroughly reviewed.

<sup>29</sup> The General Ledger transaction data contained additional information; however, CLA only utilized the LOB Department, LOB Program, Division, Program, and expense accounts because it was the most relevant data for discovering outliers to review and possibly include in the test sample.

and trustees.<sup>30</sup> CLA also analyzed the payment requests to identify payee names, programs, payment requestors, and payment approvers with the largest disbursement amounts. The results of the Ki'i data analysis were compared to the General Ledger and Check Register analyses to review for consistency and identify the largest disbursements across all of the data sets.

## 5) Selection of sample contracts and disbursements

According to the approved scope of work, CLA was to test 80 contracts and 50 disbursements for OHA. Based on the information learned through interviews conducted and through an analysis of OHA's general ledger, check register, Ki'i data, and listing of contracts, CLA judgmentally selected a sample of contracts and disbursements to test according to the approved scope of work.

On May 10, 2019, CLA sent to OHA its sample selection for 75 contracts and 45 disbursements. CLA reserved five contracts and five disbursements to select after the visit to OHA in June 2019 for the initial round of testing. This allowed CLA to select additional contracts and disbursements based on the preliminary results of testing and information learned during Trustee interviews that took place the week of July 22, 2019.

On Friday, August 2, 2019, CLA sent to OHA the remaining sample of five contracts and five disbursements. In addition, during the review of the supporting documents provided by OHA for the disbursement sample, CLA determined that nine of the transactions selected as "disbursements" were actually payments on existing contracts or grant awards, and were processed by OHA as such. According to the approved scope of work, "contracts will include vendor contracts, other contracts for professional services and/or goods, and grant agreements awarded by the OHA." Therefore, in addition to the five remaining disbursements selected, CLA selected nine replacement disbursements and five back-up disbursements, for a total of 19 disbursements sent to OHA.

During the sample selection process, CLA attempted to identify when a transaction was a contract or a grant using the general ledger information and a contract listing previously provided by OHA. In some cases, a transaction selected was a disbursement for a contract issued prior to the scope period covered by CLA (FY 2011-12 through FY 2015-16); therefore, the contract did not appear on the contract listing provided by OHA. There were also instances in which it was not evident from the general ledger detail that a transaction was a grant. In order to fulfill the requirements of the scope to test 80 contracts and 50 disbursements for OHA, CLA determined that it was best to replace the nine transactions selected with a new sample selection.

Of the nine disbursements that that were subsequently identified as contracts or grants, CLA retained two as part of the contract testing. Therefore, only three new contracts were

---

<sup>30</sup> The Ki'i purchase request data contained comment and note fields that stored text. CLA matched relevant terms and words during the keyword search and then reviewed the matches for context within the overall purchase request. Purchase requests with keywords, terms, and context that corresponded with the concerns presented to CLA were identified for possible inclusion in the testing sample.

selected to complete the sample of 80 contracts. **Attachments 01 through 04** include the lists of the contracts and disbursements selected for testing.<sup>31</sup>

## 6) Interviews of OHA trustees

During the week of July 22, 2019, CLA conducted in-person interviews of all nine current OHA trustees. The purpose of the interviews was to allow the trustees the opportunity to meet with CLA and share with CLA any thoughts or concerns they had regarding OHA or the LLCs relative to the scope of work of this engagement. Table 5 includes a list of the trustees interviewed and the date of the interview.

**Table 5: List of OHA Board of Trustees Interviews**

No	Trustee Name	Board Position	Interview Date
1	Colette Y. Machado	Chair	7/23/2019
2	Brendon Kalei'āina Lee	Vice Chair	7/23/2019
3	Kalei Akaka	Trustee	7/23/2019
4	Dan Ahuna	Trustee	7/24/2019
5	Robert K. Lindsey Jr.	Trustee	7/24/2019
6	Carmen Hulu Lindsey	Trustee	7/24/2019
7	Leina'ala Ahu Isa, Ph.D.	Trustee	7/25/2019
8	Keli'i Akina	Trustee	7/26/2019
9	John D. Waihe'e IV	Trustee	7/26/2019

## 7) Document production to CLA

### a) Contracts

For each contract, CLA requested that OHA provide the following documents, if applicable:

- Purchase Requisition
- Accounting Checklist
- Request for Proposal or Request for Qualifications
- Procurement Document Checklist
- Contract Selection Committee notes and documentation of final contractor selection
- Evidence of approval by Board of Trustees
- Executed contract or agreement and related amendments or change orders
- Purchase Order(s)
- Final deliverable(s)
- Invoice(s)
- Approved Request for Payment on Contract
- Grantee applications (for grants only)
- Grant review and approval documents (for grants only)

<sup>31</sup> **Attachment 01** – List of OHA Contracts Selected for Testing; **Attachment 02** – List of OHA Disbursements Selected for Testing; **Attachment 03** – List of LLC Contracts Selected for Testing; **Attachment 04** – List of LLC Disbursements Selected for Testing

- Progress reports (for grants only)
- Other relevant documents

The initial production of supporting documents was provided by OHA beginning on June 3, 2019 and was completed on August 23, 2019. During the review of these documents, CLA identified various documents that appeared to be missing from the production and requested additional and/or missing documents be provided to CLA. OHA continued to provide available documents to CLA through October 17, 2019. As of the date of this report, OHA has communicated that it has provided to CLA all documents that it could locate related to CLA's requests.

b) Disbursements

For each disbursement, CLA requested that OHA provide the following documents, if applicable:

- Purchase Requisition
- Purchase Order
- Request for Proposal/Request for Qualifications (if applicable)
- Proof of receipt of goods/services (i.e., packing slip)
- Invoices
- Approved Check Request
- Other relevant documents

OHA provided the supporting documentation to CLA in scanned PDF files. The initial production of supporting documents was provided by OHA beginning on June 3, 2019 and was completed on August 23, 2019. During the review of these documents, CLA identified various documents that appeared to be missing from the production and requested additional and/or missing documents be provided to CLA. OHA continued to provide available documents to CLA through October 17, 2019. In total, OHA provided to CLA approximately 870 scanned PDF files containing supporting documentation related to the sample of contracts and disbursements. Some of the scanned PDF files contained multiple documents pertaining to a contract or disbursement (i.e., Purchase Requisition, Purchase Order, contract, contractor invoices, etc.), and these files often contained over 100 pages each.<sup>32</sup> As of the date of this report, OHA has communicated that it has provided to CLA all documents that it could locate related to CLA's requests.

**8) Inquiries with OHA staff**

As part of the request to OHA for the sample contracts and disbursements, CLA requested that OHA provide the name of the contract manager for each contract selected. This would allow CLA to identify the OHA staff member to inquire with about questions on a particular contract. When OHA provided the list of contract managers, they indicated

---

<sup>32</sup> Due to the volume of documents provided, CLA did not attempt to quantify the total number of pages of supporting documentation provided by OHA.

which staff were still with OHA, those that were in different positions, and those that were no longer employed by OHA. **Attachments 01 and 02** include the lists of contracts and disbursements tested by CLA. In **Attachment 01**, column “Contract Manager (Identified by OHA)” identifies the name of the contract manager, and column “Status of Employment with OHA” identifies if the contract manager was still employed by OHA and available to answer questions.

#### **9) Assessment of Board of Trustees Oversight of OHA**

In order to assess the Board of Trustees oversight of OHA and the LLCs, CLA conducted interviews of the current trustees, reviewed the State Audit reports issued in September 2013 and June 2018, reviewed board minutes to identify and understand current actions taken by the trustees pertaining to the Permitted Interaction Group on Organizational Guidance (Governance PIG), and researched general guidance and best practices pertaining to governance. Additionally, CLA considered the totality of the results from the testing of contracts and disbursements. The observations and recommendations pertaining to the trustees’ oversight is included in Section VIII. Board of Trustees Oversight of OHA and the LLCs beginning on page 294.

#### **10) Status updates and communications with the Resource Management Committee**

Throughout this engagement, CLA maintained regular communication with the Chair and Vice Chair of the Resource Management Committee. As part of the communication protocol, CLA issued written status reports on the following dates:

- October 25, 2018
- November 27, 2018
- June 4, 2019
- August 6, 2019
- September 12, 2019

In addition, on March 12, 2019, shortly after Trustee Dan Ahuna was elected Chair of the Resource Management Committee, CLA met with the Resource Management committee leadership to provide an update on the status of this engagement, the procedures performed to date, and the steps needed to complete the engagement. Additionally, CLA presented an updated timetable for completion of the project due to delays in receiving documents requested from OHA and the LLCs (as discussed in Section VI.A.3. Document request, beginning on page 31).

## **B. TESTING CRITERIA**

Testing criteria refers to the specific requirements of HRS or OHA's internal policies and procedures that were identified by CLA to be covered during the testing of OHA's contracts and disbursements. For example, OHA's Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.5.1 – Auto-create Purchase Order Process, requires in step #4 that the CFO review and sign the purchase order (**Exhibit 02**, page 96). CLA established the CFO's signature on the purchase order as one of the criteria for testing compliance of contracts and grants with OHA's internal policies and procedures.<sup>33</sup>

### **1) Contracts**

The specific areas identified in the scope of work tested by CLA for contracts (see Section V. Scope of Work – subsection 3.a. beginning on page 25) required that CLA test for:

- a) The approval and execution of OHA contracts were in compliance with HRS Chapter 103D Hawai'i Procurement Code, HRS Chapter 84 Standards of Conduct, and OHA's applicable internal policies and procedures;
- b) Sufficiency of contract oversight provided by the assigned contract manager/monitor;
- c) Deliverables were met by the contractor; and
- d) Indicators of fraud, waste, or abuse.

CLA obtained a copy of HRS §103D, HRS §84, and OHA's internal policies and procedures related to the approval and execution of contracts, and reviewed the documents to identify the specific requirements of each that were applicable to the approval and execution of contracts and contract payments. Based on the type and amount of purchase, a different procurement method was required. For each of the various procurement methods required, CLA identified and created a list of the specific criteria to be tested. The following list identifies the contract type (as identified by OHA) and the attachment number that includes the specific list of criteria tested by CLA.

#### **a) Grants – Attachment 05**

The issuance of grants are specifically exempted from HRS Chapter 103D. HRS §10-17 provides the statutory guidelines for the approval, execution, and monitoring of grants. During the period of review, OHA issued four types of grants:

1. Community Grants: Community Grants are two-year grants designed for programs that specifically address narrow focus areas aligned with OHA's Strategic Plan. Community Grants are publicly solicited, require eligible

---

<sup>33</sup> Throughout this report, the term criteria is used to refer to both the plural and singular form.



organizations to submit an application, and are awarded through a competitive process. Community Grants do not have a maximum award amount.

2. **Kauhale Grants:** Kauhale Grants is an outdated subcategory of Community Grants that existed during the time period of CLA's scope of work.<sup>34</sup> Kauhale Grants are community based grants that make up to \$25,000 available for community-based projects that directly impact any of OHA's ten strategic results. Kauhale Grants require matching funds that amount to at least 25 percent of the total cost of the project.
3. **'Ahahui Grants:** 'Ahahui Grants provide funding support to eligible organizations hosting community events that align with at least one of OHA's Strategic Results, provide significant benefits to the Hawaiian community, and offer OHA valuable public relations, partnerships and community engagement opportunities. 'Ahahui Grants are not intended to support fundraisers, award and recognition events, or individuals and groups seeking financial assistance to participate in an event. 'Ahahui Grants are publicly solicited, require eligible organizations to submit an application, and are awarded through a competitive process. 'Ahahui Grants have a maximum award amount of \$10,000.
4. **Kūlia Initiatives:** Kūlia Initiative grants (also referred to within the OHA as "Board Initiatives" or "BOT Initiatives") are one-year grants designed to support OHA's broad Strategic Priorities of health, education, income, land/water, culture, and housing. Kūlia Initiative grants are intended to support unique and innovative programs that may be ineligible for consideration under Community Grants and funding requests may be received outside the Community Grants Program annual funding cycle. Kūlia Initiative grants are also non-competitive awards and are initiated by a trustee or OHA Administration on behalf of a potential recipient. In addition, Kūlia Initiative grants undergo an administrative review that is less stringent than those required for Community and 'Ahahui Grants. Kūlia Initiative grants do not have a maximum award amount.
5. **Sponsorships:** Sponsorships (also referred to within OHA as "CEO Sponsorships") provide funding support to eligible organizations whose missions align with OHA's vision and strategic plan, whose programs and services benefit the Native Hawaiian community, and whose events offer OHA valuable public relations and recognition benefits.<sup>35</sup> Sponsorships are not intended to support events that would otherwise qualify under the 'Ahahui Grants Program or to support program

---

<sup>34</sup> Based on our discussion with former Grants Specialist, Misti Pali-Oriol, grants were managed by dollar amount until the fiscal biennium 2014-2015. CLA's review of the OHA Annual Reports indicated that the Kauhale Grants program was superseded after fiscal year 2012.

<sup>35</sup> CLA tested CEO Sponsorships with disbursements because OHA's policies and procedures for awarding CEO Sponsorships do not require a signed contract for the award. In addition, CLA tested an "Other – Administrative" grant with disbursements because there was no applicable OHA policy or procedure for testing this particular type of grant, and the financial data available to CLA at the time of sample selection indicated that there was no contract number associated with the grant award.

services. Sponsorships do not require a formal application and all requests are submitted to the CEO. There is no formal submittal deadline because applications are considered year round. Applications undergo an administrative review process and the CEO has final award approval. Sponsorships have a maximum award amount of \$25,000.<sup>36</sup>

The method of awarding grants in accordance with HRS §10-17 requires individuals and organizations to be a qualified applicant and submit an application containing required information. Applicants qualify if they are either a for-profit subsidiary of a nonprofit organization, a nonprofit community-based organization, a cooperative association, or an individual, who in the board's determination, is able to provide the service or activities proposed in the application for a grant. A non-profit community-based organization shall meet additional requirements concerning its governing board.

HRS §10-17 states that Grants shall only be awarded if the applicant applies and receives all applicable licenses and permits; agrees to comply with federal, state, and county laws, statutes, and ordinances; agrees to not use the grant for entertainment purposes; and indemnifies OHA and the State of Hawai'i and, if required, procures sufficient insurance to provide indemnification. Applicants must also agree to make all records available to OHA and establish that sufficient funds are available for the operation of the activity for which the grant is awarded. In addition, grants are monitored by OHA to ensure compliance and evaluated annually to determine whether the grant attained the intended results.

b) Competitive Sealed Proposal contracts – **Attachment 06**

In accordance with HRS §103D-303, Competitive Sealed Proposal contracts include contracts for the purchase of "goods, services, or construction that are either not practicable or not advantageous to the State to procure by competitive sealed bidding." Proposals shall be solicited through a request for proposals (RFP) given through adequate public notice of the invitation. "Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the evaluation process."

The RFP shall state the relative importance of price and other evaluation factors, and for the purpose of clarification, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably likely to be selected for the contract. Awards for RFPs are to be made to the responsible offeror whose proposal is determined in writing to be the most advantageous, taking into consideration price and the evaluation factors set forth in the RFP.

c) Professional Services contracts – **Attachment 07**

Professional Services contracts include contracts for the purchase of services for which the vendor was identified through the annual solicitation of professional

---

<sup>36</sup> In March 2018, OHA's BOT approved a moratorium on CEO Sponsorships.

services providers method in accordance with HRS §103D-304. The method to solicit professional service providers in accordance with HRS §103D-304 includes the publication of a notice inviting persons engaged in providing professional services, which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency.

The head of the purchasing agency designates a review committee of at least three people with sufficient education, training, and licenses or credentials for each type of professional service.<sup>37</sup> The statute requires that the agency ensure the impartiality and independence of each member selected for the review committee.

The committee reviews and evaluates all submissions and prepares a list of qualified professional service providers, and, once approved, they are included in the listing of OHA professional service providers. During the course of the fiscal year, when OHA needs a particular professional service, the head of the purchasing agency designates a selection committee to evaluate the statements of qualification for the providers included on the list of qualified professional service providers. The selection committee ranks a minimum of three providers and sends the ranking to the head of the purchasing agency who negotiates a contract with the first-ranked professional service provider.

d) Small Purchase contracts – **Attachment 08**

Small Purchase contracts include contracts for the purchase of goods or services of less than \$100,000 or for construction of less than \$250,000 in accordance with HRS §103D-305. This type of procurement is “designed to ensure administrative simplicity and as much competition as practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.”

Procurement of \$25,000 to less than \$250,000 shall be made in accordance with small purchase procedures; provided that small purchase procurement through an electronic system is used.<sup>38</sup>

---

<sup>37</sup> The Head of the Purchasing Agency (HOPA) for OHA is the CEO, who designated the procurement tasks to the procurement department led by the Procurement Manager, Ms. Phyllis Ono Evangelista. Professional services include for example, accounting, architecture, computer engineering, history, education and health, and legal services.

<sup>38</sup> The electronic system used is named Hawai'i Electronic Procurement System (HePS). Hawai'i law does not require purchasers to use a competitive bid or competitive negotiation on the purchase of goods and services which fall within the dollar threshold of a small purchase. According to OHA policy, purchases up to \$2,499 reasonable competition is recommended. Purchases from \$2,500 to \$24,999 require at least three written quotes, and small purchases of \$25,000 to \$50,000 are to be conducted through the Hawai'i Electronic Procurement System.

e) Exempt contracts – **Attachment 09**

Exempt contracts include contracts for the purchase of goods or services that are specifically listed in HRS §103D-102(b) and Hawai'i Administrative Rules Section 3-120-4 – Exhibit A that are specifically exempt from the procurement method requirements included in HRS §103D. HRS §103D does not provide for any specific requirements for awarding a contract for goods or services that qualify as exempt. Examples of purchases that qualify as exempt under HRS §103D-102(b) include awards to governmental bodies of the state, works of art for museum or public display, and utility services whose rates or prices are fixed by regulatory processes or agencies. These are just a few examples from the list of exempt purchases allowed.

OHA's Fiscal Procedures Manual, revised March 2, 2009, provides the process for exempt purchases in Figure 2.2.1.3. – Exempt Purchase Procedures (**Exhibit 02**, page 56). The purchaser determines if the purchase is exempt under HRS §103D; prepares a Purchase Requisition; and, for goods or services over \$2,500, completes a Procurement Document Checklist. The purchase review process outlined in Figure 2.2.4.4 (**Exhibit 02**, page 95) is followed to complete the internal review process, prepare a contract, and convert the Purchase Requisition into a Purchase Order. The purchaser may then purchase the goods or service.

**2) Disbursements**

The specific areas identified in the scope of work tested by CLA for disbursements (see Section V. Scope of Work – subsection 3.b.i. beginning on page 25) required that CLA test compliance with (1) HRS Chapter 103D Hawai'i Procurement Code, (2) HRS Chapter 84 Standards of Conduct, and (3) OHA's applicable internal policies and procedures.

CLA obtained a copy of HRS Chapters 84 and 103D and OHA's internal policies and procedures related to disbursements, and reviewed the documents to identify the specific requirements of each that were applicable. Based on the type and amount of purchase (e.g., travel), a different procurement and/or approval method was required. CLA identified the three types of disbursements within the sample selected. The following list identifies the disbursement type and the attachment number that includes the specific list of criteria tested by CLA.

a) CEO sponsorships – **Attachment 10**

CEO Sponsorships are one-time awards to community organizations for events or projects. CLA tested CEO Sponsorships under the scope of work for disbursements because OHA's policies and procedures for awarding CEO Sponsorship do not require a signed contract for the award. Awards are made through an administrative review process, and, unlike the formal grant application process, CEO Sponsorships do not involve a solicitation process.

b) Exempt and small purchase disbursements – **Attachment 11**

Other disbursements include procurements of goods and services categorized by OHA under the Exempt Procurements, Small Purchases, and “Other” procurement methodologies.<sup>39, 40</sup> Exempt Procurements are not subject to the procurement requirements of HRS §103D, and, for amounts over \$2,500, require the purchaser to purchase the good or service with a Procurement Document Checklist and cite the appropriate statutory or rule exemption. Purchases of goods or services of \$2,499 or less involve selecting the vendor most advantageous to OHA and submitting a check request. The “Other” methodologies utilized are not defined by OHA’s Fiscal Procedures Manual, but the procurement method follows a similar process as that used for exempt purchases.

c) Purchasing cards (pCards) and employee travel – **Attachment 12**

OHA’s Purchasing Card Program is described in the Purchasing Card Program Internal Guidelines and Procedures, July 2016. The purpose of the pCard is to facilitate the small purchase process; however, cardholders must still adhere to the state and OHA’s procurement rules and regulations. OHA’s internal guidelines and procedures are intended to supplement the State of Hawai’i Purchasing Card Program. The program describes the pCard, which is similar to a credit card and is designed to streamline OHA’s small purchase and payment process. It allows employees to charge small purchases from vendors without having to prepare a purchase order. OHA then makes one or more payments to the card issuer on a monthly basis on or before the due date.

d) Building leases – **Attachment 13**

OHA exempts the leases of real property and office rentals from HRS §103D. The exemption is based upon Corporate Counsel’s interpretation of the definition of “goods,” “services,” and “construction” in HRS §103D, which excludes leases of real property and office rentals.<sup>41</sup> The leases of real property and office space do not fall under procurement and the documents typically used to comply with HRS §103D, including the Procurement Document Checklist, tax clearance, and certificate of good standing, are not completed. Leases of real property and office rentals follow the

---

<sup>39</sup> The Exempt Procurements tested under disbursements follow Figure 2.2.1.3 Exempt Purchase Procedure. Unlike exempt contracts, OHA determines that the item or service does not require a contract and just purchases the item or service.

<sup>40</sup> For sample D-04, OHA cited an “Other – Lease Guaranty” and “Other – Encumber funds” for the service requested on the Purchase Requisition.

<sup>41</sup> HRS §103D-104 Definitions defines “goods” as “all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals” [emphasis added]. Leases of real property are explicitly excluded from the definition of goods.

Exempt Procurements method and in the case of exempt services, a contract is prepared.

### C. TESTING METHODOLOGY

The testing methodology is the strategy and analysis applied by CLA when reviewing the supporting documentation and information to determine whether a contract or disbursement complied with HRS or OHA's internal policies or procedures.

The following methodology was used by CLA to test or assess each criteria or testing area included in the scope of work. Next to each bulleted item below is a note on whether that item was applicable to only contracts, only disbursements, or both contracts and disbursements.

1) HRS §84 – Standards of Conduct (contracts and disbursements)

CLA identified three subsections of HRS §84 that were applicable to the approval and execution of contracts: HRS §84-14 related to conflicts of interest; HRS §84-15(a) related to contracts with a legislator; and HRS §84-15(b) related to contracts with former employees. The specific requirements of each subsection are detailed in the respective Attachments for each type of contract tested.

To assess whether a contract complied with the subsections of HRS §84, CLA relied upon publicly available information identified through internet searches and documentation available within the documents provided by OHA to CLA.<sup>42</sup>

2) HRS §103D – Hawai'i Procurement Code; HRS §10 – Office of Hawaiian Affairs (contracts and disbursements)

Within HRS §103D, there are specific procurement methods required based on the dollar amount and type of purchase made by OHA. In order to determine whether OHA complied with the requirements of HRS §103D, CLA requested that OHA provide the procurement method used by OHA for each contract selected in the sample. When reviewing the documents and testing the specific criteria of HRS §103D, CLA assessed: (1) whether OHA categorized the contract correctly based on the type and amount of the goods or services purchases and (2) whether the appropriate steps were taken by OHA as outlined in HRS §103D to procure, approve, and execute each contract.

As previously stated, grants issued by OHA are specifically exempted from HRS §103D. Therefore, CLA applied the requirements of HRS §10-17 to determine whether the appropriate steps were taken by OHA to award and approve the grant contracts/agreements tested.

---

<sup>42</sup> During the testing, CLA determined that some contracts contained a Standards of Conduct Declaration that was completed and signed by the vendor. The declaration documents the vendors compliance with certain provisions of HRS §84, Standards of Conduct, including §84-14 and §84-15(a) and (b). This is not required by statute, and it appears that OHA was not consistently using the form as not all contract files contained this document. See recommendation 01.

3) OHA's applicable internal policies and procedures (contracts and disbursements)

CLA obtained the most current version of OHA's Fiscal Procedures Manual (revised March 2, 2009) and identified the specific procedures required to approve and execute each contract based on the type of procurements.<sup>43</sup> The specific criteria are identified in the respective attachment for each contract type. Through the review of documents provided by OHA, CLA verified whether the procedures were adhered to. For example, CLA assessed whether the grants, procurement, and contracts review process was followed according the applicable procedures outlined in OHA's Fiscal Procedures Manual for the type of contract being process. CLA also verified whether the purchase order, the receiving on purchase order, the contract payment process, and the check issuance and distribution process used was consistent with the outlined procedures.

In addition, OHA provided to CLA the five Operational Authority Delegation Hierarchies applicable for the time period of this engagement (**Exhibit 03**). While testing each contract and contract payment, CLA verified whether the appropriate approval signatures were present on the respective documents based on the delegation hierarchy in effect at the time. For contracts with multiple payments that occurred during the time period covered by this engagement, CLA selected only a sample of payments for testing to verify that there was supporting documentation for the invoice, a deliverable was provided (if required for the specific payment), and the appropriate signatures/approvals were obtained prior to payment.

4) Deliverables were met by the contractor (contracts only)<sup>44</sup>

For each contract selected by CLA for testing, CLA requested and OHA provided a copy of the respective contract. CLA reviewed the contract to identify the specific deliverables required of the contractor. As part of the document request to OHA, CLA requested all deliverables from the contractor for each contract selected.

CLA reviewed the deliverables provided and made an assessment on whether the contractor provided a product that appeared to comply with the deliverable requirements specified in the contract (and related amendments). CLA did not assess whether the deliverables met the expectations of OHA or were to the standard expected for the type of service or industry. If CLA was able to interview the contract

---

<sup>43</sup> The OHA Fiscal Procedures Manual provided to CLA contains a date of June 2008 on the cover page; however, the second page of this manual contains a list of effective changes which includes the latest change on March 2, 2009. For this reason, CLA refers to this manual's latest update, March 2, 2009, as the most recent version.

<sup>44</sup> Although the Scope of Work (Section V.) for testing OHA contracts lists "sufficiency of contract oversight provided by the assigned contract manager/monitor" before "deliverables were met by the contractor," CLA switched the order of these two criteria when assessing the contracts as whether the contractor submitted the deliverable(s) required by the contract impacted the assessment of whether there was sufficient oversight of the contract.



manager, CLA inquired with the contract manager about whether the deliverable(s) met their expectations.

5) Sufficiency of contract oversight provided by the assigned contract manager/monitor (contracts only)

Through discussions with OHA personnel and a review of OHA internal policies and procedures, there are no written policies for how OHA personnel must provide oversight of a contract. OHA conveyed to CLA that each contract is assigned a contract manager that was responsible for the oversight of the contract and communications with the contractor.

When CLA sent the contract sample list to OHA, CLA requested that OHA identify the contract manager for each contract selected. OHA also identified whether the contract manager was still an employee of OHA and available to answer questions. **Attachment 01** includes a list of all contracts selected for testing, identifies the contract manager identified by OHA, and indicates whether the OHA employee was still employed by OHA and able to answer CLA's questions related to the contract.

If the contract manager was still employed by OHA, CLA requested an in-person or phone interview of the person to ask questions pertaining to the contract. Based on the discussion with the contract manager and the available documentation, CLA made an assessment of whether there appeared to be sufficient oversight of the contract.

If the contract manager was no longer employed by OHA, or CLA was unable to obtain an interview with the contract manager prior to their departure from OHA, CLA relied solely on the documentation provided to assess whether a contract appeared to have sufficient oversight. CLA primarily relied on whether the contractor submitted the deliverables required by the contract to make this assessment. In some cases, the documentation was too limited to make an assessment on this area.

6) Compliance with budget restricts (disbursements only)

For each disbursement selected by CLA for testing, CLA requested and OHA provided a copy of the respective purchase requisition. CLA reviewed the purchase requisition to verify that the Budget Analyst certified and agreed that the requisition was "in accordance with BOT Approval of [the] Program's operating budget" and would "not exceed [the] BOT approved Program Budget for the applicable fiscal year."<sup>45</sup> As part of the document request to OHA, CLA requested all related check requests and compared the total disbursed through the check requests to the purchase requisitions to ensure that the disbursed amount did not exceed the amount approved on the Purchase Requisition.

---

<sup>45</sup> The Purchase Requisition Form includes the certification statement. This statement was consistent across all revisions of the Purchase Requisition that CLA tested.

7) No evidence of fraud, waste, or abuse (contracts and disbursements)

As stated in Section V. Scope of Work beginning on page 24, this engagement was not an investigation. CLA's procedures were designed to detect and identify possible fraud, waste, or abuse; however, CLA has not made a conclusion as to whether fraud, waste, or abuse actually exists. Based on the totality of information gathered through the testing procedures performed, CLA has identified whether there are red flags or indicators of possible fraud, waste, or abuse. Those contracts or disbursements with red flags or indicators have been identified and are discussed within Section VI.D. Results of Work Performed beginning on page 49.

There are a multitude of transaction characteristics or situations that can be a red flag or indicator of possible fraud, waste, or abuse, and there is not one comprehensive list to identify all possible red flags or indicators. Red flags or indicators can be specific to a transaction (i.e., how a transaction was processed) or the general attitude or environment in an organization (i.e., "get it done now" behavior). Red flags or indicators can also vary by the nature or type of transaction. Some of the more common red flags or indicators related to contracting and disbursements include, but are not limited to:

- Missing documents and/or no supporting documents
- Documents being completed out of the normal sequence
- Back-dating of documents
- Management override of processes or controls
- Little or no review or supervision over a transaction
- Non-compliance with policies or procedures
- Unexplained or unusual favoritism toward a particular vendor/contractor
- Failure to disclose an actual or apparent conflict of interest
- Contract awards made without adequate documentation of actions taken to award the contract

The most exhaustive list of red flags of fraud identified by CLA is on the website for the Department of Defense (<https://www.dodig.mil/Resources/Fraud-Detection-Resources/Fraud-Red-Flags/>). The website lists "Fraud Red Flags and Indicators" by the type of transaction or fraud scheme, with over 40 areas covered. CLA extracted from this website those areas most applicable to contracts and disbursements, and included the list of fraud red flags and indicators in **Exhibit 04**.

## **D. RESULTS OF WORK PERFORMED**

CLA's scope of work included testing 80 OHA contracts and 50 OHA disbursements. The following sections, sections 1) and 2) below summarize the results of the testing performed on contracts and disbursements of OHA. To the extent supporting documents requested by CLA were missing or not available, CLA attempted to apply other procedures to verify the criteria being tested. Generally, CLA attempted to verify information pertaining to each contract or disbursement as follows: (1) supporting documentation validated the criteria being tested; (2) CLA inquired with the contract manager regarding questions on a particular contract; (3) CLA inquired with OHA staff regarding the general procedures related to procurement, disbursements, or grants;<sup>46</sup> (4) CLA submitted written questions to Phyllis Ono-Evangelista, Procurement Manager, and Raina Gushiken, Corporate Counsel, who coordinated obtaining responses from appropriate OHA staff; and (5) CLA searched publicly available information.

### **1) Contract Testing**

The contracts selected for testing included 80 OHA contracts that fell within different category types based on the type of contract, for example, grant contract, or based on the type of procurement method used to obtain the contract. Letters a) through e) below list the different types of contracts and the number of contracts tested for each type.

- a) OHA Grant Contracts – 39 tested
- b) OHA Competitive Sealed Proposal contracts – 9 tested
- c) OHA Professional Services contracts – 14 tested
- d) OHA Small Purchases contract – 1 tested
- e) OHA Exempt Contract – 17 tested

When CLA provided the listing of contracts selected for inclusion in the sample, CLA requested that OHA provide the procurement method used by OHA to process the respective procurement and contract. When OHA provided the supporting documentation for each contract, OHA also provided the procurement method used by OHA. This information was used by CLA to group the sample contracts into the same procurement categories for testing (e.g., professional services contract). The results of the contract testing are presented below by the procurement method used by OHA.

Within each observation, CLA has listed the OHA contract sample number with that particular observation. The specific contract number and a more detailed discussion of the observation can be found by referring to the corresponding attachment. Each

---

<sup>46</sup> CLA inquired with Phyllis Ono-Evangelista, Procurement Manager, regarding procedures pertaining to the procurement process; Gloria Li, Controller, regarding procedures pertaining to disbursements and other accounting functions; and Misti Pali-Oriol, former grants staff, regarding procedures pertaining to grants processing and monitoring.

observation also includes a reference to the applicable criteria listed in the table above.

#### a) Grant Contracts

Thirty-nine contracts were executed by OHA using the grant method. HRS §103D-102, Application of this chapter, subsection (b) specifically exempts grants from the procurement requirements in HRS §103D. CLA utilized HRS §10-17 Grant; conditions and qualifications, which provides requirements for OHA's grant awards and contracts. The statute regulates OHA's process for accepting qualified applications, executing grant contracts, and monitoring grantees. A copy of HRS §10-17 is included in **Exhibit 05**.

A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the approval and execution of OHA grant contracts is included in **Attachment 05**. OHA's Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.4.4 identifies the process for reviewing procurement documents for grant applications approved by the Board of Trustees. OHA's Grant Program Standard Operation Procedures (Grants SOP), published July 1, 2015, and identifies the administrative process for soliciting, reviewing, awarding, monitoring, and evaluating grants.<sup>47</sup>

Included in Table 6 below is a summary of the results, identifying for each criteria tested, the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>48</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 05** includes a table containing the results at the contract level and tickmarks explain each contract with an observation.<sup>49</sup>

---

<sup>47</sup> Although the Grants SOP was published in July 2015, CLA identified its processes and procedures for the testing of any grant awarded during the time period of our review. This decision was based on a discussion with a former Grants Specialist who confirmed that the many of the processes and procedures were in operation before the Grants SOP was published.

<sup>48</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>49</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 05**, tickmarks for grant contracts tested are numbered with the letter "A" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **A01** is the first observation tickmark for OHA grant contracts.

**Table 6: Summary of Results – OHA Grant Contracts**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	0	2	37	39
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or in any other agency capacity.	0	1	38	39
<b>HRS §84-15(a): Contracts</b>					
[3]	The contract was not with a legislator or employee who has controlling interest.	0	0	39	39
[4]	If the contract was with a legislator or employee who has controlling interest, alternative criteria were met.	0	0	39	39
<b>HRS §84-15(b): Contracts</b>					
[5]	The person or the business entering into contract with OHA was not represented by a person employed by OHA in the preceding 2 years.	0	1	37	38
[6]	If the person or business entering into contract with OHA was represented by a person employed by OHA in the preceding 2 years, the person did not participate in the matter with which the contract is directly concerned.	0	1	38	39
<b>HRS §10: Office of Hawaiian Affairs<sup>50</sup></b>					
<b>HRS §10-17(a): Grants; conditions and qualifications</b>					
[7]	OHA received an application for the grant.	14	0	25	39
[8-12]	The application met the minimum qualifications detailed in HRS §10-17(a).	14	0	25	39
[13]	The activities of the grant were consistent with HRS §10-17.	14	0	25	39
<b>HRS §10-17(b): Grants; conditions and qualifications</b>					
[14]	The applicant applied for or received all license and permits, when required to conduct the activities.	0	39	0	39
[15]	The applicant agreed to comply with federal, state, and county laws.	0	2	37	39
[16]	The grant was not used for entertainment or perquisites.	0	1	38	39
[17]	The applicant agreed to comply with federal, state, and county statutes and ordinances, including building code and agency rules.	0	1	38	39
[18]	The applicant indemnified OHA.	0	2	37	39
[19]	The applicant procured insurance if requested by OHA.	0	31	8	39
<b>HRS §10-17(c): Grants; conditions and qualifications</b>					
[20-23]	Based on the grant application, the applicant was an eligible organization as defined by HRS §10-17(c).	0	0	39	39
[24]	If the applicant was a nonprofit organization:				
	[a] the governing board members have no material interest and serve without compensation,	0	33	6	39
	[b] has bylaws regarding nepotism and conflict of interests, and	0	33	6	39
	[c] employs no more than two or more family members.	0	33	6	39
[25]	The applicant made all records relating to its operation of the activity available to OHA.	0	4	35	39
[26]	The applicant satisfied OHA that sufficient funds were available for its operation or the grant activity.	0	4	35	39

<sup>50</sup> HRS §10-17(d) was also tested as part of criteria [66-72] and [78-79] but is not shown in this section to avoid duplication.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.4.1: Grants Review Process</b>					
[27]	Staff completed the sections for scope of work, compensation/payment and reporting requirements.	0	17	22	39
[28]	No sections of the forms were altered.	0	0	39	39
[29-31]	The grant was documented and completed on the appropriate form for the type of grant.	0	1	38	39
[32]	The proof of award was submitted, including the grant award letter, Board minutes, or the approved Administrative Memo.	6	0	33	39
[33]	If the award was over \$2,500, the senior staff attorney signed the Procurement Document Checklist (PCL).	12	0	27	39
[34]	If the award was over \$2,500, the award was submitted with the Procurement Document Checklist (PCL).	16	0	23	39
<b>2.2.4.3: Review Documentation<sup>51</sup></b>					
[35]	A completed Purchase Requisition (PR) was submitted by a Purchase Requisition Representative.	9	3	27	39
[36]	For grants using the OHA Long Contract:				
	[a] an Accounting Checklist was submitted,	0	39	0	39
	[b] funds were verified by the Budget Analyst, and	9	2	28	39
	[c] funds were certified by the CFO.	2	0	37	39
[37]	For grants using the OHA Long Contract, a PCL was submitted and signed by a Hale Director.	12	0	27	39
[38-41]	The legal relationship was documented on the appropriate form for the type of grant.	0	1	38	39
<b>OHA Operational Authority Delegation Hierarchy issued by the Chief Executive Officer on Interoffice Memorandum</b>					
<b>Issued February 9, 2010 and revised December 12, 2012, May 19, 2015, October 21, 2015</b>					
[42-45]	The Purchase Requisition had appropriate approvals based on the Operational Authority Delegation Hierarchy. <sup>52, 53, 54, 55</sup>	9	3	27	39
<b>OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.4.4: Purchase Review Process for Contracts and Grants</b>					
[46]	For grants over \$2,500 the AP Supervisor approved the Procurement Document Checklist (PCL).	12	21	6	39
[47]	The Budget Analyst verified the availability of funding and correct coding.	9	2	28	39
[48]	A Purchase Order (PO) was issued by the Treasury and Other Services (TOS) to the preparer.	2	6	31	39

<sup>51</sup> The testing of criteria [36] and [39] also satisfied the requirements of the Fiscal Procedures Manual, Section 2.2.6: Grants Contract Funding Certification.

<sup>52</sup> Grant Agreement Form GA-1 is used for Kaiaulu grants up to \$100,000, CBED grants up to \$50,000, and Kahale grants up to \$24,999.

<sup>53</sup> Form CGA-1 is used for University of Hawai'i grants.

<sup>54</sup> 'Ahahui Agreement Form is used for 'Ahahui grants up to \$10,000.

<sup>55</sup> Small Governance Award Letter is used for Hawaiian Governance grants.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>2.2.7.4: Grants Payment Processing<sup>56</sup></b>					
[49]	Payments were processed appropriately based on the type of Grantee Requirements and Grant Monitor Requirements.	16	1	22	39
[50]	The Grant Monitor reviewed and approved the required grant reports within 5 working days.	16	1	22	39
[51]	The Grant Monitor prepared the Contract Payment Request with the grantee invoice.	0	7	32	39
[53]	The Controller approved the Contract Payment Request.	0	37	2	39
<b>OHA Operational Authority Delegation Hierarchy issued by the Chief Executive Officer on Interoffice Memorandum</b>					
<i>Issued February 9, 2010 and revised December 12, 2012, May 19, 2015, October 21, 2015</i>					
[54-57]	The Request for Payment on Contract had appropriate approvals based on the Operational Authority Delegation Hierarchy.	0	16	23	39
<b>OHA Grants Program Standard Operating Procedures, revised July 1, 2015<sup>57</sup></b>					
<b>III. Procedures: (A) Community Grants<sup>58</sup></b>					
[58 & 60]	The Community Grants application contains all of the required sections and minimum requirements.	3	0	36	39
[59]	The application was received before the deadline.	3	13	23	39
[61]	The grant was recommended by Grants Specialists and TAP Manager.	21	0	18	39
[62]	The grant was reviewed by the CFO and approved by the COO and CFO.	10	0	29	39
[63]	The grant award was approved by:				
	[a] the Beneficiary Advocacy and Empowerment (BAE) and Assets and Resource Management (ARM) joint committee	7	3	29	39
	[b] confirmed at a full BOT meeting.	7	3	29	39
[64]	The grant agreement includes the required terms and conditions.	0	0	39	39
[65]	For multi-year grants, a Purchase Requisition was submitted for each fiscal year to encumber funds.	0	20	19	39
[66]	The grant file contains the required progress and monitoring reports, including correspondence and payment copies.	19	1	19	39
[67]	The Desktop Monitoring contains the required Progress Activity, Performance Measures, and Expenditures reports.	16	0	23	39
[68]	The Grant Assessment form was approved by the TAP Manager.	17	5	17	39
[69]	On-site monitoring was performed on an annual basis.	20	0	19	39
[71]	The Grant Closeout Report was approved by the TAP Manager.	21	1	17	39
[72]	A grant evaluation was conducted by the Program Improvement Program (PIP).	36	0	3	39
<b>III. Procedures: (B) 'Ahahui Grants</b>					
[73]	The application was received before the deadline.	0	1	38	39

<sup>56</sup> Criteria [52] was tested concurrently with the Operational Authority Delegation Hierarchy.

<sup>57</sup> The Grants Program Standard Operating Procedures are applicable only to grants awarded after July 1, 2015.

<sup>58</sup> Criteria [70] is excluded as it was used by CLA to document information pertaining to the process of reviewing the On-Site Monitoring Report. CLA determined this criteria is not necessary to report the final results of testing.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[74]	The review committee consisted of a minimum of three individuals who did not have a real or perceived conflict of interest.	0	2	37	39
[75]	The grant was recommended by the Grants Specialists and TAP Manager.	0	1	38	39
[76]	The grant was reviewed by the CFO and approved by the COO and CFO.	0	0	39	39
[77]	The OHA Form GP-1 was signed by the awardee.	0	1	38	39
[78]	The final reporting form was completed by the awardee and submitted to OHA within 30 days after the event completion.	0	1	38	39
[79]	The OHA Staff Attendance Report form was completed and submitted to the Grants Specialist within 5 business days after the event completion.	0	2	37	39
<b>III. Procedures: (D) Kūlia Initiative<sup>59, 60</sup></b>					
[84]	The application or funding request includes the required information and supporting documentation for Kūlia Initiative awards.	9	6	24	39
[85]	The Grants Specialist recommended the funding request based on the merit and support of OHA's mission.	15	0	24	39
[86]	The Kūlia Initiative Review Form indicates how the funding request was assessed.	0	15	24	39
[87]	The funding consideration was approved by the ARM/BAE and BOT as an Action Item.	0	0	39	39
<b>Other Testing Results</b>					
[88]	Sufficiency of contract oversight provided appropriately by the assigned contract manager/monitor.	0	1	38	39
[89]	Deliverables were met by the contractor.	0	1	38	39
[90]	No fraudulent or wasteful disbursements were made.	0	5	34	39

Within each observation, CLA has listed the OHA contract sample number with that particular observation. The specific contract number and a more detailed discussion of the observation can be found by referring to **Attachment 05**. Each observation also includes a reference to the applicable criteria listed in the table above.

1) Compliance with HRS §84: Standards of Conduct

a. HRS §84-14: Conflicts of Interest

Two contracts were identified by CLA as possibly not compliant with HRS §84-14(a), which states, “no employee shall take any official action directly affecting: (1) a business or other undertaking in which the employee has a substantial financial interest; or (2) a private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity” (criteria **[1]**, **[2]**).

<sup>59</sup> Criteria [80] through [83] were applicable to Sponsorships. Sponsorships were tested as disbursements.

<sup>60</sup> The Kūlia Initiative monitoring and evaluation process was also tested as part of criteria [66-72] and [78-79] but is not shown in this section to avoid duplication.



- i. K-39 – OHA Contract #2953 – Native Hawaiian Education Association on behalf of World Indigenous People's Conference on Education (WiPC:E)

On March 6, 2014, a \$150,000 Kūlia Initiative grant was awarded to the Native Hawaiian Education Association (NHEA) to sponsor the World Indigenous People's Conference on Education (WiPC:E) held May 19 to May 25, 2014 at Kapi'olani Community College. The sub-recipient of this grant, WiPC:E, engaged Dr. Crabbe to be a keynote speaker at the event.<sup>61</sup> NHEA did not disclose in its application that Dr. Crabbe was a keynote speaker. NHEA also submitted a budget that lacked specific details on how the award funds were to be spent and did not specify whether the keynote speakers were compensated or received complimentary travel accommodations or meals.<sup>62</sup> CLA could not determine if Dr. Crabbe received compensation for the speech, was provided complimentary travel accommodations or meals, or if there was any possible financial benefit received. Without proper disclosures in the application, there was a risk of possible financial interest. CLA inquired about whether Dr. Crabbe received compensation or other benefits, and OHA responded that it was "unable to provide information requested as Dr. Crabbe and staff who may have had firsthand knowledge at the time of the grant are no longer employed at OHA." Therefore, it is unknown whether Dr. Crabbe had a financial interest in connection with the grantee.

- ii. K-76 – OHA Contract #2785 - 'Aha Kāne - Foundation for the Advancement of Native Hawaiian Males

On June 14, 2012, a \$200,000 Kūlia Initiative grant was awarded to 'Aha Kāne – Foundation for the Advancement of Native Hawaiian Males ('Aha Kāne) to convene a gathering held June 15 to June 17, 2012 at Windward Community College to address issues of Native Hawaiian male leadership and community involvement. A public records search of 'Aha Kāne indicated that Dr. Crabbe was one of the founders of 'Aha Kāne and was on the Advisory Board Chair at the time the grant was awarded. As part of the grant award process, Dr. Crabbe would have the final recommendation for funding consideration for this grantee before the application was presented to the ARM/BAE and BOT for final approval. Therefore, an employee of OHA approving the beneficiary may have had a financial interest as well as being engaged as a representative or other agency capacity, which is a violation of HRS §84-14 Standards of Conduct.

---

<sup>61</sup> The keynote speaker was Dr. Crabbe, who was the CEO at the time of this award and when he was the keynote speaker.

<sup>62</sup> The budget was for: 1) Contractual Services – Facilities - \$75,000; 2) Contractual Services – Equipment rental - \$25,000; 3) Contractual Services – Huaka'i/Excursion supplies - \$10,000; and, 4) Contractual Services – Transportation - \$40,000.

b. HRS §84-15: Contracts

One contract was identified by CLA as possibly not compliant with HRS §84-15(b), which states, “(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned. This subsection shall not apply to any contract that is awarded in accordance with subsection (a) with a person or business represented or assisted by a person who was a member of a task force or served as the designee or representative of a task force member”(criteria [5], [6]).

i. K-76 – OHA Contract #2785 - 'Aha Kāne - Foundation for the Advancement of Native Hawaiian Males

As noted in the preceding HRS §84-14 section, Dr. Crabbe was one of the founders of 'Aha Kāne and was the Advisory Board Chair at the time the grant was awarded. 'Aha Kāne’s IRS Form 990 indicates that Dr. Crabbe was the organization’s President in 2011, the year before the grant (**Exhibit 06**). In 2012, he was no longer listed on the IRS Form 990 as either (1) an officer, director, trustee, key employee, highest compensated employee; or (2) an independent contractor. However, Dr. Crabbe filed a Hawai'i State Ethics Commission Short Form Disclosure of Financial Interests in April 2016 stating that he was the Advisory Board Chair for 'Aha Kāne (**Exhibit 07**). Further review indicated that he held the position of Advisory Board Chair as early as 2009.<sup>63</sup> CLA inquired if the BOT was aware of Dr. Crabbe’s involvement with the organization before the grant was awarded, and OHA confirmed that the BOT was aware of this fact. However, there was no disclosure in the grantee’s application that there may be a possible conflict of interest due to his involvement. Current OHA staff informed CLA that this possible conflict of interest was brought before the BOT; however, the grant documents do not disclose this potential conflict and do not provide any information as to what actions, if any, the BOT took to resolve the potential conflict.

See recommendations 02, 03, 04, 05, 06, and 20.

2) Compliance with HRS §10: Office of Hawaiian Affairs

The statute requirements identified by CLA that address the acceptance of qualified applications, executing grant contracts, and monitoring grantees include a review of the grant application, cover sheet, or letter; grant contract;

---

<sup>63</sup> According to a Civil Beat Data, Hawai'i Financial Disclosures for Public Official Filings, Dr. Crabbe listed the Advisory Board Chair position began in 2009 and he received an annual compensation amount that was less than \$1,000.

proof of license, permits, and insurance; and monitoring and evaluation reports. When documentation was missing, CLA reviewed the procurement forms for evidence that OHA performed procedures to ensure compliance with HRS §10.

Included below is a summary of the observations for each of the requirements reviewed as part of the statute:

- a. HRS §10-17(a): Grant applications
  - ii. Fourteen grants were missing the grant application form (including forms GA-1 and CGA-1), cover sheet, or letter requesting funding (criteria **[7]** through **[13]**).<sup>64</sup> These documents provide evidence that the organization applied for funding and provided the minimum information required by HRS §10-17.<sup>65</sup> OHA's response to CLA's request for these documents was that it was unable to locate the documents. The grant files included other supporting documents and approvals; therefore, CLA does not have reason to believe that a grantee received an award without submitting an application or funding request letter; however, evidence of this could not be provided.
- b. HRS §10-17(b): Conditions for awarding grants
  - i. Thirty-seven grants were missing any documentation or evidence within the grant proposal, agreement, contract, or review forms that OHA had independently verified that the applicant had applied for or received all of the applicable licenses and permits, when such licenses or permits were required to conduct the activities or services for which the grant was awarded (criteria **[14]**).<sup>66</sup> Though the language of the grant contract stated, "The grantee shall insure [sic] that all applicable licensing and operating requirements of the State, Federal, and County government and all applicable accreditation and other standards of quality generally accepted in the field of the grantee's activities are complied with and satisfactorily met," there is no indication that OHA performed any verification that the grantee had applied or obtained the applicable licenses and permits to be in compliance with HRS §10-17(b).

---

<sup>64</sup> The 14 grants were: K-15, K-22, K-38, K-39, K-42, K-46, K-48, K-50, K-53, K-57, K-61, K-68, K-78, K-80.

<sup>65</sup> The minimum information includes: 1) the name of the requesting organization or individual; 2) the purpose for the grant; 3) the service to be supported by the grant; 4) the target group to be benefited; 5) the cost of the grant; and 6) that the grant shall be used for activities that are consistent with the purposes of HRS §10.

<sup>66</sup> The 37 grants were: K-06, K-07, K-08, K-11, K-13, K-14, K-15, K-22, K-23, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-38, K-39, K-40, K-42, K-46, K-48, K-53, K-57, K-61, K-62, K-63, K-64, K-65, K-66, K-68, K-71, K-76, K-78, K-79.

- ii. One grant was executed on a Memorandum of Agreement (MOA) with the Department of Labor and Industrial Relations (K-50). Unlike the OHA grant contract template, the MOA did not have any language that required the grantee to apply or obtain all applicable licenses and permits (criteria [14]).<sup>67</sup> In addition, there was no documentation that OHA had performed any verification that the grantee had applied or obtained the applicable licenses and permits to be in compliance with HRS §10-17(b).

The MOA also did not contain sufficient language to address whether the applicant agreed to comply with federal, state, and county laws (criteria [15]). The MOA stated that the grantee “shall procure the services...in accordance with all applicable state procurement laws and regulations.” The language was limited to state procurement laws and did not address federal or county laws.

Lastly, the MOA did not contain any language that the grantee would indemnify OHA and its officers, agents, and employees nor was there any proof submitted that the grantee had procured sufficient insurance to provide the indemnification, if requested so by OHA (criteria [18], [19]).

- iii. One grant was missing an executed grant contract or agreement (K-80 – criteria [14] through [19]). CLA was unable to determine: 1) if the grantee had agreed to comply with the requirement to apply or obtain the applicable licenses and permits; 2) if the grantee had agreed to comply with applicable federal, state, and county laws; 3) that the grantee would not use the grant funds for entertainment or perquisites; 4) that the activities undertaken would comply with applicable federal, state, and county statutes and ordinances, including building codes; and 5) that the grantee would indemnify OHA, its officers, agents, and employees, and would obtain sufficient insurance to provide the indemnification, if requested so by OHA.
- iv. Twenty-nine grants were missing any documentation or evidence within the grant proposal, agreement, contract, or review forms that OHA had independently verified that the applicant had procured sufficient insurance to indemnify OHA, if OHA had requested the grantee to do so

---

<sup>67</sup> OHA classified this grant as an “MOA with the State of Hawaii Department of Labor and Industrial Relations – Office of Community Services.” OHA categorized it as a grant on the Purchase Requisition and Authorization to Proceed with Contract Execution form. OHA completed a Grant Agreement Routing Form. OHA assigned a Grants Specialist to monitor the grant. For these reasons, CLA considered this a grant for testing purposes.

(criteria **[19]**).<sup>68, 69</sup> Some but not all of the grants contained the Contract Routing Form, which included an area to document if the Grants Specialist had obtained the “Liability Insurance Certificate.” In the 29 grants noted here, this area of the form was not completed or not included in the grant files. CLA did not receive any other documentation indicating that OHA had independently verified if the grantee had obtained sufficient insurance if requested to do so.

c. HRS §10-17(c): Conditions for applicants

- i. Thirty-three grants were missing documentation or evidence that OHA had independently verified the composition and policies regarding the governing boards of the nonprofit organizations that received grants (criteria **[24]**).<sup>70, 71</sup> HRS §10-17(c) requires nonprofit organizations to have governing boards whose members have no material conflict of interest and serve without compensation. The organizations must also have policies relating to nepotism and conflict of interest and not employ or contract with two or more family members. OHA was unable to provide any information regarding these governing boards, but did state that it currently requires grant applicants to submit a board governance certification form that certifies that the governing board serves without compensation and has bylaws and policies relating to nepotism.<sup>72</sup>
- ii. Four grants were missing language within the contract or agreement that the grantee would make available to OHA all records the grantee may have relating to the operation of the grantee’s business and that the grantee would establish that sufficient funds were available for the effective operation of the grant activity (K-50, K-57, K-79, K-80 – criteria **[25]**, **[26]**). The reason these grants did not contain these additional terms was because the grants were either executed on a three-party grant agreement, an OHA Form GP-1, which differed in the language and

---

<sup>68</sup> The 29 grants were: K-06, K-07, K-08, K-11, K-13, K-14, K-15, K-22, K-23, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-38, K-39, K-40, K-42, K-48, K-53, K-57, K-61, K-68, K-76, K-79.

<sup>69</sup> The grant documentation did not include documentation regarding whether OHA had requested the grantee to obtain sufficient insurance to provide the indemnification; therefore, CLA could not determine which grantees OHA requested to obtain insurance.

<sup>70</sup> The 33 grants were: K-07, K-08, K-13, K-14, K-15, K-22, K-23, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-39, K-42, K-46, K-48, K-53, K-57, K-61, K-62, K-63, K-64, K-65, K-66, K-71, K-76, K-78, K-79, K-80.

<sup>71</sup> The six grants that met the requirements of HRS §10-17(c) were either (1) educational institutions that did not meet the definition of a nonprofit organization or (2) were a nonprofit organization that included a description of its board members and its policies in the application, or had the information available on its website.

<sup>72</sup> CLA reviewed the OHA solicitations available online and observed that the Governance Board Certification was required as early as September 2018. Solicitations in 2017 did not require grantees to submit the form.

terms found in the OHA grant contract template, or the agreement was missing.<sup>73</sup>

d. HRS §10-17(d): Grant monitoring and evaluation

The requirements of subsection (d) state that every grant shall be monitored by OHA to ensure compliance with HRS §10 and the purposes and intent of the grants, and every grant shall be evaluated annually to determine whether the grant attained the intended results. The monitoring and evaluation requirements defined by HRS §10-17(d) were tested concurrently with the criteria described in the OHA Grants Program Standard Operating Procedures, July 1, 2015 (criteria [66] through [72] and [78],[79]). A summary of the observations is included in Section 4) Compliance with OHA Grants Program Standard Operating Procedures beginning at page 64.

See recommendations 07, 08, 09, 10, and 21.

3) Compliance with OHA's applicable internal policies and procedures

The internal policies and procedures identified by CLA that address the approval and execution of OHA grants include a review of the Grant Form/Contract, documentation of grant approval/award, Procurement Document Checklist, Purchase Requisition, Purchase Order, and Request(s) for Payment on Contract. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. See **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's grant awarding process:

a. Time of Performance

- i. Seventeen grant contracts were approved and finalized by the appropriate authority, according to the Operational Authority Delegation Hierarchy in effect at the time of the grant award, after the Time of Performance in the grant application had begun (Criteria [27]). There was no amendment in the grant to change the start date of the Time of Performance. The significance of this issue is that the intended grant purpose may be curtailed because the Time of Performance is shortened, which may affect the results of the activity for which the grant was awarded. Furthermore, this issue is evidence that there is insufficient monitoring of approved grants. These approved grants are either rushed through the approval process and do not give the approver enough time

---

<sup>73</sup> OHA Form GP-1 is a shortened grant agreement form used for 'Ahahui grants.

to review before the TOP begins or these grants were approved and not executed in a timely fashion.

b. Grant Form:

- i. One grant was not documented and completed on the appropriate form for the type of grant award (K-80 – criteria [29] through [31], [38] through [41], and [77]). The 'Ahahui grant should have been documented on an OHA Form GP-1. As a result, this grant did not provide pertinent information, including, disclosure of prior OHA funding, if the grantee was a fiscal sponsor, the intended OHA Strategic Result, event date, event location, event name, expected attendance, and a funding summary.

c. Grant Award:

- i. Six grants were approved by the BOT or CEO, but the award letter, administrative memo, or board minutes and corresponding attachments were not provided with the grant (criteria [32]).<sup>74</sup> Four of the grants contained a copy of the board minutes but not the corresponding attachments that detailed the organizations and award amounts. Without the attachments, CLA was unable to determine which applicants were specifically approved in the BOT session.<sup>75</sup> The remaining two grants did not contain a proof of award.<sup>76</sup>

d. Procurement Document Checklist:

- i. Twelve grants were missing the Procurement Document Checklist (criteria [33], [37]).<sup>77</sup> The Purchase Document Checklist should be reviewed and approved prior to creating and approving a Purchase Requisition and the grant contract.<sup>78</sup>

e. Purchase Requisition:

- i. Nine grants were missing the Purchase Requisition (criteria [35], [36b], and [42] through [45]).<sup>79</sup> As a result, all nine grants were also missing

---

<sup>74</sup> The six grants were: K-26, K-27, K-29, K-31, K-50, K-57.

<sup>75</sup> Grants K-26, K-27, K-29, and K-31 contained board minutes but no attachments.

<sup>76</sup> Grants K-50 and K-57 did not contain any proof of award. In the Fiscal Procedures Manual, the proof of award is defined as a grant award letter, Board minutes, or copy of the approved Administrative memo.

<sup>77</sup> The 12 grants were: K-11, K-42, K-50, K-57, K-61, K-62, K-63, K-64, K-65, K-66, K-68, K-71.

<sup>78</sup> Criteria [34] is not discussed here because the criteria was sufficiently covered by criteria [32] and [33]. Criteria [34] has a total of 16 contracts with missing documents. This total is comprised of four contracts that were missing the proofs of award, ten contracts missing a Procurement Document Checklist, and two contracts missing both the proof of award and Procurement Document Checklist.

<sup>79</sup> The nine grants were: K-53, K-57, K-61, K-63, K-64, K-65, K-66, K-68, K-71.

documentation that the Budget Analyst had verified the funds and certified that the amount was in accordance with the BOT's approval of Program's operating budget.<sup>80</sup>

- ii. One grant did not contain all of the Purchase Requisitions equal to the amount awarded and paid to the grantee (K-11 – criteria **[42]** through **[45]**). OHA was unable to locate the additional Purchase Requisition for CLA to review.<sup>81</sup>
  - iii. Two grants did not contain the second page of the Purchase Requisition, which contains the record of approvals, including the Budget Analyst, Manager, LOB Director, Program Budget Authority, and, if required, CFO, COO, or CEO (K-13, K-76 – criteria **[36b]**, **[42]** through **[45]**). Without the second page, CLA was unable to determine if the Purchase Requisition was properly approved within the guidance of the Operational Authority Delegation Hierarchy in effect at the time of the award.
- f. Purchase Order:<sup>82</sup>
- i. Two grants were missing the Purchase Order (K-79, K-80 – criteria **[36c]** and **[48]**). As a result, both grants were also missing documentation that the CFO had certified the availability of the funds and that there is an appropriate balance in the account(s) for the contract.<sup>83</sup>
  - ii. Six grants were missing a Request to Close a Purchase Order (K-29, K-48, K-50, K-53, K-61, K-64 – criteria **[48]**). The Request to Close a Purchase Order is a form to close a contract that is expired or terminated, the services are no longer needed, or the grantee is out of business or unable to provide services. The form is generally used when the grant's time of performance ends but not all funds are expended. As a result, the form is used to reconcile the difference between the award amount and the amounts paid to the grantee. Any unused disbursed funds are required

---

<sup>80</sup> The Budget Analyst's verification of funds is a process described in the Fiscal Procedures Manual as occurring on the Accounting Checklist. Per our discussion with OHA's Controller, the Accounting Checklist was no longer used. Instead the Budget Analyst documents the funding verification on the Purchase Requisition.

<sup>81</sup> Purchase Requisitions are required to be submitted and approved each year for multi-year grants. Therefore, some grants contained more than one Purchase Requisition.

<sup>82</sup> Criteria [46] is not discussed here because the criteria was sufficiently covered by criteria [33] and [34]. The 21 observations for criteria [46] represent those grants that had the Procurement Document Checklist, but were not signed by the AP Supervisor. According to the OHA Controller, this approval procedure had not been used during her tenure. Criteria [47] is not discussed here because the criteria was sufficiently covered by criteria [35] and [36].

<sup>83</sup> The CFO's certification of the availability of funds is a process described in the Fiscal Procedures Manual as occurring on the Accounting Checklist. Per our discussion with OHA's Controller, the Accounting Checklist was no longer used. Instead the CFO certifies the availability of funds on the Purchase Order.



to be repaid to OHA. Without a Request to Close a Purchase Order, CLA was unable to determine if the funds paid to the grantee were fully expended or if the grantee owes a remaining balance to OHA.

- g. Grant Monitoring Processing:<sup>84</sup>
  - i. Sixteen grants did not contain any documentation or evidence that the Grant Monitor reviewed and approved the required grantee reports (criteria **[49]**, **[50]**).<sup>85</sup> In general, the grants contained the Grantee Invoices but not the Progress Activity Reports, Performance Measures, Expenditure Reports, On-Site Monitoring Reports, Final Grant Assessments, or Closeout Reports. Therefore, CLA cannot determine if the payments were processed appropriately and in accordance with the payment schedules of the grant agreements.
  - ii. One of the grants was required by the terms of the contract to submit only a Final Progress Report; however, the report was received after the contract deadline (K-76 – criteria **[50]**). The contract deadline was on August 15, 2012, but the Final Progress Report was received by OHA on August 24, 2012.
- h. Request(s) for Payment on Contract:<sup>86</sup>
  - i. Thirty-seven grants were missing the Controller’s approval on the Request for Payment on Contract (criteria **[53]**).<sup>87</sup> CLA reviewed the request forms and noted that they do not contain a section to document the Controller’s approval. The Controller’s approval appears on the Procurement Package Checklist and Authorization to Proceed with Contract Execution forms instead. CLA determined that the process described in the Fiscal Procedures Manual was not updated to reflect the actual process in use.
  - ii. Seven grants were missing one or more of either the Requests for Payment on Contract or the Grantee Invoices (criteria **[54]** through

---

<sup>84</sup> Figure 2.2.7.4 Grants Payment Process in the Fiscal Procedures Manual requires in step #5, “The Grant monitor reviews and approves the required grantee reports [within 5 working days].” Additional monitoring procedures were tested as part of the Grants SOP, the results of which are included in Section D.a)4) Compliance with OHA Grants Program Standard Operating Procedures.

<sup>85</sup> The 16 grants were: K-22, K-23, K-38, K-39, K-42, K-46, K-48, K-50, K-53, K-57, K-61, K-64, K-71, K-78, K-79, K-80.

<sup>86</sup> Criteria [51] is not discussed here because the criteria was sufficiently covered by criteria [54] through [57].

<sup>87</sup> The 37 grants were: K-06, K-07, K-08, K-11, K-13, K-14, K-15, K-22, K-23, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-38, K-39, K-40, K-42, K-46, K-48, K-50, K-53, K-57, K-61, K-62, K-63, K-64, K-65, K-66, K-68, K-71, K-76, K-78.

**[57]**).<sup>88, 89</sup> The total amounts requested through the Grantee Invoices and Requests for Payment on Contract did not equal the total amount paid on the grant award.

- iii. One of the grants contained a Final Request for Payment on Contract that did not agree with the amount actually paid per the OHA Check Register (K-29 – criteria **[49]**, **[54]** through **[57]**). The Final Payment Amount recommended is \$74,834.57, but the amount per the OHA Check Register is \$78,284.57. OHA explained the difference is because "it appears that the grantee submitted a late invoice for \$3,450 for graphic design cost that the grant monitor approved payment for"; however, CLA did not receive any documentation of the late invoice.
- iv. Nine grants contained a Request for Payment on Contract that was not approved by the CFO, as required by the Operational Authority Delegation Hierarchy in effect at the time of the grant (criteria **[54]** through **[57]**).<sup>90</sup> The Request for Payment on Contract was approved by the Controller on behalf of the CFO. There was no documentation to support that the Controller had the authority to sign the requests. OHA responded that the Controller was allowed to sign because the CFO provided an Out of Office Delegation memo; however, OHA did not provide the memos to CLA to review.
- v. One of the grants contained a Request for Payment on Contract that was approved by the LOB Manager before the Procurement Document Checklist was approved, signed, and dated by the Senior Staff Attorney (K-80 – criteria **[54]** through **[57]**). The Request for Payment on Contract was approved by the LOB Manager on January 7, 2014, but the Procurement Document Checklist was approved by the Senior Staff Attorney on January 9, 2014. It appears the Request for Payment on Contract was prepared and signed prematurely.

See recommendations 11, 12, 14, 21, 26, 32, 40, and 54.

#### 4) Compliance with OHA Grants Program Standard Operating Procedures

Although the OHA Grants Program Standard Operating Procedures (SOP) were not effective until July 1, 2015, CLA's discussion with a former OHA Grants Specialist confirmed that aspects of the Grants SOP were in place through the

---

<sup>88</sup> The seven grants were: K-07, K-08, K-11, K-13, K-15, K-29, K-64.

<sup>89</sup> The total number of contracts with observations for criteria [54] through [57] is 16; however, some of the 16 contracts contained two observations. The total number of individual observations within the 16 contracts is 18, which is the total of subsections ii (7), iii (1), iv (9), and v (1).

<sup>90</sup> The nine contracts were: K-22, K-25, K-42, K-50, K-61, K-62, K-63, K-64, K-68.

time period covered by this engagement.<sup>91</sup> Therefore, all grants tested by CLA were tested against the Grants SOP, regardless of when the grant was awarded. It is possible that some procedures required under the Grants SOP were not implemented by OHA at the time of a particular grant award; however, CLA does not have sufficient information to determine when specific procedures were put into place. Likewise, some of the processes and procedures described within the Grants SOP overlapped with the processes and procedures in the Fiscal Procedures Manual; however, the Grants SOP provided a more detailed account of the procedures and the specific forms required for each of the grant types. The majority of the procedures required in the Grants SOP are consistent with the requirements of HRS §10.

The internal policies and procedures identified by CLA that address the monitoring and evaluation of OHA grants include a review of the grant application, grant committee review, Purchase Requisitions, progress and monitoring reports, grant assessments, on-site monitoring reports, grant closeout reports, and grant evaluations. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. CLA cross-referenced the signatures with the OHA organizational charts to ensure the individuals signing the forms held the appropriate title and position to approve the forms. See **Exhibit 08** for each OHA organizational chart in effect during the period covered by this engagement.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's Grants Program SOP:

- a. Community and 'Ahahui Grant Application:<sup>92</sup>
  - i. Three of the grants were missing Community and 'Ahahui Grant applications (K-22, K-61, K-68 – criteria **[58]** through **[60]**). As a result, CLA was unable to determine if the grant was received before the solicitation deadline and, therefore, acceptable for consideration and review.
  - ii. Five of the grant applications did not have markings or indications of the date the application was received (K-07, K-08, K-32, K-33, K-80 – criteria **[59]**, **[73]**). CLA could not determine if the application was received by OHA before the solicitation deadline.

---

<sup>91</sup> The former Grants Specialist was a current OHA employee who had transferred out of the Grants Department but provided CLA with historical context of the grant monitoring procedures during the period July 1, 2011 through June 30, 2016.

<sup>92</sup> Kūlia Initiatives have separate grant application criteria from Community and 'Ahahui Grants and are discussed at "e. Kūlia Initiative grants:."

- iii. Three grants were marked with a date that indicated the grant application was received after the solicitation deadline (K-24, K-26, K-29 – criteria **[59]**). The grant applications were reviewed and grant funds were awarded to the organizations.
- iv. Five of the grant applications were submitted electronically and did not have marking or indications of the date the application was received (K-62, K-63, K-64, K-65, K-66 – criteria **[59]**). CLA could not determine if the application was received by OHA before the solicitation deadline.
- v. One grant was signed and dated by the grantee's authorized representative after the date that OHA indicated it received the application (K-30 – criteria **[59]**). The application is signed and dated by the organization's executive director on January 25, 2013, but the application is stamped by OHA with a date indicating it was received on January 17, 2013. OHA was unable to provide CLA with any information to explain the inconsistency.
- vi. Two grants were 'Ahahui grants that did not contain enough information within the grant application cover sheet or grant file to determine if the review committee met the minimum requirements of consisting of three individuals who did not have a real or perceived conflict of interest (K-79, K-80 – criteria **[74]**).

One grant was an 'Ahahui grant that did not contain enough information within the grant application cover sheet or grant file to determine if the grant was recommended by the Grants Specialist and TAP Manager (K-80 – criteria **[75]**).

b. Grant Committee Review:

- i. Twenty-three grants did not contain documentation or evidence that the grant was recommended by the review committee and finalized by the Grants Specialist (criteria **[61]** and **[74]**).<sup>93</sup> The one grant that met this criteria included a copy of the OHA Review Scoring Form (K-68).
- ii. Ten grants did not contain documentation or evidence that the grant was reviewed and approved by the CEO and COO (criteria **[62]**).<sup>94, 95</sup> The lack of documentation is further explained below.

---

<sup>93</sup> The 23 grants were: K-07, K-08, K-11, K-13, K-14, K-22, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-61, K-62, K-63, K-64, K-65, K-66, K-79, K-80.

<sup>94</sup> The 10 grants were: K-13, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-33, K-61.

<sup>95</sup> CLA noted that the COO and CEO documented their review and approval of the grant on the Joint Committees on Asset and Resource Management and Beneficiary Advocacy and Empowerment (ARM/BAE) Action Item cover sheet.

- a. Seven of these grants did not contain documentation of BOT minutes that the grant award was confirmed at a full BOT meeting (criteria **[63]**).<sup>96</sup>
- b. The remaining three grants contained a copy of the BOT minutes showing that the BOT approved a matrix of Community Grants; however, the BOT Action Item does not contain the Attachment A - OHA FY 2014-15 Community Grant Recommendations Matrix, which lists the 30 Fiscal Biennium 2014-15 Community Grant recommendations for funding (K-24, K-31, K-33 – criteria **[63]**).
- c. Purchase Requisitions:
  - i. Twenty of the grants did not contain documentation that a Purchase Requisition was prepared each fiscal year for multi-year awards (criteria **[65]**).<sup>97</sup> The Grants Specialist either (1) did not complete any or all of Purchase Requisitions in a multi-year grant award or (2) the requisition was not included with the grant documents.<sup>98</sup>
- d. Grant Monitoring and Evaluation:<sup>99</sup>

In general, most of the grants were missing a combination of, or all of, the monitoring reports that OHA utilized throughout the time period covered by this engagement. The missing documents included the Progress Reports, Performance Measures, Expenditure Reports, Grant Assessment, On-Site Monitoring Reports, and the Grant Closeout Reports (criteria **[66]** through **[71]**). The specific observations are discussed further below.<sup>100, 101</sup>

---

<sup>96</sup> The seven grants were: K-13, K-25, K-26, K-27, K-29, K-30, K-61.

<sup>97</sup> The 20 grants were: K-11, K-13, K-14, K-22, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-61, K-62, K-63, K-64, K-65, K-66, K-68.

<sup>98</sup> The Grants SOP requires that the Grants Specialist submit a Purchase Requisition each fiscal year to encumber funds. The Fiscal Procedures Manual does not contain this requirement. Therefore, the observations noted in the Fiscal Procedures Manual section were contained to grants missing any and all Purchase Requisitions. The 26 noted under the Grants SOP contained an insufficient number of Purchase Requisitions to meet the criteria of the Grants SOP.

<sup>99</sup> According to the Grants SOP, Community grants and Kūlia Initiative grants are subject to monitoring and evaluation procedures. The Grants SOP imposes a separate procedure on 'Ahahui grants and Sponsorships to perform OHA Event Attendance/Participation/Community Engagement. CLA did not assess whether OHA's Grants SOP requirements for 'Ahahui grants and Sponsorships were in compliance with the monitoring and evaluation requirements of HRS §10-17(d).

<sup>100</sup> CLA observed missing documentation for Community Grant and Kūlia Initiative monitoring and evaluation throughout criteria [66-72]. Those observations are not discussed in this report but are noted on Attachment 05.

<sup>101</sup> Criteria [73], [74], [75] were discussed as part of section "a. Community and 'Ahahui Grant Application:" and are not shown in this section to avoid duplication. Criteria [76] had no missing documents or

- i. One grant did not contain all of the Grant Assessment forms that should have corresponded with the payment requests (K-31 – criteria **[66]** and **[68]**).
  - ii. Four grants contained one or more copies of the Grant Assessment Forms that were missing the approval signature of the Community Relations Specialist (K-07, K-08, K-13, K-14 – criteria **[68]**).
  - iii. One Grant contained a copy of the Grant Closeout Report that was missing the approval signature of the Transitional Assistance Program manager (K-63 – criteria **[71]**).
  - iv. Two grants were 'Ahahui grants that were missing the OHA Staff Attendance Report Forms (K-79, K-80 – (criteria **[79]**)).
  - v. One 'Ahahui grant contained a final reporting form that was completed by the grantee but not submitted to OHA within 30 days after the event's completion (K-80 – criteria **[78]**).
  - vi. Thirty-six grants did not contain documentation or evidence that an annual evaluation was performed to determine whether the grant attained the intended results (criteria – **[72]**).<sup>102</sup>
- e. Kūlia Initiative grants:

CLA tested 15 grants that were categorized as Kūlia Initiative grants. The Kūlia Initiative grants contained other provisions in addition to being subject to the monitoring and evaluation requirements of Community Grants. Included below is a summary of the observations for each of the Kūlia Initiative grants reviewed:<sup>103</sup>

- i. Nine Kūlia Initiative grants were missing an application or formal funding request letter (criteria **[84]**).<sup>104</sup>

---

observations. Criteria [77] was discussed as part of section “3)b. Grant Form:” and is not shown in this section to avoid duplication.

<sup>102</sup> The 36 grants were: K-06, K-07, K-08, K-13, K-14, K-15, K-22, K-23, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-38, K-39, K-40, K-42, K-46, K-48, K-50, K-53, K-57, K-61, K-62, K-63, K-64, K-65, K-66, K-68, K-71, K-76, K-78.

<sup>103</sup> According to the Grants SOP, Community grants and Kūlia Initiative grants are subject to monitoring and evaluation procedures. The Grants SOP imposes a separate procedure on 'Ahahui grants and Sponsorships to perform OHA Event Attendance/Participation/Community Engagement. CLA did not assess whether OHA's Grants SOP requirements for 'Ahahui grants and Sponsorships were in compliance with the monitoring and evaluation requirements of HRS §10-17(d).

<sup>104</sup> The nine grants were: K-15, K-39, K-40, K-42, K-46, K-48, K-50, K-53, K-57.

---

- ii. Six Kūlia Initiative grant applications did not contain a statement explaining why the requests were not made through the Community Grants Program process (K-06, K-23, K-38, K-71, K-76, K-78 – criteria **[84]**). Kūlia Initiative grants are to be used to support individuals and organizations seeking funding outside of the Community Grants Program annual funding cycle and for projects that may be ineligible for consideration under the Community Grants Program.
- iii. Five Kūlia Initiative grant applications were missing the Certificate of Vendor Compliance (K-06, K-23, K-38, K-76, K-78 – criteria **[84]**).
- iv. Three Kūlia Initiative grant applications were missing the IRS letter of determination (K-71, K-76, K-78 – criteria **[84]**).
- v. One grant was awarded to an organization that had a previous financial relationship with OHA; however, this information was not disclosed in the grant file (K-06 – criteria **[84]**). The grant was awarded to Young of Heart Workshop (OHA Contract #2695) on September 23, 2011 for \$150,000 to create the Hawai'i Kakou mural and community engagement program. At the time this grant was awarded, the Executive Director of Young of Heart Workshop had a previous business relationship with OHA as the managing partner of Mana Hawaii The Spirit of Hawaii Nei, LLC (Mana Hawaii). In December 2009, OHA signed a lease guaranty for \$150,000 on behalf of Mana Hawaii. In November 2011, Mana Hawaii defaulted on its lease, and OHA was required to pay the \$150,000 to the lessor, ABW Holdings, LLC.

The prior business relationship is not disclosed in the grant application, nor is there any evidence that the Grant Specialist reviewing the application knew that OHA was the lease guaranty for her shop. CLA did not observe anywhere within the application a section to disclose whether or not the organization or any of its members had a prior financial relationship with OHA, conflicts of interest with OHA, or any other relevant matters to make known to the grants staff. Therefore, it is unknown whether the employee selecting the grantee knew that OHA was representing the grantee's Executive Director in another financial matter. Lastly, in the documentation reviewed, CLA did not observe either a form or documentation whereby the grants staff can disclose their review of the grantee's funding history and whether they are in good standing with OHA.

- vi. Fifteen Kūlia Initiative grants were not assessed using the Kūlia Initiative Review Form (criteria **[85]**, **[86]**).<sup>105</sup>

---

<sup>105</sup> The 15 grants were: K-06, K-15, K-23, K-38, K-39, K-40, K-42, K-46, K-48, K-50, K-53, K-57, K-71, K-76, K-78.

See recommendations 11, 15, 16, 17, 18, and 19.

- 5) Sufficiency of contract oversight provided appropriately by the assigned contract manager/monitor.
- a. Thirty-six grants did not contain documentation indicating that an evaluation was performed to determine whether the grantee attained the intended results in the manner the grantee suggested (criteria **[72]**).<sup>106</sup> OHA should have included an evaluation report with each grant, if an evaluation was performed. Despite the missing evaluation reports, there was documentation that OHA monitored the grants. As a result, CLA was unable to assess the extent to which the monitoring procedures conducted by OHA met the level of sufficient grant oversight as defined by the Grants SOP as well as HRS §10-17(d).
  - b. One grant showed evidence that the payments were made in accordance with the contracted schedule of payments; however, all of the payments were made before the intended result of the grant was achieved (K-57 – criteria **[88]**). The grant was a \$2,598,000 Kūlia Initiative grant awarded to Akamai Foundation on behalf of Na'i Aupuni on May 4, 2015. The intended result of the grant was an election of delegates, election and referendum monitoring, a governance 'Aha, and a referendum to ratify any recommendation of the delegates arising out of the 'Aha. The terms of the Letter Agreement between OHA, Na'i Aupuni, and Akamai Foundation, stated the OHA CEO authorized all payments and funding would be made available upon the request of the Akamai Foundation. The schedule included an initial payment of \$250,000, paid on May 14, 2015, and the remaining grant funds were available for the following objectives:
    - i. \$276,250.00 for the Independent Election Monitor Contract. Payment was requested by the Akamai Foundation on July 20, 2015.
    - ii. \$159,137.33 for the first tranche for attorney fees, other consultants, or any budget category needing funding. Payment was requested by the Akamai Foundation on July 20, 2015.
    - iii. \$1,457,088.00 for the Governance 'Aha Contract. Payment was requested by the Akamai Foundation on July 20, 2015.
    - iv. \$159,137.33 for the second tranche for attorney fees, other consultants, or any budget category needing funding. Payment was requested by the Akamai Foundation on July 20, 2015.

---

<sup>106</sup> The 36 grants were: K-06, K-07, K-08, K-13, K-14, K-15, K-22, K-23, K-24, K-25, K-26, K-27, K-29, K-30, K-31, K-32, K-33, K-38, K-39, K-40, K-42, K-46, K-48, K-50, K-53, K-57, K-61, K-62, K-63, K-64, K-65, K-66, K-68, K-71, K-76, K-78.



- v. \$137,250.00 for the Referendum Contract and Independent Referendum Monitoring Contract. Payment was requested by the Akamai Foundation on August 12, 2015.
- vi. \$159,137.33 for the third tranche for attorney fees, other consultants, or any budget category needing funding. Payment was requested by the Akamai Foundation on August 12, 2015.

In sum, the entirety of the grant award was disbursed. The election was scheduled to begin on November 1, 2015, and end on November 30, 2015; however, the election was cancelled by Na'i Aupuni on December 15, 2015. The grant did not contain evidence of (1) Grant Assessment Forms; (2) Progress Activity Reports, Performance Measures, or Expenditures Reports from the grantee; (3) On-Site Monitoring Reports; or (4) a Grant Closeout Report. The documentation provided indicates that the payments to the grantee were made in whole before the election process was scheduled to take place, there were no reports of active grant monitoring occurring during the lead up to the election, and there was no assessment or evaluation of why the grant did not achieve its intended results. In addition, Akamai Foundation submitted its requests for disbursements without providing any proof of the expenses incurred, including invoices, receipts, or detailed time billing. The requests included only the amounts listed in the bullet points above, and there was no cost breakdown showing how it had incurred expenses. CLA was unable to determine how Akamai Foundation calculated the costs it submitted to OHA.

Furthermore, there was no documentation in the grant file that the election did not take place. CLA obtained from Na'i Aupuni's website a copy of the news release to terminate the election process (**Exhibit 09**). CLA was unable to determine if or when Na'i Aupuni notified OHA of Akamai Foundation that the election would be cancelled. Based on the totality of this information, it appears that there was insufficient grant oversight provided by the assigned grant monitor.

- 6) Deliverables were met by the contractor
  - a. One grant was for an election of delegates and the election was terminated before the election votes were counted (K-57 – criteria **[89]**). The grant was intended to produce an election that would occur between November 1, 2015, and November 30, 2015. The election was terminated by the grantee on December 15, 2015. In its news release, Na'i Aupuni stated that "Election-America has been informed to stop the receipt of ballots, to seal ballots that have already been received, and to prevent anyone from counting the votes...Na'i Aupuni has decided that the election votes will never be counted." (**Exhibit 09**) The grant did not include any evidence that the election was rescheduled or that the grantee would reattempt to achieve the intended goal with the awarded funds. CLA reviewed documents on the

grantees' website and learned that the election was terminated due to ongoing litigation that it expected would continue for years. In addition, Na'i Aupuni offered all 196 Hawaiians who ran as candidates a seat as a delegate to the 'Aha in order to reach a consensus on a process to achieve self-governance. The results of Na'i Aupuni's actions do not appear to be consistent with the deliverable for which the grant contract was executed nor is there any documentation in the grant file that OHA determined this action to be allowable or that the grant met its intended purpose.

7) No fraudulent or wasteful disbursements were made

A review of the documents for five of the grants tested in this area identified red flags or indicators that indicate a possibility of fraud, waste, or abuse (criteria **[90]**). The identification of a red flag or indicator does not, on its own, confirm that fraud, waste, or abuse did occur. This section simply identifies the observations made by CLA during the testing that can be indicators of fraud, waste, or abuse, and, therefore, CLA is not making a conclusion as to the existence of fraud, waste, or abuse. Additional investigation of each grant would be required, which was beyond the scope of this engagement. Each of the six grants is discussed further below.

a. K-11 and K-25 – OHA Contracts #2726 and #2887 – I Ola Lāhui, Inc.

These two grants were made to an organization whose executive director appears to have been an acquaintance of Dr. Crabbe. A public information search shows that Dr. Crabbe and the grantee's Executive Director may have connections based on their education backgrounds and professional research topics (**Exhibit 10**). Both Dr. Crabbe and the grantee's Executive Director appeared at the same events involving Native Hawaiian health initiatives (**Exhibit 11**). These two grants were categorized as Community Grants, and as such, the CEO is in the position to review and approve grants recommended by the review committee before sending the recommendations to the ARM/BAE.

Other observations that suggest improper handling include: missing documents, execution of the grant after the time of performance began, and overlapping payments for concurrent awards.

- i. The missing documents included the Purchase Requisition for \$250,000 for the first year (K-11), the Purchase Requisition for \$250,000 for the second year (K-25), and a final Request for Payment on Contract for \$1,000 (K-11).
- ii. The contract for the award (K-11) was signed and executed by the interim CEO, CFO, and Senior Staff Attorney after the Time of Performance (TOP) for the grant had begun. The TOP began December 1, 2011, but the contract was not executed until February 1, 2012.

- iii. The TOP for both awards overlapped. The TOP for the first award was December 1, 2011 to November 30, 2013, but the TOP for the second award was July 1, 2013 to June 30, 2015. For a period of five months, the grantee was eligible to receive concurrent award funds, and there is no documentation in the file to explain why this was allowed or if grants staff were aware that the TOPs overlapped.

Although there does not appear to be a personal financial benefit to an OHA employee, there is a possibility of preferential treatment to this grantee. Any mishandling of grant awards of perceived favoritism could pose a risk to OHA of possible fraud, waste, or abuse.

- b. K-39 – OHA Contract #2953 – Native Hawaiian Education Association on behalf of World Indigenous People's Conference on Education (WiPC:E)

This grant was paid to an organization that engaged Dr. Crabbe to be a keynote speaker at the event paid for by the grant award. Dr. Crabbe was a keynote speaker at the WiPC:E event that OHA sponsored. CLA could not determine if Dr. Crabbe received compensation for the speech and if there was any financial interest at stake. CLA inquired and OHA responded that it was "unable to provide information requested as Dr. Crabbe and staff who may have had firsthand knowledge at the time of the grant are no longer employed at OHA." In addition, this grant was categorized as a Kūlia Initiative grant, and as such, the CEO is in the position to make the final determination to recommend the grantee for funding consideration before sending the recommendation to the ARM/BAE.

This grant file was also missing several documents, including the grant application, which would have been useful for CLA to determine whether the grantee had disclosed that Dr. Crabbe was a keynote speaker at the event. The file was also missing the monitoring and evaluation reports that OHA staff are required to prepare, including the Grant Assessment form, on-site monitoring report, and Grant Closeout Report. All of these forms are used to monitor and evaluate the grant and determine whether the grant attained the intended results. Instead, the grant only contained a final report of the results that the grantee prepared. This indicates that OHA staff relied upon the grantee to self-report the results instead of conducting the monitoring and evaluation process themselves.

The potential for a personal financial benefit to Dr. Crabbe, combined with the missing documents, are red flags or indicators of possible fraud, waste, or abuse.

- c. K-57 – OHA Contract #3026 – Akamai Foundation on behalf of Na'i Aupuni

This grant contained several observations that indicate a possibility of fraud, waste, or abuse during the awarding and disbursement process, as discussed below.

- i. One of the board members of Na'i Aupuni was the spouse of Mr. Nāmu'o, who left OHA on December 30, 2011. This grant was awarded on May 4, 2015. However, Mr. Nāmu'o was employed as the Executive Director of the Native Hawaiian Roll Commission (NHRC) during the time the grant was awarded.<sup>107</sup> In addition, the NHRC's office was located within OHA's office, and funding for the NHRC was provided by OHA.<sup>108</sup> This suggests that Mr. Nāmu'o was in the same office as OHA and receiving compensation that was provided by OHA during the same time that his wife's organization received the \$2.6 million dollar grant. CLA found that there was no disclosure in the grant that there was a potential conflict of interest involving Mr. Nāmu'o.
- ii. As detailed in section 5) in the preceding observations, Akamai Foundation requested the entirety of the grant award amount 81 days before it was scheduled to hold the election. In addition, the disbursement requests lacked any detail, including invoices, receipts, or billings, to demonstrate to OHA what costs it had incurred in the process of holding the election. In fact, one of the Akamai Foundation Request for Disbursement letters stated, "we have entered into an agreement with Election-America which can be found at [www.naiaupuni.org](http://www.naiaupuni.org). We are also in discussions with vendors for the 'Aha which will require commitments to pay in the near term." This Request for Disbursements letter implies that Akamai Foundation had not incurred costs for some of the services for which it was requesting funds. This arrangement is not consistent with the Grants SOP, which requires that grantees submit an expenditure report before Grant Assessment can approve and process the next payment disbursement as requested.<sup>109</sup> The method in which Akamai Foundation requested a disbursement without supporting documentation or an expenditure report, and prior to incurring costs, appears to be an abuse of OHA's established disbursement process.
- iii. As detailed in section 6) in the preceding observations, Na'i Aupuni terminated the election on December 15, 2015, and offered all 196 Hawaiians who ran as candidates a seat as a delegate at the 'Aha. Na'i Aupuni also stated that the votes would never be counted. The sole

---

<sup>107</sup> CLA confirmed that Mr. Nāmu'o was employed with the NHRC at the time his wife's organization received the OHA grant by reviewing publicly available information. Documents filed for the case *Judicial Watch, Inc. v. Clyde W. Nāmu'o*, and State of Hawai'i Native Hawaiian Roll Commission confirmed he was employed at the NHRC at the time. These documents included an email sent by Mr. Nāmu'o as late as July 14, 2015. This email was sent after the time the grant was awarded.

<sup>108</sup> The Hawai'i Senate passed Bill 1520 for Act 195 on July 7, 2011. The act included the provisions that the NHRC was a five-member commission established within OHA for administrative purposes only, that funding for the NHRC would be provided by OHA, and that the NHRC could fix the compensation of the Executive Director.

<sup>109</sup> Grants SOP, Section III(A)(7)(b)(1-4).

purpose of the election was to facilitate an election of delegates, election and referendum monitoring, a governance 'Aha, and a referendum to ratify any recommendation of the delegates arising out of the 'Aha. There is no evidence that OHA was satisfied that Na'i Aupuni's actions met the intended purpose of the grants. Lastly, there is evidence that Na'i Aupuni's actions to terminate the election were done so without consulting with OHA. In a "Q&A" document that CLA retrieved from Na'i Aupuni's website, it stated, "the Grant Agreement, which is on our website, states that OHA will not control or affect Na'i Aupuni's decisions and that Na'i Aupuni has no obligation to consult with OHA. Thus, OHA is learning about this announcement along with the rest of the community at this time. Na'i Aupuni did not consult with OHA about this change of plans, and Na'i Aupuni believes that it is authorized under the Grant Agreement to proceed in this fashion" (**Exhibit 12**). The grant file does not contain any documentation that OHA agreed or disagreed with this statement.

Because all funds were disbursed and the election was canceled, the intended results of the grant were not recognized, which is an indication of waste of funds.

d. K-76 – OHA Contract #2785 – 'Aha Kāne

The grantee, 'Aha Kāne, was founded by Dr. Crabbe before he was employed at OHA. In 2012, 'Aha Kāne received an award of \$200,000 to convene a gathering of Native Hawaiian men for leadership and community involvement instruction. At the time, documentation shows the former CEO was serving as an Advisory Chair to the grantee. This information was not documented in the grant or disclosed in the grant application. In addition, the grant contract was not signed and executed until a day before the time of performance, which meant that the funds for the event were not disbursed and deposited until after the event began. The OHA Grant Reviewer noticed this and recommended in the Grant Review Report that the "grantee should submit requests for funding earlier so that OHA has the time to complete the grant agreement and disburse funds prior to the event date."

The association between Dr. Crabbe and this organization indicate a possible conflict of interest in the awarding of this grant. Although there is no evidence of a personal financial benefit to Dr. Crabbe, his association was not disclosed in the grant documents. Any disbursement of funds to an entity with an association to a high-ranking employee poses a greater risk of fraud, waste, or abuse.

See recommendations 02, 06, 13, 31, and 40.

**b) Competitive Sealed Proposal Contracts**

Nine of the contracts selected for testing were procured using the competitive sealed proposal method – Request for Proposal (RFP). HRS §103D-303 subsection (a) provides that competitive sealed proposals may be used to procure goods, services, or construction that are either not practicable or not advantageous to the State to procure by competitive sealed bidding. A copy of HRS §103D-303 is included in **Exhibit 13**.<sup>110</sup>

A detailed listing of the applicable HRS rules and OHA policies and procedures identified by CLA to test the procurement and execution of OHA RFP contracts is included in **Attachment 06**. As part of this testing, criteria [19] through [34] and [47] through [52] were used by CLA to determine if the goods, services, or contract type appeared to follow HRS §103D-303 and OHA’s Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.1.9.3 Request for Proposal (RFP) Process.<sup>111</sup>

Included in Table 7 below is a summary of the results identifying for each criteria tested the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations. Included below the table is a discussion of the more significant observations from CLA’s testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 06** includes a table containing the results at the contract level and tickmarks explaining each observation for a contract.<sup>112</sup>

**Table 7: Summary of Results – OHA Competitive Sealed Proposal (RFP) Contracts**<sup>113</sup>

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	4	0	5	9

<sup>110</sup> The universal citation for this HRS is HI Rev Stat § 103D-303 (2012). In performing this testing, CLA used the HRS in effect for the scope period.

<sup>111</sup> The OHA Fiscal Procedures Manual provided to CLA contains a date of June 2008 on the cover page; however, the second page of this manual contains a list of effective changes which includes the latest change on March 2, 2009. For this reason, CLA refers to this manual’s latest update, March 2, 2009, as the most recent version.

<sup>112</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 06**, tickmarks for RFP contracts tested are numbered with the letter “B” as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **B01** is the first observation tickmark for OHA’s RFP contracts.

<sup>113</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however,

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or any other agency capacity.	4	0	5	9
<b>HRS §84-15: Contracts</b>					
[3]	The contract was not with a legislator or employee who has controlling interest.	0	0	9	9
[4]	If the contract was with a legislator or employee who has controlling interest, alternative criteria were met.	0	0	9	9
[5]	The person or business entering into contract with OHA was not represented by a person employed by OHA in the preceding 2 years.	0	0	9	9
[6]	If the person or business entering into contract with OHA was represented by a person employed by OHA in the preceding 2 years, the person employed by OHA did not participate in the matter with which the contract is directly concerned.	0	0	9	9
<b>HRS §103D: Hawaii Public Procurement Code</b>					
<b>HRS §103D-101(a): Requirements of Ethical Public Procurement</b>					
[7]	No evidence was observed of OHA employee(s) not acting as a fiduciary of public funds.	3	0	6	9
[8]	No evidence was observed of OHA employee(s) not remaining independent of bidder, offeror, contractor, or business.	3	0	6	9
[9]	No evidence was observed of OHA employee(s) not acting only in the public interest.	3	0	6	9
[10]	No evidence was observed of disobedience to of statutes and administrative rules relating to public procurement.	5	0	4	9
[11]	No evidence was observed of inefficiencies in the public procurement process.	3	0	6	9
[12]	No evidence was observed of persons not afforded an equal opportunity to compete in a fair environment.	5	0	4	9
[13]	No evidence was observed of intent or appearance of unethical behavior.	3	0	6	9
[14]	No evidence was observed of social interactions with actual/prospective bidder.	3	0	6	9
[15]	No evidence was observed of a failure to maintain confidentiality in a manner that ensures a fair procurement process.	5	0	4	9
[16]	No evidence was observed of a failure to remain impartial in dealings with actual or prospective bidders, offeror, contractor, business, or interested parties.	3	0	6	9
<b>HRS §103D-101(b) &amp; (c): Requirements of Ethical Procurement</b>					
[17]	No evidence was observed of a failure to identify and eliminate conflict of interests for this contract.	3	0	6	9
[18]	No evidence was observed that any party involved in the negotiation, performance, or administration of this contract did not act in good faith.	3	0	6	9
<b>HRS §103D-303 Competitive Sealed Proposals<sup>114</sup></b>					
[19]	Request for Proposal (RFP) was issued with proper adherence to HRS §103D-302(c).	2	0	7	9

the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>114</sup> Criteria [20] and [33] were also tested here but are excluded as they was used by CLA to document information pertaining to the procurement process, such as the number of days between the public notice



Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[21]	The number of days between the public notice of the invitation for bids and the opening of bid was reasonable.	2	0	7	9
[22]	The form of the RFP notice was in accordance with board Policy.	2	0	7	9
[23]	The manner in which the RFP notice was published was in accordance with OHA board policy.	6	0	3	9
[24]	Proposals were opened in a manner that ensured no proposal materials were unfairly disclosed to competing offerors.	6	0	3	9
[25]	A register of proposals was prepared and made available for public review.	6	0	3	9
[26]	The RFPs included descriptions of the relative importance of price and any other factors considered in the selection process.	2	0	7	9
[27]	The award was made in writing to the most advantageous vendor after considering price and other factors set forth in the RFP and no other factors were considered if they were not in the official RFP.	5	0	4	9
[28]	The design-build method was utilized for construction projects.	0	0	9	9
[29]	For construction projects, prequalified offerors were selected prior to submittal of proposals and all offerors were notified of those offerors that had been short-listed.	0	0	9	9
[30]	The project was a construction project and the cost was greater than \$1,000,000.	0	0	9	9
[31]	For construction projects, the conceptual design fee (if any) was properly disclosed in the request for proposals.	0	0	9	9
[32]	A pre-bid conference was held for contracts valued at \$100,000 or more or \$500,000, or more, as applicable.	2	0	7	9
[34]	All potential interested bidders, offerors, subcontractors, and union representatives invited to attend the pre-bid conference.	2	0	7	9
<b>HRS §103D-309 Contract Not Binding Unless Funds Available</b>					
[35]	The comptroller (CFO) endorsed a certificate that appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract, was made.	0	0	9	9
<b>HRS §103D-312 Fair and Reasonable Pricing Policy - Cost Pricing Data</b>					
[36]	The procurement officer made a written determination of whether a price was fair and reasonable for each contracting action, unless the contract is based on adequate price competition	0	0	9	9
[37]	The procurement officer obtained certified cost of pricing data and other data as necessary to perform a cost analysis to determine a fair and reasonable price, unless the contract is based on adequate price competition	0	0	9	9
[38]	The procurement officer obtained from the contractor pricing data and certification that the cost/pricing data submitted was accurate, complete, and current as of a date mutually determined before the award of the contract, or the pricing of any change order, unless the contract is based on adequate price competition	0	0	9	9
[39]	If a certificate was required for a contract, change order, or contract modification, it contained a provision that the price shall be adjusted to	0	0	9	9

of the invitation for bids and the opening of the bids; however, is not necessary to report the final results of the testing.



Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
	exclude significant sums for an increase due to inaccurate, incomplete, or not current data as of the date agreed.				
<b>HRS §103D-315 Multi-Term Contracts<sup>115</sup></b>					
[40]	The terms of the contract and conditions for renewal or extension were included in the solicitation.	2	0	7	9
[42]	For multi-year contracts, it was determined in writing that the estimated requirements cover the period and are reasonably firm and continuing.	0	0	9	9
[43]	For a multi-year contract, it was determined in writing that such contract serves in the best interest of OHA.	0	0	9	9
[44]	For multi-year contracts, it was determined in writing that sufficient funds to pay for the initial term of the contract are available and funds necessary for the remaining terms are likely to be available from sources identified in writing.	0	0	9	9
<b>HRS §103D-323 Bid Security</b>					
[45]	Documentation to show that a bid security bond provided in an amount equal to at least five percent of the amount of the bid was obtained for construction projects.	0	0	9	9
<b>HRS §103D-324 Contract Performance and Payment Bonds</b>					
[46]	A performance or payment bond in an amount equal to one hundred percent of the price specified in the contract was obtained, if the contract was over \$25,000 and was for construction.	0	0	9	9
<b>P-10: OHA Purchase and Procurement Procedures, revised March 2, 2009</b>					
<b>2.2.1.9.3: Request for Proposal</b>					
[47]	An administrator made a written determination that a competitive sealed proposal was the more appropriate method.	0	5	4	9
[48]	An Evaluation Committee or Procurement Officer was utilized to conduct the evaluation.	4	0	5	9
[49]	The Procurement Officer prepared the RFP.	2	0	7	9
[50]	The RFP was properly approved by an Administrator and Legal Office.	7	2	0	9
[51]	The RFP was advertised in major newspapers and the OHA website.	6	0	3	9
[52]	Proposals were fully evaluated and, if additional discussion was necessary, a priority list was prepared.	5	0	4	9
<b>2.2.2.1: Purchase Request</b>					
[53]	A Hale Director or Deputy Administrator identified the need to create a Purchase Requisition.	0	1	8	9
[54]	The Purchase Requisition complied with the OHA Procurement Policy.	0	1	8	9
[55]	The Purchase Requisition documented the availability of funds for the procurement.	0	1	8	9
[56]	The Purchase Requisition was approved by the appropriate manager as per the delegation of authority document.	0	1	8	9
[57]	A complete Purchase Requisition was submitted by a designated representative for the review process.	0	1	8	9
<b>2.2.4: Grants, Procurement, and Contracts Review Process</b>					
[58]	[a] An Accounting Checklist was submitted.	0	9	0	9

<sup>115</sup> Criteria [41] was also tested here but is excluded as it was used by CLA to document whether the contract was a multi-year contract. This information is not necessary to report the final results of the testing as it is address within criteria [42].

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
	[b] Funds were verified by the Budget Analyst.	0	1	8	9
	[c] Funds were certified by the CFO.	0	0	9	9
[59]	The CFO certified the availability of funds on the Accounting Checklist.	0	9	0	9
[60]	Unless not required by statute, the contractor submitted a Tax Clearance to OHA prior to executing the Purchase Order.	0	0	9	9
[61]	A Procurement Document Checklist was submitted and signed by a Hale Manager.	0	0	9	9
[62]	The owner of the business, except for sole proprietorships, charitable organizations, unincorporated associations, and foreign insurance companies, submitted a DCCA Verification showing Proof of Good Standing with the State of Hawaii.	0	0	9	9
[63]	The Hale Manager or Grants staff submitted a Standard Long Form Contract for Purchase of Services.	0	0	9	9
<b>2.2.4.2: Purchase of Goods and Services Review Process<sup>116</sup></b>					
[64]	The standard contract was used for the purchase of services and it included all of the provisions outlined in the Standard Long Form Contract.	0	1	8	9
[65]	The senior staff attorney signed the Procurement Document Check List to ensure compliance with State Procurement Laws for purchases of more than \$2,500.	0	1	8	9
[66]	The senior staff attorney signed the contract.	0	0	9	9
[68]	The appropriate signatures were obtained on contract based on Operational Authority Delegation Hierarchy revised 12/12/12, 5/19/15, and 10/21/15, as applicable.	0	1	8	9
<b>2.2.5: Purchase Orders</b>					
[69]	A copy of the Purchase Order was issued to the preparer to indicate the contract encumbrance process was complete.	0	0	9	9
[71]	The Purchase Order was reviewed and signed by the Controller or the CFO, as applicable.	0	0	9	9
<b>2.2.7.3: Contract Payment Process<sup>117, 118</sup></b>					
[72]	The Request for Contract Payment, was signed by the Hale Director for contracts, or a receipt of goods/services was received.	1	0	8	9
[75]	The Request for Payment on Contract was reviewed and signed by the Hale Director and Administrator, or Deputy Administrator, as applicable.	1	0	8	9
[78]	The payment was approved by the appropriate level based on Operational Authority Delegation Hierarchy revised 12/12/12, 5/19/15, and 10/21/15, as applicable.	1	0	8	9

<sup>116</sup> Criteria [67] and [70] were also tested here but are excluded as they were used by CLA to document the name of the individual who approved the Requisition form and the date when the Purchase Requisition was signed; however, this information is not necessary to report the final results of the testing.

<sup>117</sup> Criteria [73] and [74] were also tested here but are excluded as they were used by CLA to document the name of the Hale Director, and the date of certification of receipts of goods/services; however, this information is not necessary to report the final results of the testing.

<sup>118</sup> Criteria [76] and [77] were also tested here but are excluded as they were used by CLA to document the name of the Hale Director or Administrator (Deputy Administrator); however, this information is not necessary to report the final results of the testing.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>2.2.7.5: Check Issuance</b>					
[79]	The invoice was stamped "Paid" and marked with the check number.	0	9	0	9
<b>Other Testing Results</b>					
[80]	Deliverable was met by the contractor.	1	4	4	9
[81]	There was sufficient oversight of project/work by the contract monitor/manager.	0	7	2	9
[82]	There was no evidence of fraudulent or wasteful disbursements.	4	2	3	9

Within each observation, CLA has listed the OHA contract sample number with that particular observation. The specific contract number and a more detailed discussion of the observation can be found by referring to **Attachment 06**. Each observation also includes a reference to the applicable criteria listed in the table above.

1) Compliance with HRS §84: Standards of Conduct

Four contracts did not contain a document that would have enabled CLA to determine who were the OHA employees selecting the contractor in order to assess whether the selecting employee(s) had a financial interest in the contractor or were engaged as legal counsel, advisor, consultant, representative, or other agency capacity (K-04, K-34, K-06, K77 - criteria **[1]**, **[2]**).<sup>119</sup>

2) Compliance with HRS §103D – Hawai'i Procurement Code

a. HRS §103D-101(a)

- i. Three contract files did not contain any documentation that would have enabled CLA to assess whether the requirements of HRS §103D-101(a) were met (K-34, K-43, K-77 - criteria **[7]** through **[16]**).<sup>120</sup>
- ii. Two contract files (K-04, K-60) did not contain documentation that would have enabled CLA to assess whether there was.<sup>121</sup>

<sup>119</sup> The documents that would have enabled CLA to make the assessment are any of the following: Memorandum of evaluation committee appointments, RFP evaluations completed by each member of the evaluation committee, and/or Evaluation Committee Scoring Matrix.

<sup>120</sup> The documents that would have enabled CLA to make the assessment are the following: Memorandum of evaluation committee appointments, RFP evaluations completed by each member of the evaluation committee, Evaluation Committee Scoring Matrix.

<sup>121</sup> The documents that would have enabled CLA to make the assessment are all those indicated in footnote above as well as evidence of the publication of the RFP and the RFP itself.

- No evidence of disobedience to statutes and administrative rules relating to public procurement (criteria **[10]**)
- No evidence that persons were not afforded an equal opportunity to compete in a fair environment (criteria **[12]**)
- No evidence that there was failure to maintain confidentiality in a manner that ensures a fair procurement process (criteria **[15]**)

b. HRS §103D-101(b) and (c)

Three contract files did not contain any documentation that would have enabled CLA to assess whether the requirements of HRS §103D-101(b) and (c) were met. The criteria includes failure to identify and eliminate conflicts of interest and parties involved in the negotiation, performance, or administration of a contract did not act in good faith.<sup>122</sup> (K-34, K-43, K-77 - criteria **[17]** and **[18]**)

c. HRS §103D-303 – Competitive Sealed Proposals

One of the most prevalent issues noticed for contracts procured through the RFP method, was that complete documentation regarding the procurement process for the majority of the contracts was incomplete or not available to provide to CLA. The Current Procurement Manager communicated to CLA that during the majority of the scope period, the procurement department did not maintain the procurement contract files. The procurement documents were, as a matter of practice, sent to the accounting department and the documents that were provided, were available because the accounting department happened to retain them. The Procurement Manager stated that soon after becoming the procurement manager she attempted to establish a process to keep procurement documents in contract files retained by the Procurement Office, However, it took time for her department to completely comply with this new process. The current Procurement Manager became the manager in FY 2014-15.<sup>123</sup> The following bullet points indicate which contracts did not contain the documents that would have enabled CLA to assess whether the procurement was consistent with all of the requirements of HRS §103D-303.

---

<sup>122</sup> The documents that would have enabled CLA to make the assessment are the following: Memorandum of evaluation committee appointments, RFP evaluations completed by each member of the evaluation committee, Evaluation Committee Scoring Matrix, copy of acknowledgment of receipt of proposal, copy of registry of proposals.

<sup>123</sup> Of the nine RFP contracts tested, only contract samples K-52 and K-60 were procured in or subsequent to FY 2014-15.

- i. For two contracts CLA did not receive the prepared RFP document and therefore was unable to assess whether:<sup>124</sup>
  - a. The notice of the RFP was issued with proper adherence to HRS §103D-302(c),<sup>125</sup>
  - b. The number of days between the invitation for bids and the opening of the bids was reasonable,
  - c. The form of the RFP was in accordance with Board Policy,
  - d. The RFP included a description of the relative importance of price and other factors considered,<sup>126</sup>
  - e. A pre-bid conference was held for contracts valued at \$100,000 or more,
  - f. All potential interested bidders, offerors, subcontractors, and union representatives were invited to attend a pre-bid conference, and
  - g. The term of the contract and condition for renewal or extension were included in the solicitation.
- ii. For six contracts, CLA did not receive documents detailing how the RFP notice was published, how the proposals were opened, or that a register of proposals received was prepared and made available for public review (K-04, K-34, K-43, K-45, K-60, K-77 - criteria **[23]** through **[25]**).
- iii. For five contracts, CLA did not receive the evaluation matrices that would have allowed CLA to verify that the award was made in writing to the most advantageous vendor after considering price and other factors set forth in the RFP (K-04, K-34, K-43, K-06, K-77 – criteria **[27]**).

See recommendation 23.

### 3) Compliance with OHA Internal policies and procedures

The internal policies and procedures identified by CLA that address the procurement, approval, and execution of OHA RFP contracts include a review of

---

<sup>124</sup> The two contracts were K-34 and K-77. (criteria [19], [21], [22], [26], [32], [34], [40])

<sup>125</sup> HRS §103D-302(c) requires that adequate public notice of the invitation for bids shall be given reasonable time before the date set forth in the invitation for the opening of bids.

<sup>126</sup> These contracts were K-34, K-77 and applicable criteria were [19] through [22] and [26].

the RFP, Purchase Requisition, Procurement Document Checklist, Tax Clearance, DCCA Verification submitted by the contractor, use of standard contract, Purchase Order, and Request(s) for Payment on Contract. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. Refer to **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's procurement process.

a) Request for Proposal

- i. Five contract files did not contain documentation to confirm that an administrator made a written determination that a competitive sealed proposal was the most appropriate method. Furthermore, the Procurement Document Checklist contained a section to be checked when this step had been completed. These five contracts did not have that box checked (K-19, K-36, K-43, K-45, K-77 – criteria **[47]**).
- ii. Four contract files did not contain documentation that an Evaluation Committee was utilized to conduct the evaluation (K-04-, K-43, K-60, K-77 – criteria **[48]**).
- iii. Two contract files did not include a copy of the RFP document (K-34, K-77 – criteria **[49]**).
- iv. Seven contract files did not contain evidence that legal counsel reviewed the RFP prior to the RFP publication. Based on the documentation received, it appears that review by legal counsel prior to the RFP being issued was not documented prior to October 2014. Prior to October 2014, the first document in the procurement process that records review by legal counsel is the Procurement Document Checklist, which is completed prior to executing the contract but well after the RFP was published. Two contracts that were procured after October 2014 (as listed in item v. below) contained a document titled Procurement Solicitation Routing form. This form has a location to document legal counsel's review of the RFP. (K-04, K-19, K-34 K-36, K-43, K-45, K-77 – criteria **[50]**).
- v. Two RFP publications were not reviewed by legal counsel prior to the RFP publication. These contracts contained a document titled Solicitation Routing Form, which has a location to record legal review of the RFP prior to RFP publication. For these two contracts, the location to record the legal review was left blank. (K-52, K-60 – criteria **[50]**).

- vi. Six contract files did not contain evidence that the RFP was published in major newspapers, with the State Procurement Office, and on the OHA website (K-04, K-34, K-43, K-45, K-60, K-77 – criteria **[51]**).
- vii. Five contract files did not contain evidence that proposals were fully evaluated as they did not include a completed evaluation form and/or evaluation matrices (K-04, K-34, K-43, K-60, K-77 – criteria **[52]**).

b) Purchase Requisitions

- i. One contract file contained three versions of a Purchase Request for one corresponding contract amendment. Although there were several purchase requisitions for the contract amendment, the contract file did not include the purchase request from the time the contract was executed. For this reason, CLA is unable to determine whether the CFO reviewed the budget for verification of funds for the initial contract executed or whether the Purchase Requisition was approved by the appropriate manager (K-77 – criteria **[53]** to **[57]**, **[58b]**).

c) Contracts review process

- i. All nine contracts did not have an Accounting Checklist completed. According to Gloria Li, Controller, the Accounting Checklist has not been used in a long time and the Procurement Document Checklist is used instead. The Accounting Checklist was used when purchasing was part of the accounting department, and there was a separate checklist for each group (accounting and procurement). Now that procurement is its own department, only the Procurement Document Checklist is used. The availability of funds is verified on the Purchase Requisition by the Budget Analyst. The CFO's certification of funds is documented on the Purchase Order (criteria **[58a]** and **[59]**).
- ii. One contract file contained the original contract executed on the Standard Long Contract format, as required; however, there was evidence that a contract amendment had been approved, but a copy of the amendment was not available. (K-04 – criteria **[64]**).
- iii. One contract did not include the signature of the senior staff attorney on the Procurement Document Checklist to ensure compliance with State Procurement Laws for purchases of more than \$2,500 (K-43 – criteria **[65]**).
- iv. One contract of more than \$150,000 was signed by the COO contrary to the Operational Authority Delegation Hierarchy in effect at the time of the contract execution. The Delegation of authority document in effect for the period in which this contract was executed stated that the CEO is responsible for signing program level contracts and amendments of \$150,001 and higher. The COO is able to sign contracts

up to \$150,000. CLA did not receive a memorandum or any other documentation that would indicate the CEO delegated this authority to the COO for the execution of this contract (K-52 – criteria [68]).

d) Request for Contract Payment

- i. For one contract, CLA was provided with the payment request and invoice for only the first payment made. There were four additional payments for \$30,000 each for which CLA was not provided the payment request, invoice, or deliverables. Payment support was provided for only \$30,000 of this \$150,000 contract. There was a sticky note on the one payment support that was provided that indicated "contract closed - can't find other payments." (K-19 – criteria [72], [75], [78]).

e) Check Issuance

- i. Six contract files contained records of payments made that did not contain a stamp on the paid invoice indicating the check number. The OHA Fiscal Procedures Manual, Check Issuance and Distribution Process section (**Exhibit 02** page 114), states that invoices are to be stamped "Paid" and marked with the check number. CLA noticed, for the payments on all contracts, the actual process followed included applying the stamp on the Request for Payment on Contract form, and no stamp was applied or check number recorded on the actual invoice (K-04, K-34, K-45, K-52, K-60, K-77 – criteria [79]).
- ii. One contract file did not contain an invoice for four of the five payments processed (refer to d. i. above relating to contract sample K-19 – criteria [79]).
- iii. One contract included a payment that did not have the check number listed on the stamp applied to the Request for Payment on Contract form. The payment process indicates that the invoice will be stamped 23paid and list the check number. As explained above, the paid stamp and notation of the check number, in practice, was taking place on the Request for Payment on Contract form, which was the case for three of the four payments made on this contract. For the final payment totaling \$262,293.37, which was paid with check number 58223, the Request for Payment on Contract form did not have a notation of the check number. Additionally, this form contained a note that stated, "Do not mail, pls, fwd check to Miki." Checks should never be forwarded to OHA staff, and always be mailed directly to the vendor (K-36 – criteria [79]).
- iv. One payment made on one contract contained an error which caused a small overpayment. This contract, after amendment, totaled \$297,225, and seven payments were made for the period tested by CLA. One of the seven payments for this contract was for two separate



charges, \$1,365.00 and \$545.45, for a total invoice of \$1,910.45. However, the payment was processed for \$545.45 plus \$1,910.45, for a total check of \$2,455.90. The vendor was paid an excess of \$545.45 on this contract, and CLA did not receive evidence that a refund was requested by OHA. This appears to have been an accounting error at the time of entry. Additionally, although the payment process indicates that the invoice will be stamped paid and list the check number, the check number was not listed on the Request for Payment form for this one payment. (K-43 – criteria **[79]**).

See Recommendations 25, 27, 28, 29, 30, 47, 48, and 52.

- 4) Deliverable was met by the contractor
- a. Four of the nine RFP contract files tested included documentation from the contractor to indicate the contractor completed and provided OHA the deliverables required by the contract terms (K-34, K-36, K-43, K-19 – criteria **[80]**).
  - b. One contract did not include documentation from the contractor to indicate that the contractor completed and provided to OHA the deliverables required by the contract terms (K-60). CLA is unable to assess whether the contractor completed the deliverable as required. The following item provides additional information for this contract.
    - i. K-60 – OHA Contract #3036 – Helping Hands Hawaii

This contract was a \$1,660,000 contract with Helping Hands Hawaii to operate a statewide delivery system for a financial literacy and multi service referral program, and implementation of services to be provided for Native Hawaiian beneficiaries. This contract was effective from July 1, 2015 to June 30, 2017.<sup>127</sup> The contract manager was still a current member of OHA staff but in a different position. CLA spoke with this employee and was told that the vendor provided the services as detailed in the contract terms and provided the required quarterly fiscal and program progress reports as well as the annual reports. The employee communicated that an attempt would be made again to locate the needed reports; however, these reports were not made available to CLA.
  - c. Four contracts contained partial evidence that a deliverable was provided by the contractor. Because only partial evidence that a deliverable was reviewed, CLA is unable to assess whether the contractor completed all

---

<sup>127</sup> This same vendor had a previous contract with OHA for the same services for the period of August 1, 2013 through June 30, 2015. This previous contract was also selected by CLA as sample number K-34. For K-34, CLA did receive copies of the quarterly fiscal and program progress reports, and annual reports, as required per the terms of the contract.

---

deliverables as required. The following items provide additional information for each contract.

i. K-52 – OHA contract #3007 - WCIT:

This was a \$1,605,532 contract with WCIT Architecture with the ultimate purpose of providing a conceptual master plan for OHA's Kaka'ako Makai parcel to take OHA from the framework plan to the point of being ready to issue an RFP to select a site developer. The contract period was from December 11, 2014, to December 10, 2016. Although the contract manager was no longer with OHA, the current Resource Manager & Land Assets Director was able to provide CLA with details regarding the deliverables provided by the vendor. He communicated that the vendor did provide deliverables that included an environmental impact report. Based on that analysis, the vendor prepared a presentation to the Board of Trustees. Because the deliverables by the vendor were presented to the Board of Trustees in closed session, OHA did not provide them to CLA. Instead, CLA was provided with the November 4, 2015 agenda for the meeting of the Resource Management Committee, which lists in item IV-Executive Session, Kaka'ako Makai Conceptual Master Plan Updates regarding implementation of the Kaka'ako Makai Conceptual Master Plan pursuant to HRS §92-5(a)(4).<sup>128</sup> Because CLA was not able to review the deliverable that appears to have been provided by the vendor, CLA is unable to assess whether the deliverable met the terms of the contract.

ii. K-04 – OHA Contract #2688- Alu Like, Inc.:

This was originally an \$830,000 contract executed on July 22, 2011, for the contractor to operate a state-wide delivery system for programs related to: community resource access and assistance, individuals and family asset building, and assets for independence. The time of performance was from July 1, 2011 to June 30, 2012. Based on the payments made, it appears that an amendment was negotiated that added \$830,000 to the contract and extended the time of performance for one more year (bringing the total contract value to \$1,660,000). However, CLA was not provided with this contract amendment. Additionally, no deliverables were made available to CLA for the original contract or for the period covered under the contract amendment. However, based on the review of documents for the assessment of a new vendor to provide similar services, the work that had been performed by Alu Like, Inc. was discussed.

---

<sup>128</sup> HRS §92-5(a)(4) states, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities." CLA did not assess whether the Executive Meeting session was in accordance with the cited HRS.

## iii. K-45 – OHA Contract #2976 – PFK Pacific Hawaii, LLP

This was a \$95,000 contract executed on June 19, 2014 for the (1) review of financial statements, audit reports, and other internal and external documents relating to the OHA operations, OHA's LLCs, Board of Trustees Policies and other documents requested by ARM Chair; (2) determine the extent to which budgeted actuals and spending accurately reflect BOT priorities set forth in OHA's strategic plan, action items, and BOT votes; (3) perform analytics to consolidate and transform data into meaningful information to assist the Board in their decision making. The contract stated that invoices must include a detailed breakdown of contractor's time charges and be accompanied by a verbal or written activity report. Only one of the seven invoices tested by CLA had the required detailed breakdown of the contractor's time charged, which was the first invoice. The remaining six invoices did not contain the detailed breakdown, and CLA was not provided with any written reports that may have been submitted by the vendor. CLA inquired with OHA staff; however, OHA did not provide CLA with additional details relating to this contract or communicate to CLA whether the activity reports were submitted to OHA in verbal or written form.

## iv. K-77 – OHA Contract #2847 Absolute Plus Advisors

This was a \$100,000 contract executed on December 31, 2012, and amended on April 25, 2014 to make the total contract amount \$185,000. The contract terms detailed that the contractor was to provide verbal or written quarterly assessments of each Trust Funds Advisor and the entire Trust Fund during regularly scheduled meetings of the Asset and Resource Management Committee and/or the Board of Trustees. OHA was unable to locate any written reports that may have been provided by the vendor or any other supporting documentation to provide evidence of a verbal report. Although the contract required the invoices to be accompanied by a verbal and/or written report identifying the activities, tasks, and/or work product completed, OHA was unable to locate and provide to CLA.

See recommendation 31.

## 5) Sufficiency of contract oversight

- a. Two contracts included documentation from the contractor for CLA to assess that there appeared to be sufficient oversight of the project/work by the contract manager (K-36, K-52). OHA's internal policies and procedures do not indicate the methods that must be used by the contract manager to provide oversight of the contractor's work. Therefore, CLA's assessment was based on whether there was evidence of deliverables from the contractor, invoices provided detail of the work performed, and/or CLA was able to speak with the contract manager to discuss the work performed.

- b. Five contracts had an effective date that preceded the contract execution date (K-04, K-34, K-43, K-45, K-60). Executing a contract after the effective date is not a best business practice and provides indication of deficiencies in the contract oversight.

- i. K-04 – OHA Contract #2688 - Alu Like, Inc.

As mentioned, this was originally an \$830,000 contract executed on July 22, 2011, for the contractor to operate a state-wide delivery system for the programs related to: community resource access and assistance, Individuals and family asset building, and assets for independence. The effective date of performance was from July 1, 2011 to June 30, 2012, while the contract was executed on July 22, 2011, which is 21 days after the effective date.<sup>129</sup>

- ii. K-34 – OHA Contract #2926 - Helping Hands Hawaii

This was a \$1,198,000 contract executed on August 2, 2013, for the contractor to operate a statewide delivery system for a financial literacy and multi service referral program, and implement services to be provided for Native Hawaiian beneficiaries. This contract was effective from August 1, 2013 to June 30, 2015, while the contract was executed on August 2, 2013, which is one day after the effective date.<sup>129</sup>

- iii. K-43 – OHA Contract #2963 – Environmental Science International

This was a \$361,959 contract executed on April 14, 2014, for the contractor to provide environmental consulting services for approximately 30 acres in Kaka'ako Makai. The effective date of performance was from March 27, 2014 to December 31, 2016, while the contract was executed on April 14, 2014, which was two weeks after the effective date.<sup>130</sup>

- iv. K-45 – OHA Contract #2976 – PFK Pacific Hawaii, LLP

This was a \$95,000 contract executed on June 19, 2014 for the (1) review of financial statements, audit reports, and other internal and external documents relating to the OHA operations, OHA's LLCs, Board of Trustees Policies and other documents requested by ARM Chair among other services. This contract was effective from May 1, 2014 to June 30, 2015,

---

<sup>129</sup> According to invoice support, services were provided by the vendor beginning on the effective date.

<sup>130</sup> The first invoice stated that it was for services provided through June 30, 2014. For this reason, CLA is unable to determine when the vendor commenced work for this contract.

while the contract was executed on June 19, 2014, which was more than one month and a half after the effective date.<sup>131</sup>

v. K-60 – OHA Contract #3036 – Helping Hands Hawaii

This contract was a \$1,660,000 contract executed on July 10, 2015 for the contractor to operate a statewide delivery system for a financial literacy and multi service referral program, and implementation of services to be provided for Native Hawaiian beneficiaries. This contract was effective from July 1, 2015 to June 30, 2017, while the contract was executed on July 10, 2015, nine days after the effective date.<sup>132</sup>

- c. One contract (K-19) did not contain the invoice and payment support for \$120,000 of a \$150,000 contract with Rider Levett Bucknall, Ltd for the design of management and development framework for the Kaka'ako Makai Land Parcels.<sup>133</sup> Although the deliverables were provided to CLA, there were no invoices that provided detail of the work performed, and CLA was unable to speak with the contract manager to discuss the work performed.<sup>134</sup> For this reason CLA is unable to determine whether appropriate contract oversight existed for this contract.<sup>135</sup>
- d. One Contract had several patterns evidencing poor contract oversight (K-77). The original contract with Absolute Plus Advisors was executed on December 31, 2012, for \$100,000. One amendment was executed on April 25, 2014 and increased the total contract amount to \$185,000.<sup>136</sup>

---

<sup>131</sup> According to invoice support, services were provided by the vendor beginning on July 1, 2014, which was after the execution date.

<sup>132</sup> According to invoice support, services were provided by the vendor beginning on the effective date.

<sup>133</sup> There were five \$30,000 payments recorded in the general ledger for this contract. The first payment of \$30,000 was made at the time of the contract execution, and four other payments of \$30,000 each were made with one single check

<sup>134</sup> Another contract by this vendor was tested under sample K-44. Within the support for that contract, there is a statement that communicates an outstanding balance of \$130,000, which includes the \$120,000 for which no invoices were located and provided to CLA. The contractor appeared to consider the two contracts with OHA, K-43 and K-44, as a single contract (Rider Levett Bucknall Ltd. contract number #2865). The contract tested in sample K-44 appears to be for the presentation of the results from the work performed. If this is indeed the case, this would be additional evidence of insufficient or poor oversight as the original contract provided for the contractor to present findings to OHA project managers and decision-makers upon request.

<sup>135</sup> Although CLA did not receive evidence of the Request for Payment on Contract or of the four corresponding invoices, according to the general ledger, the check was prepared on December 6, 2013, while the final report provided to CLA as evidence of a deliverable was dated November 2013.

<sup>136</sup> The payment terms detailed that monthly payments of a fixed amount would be paid on a specific schedule after the receipt of invoices that include a detailed breakdown of the contractor's time charge

- i. The contract had an amendment execution date was after the amendment effective date by one day short of five months.
- ii. The contract terms detailed that the contractor was to provide verbal or written quarterly assessments of each Trust Funds Advisor and the entire Trust Fund during regularly scheduled meetings of the Asset and Resource Management Committee and/or the Board of Trustees. As stated in Section 4 above (Deliverable was met by the contractor), no evidence of a deliverable was provided to CLA.
- iii. The terms of the contract for this vendor are not clear as to whether the contractor was able to include in the invoices to OHA hours associated with his travel to multiple investment conferences.<sup>137</sup>
- iv. The contractor continued to invoice OHA for work performed in 2014, after his initial contract had expired on December 31, 2013. The OHA CFO approved for payment the invoices for January 2014 and February 2014 on March 17, 2014, and the March 2014 invoice on April 9, 2014, which was prior to the amendment execution date of April 25, 2014. Although the payment on these invoices was approved, the payment was not actually processed until May 23, 2014.

The fact that CLA could not review the deliverables along with the fact that a contractor continued to perform work, and have his invoices approved by the contract manager (CFO), provide evidence that this contract did not have appropriate monitoring and oversight.

See recommendations 31, 32, 33, and 34.

6) There was no evidence of fraud, waste, or abuse

A review of the documents for two of the contracts tested in this area identified red flags or indicators that indicate a possibility of fraud, waste, or abuse. The identification of a red flag or indicator does not, on its own, confirm that fraud, waste, or abuse did occur. This section simply identifies the observations made by CLA during the testing that can be indicators of fraud, waste, or abuse, and, therefore, CLA is not making a conclusion as to the existence of fraud, waste, or

---

attributable to the particular billing period and that receipts evidencing actual costs and expenditure should accompany monthly invoices.

<sup>137</sup> The contract specified fixed monthly payments of \$8,333.33 similar to a retainer. Therefore, regardless of the number of worked hours listed, the payment was the same. The lowest number of hours were incurred in January 2014, which listed nine hours. The greatest number of hours were incurred in March 2014 for 72 hours (40 of those hours were for attendance to conferences), and June 30, 2014 for 73 hours. The fixed monthly payments did not increase regardless of travel. The travel locations included domestic travel to New York, Chicago, Colorado, Florida, California, and Massachusetts. International travel included London, England.

abuse. Additional investigation of each contract would be required, which was beyond the scope of this engagement.

There were four contracts for which CLA did not receive sufficient documentation in order to make an assessment regarding indicators of fraud, waste, or abuse.<sup>138</sup> For each of these contracts, several documents were not available to CLA, including, procurement process documents, support for invoices and/or payments, and/or support for deliverables (K-04, K-19, K-45, K-60).

For two contracts CLA identified indicators of fraud, waste, or abuse as follows:

a. K-52 – OHA Contract #3007 – WCIT Architecture

The contract with WCIT Architectures was executed on December 11, 2014 for \$2,925,752. The contract period was from December 11, 2014, to December 10, 2016. According to the language included in the scope of services section of the contract, the purpose of this Conceptual Master Plan Contract was to take OHA from the Framework Plan to the point of being ready to issue an RFP to select a site(s) developer. Although CLA was not provided with the deliverable, OHA communicated that one was provided. Assuming the deliverable was made on time, with a contract end date of December 10, 2016, OHA should have been prepared to issue an RFP to select a site(s) developer shortly after. However, as further explained below, the purpose of this contract does not appear to have been accomplished.

- i. According to the OHA website page dedicated to the progress on the Kaka’ako Makai parcel, the Kaka’ako Makai parcel conceptual plan was to be completed before the end of 2015. The Environmental Impact Statement would take place in 2015/16, followed by the Permitting in 2016/17. By the beginning of 2018, the development process would have been started.
- ii. According to the current Resource Manager & Land Assets Director, the contract was allowed to expire before all of the work listed in the contract was completed because OHA planned to complete these steps internally.<sup>139</sup>
- iii. According to the November 4, 2015 agenda for the meeting of the Resource Management Committee, a presentation was given by the vendor in Executive Session. It appears that the results may have been provided by the vendor on this date, which is consistent with the timeline

---

<sup>138</sup> These four were identified with “DM” for documents missing.

<sup>139</sup> The current Resource Manager & Land Assets Director stated that OHA continues to work towards accomplishing this objective.

presented on the OHA website; however, there is no evidence that the next steps in the process were accomplished as described.

The purpose of this contract was not, and has not been, accomplished as of the date of this report, which is approximately four years after the work appears to have been completed by the vendor. This raises a concern of possible waste relating to the total paid to the contractor under this contract, as there is a possibility that circumstances may have changed in the last four years that would render some, if not all, of the work performed by the contractor as obsolete.<sup>140</sup>

b. K-77 – OHA Contract #2847 – Absolute Plus Advisors

The contract with Absolute Plus Advisors was executed by OHA on December 31, 2012, for \$100,000, and an amendment was executed on April 25, 2014 which increased the total contract amount to \$185,000. OHA paid a total of \$181,499 toward this contract.

Absolute Plus Advisors was retained by OHA to provide verbal or written quarterly assessments of each Trust Funds Advisor and the entire Trust Fund during regularly scheduled meetings of the Asset and Resource Management Committee and/or the Board of Trustees as well as other financial advisory-related services. The following observations were made by CLA pertaining to this contract.

- i. None of the documents related to the RFP procurement process were provided to CLA, such as the appointment of an evaluation committee, copy of the RFP, evidence of publication of RFP, copy of register of proposals, and evaluation committee recommendations to hire.
- ii. A purchase requisition was not provided for the original contract.
- iii. Evidence of a deliverable was not provided for this contract.

---

<sup>140</sup> Other observations made on this contract include failure by legal counsel to review the RFP prior to publication (Criteria [50]), and the CEO did not sign this contract, and there was no evidence that a delegation of authority was made to the COO who signed the contract outside of authority (criteria [68]). This contract contained more procurement-related documents than the rest of the RFP contracts tested. Note that design professional services furnished by licensees under chapter 464, which includes architects, must be procured pursuant to HRS §103D-304 – Procurement of Professional Services or HRS §103D-307 – Emergency Procurements. However, although the name of the company is WCIT Architecture, the services requested in the RFP extended beyond architecture services and required collaborations by a financial analyst, master planner, environmental/land use planner, and public relations and community outreach. For this reason, it appears appropriate to CLA that this contract was procured through the RFP method instead of the professional services procurement method.



- iv. Contract amendment was executed approximately five months after the contract effective date.
- v. Poor contract oversight included the CFO's approval of three invoices for time incurred past the original contract expiration date and prior to the execution of the contract amendment.

The lack of documentation related to the hiring of this vendor raises the question of whether this contract was procured properly. The lack of evidence of a deliverable, and the various other observations, suggests that the contract was not managed properly. The totality of the observations for this contract suggest a greater risk of possible fraud, waste, or abuse.

See recommendations 35 and L10.

### c) Professional Services Contracts

CLA tested 14 contracts procured by OHA using the Professional Services procurement method. HRS §103D-304 provides the requirements for the procurement of professional services. HRS §103D-304 is one of multiple options that State governmental agencies have for the procurement of professional services.<sup>141</sup> A copy of HRS §103D-304 is included in **Exhibit 14**. Section 2.2.1.8 Professional Services within the OHA Fiscal Procedures manual, revised March 2, 2009, contains the process outlined for the procurement of professional services.

A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the procurement, approval, and execution of OHA professional services contracts is included in **Attachment 07**. As part of this testing, criteria [19] through [38] and [44] to [46] were used by CLA to determine if the services were procured in accordance with the required HRS rules and OHA policy. OHA's Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.1.8 identifies the process for procuring professional services (see **Exhibit 02**, page 70). The professional services method of procurement requires various steps, which were tested as part of CLA's procedures.

Included in below is a summary of the results identifying for each criteria tested the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations. Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 07** includes a table containing the results at the contract level and tickmarks explaining each observation for a contract.<sup>142</sup>

**Table 8: Summary of Results – Professional Services Contracts<sup>143</sup>**

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	6	0	8	14

<sup>141</sup> Professional services may also be procured in accordance with sections 103D-302, 103D-303, 103D-305, 103D-306, 103D-307, or this section, provided that the services of engineers, architects, surveyors, and landscape architects be procured using this section or HRS §103D-307.

<sup>142</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 07**, tickmarks for professional services contracts tested are numbered with the letter "C" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **C01** is the first observation tickmark for OHA's professional services contracts.

<sup>143</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however,

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[2]	Employees selecting the contractor were not engaged by the contractor as legal counsel, advisor, consultant, representative, or other agency capacity.	6	0	8	14
<b>HRS §84-15 &amp; §84-18 : Contracts</b>					
[3]	The contract was not with a legislator or employee who has controlling interest.	0	0	14	14
[4]	If the contract was with a legislator or employee who has controlling interest, alternative criteria were met.	0	0	14	14
[5]	The person or the business entering into contract with OHA was not represented by a person employed by OHA in the preceding 2 years who was employed by OHA for more than 181 days in the preceding year.	0	1	13	14
[6]	If the person or business entering into contract with OHA was represented by a person employed by OHA in the preceding 2 years, the person did not participate in the matter with which the contract is directly concerned.	0	1	13	14
<b>HRS §103D: Hawai'i Public Procurement Code</b>					
<b>HRS §103D-101(a) &amp; (b): Requirements of Ethical Public Procurement</b>					
[7]	No evidence was observed of OHA employee(s) not acting as a fiduciary of public funds.	1	0	13	14
[8]	No evidence was observed of OHA employee(s) not remaining independent of bidder, offer or, contractor, or business.	1	1	12	14
[9]	No evidence was observed of OHA employee(s) not acting only in the public interest.	1	0	13	14
[10]	No evidence was observed of disobedience to of statutes and administrative rules relating to public procurement.	1	1	12	14
[11]	No evidence was observed of inefficiencies in the public procurement process.	1	1	12	14
[12]	No evidence was observed of persons not afforded an equal opportunity to compete in a fair environment.	1	13	0	14
[13]	No evidence was observed of intent or appearance of unethical behavior.	1	1	12	14
[14]	No evidence was observed of social interactions with actual/prospective bidder.	1	1	12	14
[15]	No evidence was observed of a failure to maintain confidentiality in a manner that ensures a fair procurement process.	1	1	12	14
[16]	No evidence was observed of a failure to remain impartial in dealings with actual or prospective bidders, offeror, contractor, business, or interested parties.	1	1	12	14
<b>HRS §103D-101(c): Requirements of Ethical Behavior</b>					
[17]	No evidence was observed of a failure to identify and eliminate conflict of interests for this contract.	1	1	12	14
[18]	No evidence was observed that any party involved in the negotiation, performance, or administration of this contract did not act in good faith.	1	1	12	14

the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §103D-304 Procurement of Professional Services</b>					
[19]	Professional service was procured in accordance with 103D-302 (Competitive Sealed Bidding), 103D-303 (Competitive Sealed Proposal), 103D-305 (Small Purchases and P-Card), 103D-306 (Sole Source Procurement) or 103D-307 (Emergency Procurement), if not in accordance with this section, 103D-304.	0	0	14	14
[20]	Professional engineers, architects, surveyors and landscape architects were procured using this section, 103D-304 (Procurement of Professional Services) or 103D-307 (Emergency Procurement).	0	0	14	14
[21]	Contract was awarded on basis of competence/qualifications to provide required services at fair and reasonable prices.	6	0	8	14
[22]	Notices were published before the beginning of each year inviting professional service organizations to submit statements of qualifications and expressions of interest.	0	14	0	14
[23]	The selection committee was of sufficient education/training/licensure designated to review the professional service providers.	6	0	8	14
[24]	Steps were taken to ensure the review committee members and the selection committee members would be impartial and independent in their review and selection of professional service providers.	6	8	0	14
[25]	The names of individuals designated to the Review Committee were noted in the contract file.	6	0	8	14
[26]	The Selection Committee's selection criteria was employed in descending order of importance by relevant experience, past performance or similar projects, and capacity.	6	0	8	14
[27]	The Selection Committee rankings, as well as a summary of qualifications that make up the ranking, were provided to the head of purchasing.	6	0	8	14
[28]	The contract was awarded to the first-ranked person.	0	6	8	14
[29]	The contract included fair/reasonable terms of compensation considering the scope and complexity of services to be rendered.	0	0	14	14
[30]	If other than first-ranked was selected, the documentation that supported selection of the next-ranked person (or other-than-first person) was included with the contract.	2	4	8	14
[31]	Contracts in excess of \$5,000 were posted (for public review) within 7 days after the contract was awarded.	0	14	0	14
[32]	The Selection Committee's rankings were included in the posting.	0	14	0	14
[33]	The organization receiving the award was included in the posting.	0	14	0	14
[34]	The dollar amount of the contract was included in the posting.	0	14	0	14
[35]	The name of the designee(s) making the selection was included in the posting.	0	14	0	14
[36]	Any existing relationships between the principals of the service provider and the official making the award decision were included in the posting.	0	14	0	14
[37]	Contracts of less than \$100,000 (\$250,000 for construction projects) were properly reviewed by the head of the purchasing agency, or designee, with at least two persons on the Selection Committee.	3	0	11	14
[38]	Contracts that were in excess of \$100,000 were not unnecessarily split or parceled out to allow for this method of contract approval.	0	0	14	14

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §103D-315: Multi-Term Contracts<sup>144</sup></b>					
[39]	The terms of the contract and conditions for renewal or extension were included in the solicitation.	0	14	0	14
[41]	For multi-year contracts, it was determined in writing that the estimated requirements cover the period and are reasonably firm and continuing	0	0	14	14
[42]	For multi-year contracts, it was determined in writing that such contracts serve in the best interest of OHA.	0	0	14	14
[43]	For multi-year contracts, it was determined in writing that sufficient funds to pay for the initial term of the contract are available and funds necessary for the remaining terms are likely to be available from sources identified in writing.	0	0	14	14
<b>P-10: OHA Purchase and Procurement Procedures, revised March 2009</b>					
<b>2.2.1.8: Professional Services<sup>145</sup></b>					
[44]	Professional services were solicited no later than May of each year.	0	14	0	14
[45]	A procurement notice was issued requesting proposals from the appropriate service providers.	0	14	0	14
[46]	Notices were posted on the Procurement Notices System and in major newspapers.	0	14	0	14
<b>2.2.2.1: Purchase Request</b>					
[47]	A Hale Director or Deputy Administrator identified the need to create a Purchase Requisition.	1	0	13	14
[48]	The Purchase Requisition complied with the OHA Procurement Policy.	1	0	13	14
[49]	The Purchase Requisition documented the availability of funds for the procurement.	1	0	13	14
[50]	The Purchase Requisition was approved by the appropriate manager as per the delegation of authority document.	1	0	13	14
<b>2.2.4: Grants, Procurement, and Contracts Review Process</b>					
[51]	A complete Purchase Requisition was submitted by a designated representative for the review process.	1	0	13	14
[52]	[a] An Accounting Checklist was submitted.	0	13	1	14
	[b] Funds were verified by the Budget Analyst.	1	0	13	14
	[c] Funds were certified by the CFO.	0	0	14	14
[53]	The CFO certified the availability of funds on the Accounting Checklist.	0	13	1	14
[54]	Unless not required by statute, the contractor submitted a Tax Clearance to OHA prior to executing the Purchase Order.	0	2	12	14
[55]	A Procurement Document Checklist was submitted and signed by a Hale Manager.	2	2	10	14
[56]	The owner of the business (except for sole proprietorships, charitable organizations, unincorporated associations, and foreign insurance companies) submitted a DCCA Verification showing Proof of Good Standing with the State of Hawai'i.	0	2	12	14

<sup>144</sup> Criteria [40] was also tested here but is excluded as it was used by CLA to document whether the contract was a multiyear contract.

<sup>145</sup> Criteria [23] and [27] were also tested as part of OHA’s Fiscal Procedures Manual (revised March 2, 2009) section 2.2.18. Professional Procedures, but are not shown here to avoid duplication.

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[57]	The Hale Manager or Grants staff submitted a Standard Long Form Grant Agreement or Contract for Purchase of Services.	0	0	14	14
<b>2.2.4.2: Purchase of Goods and Services Review Process<sup>146</sup></b>					
[58]	The standard contract was used for the purchase of services and it included all of the provisions outlined in the Standard Long Contract.	0	5	9	14
[59]	The senior staff attorney signed the Procurement Document Check List to ensure compliance with State Procurement Laws for purchases of more than \$2,500.	2	2	10	14
[60]	The senior staff attorney signed the contract.	0	0	14	14
[62]	The appropriate signatures were obtained on the contract based on Operational Authority Delegation Hierarchy revised 12/12/12, 5/19/15, and 10/21/15, as applicable.	0	2	12	14
<b>2.2.5.2: Receiving on a Purchase Order<sup>147</sup></b>					
[65]	The Purchase Order was reviewed and signed by the Controller or the CFO as applicable.	0	0	14	14
[66]	The Request for Contract Payment, signed by the Hale Director for contracts, or a receipt of goods/services was received.	0	3	11	14
<b>2.2.7.3: Contract Payment Process<sup>148</sup></b>					
[69]	The Request for Payment on Contract was reviewed and signed by the Hale Director and Administrator, or Deputy Administrator, as applicable.	0	2	12	14
[72]	The payment was approved by the appropriate level based on Operational Authority Delegation Hierarchy revised 12/12/12, 5/19/15, and 10/21/15, as applicable.	0	2	12	14
<b>2.2.7.5: Check Issuance</b>					
[73]	The invoice was stamped "Paid" and marked with the check number.	0	14	0	14
<b>Other Testing Results</b>					
[74]	Deliverable was met by the contractor	1	4	9	14
[75]	There was sufficient oversight of project/work by the contract monitor/manager	0	12	2	14
[76]	There was no evidence of fraudulent or wasteful disbursements	1	3	10	14

Within each observation, CLA has listed the OHA contract sample number with that particular observation. The specific contract number and a more detailed discussion

<sup>146</sup> Criteria [61], [63] and [64] were also tested here but are excluded as they were used by CLA to document the name of the individual approving the Purchase Requisition and the date of the approval; however, this information is not necessary to report the final results of the testing.

<sup>147</sup> Criteria [67] and [68] were also tested here but are excluded as they were used by CLA to document the name of the Hale Director or Administrator (Deputy Administrator) and the date of receipt of services; however, this information is not necessary to report the final results of the testing.

<sup>148</sup> Criteria [70] and [71] were also tested here but are excluded as they were used by CLA to document the Hale Director or Administrator (Deputy Administrator) approval and date of approval; however, this information is not necessary to report the final results of the testing.

of the observation can be found by referring to **Attachment 07**. Each observation also includes a reference to the applicable criteria listed in the table above.

1. Compliance with HRS §84: Standards of Conduct

a. HRS §84-14: Conflicts of Interest (criteria **[1]** and **[2]**)

Six contract files (K-03, K-05, K-16, K-17, K-55, K-67) did not contain the names of the selection committee members or a signed affidavit indicating no personal, business, or any other relationship that would influence their decision. For this reason, CLA was unable to assess whether the selection committee members had a financial interest in the contractor or were engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

b. HRS §84-15(a): Contracts (criteria **[3]** and **[4]**)

Based on the procedures performed and publicly available information, CLA did not identify information that provides evidence of a contract with a legislator as defined under HRS §84-15(a).

c. HRS §84-15(b) and HRS §84-18(c) and (e): Restrictions on Post Employment (criteria **[5]** and **[6]**)

One contract was identified by CLA as possibly not compliant with HRS §84-18(c), which states, “no former employees, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration, on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served. This section shall not apply to a task force member who, but for the service as a task force member, would not be considered an employee.” Section (e) further clarifies that this section shall not apply to any person who is employed by the state for a period of less than one hundred and eighty-one (181) days.

i. K-56 – OHA Contract #3025 - Reed Smith LLC

Reed Smith LLP submitted a Statement of Qualifications to OHA dated September 27, 2013 that listed Breann Nu'uhiwa as the attorney that would provide professional services relating to non-litigation legal expertise. Ms. Nu'uhiwa was employed by OHA from April 23, 2012 through September 4, 2013. This proposal was submitted less than one month after Ms. Nu'uhiwa left her employment with OHA. Reed Smith LLP was approved on October 3, 2013 as one of the professional service providers under the legal category. This contract with Reed Smith LLP was not executed until May 5, 2015; however, it was effective retroactively to September 7, 2014. Although the effective date of the contract was more

than one year after Ms. Nu'uhiwa left her employment with OHA, CLA learned through inquiry with current OHA staff that Ms. Nu'uhiwa provided “pro-bono” services to OHA during the first year after her separation from OHA.

Table 9 included on page 103 includes a detailed timeline of the events and documents pertaining to this contract. Based on this timeline, the Purchase Requisition was approved for this contract on September 5, 2014, prior to the Professional Services Review Committee making its recommendation on vendors to include in the listing of professional service providers for the 2014-15 year. Reed Smith LLP had submitted a Statement of Qualifications for the 2013-14 fiscal year, but not for the 2014-15 fiscal year. Therefore, it appears that the hiring of Reed Smith LLP in fiscal year 2014-15 was based on the Statement of Qualifications and approved vendor list from the prior year. There are other inconsistencies and timing issues with the documents pertaining to this contract that are outlined in Table 9.

Although Reed Smith LLP did not invoice OHA for the “pro-bono” time spent by Ms. Nu'uhiwa working for OHA, Reed Smith LLP was awarded a contract effective on September 7, 2014, just over one year after Ms. Nu'uhiwa's departure from OHA. And the process to award the contract did not follow the process required by HRS §103D-304 or OHA's internal policies and procedures. This raises a concern of whether the work that was performed on a “pro-bono” basis by Ms. Nu'uhiwa within one year of separation from OHA was performed in exchange for receiving this contract from OHA once the year had elapsed. If so, it could be perceived that this is a form of consideration given by OHA, which is not allowed under HRS§84-18(c). There were other observations regarding the procurement process for this contract which are discussed in the next section.

See Recommendations 36, 37, and 38.

2. Compliance with HRS §103D – Hawai'i Procurement Code (criteria [7] through [46])

Based on the documentation provided relating to the professional services procurement process, all of the tested contracts had one or more observations related to HRS §103D. The observations are organized based on each applicable subsection of HRS §103D.

HRS §103D-101(a), (b), and (c) – Requirements of ethical public procurement (criteria [7] through [18])

- a. One contract contained evidence indicating that several of the requirements for ethical public procurement were not adhered to during the procurement



process (K-56). This contract with Reed Smith LLC was executed on May 5, 2015 for \$200,000. The following table provides a timeline of important dates pertaining to this contract.

**Table 9: Timeline of Important Dates Relating to Contract with Reed Smith LLC (3025)**

Sequence Number	Date	Description of Event
1	4/23/2012	Ms. Nu'uhiwa was employed by OHA as the Chief Advocate from 4/23/2012 to 8/30/2013. <sup>149</sup>
2	9/6/2013	This was the last day of Ms. Nu'uhiwa's employment with OHA, according to Raina Gushiken, OHA's Senior Staff Attorney.
3	9/27/2013	Statement of Qualifications submitted by Reed Smith LLP, which included Ms. Nu'uhiwa as the "key contact" for Reed Smith LLP. Ms. Nu'uhiwa was the only attorney for whom a biography was included in the Statement of Qualifications. Her employment history did not list employment with OHA, and the first reference provided included Dr. Crabbe, OHA's CEO. The executive summary included in the Statement of Qualifications stated that the service provider understood that OHA anticipated the need for legal services from 7/1/2013 to 6/30/2014.
4	10/2/2013	The Professional Service Review Committee recommended that the CEO approve Reed Smith LLP (Ms. Nu'uhiwa) for the category of Legal Services - Native Hawaiian affairs.
5	10/3/2013	The CEO approved the Professional Services Review Committee Recommendation; however, a contract was not established at this time. According to OHA's Senior Staff Attorney, Ms. Nu'uhiwa provided services to OHA on a "pro-bono" basis during the one year after her employment ended with OHA.
6	8/26/2014	The Purchase Requisition was prepared for the 2014/15 contract listing an expected amount of \$200,000 and estimated start date of 9/7/2014.
7	9/5/2014	The Purchase Requisition was approved by the CFO for \$200,000 of legal services for advocacy in the areas of Native Hawaiian self-governance and language immersion education.
8	9/7/2014	This was the contract's effective date for a contract amount of \$200,000 for the provision of legal services. The contract stated that \$112,500 would be paid upon contract execution. The contract stated that payment of a retainer (\$112,500) did not release the contractor from the obligation to provide detailed statements for itemized costs and expenses.
9	9/15/2014	The memorandum of appointment of Professional Services Selection Committee members lists the following members: 1) Albert Tiberi, 2) Kawika Riley, and 3) Ernie Kimoto.
10	9/16/2014	The CEO approved the appointment of the Professional Services Selection Committee members.
11	11/5/2014	In an email, Wendell Tengan, Procurement Specialist, expressed concern that he, "did a quick check of Gerald's desk and only found a PR copy and an email from you [Shirley Okamoto] saying that this procurement should be on a fast track because of a start date of 9/7/2014 (already past)]. The appointment form should have been completed before the evaluations." The response by Shirley Okamoto was, "That is what Gerald provided."
12	11/6/2014	An interoffice memorandum communicated that for the category of legal services - Native Hawaiian Affairs for Project: Advocacy-Native Hawaiian

<sup>149</sup> The listed dates of employment were obtained from an OHA-provided list of Program Managers from July 1, 2011 to June 30, 2016.

Sequence Number	Date	Description of Event
		Self Governance/Hawaiian Language immersion education, there were six vendors recommended for professional Services (one of the vendors listed was Reed Smith LLP).
13	11/14/2014	The Procurement Document Checklist was prepared and identified the contract as an "Exempt Purchase" citing § 103D-102(b)(4)(J). None of the boxes that would indicate that the appropriate documents were completed were checked.
14	12/6/2014	The Procurement Document Checklist prepared on 11/14/2014 was signed by the Senior Corporate Counsel.
15	5/5/2015	The CEO signed the contract for \$200,000 with \$112,500 due upon contract execution. The contract execution date was 5/5/2015 while the effective date was 9/7/2014.
16	5/11/2015	The Authorization to Proceed with Contract form was signed by the procurement specialist, Wendell Tengan, and by the CFO, Hawley Iona. This form listed the contract effective date of 9/7/2014.
17	5/15/2015	The Procurement Package Checklist was completed and signed by the procurement specialist, the procurement manager, and the controller. It listed the procurement as Professional Services (not as Exempt Purchase).
18	5/21/2015	The Purchase Order was established indicating an exempt purchase under 103D-102(b)(4)(J) and listing a payment of \$112,500 upon contract execution.
19	6/3/2015	The Request for Payment on Contract form was stamped "paid." The CEO approved it on 6/2/2015 and the payment of \$112,500 was issued on 6/3/2015.
20	12/31/2015	A DRAFT invoice dated 12/31/2015 communicated charges incurred from 9/10/2014 through 9/30/2015 totaling \$84,728.42. The contract file did not contain a final invoice and current OHA employees were unable to locate a final invoice.
21	2/1/2016	A Request to Close a Purchase Order form was completed for this contract. No other payments aside from the initial \$112,500 payments were made.
22	5/31/2017	Reed Smith LLP refunded OHA \$27,771.58 (the difference between the amount of the retainer payment and the amount of the draft invoice). A cover letter dated 5/31/2017 stated, "we are now returning the balance as no current work is being done on this matter."

Explained below are the indicators that this contract may not have been procured in adherence with the requirements of ethical procurement required by HRS §103D-101.

- i. Employees of OHA may not have been impartial or independent during the procurement process (criteria **[8]** and **[16]**).

Ms. Nu'uhiwa was the main provider of professional services for this contract that was executed for \$200,000. The individuals appointed to be on the Professional Services Selection Committee in 2014, when the contract was established, were Albert Tiberi, Kawika Riley, and Ernie Kimoto. While Ms. Nu'uhiwa was employed by OHA, Mr. Riley was her direct report. Because they had a recent working-relationship, it may have been difficult to remain impartial during the evaluation of all of the applicants.

On November 13, 2014, the CEO, approved the Professional Service Selection Committee recommendation dated November 6, 2014, and executed the contract on May 5, 2015. The CEO was listed as the first reference in the Statement of Qualifications submitted by Reed Smith LLC to OHA. This raises the question of whether the CEO remained independent of the contractor, not only because Ms. Nu'uhiwa had been employed by OHA during his time as CEO, but also because he was the first listed reference in the contractor's proposal.

- ii. Based on the information presented for this contract, there is sufficient evidence to determine that an ethical procurement process was not followed for this contract. Therefore, it appears that the procurement of this contract did not comply with criteria **[8]** and criteria **[10]** to **[18]**. Discussed below are some examples of the failure to meet the listed criteria.
  - a) It appears the Selection Committee Appointment form was backdated, which may be an indication of unethical behavior (criteria **[13]**).

The contract file contained an email dated November 5, 2014, from a procurement specialist stating the he had reviewed the Procurement Managers desk and located only the Purchase Requisition and a copy of an email that stated that this procurement should be on a fast track because of a start date of September 7, 2014, which had already past, and the Selection Committee Appointment form should have been completed prior to the evaluations.<sup>150</sup> The Selection Committee Appointment form located in the contract file was dated September 15, 2014, which appears to indicate that the selection committee appointment form may have been back-dated, which may be an indication of unethical behavior.

- b) The contract effective date was prior to the Selection Committee Recommendation, which may be an indication of unethical behavior (criteria **[13]**).

On November 6, 2014, a memorandum communicating that for the category of legal services – Native Hawaiian Self Governance/Hawaiian Language immersion education, there were six vendors recommended for professional services for the 2014/15 year, including Reed Smith LLC. However, based on the totality of documentation reviewed, it appears that a decision had been made to hire this vendor well in advance of this memorandum based on the fact that the contract was effective as of September 7, 2014 and on

---

<sup>150</sup> The email by Mr. Tengan appears to indicate that the Selection Committee Appointment had not been completed prior to the evaluations being conducted.

the fact that the draft invoice communicated work performed as early as September 10, 2014. This appears to be an indication of disobedience to statutes and of unethical behavior.

- c) There was a possible attempt to disobey HRS §103D-304 (criteria **[10]**)

In contradiction to the majority of the procurement documents included in the contract file that relate to a procurement of professional services, the Procurement Document Checklist prepared on November 14, 2014, and signed by legal counsel on December 16, 2014, describes this contract as an exempt purchase under HRS §103D-102(b)(4)(J). The Purchase Order completed on May 1, 2015, also identifies this contract as an exempt contract. HRS §103D-102(b)(4)(J) states, “to procure...goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State: Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters resulting under laws of another state or foreign country, or in an action brought in another state, federal or foreign jurisdiction, when substantially all legal services are expected to be performed outside of this state.” Because Ms. Nu’uhiwa’s services did not include services provided for matters resulting under the laws of another state, federal or foreign country, or in an action brought in another state, federal or foreign jurisdiction, it appears that if this contract was in fact processed as an exempt contract, it was by inappropriate utilization of the cited exemption.<sup>151</sup>

- d) Evidence was observed of persons not afforded an equal opportunity to compete in a fair environment (criteria **[12]**)

The contract was executed by the CEO on May 5, 2015, with a contract effective date of September 7, 2014, however, the required “Authorization to Proceed with Contract” was not signed by the procurement specialist and the CFO until May 11, 2015, and the procurement package checklist was not completed until May 15, 2015. The contract should not have been executed prior to these two

---

<sup>151</sup> Smith Reed LLC’s office where Ms. Nu’uhiwa worked was in California. However, the services to be provided relate to non-litigation legal advice to OHA in connection with OHA’s advocacy in the areas of Native Hawaiian governance and Hawaiian language immersion education. Therefore, although her office was in California, it appears that the matters for which she was retained did not result under the laws of another state, federal or foreign country, or in an action brought in another state, federal or foreign jurisdiction.

documents being completed. This fact pattern is evidence of disobedience to statutes and unethical behavior.

- b. Thirteen contracts lacked sufficient evidence to determine whether persons were afforded an equal opportunity to compete in a fair environment. (criteria **[12]**)
  - i. Based on the observations noted in “a” above relating to K-56, it is reasonable to conclude that persons were not afforded an equal opportunity to compete in a fair environment for that specific contract.
  - ii. The remaining 12 contracts for which CLA could not verify criteria **[12]** are discussed below, as criteria **[12]** was tested together with criteria **[22]**.
- c. One contract file did not contain most of the documentation relating to the procurement process (K-67 – criteria **[7]** to **[18]**).

K-67: Contract #3058 with the Native Hawaiian Legal Corporation was executed on August 14, 2015, with effective dates of July 1, 2015, to June 30, 2017, for \$2,097,600. This vendor was listed in the Professional Service Review Committee recommendation, dated July 30, 2015, under the section “34. y. Native Rights,” as one of six service providers. The contract files did not include the Selection Committee documents such as (1) Memorandum to CEO to appoint the Selection Committee, (2) evidence that the Procurement Officer ensured the impartiality and independence of committee members, (3) the Selection Committee individual scoring sheets, (4) the Selection Committee Scoring Matrix, and (5) a Memorandum to the CEO recommending the top three ranked candidates with the CEO’s approval.

Although the first step in the procurement of professional services was documented within the Professional Services binder, where the list of qualified professionals is maintained, there was no documentation of the selection process.<sup>152</sup> The appropriate process would have been for an administrator to designate a Selection Committee, the Selection Committee evaluate the statements of qualifications of the qualified professionals on the approved list for the type of service needed, and the Selection Committee rank at a minimum three providers using the selection criteria. CLA discussed with the Procurement Manager about the review process and the selection process. The Procurement Manager stated that OHA had not been very consistent in the past, and the process at times was simply selecting a vendor from within the list of approved professional services providers.

---

<sup>152</sup> The Professional Services binder includes the listing of the qualified professionals for the year.

HRS §103D-304 – Procurement of Professional Services (criteria [19] through [38])

- a. All 14 contracts tested did not contain evidence of the published Notice to Providers of Professional Services (criteria [12], [22], [44], [45], [46])<sup>153</sup>

HRS §103-304(b) Procurement of Professional Services: Requires that at a minimum, before the beginning of each fiscal year, the head of each purchasing agency shall publish a notice inviting persons engaged in providing professional services, which the agency anticipates needing in the next fiscal year, to submit current statements of qualification and expressions of interest to the agency.<sup>154</sup> Although documentation exists showing that OHA prepared to publish notices to providers of professional services, there is no evidence in the professional services binder that the notice was published.<sup>155</sup> The Procurement Manager explained that although the publication is made annually, evidence of the publications is normally not included in the Professional Services binder for the year. For this reason, CLA can only determine that it appears that this process was followed; however, CLA was unable to verify this process for any of the 14 professional services contracts tested.

- b. One contract file contained a Statement of Qualifications and Expression of Interest by the professional service provider for the prior year, but not for the year in which the contract was established (criteria [12], [22]).

K-28: A \$2,097,600 contract with the Native Hawaiian Legal Corporation was executed on July 3, 2013, for services relating to Native Hawaiian rights. Based on the responses from applicants, it appears that this notice was published; however, the Statement of Qualifications and the Expression of Interest from this vendor included in the contract file appears to be responsive to the prior year's publication for consideration in the year 2012/13 and not for the year 2013/14, which is the year when the contract was actually awarded. Furthermore, no Selection Committee scoring matrix

---

<sup>153</sup> Criteria [44], [45], and [46] pertain to OHA's internal policy but are closely related to criteria [12] and [22] and for that reason are discussed in the same section.

<sup>154</sup> OHA policy requires that providers of professional services be solicited no later than May of each year prior to the beginning of the next fiscal year. Supplemental notices may be given if the response to the initial notice is inadequate, the response to the initial notice does not result in adequate representation of available sources, or if new needs for professional services arise.

<sup>155</sup> Evidence of OHA's preparation is the annual memorandum to all OHA programs requesting a listing of the professional services they anticipate needing in the following year, with a statement that the Notice to Providers of Professional Services will be published in the Honolulu Star and posted on the state Procurement Notices System (PNS) website before the deadline (before the beginning of the new fiscal year).

was provided for CLA's review even though the vendor was included on the list of professional service providers for both 2012/13 and 2013/14.

- c. Documentation to verify the following criteria in accordance with HRS §103D-304 was not provided for six contracts (K-03, K-05, K-16, K-17, K-55, K-67), as the Selection Committee documentation was not included within the contract file:
- Contract was awarded on basis of competence/qualifications to provide required services at fair and reasonable prices (criteria **[21]**).
  - The selection committee was of sufficient education/training/licensure designated to review the professional services providers (criteria **[23]**).
  - The names of individuals designated to the review committee were noted in the contract file (criteria **[25]**).
  - The selection committee's selection criteria was employed in descending order of importance by relevant experience, past performance or similar projects, and capacity (criteria **[26]**).
  - The selection committee rankings, as well as a summary of qualifications that make up the ranking, was provided to the head of purchasing (criteria **[27]**).
- d. No evidence was provided for any of the tested contracts that steps were taken to ensure the Review Committee Members or the Selection Committee Members would be impartial and independent in their review of professional service providers.<sup>156</sup> (criteria **[24]**)

HRS §103-304(c) and (d) requires that in designating the members of the Review committee and Selection Committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. CLA did not identify a document within the contract files to verify that this step was taken. OHA's template memorandum for the Review Committee Appointments of Professional Service Providers Evaluations states that persons who serve on the Review Committee or Selection Committee who are not employees of OHA would sign an affidavit:

---

<sup>156</sup> For six of the contracts tested there was no record of a Selection Committee. CLA identified these with DM (documents missing) in **Attachment 07**. For the eight contracts tested where a record existed of a Selection Committee, but no evidence of steps taken to ensure that the Selection Committee Members would be impartial, CLA marked with an observation tickmark (**C02**). Ultimately there was no evidence for any of the contracts tested that steps were taken to ensure impartiality and independence.

---

- Attesting to having no personal, business, or any other relationship that will influence their decision in the review or selection process;
- Agreeing not to disclose any information on the review or selection process; and
- Agreeing that their names will become public information upon award of the contract.

It is possible that because the template memorandum specifically states that persons who serve on the Review Committee or Selection Committee who are not employees of OHA must sign the affidavit, this process was not followed for OHA employees serving on a committee. The template memorandum is consistent with HRS §3-122-69, which has the requirements as outlined in the memorandum for those serving who are not employees of OHA. However, the requirements of HRS §103-304(c) and (d), which provides that the head of the purchasing agency ensure the impartiality and independence of committee members is not addressed in the memorandum and therefore it appears that this step if completed is not documented.<sup>157</sup> Per discussion with the Procurement Manager, documentation for the independence of selection committee members was not consistently done.

- e. No evidence was provided that the contract was awarded to the first-ranked person for six contracts (K-03, K-05, K-16, K-17, K-55, K-67 - criteria **[28], [30]**).

HRS §103-304(c) to (g) states that whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (cc) along with any other pertinent information, including references and reports. If other than the first-ranked person is selected, the documentation that supported the selection should be included in the contract file.

There are additional requirements for qualifications used by those on the Selection Committee regarding how the professional service providers must be evaluated. However, for these six contracts, there was more than one vendor on the approved listing for this category, and the selected vendor was not the first vendor listed; however, there was no review committee matrix included in the contract file to document the criteria used to select this vendor. The Procurement Manager informed CLA that the process to select a vendor from the list of approved vendors includes an evaluation of the original Statements of Qualifications obtained from the annual invitation to professional service providers. The evaluation is done to identify the provider

---

<sup>157</sup> HRS §103-304(c) and (d) does not specifically mandate the manner in which the impartiality and independence of committee members must be ensured.



most qualified for the work. The Procurement Manager stated that designating a Selection Committee may have not been consistently followed in previous years, or that the related documentation was not retained in the contract file. Therefore, no documentation of this assessment was available for these six contracts.

- f. All 14 contracts were \$5,000 or more. No evidence was provided to show that the contracts were posted electronically within seven days of the contract award by the chief procurement officer or designee and that the posting remained for at least one year.

HRS §103D-304 includes additional requirements relating to the content of the electronic posting; however, because the electronic postings were not available for review, CLA was unable to test these additional requirements (criteria [31] to [36]).

- g. Three contracts tested were under \$100,000. No evidence was provided that these three contracts were reviewed by the head of the purchasing agency and at least two persons of the Selection Committee.<sup>158</sup> (K-10, K-17, and K-37 - criteria [37])

HRS §103D-315 – Multi-Term Contracts (criteria [39] through [43])

- h. No documentation was provided for any of the 14 contracts that would have enabled CLA to determine whether the terms of the contract and conditions for renewal or extension were included in the solicitation as required by HRS §103D-315: Multi-term Contracts. (criteria [39])

See recommendations 36, 37, 39, 40, 41, and 42.

3. Compliance with OHA Internal policies and procedures

The internal policies and procedures identified by CLA that address the approval and execution of OHA contracts include a review of the Purchase Requisition, Procurement Document Checklist, Purchase Order, Tax Clearance and DCCA Verification submitted by the contractor, contract, and Request(s) for Payment on Contract. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. See **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

---

<sup>158</sup> Contract sample K-17 (OHA contract #2828) executed on September 7, 2012, with Mid-Continent Research for Education and Learning to provide consulting and advisement services relating to Kūkulu Hou assessment framework project (Mana Scale) Phase 1 of 3 year 1, was originally for \$99,716; however, an amendment was executed that increased the contract amount to \$349,527.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's procurement process.

- a. Purchase Requisition:
  - i. One contract was missing the Purchase Requisition for the original contract. The contract amendment did contain this document (K-17).<sup>159</sup> A purchase requisition is completed for the purpose of ensuring funds are available, encumbering those funds, and creating a purchase order. Because the Accounting check list was also not provided for this contract, CLA is not able to verify that the Budget Analyst verified that funds were available for the original contract. (criteria **[47]** to **[51]**, **[52b]**)
- b. Accounting Checklist:
  - i. Thirteen contracts did not contain the Accounting Checklist, which was supposed to be used by OHA to verify and certify the availability of funds. According to discussions with OHA, the Accounting Checklist has not been used in a long time, and the Procurement Document Checklist is used instead. The Budget Analyst verifies the availability of funds on the Purchase Requisition, and the CFO certifies the funds on the Purchase Order.<sup>160</sup> (criteria **[52]** and **[53]**)
- c. Tax Clearance and Department of Commerce and Consumer Affairs (DCCA) Verification:
  - i. For two contracts OHA appears to not have obtained a Certificate of Vendor Compliance, which would have satisfied the requirement for the tax clearance and the DCCA verification (criteria **[54]** and **[56]**).
    - a) K-35: Contract #2931 was executed on September 20, 2013 with 'Ōiwi Television Network for \$1,000,000 to provide cable television language programming. The Procurement Package Checklist has a check mark in the box that indicates: compliance documents "not required for grants or for this payment if less than \$25,000." However, this contract was for \$1,000,000; therefore, it appears that this contract would have required this verification. The contract file

---

<sup>159</sup> Contract sample K-17 (OHA contract #2828) executed on September 7, 2012, with Mid-Continent Research for Education and Learning to provide consulting and advisement services relating to Kūkulu Hou assessment framework project (Mana Scale) Phase 1 of 3 year 1, was originally for \$99,716; however, an amendment was executed that increased the contract amount to \$349,527.

<sup>160</sup> The only contract file that contained an Accounting Checklist was contract selection K-01 contract #2449, which was executed on October 7, 2009. Therefore, the statement that the Accounting Checklist has not been used for a long time appears to be factually correct.

did have a Certificate of Vendor Compliance issued dated June 12, 2015, as required for the final payment.

- b) K-56: Contract #3025 was executed on May 5, 2015, with Smith Reed LLC for \$200,000 to provide legal advice regarding Native Hawaiian Self Governance and Hawaiian Language immersion education. The Procurement Package Checklist has a check mark in the box that indicates: compliance documents "not required for grants or for this payment if less than \$25,000." Additionally, the Professional Service Provider Review Worksheets state that the vendor was not within the State of Hawai'i. However, under current Hawai'i law, any business entity intending to enter into (or bid on) a contract with an agency of the State is required to obtain a tax clearance certificate prior to entering into a State contract, as well as upon completion of the contract before the final payment is made.<sup>161</sup>

d. Procurement Document Checklist:

- i. For two contracts (K-28, K-55) a Procurement Document Checklist was not included in the contract file. This document is used to identify the procurement method and to document that all forms and documents used are included in the procurement file for the purchase. It also documents the name of the preparer as well as review by legal counsel. (criteria **[55]**, **[59]**)
- ii. For one contract (K-16) the Procurement Document Checklist was not appropriately completed.<sup>162</sup> OHA's Fiscal Procedures Manual, revised March 2, 2009, section 2.2.2.4 states that the Hale manager and senior staff attorney must sign the Procurement Document Check list. Although the Hale manager and senior staff attorney signed this document, the form was not completed with the procurement method used and other information required. The form only contained the purchaser's name, Division name, Name of vendor, description of purchase, and the signature of preparer and legal counsel. (criteria **[55]**, **[59]**)
- iii. For one contract (K-56) the Procurement Document Checklist provided contradictory information for the procurement process.<sup>163</sup> As mentioned

---

<sup>161</sup> CLA referred to Publication-1 (revised 2002) Attachment 220.2 as available at: <https://www.hawaii.edu/policy/archives/apm/archives/a8200.201207/Attachments/Attach220.2-Pub1.pdf> and also referred to <https://vendors.ehawaii.gov/hce/splash/welcome.html>.

<sup>162</sup> Contract K-16 was executed on June 29, 2012, with Davianna Pomaika'i McGregor (a sole proprietor) for \$110,500 for the production of a detailed history of the Native Hawaiian People to be used in support of OHA governance initiatives and other purposes.

<sup>163</sup> Contract K-56 was executed on May 5, 2015, with Smith Reed LLC for \$200,000 to provide legal advice regarding Native Hawaiian Self Governance and Hawaiian Language immersion education.

previously in section 2) b. i., the Procurement Document Checklists signed by legal counsel on December 16, 2014, appears to inappropriately describe this contract as an exempt purchase under 103D-102(b)(4)(J). (criteria [55], [59])

e. Contract:

- i. Nine contracts included all required provisions of the Standard Long Contract form. (criteria [58])
- ii. One contract (K-01) had a complete Standard Long Contract form for the original contract; however, the contract file did not include the nine amendments that were made for this contract. (criteria [58])
- iii. Three contracts (K-05, K-16, K-67) did not include the insurance provision. (criteria [58])
- iv. One contract (K-35) did not include the Other Terms and Condition section. (criteria [58])
- v. Two contracts (K-16, K-41) did not contain the appropriate signatures based on the Operational Delegation Hierarchy in effect at the time as described below (criteria [62]).
  - a) K-16: The COO signed the contract stating he was signing on behalf of the CEO; however, no delegation of authority memorandum was included in the support for this contract.<sup>164</sup>
  - b) K-41: The Operational Authority Delegation Hierarchy updated December 12, 2012, and effective through May 18, 2015, stated that contract executions and amendments of up to \$150,000 can have the final execution by the COO; however, contract executions of more than \$150,000 must be executed by the CEO.<sup>165</sup>The original contract amount was under \$150K, and the COO executed the contract, which was appropriate based on the delegation of authority. However, the amendments amounted to a total contract value of \$209,426 and

---

<sup>164</sup> Contract K-16 was executed on June 29, 2012, with Davianna Pomaika'i McGregor (a sole proprietor) for \$110,500 for the production of a detailed history of the Native Hawaiian People to be used in support of OHA governance initiatives and other purposes.

<sup>165</sup> Contract K-41 was executed on April 8, 2014, with Pencilhead Production LLC for \$148,297 to produce a 45-60 minute animated educational video. The effective contract date was April 2, 2019. There were two amendments that increased the contract amount to \$209,426.

exceeded the COO's delegated authority and should have been executed by the CEO.

- f. Request for Contract Payment:
- i. Two contracts (K-01, K-03) were missing support (invoice and Request for Payment on Contract form) for one or more payments. Criteria **[66]**, **[69]**, **[72]**
  - ii. One contract (K-56) states that the payment of a retainer (\$112,500) does not release the contractor from the obligation to provide detailed statements for itemized costs and expenses.<sup>166</sup> This contract provision requires that detailed statements and itemized costs and expenses be submitted to OHA by the vendor; however, current OHA employees were able to locate only a draft of an invoice for \$84,728.42 that was received from the vendor. No final invoice was located. On June 30, 2016, the contract was closed based on a Request to Close a Purchase Order form completed by Corporate Counsel indicating the services were no longer needed. No additional payments were processed. On May 31, 2017, OHA received from the vendor a refund check for \$27,771.58, which according to the attached letter, represented the balance received as a retainer after \$84,728.42 was applied to invoice #2771165.<sup>167</sup> Based on this information, it appears that OHA may have received a finalized invoice; however, CLA was unable to verify as it could not be located. (criteria **[66]**)
- g. Request for Check Issuance:
- i. Payments made for all contracts did not contain a stamp on the paid invoice indicating the check number. The OHA Fiscal Procedures Manual, in the Check Issuance and Distribution Process section (**Exhibit 02** page 114), states that invoices are to be stamped paid and marked with the check number. CLA noticed for the payments on all contracts that the actual process followed included applying the stamp on the Request for Payment on Contract form and no stamp was applied or check number recorded on the actual invoice.

See recommendations 43, 44, 47, and 48.

---

<sup>166</sup> Contract K-56 was executed on May 5, 2015, with Smith Reed LLC for \$200,000 to provide legal advice regarding Native Hawaiian Self Governance and Hawaiian Language immersion education.

<sup>167</sup> Original payment \$112,500 – draft invoice amount \$84,728.42 = returned amount \$27,771.58.

4. Deliverable was met by the contractor (criteria [74])
- a. Nine contracts included documentation from the contractor to indicate that the contractor completed and provided to OHA the deliverables required by the contract terms (K-05, K-10, K-16, K-28, K-41, K-55, K-56, K-58, K-67). These are the contracts without observations for this criteria.
  - b. One contract did not include documentation from the contractor to indicate that the contractor completed and provided to OHA the deliverables required by the contract terms (K-01). CLA is unable to assess whether the contractor did not complete the deliverable as required or if OHA could not locate the deliverable documents. The following items provide additional information for this contract.
    - i. K-01 - OHA Contract #2499 - Oahu Publications, Inc.
 

This contract was for the printing of Ka Wai Ola Newsletter. The OHA website contains a designated page for the Ka Wai Ola electronic publication. This page stated that “in addition to the printed copy, Ka Wai Ola, the newspaper of the Office of Hawaiian Affairs, is made available online.” Based on this description, it appears likely that the vendor did provide the printing services as stated in the contract terms. The contract file did not contain any documentation relating to the newsletters that were likely printed as per the contract terms. Current OHA staff communicated that the vendor provided the services as described in the contract, but they were unable to locate the support for the printed newsletters.
  - c. Three contracts contained only partial documentation providing evidence of a deliverable as indicated below:
    - i. K-03: Contract #2683 with Papa Ola Lokahi executed on August 16, 2011, for \$160,000 for support for designing healthy work sites. The contract stipulated that the contractor would submit nine written reports on its finding which were to be received by OHA no later than the dates listed in the contract.<sup>168</sup> The support provided to CLA included the written reports for only two of the nine required under the terms of the contract, the April 1, 2013, and July 1, 2013 reports. No other deliverables were provided to CLA.
    - ii. K-35: Contract #2931 with 'Ōiwi Television Network was executed on September 20, 2013, for \$1,000,000 for cable television Hawaiian language programming. The contract required delivery of reports prior to

---

<sup>168</sup> The dates as listed in the contract were as follows: year one 10/1/11, 1/1/12, 4/1/1, 7/1/12; year two: 10/1/12, 1/1/13, 4/1/13, 7/1/13; year three: 1/1/14.

payments two through five (four reports). Only three of the four reports were included in the support.

- iii. K-37: Contract #2948 with McCorriston Miller Mukai MacKinnon, a Limited Liability Law Partnership LLP was executed on January 31, 2014, for \$50,000 to render legal advice and assistance on real property matters. The contract listed specific types of professional services to be provided; however, the invoices submitted by the attorney in request for payment contained redactions applied by OHA's Corporate Counsel; therefore, CLA was unable to determine whether the services provided by the vendor were those services listed in the contract.<sup>169</sup>
- d. One contract did not contain any documentation to determine if a deliverable was received. It appears that, for the original contract, no deliverable was received by OHA. The details relating to this contract are communicated below.
  - i. K-17: Contract #2828 was executed on September 7, 2012, with Mid-Continent Research for Education and Learning to provide consulting and advisement services relating to the Kūkulu Hou assessment framework project. The original contract, which totaled \$99,716, provided for certain contract deliverables with each payment made, as follows:
    - 1: Execution of contract (first payment of \$19,943.20)
    - 2: Corpus study report (second payment of \$23,267.07)
    - 3: Literature review report (third payment of \$23,267.07)
    - 4: Focus group report (Fourth payment of \$23,267.07)
    - 5: Annotated bibliography (fifth payment of \$9,971.60)

Although the contract was executed on September 7, 2012, it was effective from May 11, 2012, through May 31, 2013. The first invoice was dated October 17, 2012, and was not processed for payment until February 27, 2013. There were no additional invoices or payments made through the end of the original contract period.

A contract amendment was executed on June 26, 2013, but effective June 1, 2013 (after the end date of original contract) through June 30, 2014. The scope of the contract was completely amended (given that the performance period had expired and no deliverable appears to have been

---

<sup>169</sup> According to discussions with OHA's current Corporate Counsel, Raina Gushiken, all documents were reviewed by her for attorney-client privileged information prior to providing the documents to CLA. If she deemed any communications to be attorney-client privileged, the information was redacted.

completed). The amendment to the contract included additional funds added to the original contract for a total contract amount of \$349,527.

The first amendment #2828.01 provided the following:

- 1: Execution of amendment #2828.01 (first payment of \$49,962.20)
- 2: Instrument facilitation guide (second payment of \$58,289.23)
- 3: Assessment blue prints (third payment of \$58,289.23)
- 4: Assessment pilot Tool (fourth payment of \$58,289.23)
- 5: Report of phase II (final payment of \$24,981).

There were two additional amendments that only extended the performance period to August 31, 2015. The full amount of \$349,527 was paid to the vendor.

The contract file contained a June 24, 2013, email communication from the Procurement Manager to the CEO's Special Assistant regarding the first amendment. The CEO's Special Assistant forwarded that email to OHA's Corporate Counsel on June 25, 2013, one day before the contract amendment was executed; however, the email text from the CEO's Special Assistant to Corporate Counsel was redacted from the communication. The Corporate Counsel responded to the CEO's Special Assistant's email the next day, and the one line of text of the email from Corporate Counsel was also redacted.<sup>170</sup> This email communication may have contained details as to whether any of the work was completed by the vendor during the original contract period.

It appears to CLA, that none of the deliverables from the original contract were completed. CLA made this assessment based on the language of the original contract, the language of the first amendment, the lack of additional payments during the original contract period, the change in scope for the first amendment, and the additional payment due upon the execution of the first amendment. The deliverables for the contract amendment were not located.<sup>171</sup> Current OHA employees were unable to locate any deliverables related to this contract.

---

<sup>170</sup> According to discussions with OHA's current Corporate Counsel, Raina Gushiken, all documents were reviewed by her for attorney-client privileged information prior to providing the documents to CLA. If she deemed any communications to be attorney-client privileged, the information was redacted.

<sup>171</sup> On Tuesday, June 11, 2019, CLA requested a meeting with Dr. Crabbe for any time prior Friday, June 14, 2019, which was CLA's last testing day on site at OHA. A meeting with Dr. Crabbe was not scheduled while CLA was on site. Subsequently, CLA scheduled a call with Dr. Crabbe for Tuesday, June 25, 2019. CLA provided the conference call information and called into the number at the scheduled time. CLA waited for



See recommendation 31.

5. There was sufficient oversight of the project/work by the contract monitor/manager (criteria [75])
  - a. Two contracts included sufficient documentation from the contractor for CLA to be able to determine that there appeared to be sufficient oversight of the project/work by the contract manager (K-10, K-55). OHA's internal policies and procedures do not indicate the methods that must be used by the contract manager to provide oversight of the contractor's work. Therefore, CLA's assessment was based on whether there was evidence of deliverables from the contractor, invoices provided detail of the work performed, and/or CLA was able to speak with the contract manager to discuss the work performed.
  - b. Five contracts were missing all deliverables or a portion of the deliverables; therefore, CLA is unable to assess whether the contract manager provided sufficient oversight (K-01, K-03, K-17, K-35, K-37). The fact that not all deliverables could be provided may be an indication that sufficient oversight was not provided. In addition, all six contracts had an effective date that preceded the contract execution date.
  - c. Six contracts had an effective date that preceded the contract execution date and had additional observations pertaining to the procurement process, missing provisions in the contract, and/or missing an appropriate signature on the contract for example (K-05, K-16, K-28, K-41, K-56, K-67). Although there was documentation to provide evidence of a deliverable or work performed by the contractor, the contract execution and timing of the performance of work were not sufficiently managed.<sup>172</sup>

---

approximately 15 minutes, but Dr. Crabbe did not call in. CLA emailed Dr. Crabbe and OHA's current Corporate Counsel after approximately five minutes of waiting. CLA emailed them again after 18 minutes of waiting to let them know that CLA would disconnect from the call at that time. Dr. Crabbe responded to CLA's email approximately two hours later with an apology for missing the call and explaining that his assistant, who usually arranges or sets the conference calls for him, had been called away. He stated that he would discuss with Corporate Counsel for a possible reschedule. CLA sent a follow-up email to OHA's Corporate Counsel and Dr. Crabbe for a possible reschedule of the call and provided its availability. CLA did not receive a response on a new day/time. Therefore, CLA was unable to inquire regarding whether any work was performed under the original contract and whether the vendor provided OHA with the deliverables as stated in the first contract

<sup>172</sup> In total, there were 11 contracts that had an effective date that preceded the execution date (K-01, K-03, K-05, K-16, K-17, K-28, K-35, K-37, K-41, K-56, K-67).

- d. One contract (K-58) had a matching execution and effective date; however, the first invoice reflected work that took place prior to the contract effective date.<sup>173</sup> Additional information is provided below relating to this contract.

Contract #3031 with Peninsula Real Estate Partners, LLC was executed on June 9, 2015, for \$240,000 to provide real estate financial advising. The contract was executed to be effective June 9, 2015; however, there were three charges that preceded the contract effective date as follows: attending committee meeting on May 28, 2015 for \$385; 8 hours of review of documents on June 1, 2015 and June 2, 2015 for \$1,120; and meeting with Trustee on June 3, 2015 for \$175. These charges totaled \$1,680 and were incurred before the contract effective date.

OHA's Land and Property Director originally approved the payment on September 14, 2015, but the Controller questioned the services that predated the contract effective date. Documentation for the payment includes an email from OHA's Land and Property Director that confirms the charges for services prior to the contract effective date are legitimate and recommends to treat it as a procurement violation, and to proceed with payment.<sup>174</sup> The full payment was made to this vendor. Based on this information, the contract execution and timing of the performance of work were not sufficiently managed.

See recommendations 31 and 45.

6. There was no evidence of fraud, waste, or abuse (criteria **[76]**)

A review of the documents for three of the contracts tested in this area identified red flags that indicate a possibility of fraud, waste, or abuse. The identification of a red flag or indicator does not, on its own, confirm that fraud, waste, or abuse did occur. This section simply identifies the observations made by CLA during the testing that can be indicators of fraud, waste, or abuse, and, therefore, CLA is not making a conclusion as to the existence of fraud, waste, or abuse. Additional investigation of each contract would be required, which was beyond the scope of this engagement.<sup>175</sup>

---

<sup>173</sup> This contract did not call for specific deliverables other than the presentation of invoices and satisfactory documentation of the financial advisory assistance provided. Based on the invoices provided, CLA was satisfied that the services were provided as per the terms of the contract, with the exception of the time charged that preceded the contract effective date.

<sup>174</sup> The contract file did not contain any evidence that a procurement violation report was documented.

<sup>175</sup> There were six contracts for which no indicator or red flags of waste, fraud, or abuse were identified, although the contract effective date preceded the contract execution date (K-05, K-10, K-28, K-41, K-58, K-67). Additionally, there were three contracts that has several observations that included incomplete or missing deliverables, failure to follow OHA established procedures, and incomplete evidence of an

There was also one contract for which CLA was unable to verify a deliverable, and, although the contract effective date preceded the contract execution date, this was not sufficient information for CLA to make an assessment on possible indicators of fraud, waste, or abuse (K-01).

Each of the three contracts for which CLA identified indicators or red flags of fraud, waste, or abuse is discussed below.

a. K-17 – OHA Contract #2828 – Mid-Continent Research for Education and Learning

The contract with Mid-Continent Research for Education and Learning was executed by OHA on September 7, 2012 for \$99,716. There was one amendment to the contract that extended the contract period and increased the total contract amount to \$349,527. There were two additional amendments that further extended the contract period. OHA paid the full amount of this contract of \$349,527.

This contractor was retained by OHA to provide consulting and advisement services relating to the Kūkulu Hou assessment framework project. The following observations were made by CLA pertaining to this contract:

- i. As mentioned previously, the contract file did not contain the names of the selection committee members or a signed affidavit by the selection committee members confirming they had no personal, business, or any other relationship that would influence their decision.
- ii. No evidence was provided that the contract was awarded to the first-ranked contractor.
- iii. No evidence was provided to CLA that this contract, which was initially under \$100,000, was reviewed by the head of the purchasing agency with at least two persons of the selection committee in accordance with HRS §103D-304.
- iv. The Purchase Requisition was missing for the original contract.
- v. There is no evidence that a deliverable was provided as per the terms of the original contract after OHA had paid the vendor \$19,943 upon the execution of the contract. There is no evidence that any work was performed as the vendor never submitted invoices to OHA and no additional payments were made under the original contract. Nonetheless, an amendment was executed to extend the contract

---

appropriate procurement process. However, the totality of the observations do not appear to rise to the level of indicators or red flags of waste, fraud, or abuse (K-03, K-35, K37).

---

period, add additional funds for a total contract amount of \$349,527, and revise the scope of work. In addition, an additional payment of \$49,000 was processed upon the execution of the first amendment.

- vi. The first contract amendment was made effective prior to the execution date. The amendment was executed on June 26, 2013, with an effective date of June 1, 2013.
- vii. No deliverable was located by current OHA staff for the work of this vendor.
- viii. The contract file contained a June 24, 2013, email communication from the Procurement Manager to the CEO's Special Assistant, regarding the first amendment. The CEO's Special Assistant forwarded that email to OHA's Corporate Counsel on June 25, 2013, one day before the contract amendment was executed; however the content of the email was redacted. The Corporate Counsel responded to the CEO's Special Assistant's email the next day, and the one line of text of the email from Corporate Counsel was also redacted.<sup>176</sup>
- ix. The contract manager listed for this contract was the CEO, Dr. Crabbe. After several attempts, CLA was unsuccessful in getting an interview with Dr. Crabbe prior to his last day with OHA on June 30, 2019.

There is no documentation to show that OHA followed the proper procurement method when retaining this contractor to provide these services. Additionally, there is no evidence that a deliverable was ever provided by the contractor under either the original contract or the amendment. Combined with other observations noted above, such as the redacted email communication with Corporate Counsel, raises concern that the contract was not handled properly and that OHA did not receive the benefit for which it paid. This information is sufficient to indicate the possibility of fraud, waste, and/or abuse.

- b. K-55 – OHA Contract #3022 – Stryker Winer & Yokota Public Relations, Inc.

The contract with Stryker Winer & Yokota Public Relations, Inc. was executed on April 1, 2015, for \$256,000. One amendment was executed for this contract, which added an additional \$37,969 for a total contract amount of \$293,969. OHA paid a total of \$215,969 during the period covered by the scope of this engagement. The contract extended through March 31, 2017.

---

<sup>176</sup> According to discussions with OHA's current Corporate Counsel, Raina Gushiken, all documents were reviewed by her for attorney-client privileged information prior to providing the documents to CLA. If she deemed any communications to be attorney-client privileged, the information was redacted.

Stryker Winer & Yokota Public Relations, Inc. was hired to provide services relating to an integrated marketing communications plan with the purpose of OHA having uniform communications and messaging highlighting OHA. There was sufficient evidence to indicate that the vendor performed the services under the contract; however, there were observations pertaining to the process for procurement of the services, and it appears that OHA ultimately did not use one of the elements of the product delivered by the vendor.

The following observations were made by CLA pertaining to the procurement of this contract:

- i. Selection Committee documentation was not included within the contract file.
- ii. No documentation was provided that would have enabled CLA to verify that the contract was awarded to the first-ranked person (vendor).
- iii. The Procurement Document Checklist was not provided for this contract. This checklist, as mentioned, is used to identify the procurement method used, to document that all the forms and documents used are included in the procurement file, and to document the review by legal counsel.

The contractor was hired for a project named, "integrated marketing communications plan"; the Description of the project was "Uniform Communications and Messaging highlighting OHA." The intention of the integrated Marketing Plan ("IMCP") was to provide OHA a strategic plan to increase the positive image of OHA among the native Hawaiians and the general public.

A Beneficiary Advocacy and Empowerment (BAE) meeting on August 24, 2016 was held to approve the "One Voice, One Message" based on one aspect of the work performed by Stryker Weiner & Yokota Public Relations, Inc. The Action item was BAE 16-02 "To approve an OHA Board of Trustees Executive Communications Policy Plan called 'One Voice, One Message'" (**Exhibit 15**).<sup>177</sup>

---

<sup>177</sup> On November 27, 2019, after receiving CLA's Draft report, OHA staff communicated to CLA that while the Board of Trustees has not yet approved one aspect (One Voice One Message) of the integrated communication plans, OHA nevertheless actively uses the plans provided by the vendor to guide OHA's internal and external communications. Additionally, the plans provided by the vendor were adopted into OHA's Internal Communication Standard Operating Procedure and into its Strategic Communication Framework and Communication Plan (both of which were provide to CLA at this time), which are used for internal and external communications, especially major external and internal communication campaigns. The vendor also produced a "Community Issues & Perceptions" survey (also provided to CLA at this time), which OHA still uses to inform its internal and external messaging.

At this meeting, there was disagreement among the Trustees, and questions were raised regarding whether the proposed "One Voice, Once Message" was constitutional if required of the Board of Trustees. After discussion with the Board of Trustees, it was ultimately decided to table the item as they could not agree on a decision for the proposed action item. Additionally, the CEO stated during this meeting: "I think the discussion has raised a legal issue regarding the Constitutionality, which we did not look at, and we will get a legal perspective on it and look to revising this."

OHA communicated to CLA that as of October 2019, a revised "Integrated Marketing Communications Plan" had not been brought back to the Board of Trustees, and the Board of Trustees has never taken action on this item.

The objective of this contract, totaling \$293,969 (including amendment), was to devise an "integrated Marketing Communications Plan" that in part involved the Board of Trustees; therefore, it would have been prudent to involve the Board of Trustees prior to entering into this contract. By waiting until the vendor had completed the work and deliverable to involve the Board of Trustees, a portion of the contract deliverable was ultimately unusable by OHA.

OHA ultimately never used a portion of the product produced by this vendor and paid for by OHA, which is an indication of possible waste of OHA's resources. If the objective, from the beginning, was to involve the Board of Trustees in the "Integrated Marketing Communications Plan," the contract manager should have discussed the potential contract with the Board of Trustees prior to beginning the procurement process to ensure all were in agreement on objective and scope.

c. K-56 – OHA Contract #3025 – Reed Smith LLP

The contract with Reed Smith LLP was executed by OHA on May 5, 2015, for \$200,000 with an effective date of September 7, 2014. There were no amendments to the contract. During the scope period, this vendor was paid a retainer of \$112,500, but a refund to OHA reduced the total payments to \$84,728.

Reed Smith LLP was retained to provide legal advice regarding "Native Hawaiian Self Governance and Hawaiian Language immersion education." The main provider of these services was Breann Nu'uhiwa, whose employment with OHA had ended on September 4, 2013 after a year and a half of employment. The following observations were made by CLA pertaining to this contract.

- i. Ms. Nu'uhiwa performed work for OHA on a "pro-bono" basis within the first year after her departure from OHA. Shortly after the one year elapsed, Reed Smith LLP was awarded a contract by OHA. This raises a

concern of whether the work that was performed on a “pro-bono” basis by Ms. Nu’uhiwa within one year of separation from OHA was performed in exchange for receiving this contract once the year had elapsed. If so, it could be perceived that this is a form of consideration given by OHA, which is now allowed under HRS §84-18(c).

- ii. Evidence was observed indicating that OHA employees may not have been independent and/or impartial during the selection process. Because Ms. Nu’uhiwa had been employed by OHA as the Chief Advocate, it is possible that the members of the Professional Services Selection Committee could not be impartial or remain independent being that they were employed by OHA at the same time as Ms. Nu’uhiwa.<sup>178</sup> Additionally, the CEO who approved the Selection Committee’s recommendation of Reed Smith LLP, to be approved as a qualified professional services provided, and who executed the contract, was listed as the first reference within the Statement of Qualifications submitted by Reed Smith LLP.
- iii. Based on the timeline of events as shown beginning in Table 9 beginning on page 103, there is evidence that the vendor began charging time to this contract as early as September 10, 2014, after the contract effective date of September 7, 2014, but before the first evidence of a procurement process for FY 2014-15 begins. The first evidence of the procurement process for FY 2014-15 begins with a memorandum of appointment of a Selection Committee dated September 15, 2014. Other documents related to this procurement indicate that the procurement process did not occur in the proper order. This information suggests that OHA had already made a decision to hire Reed Smith LLP prior to any of the procurement steps being undertaken for FY 2014-15.
- iv. There was inconsistent documentation in the procurement file pertaining to the method of procurement. The Procurement Document Checklist indicated the contract with Reed Smith LLP was an exempt purchase; however, the listed exemption did not appear to apply to the services being provided by Reed Smith LLP (see Section 2.a. above).
- v. Compliance documents were not obtained from this vendor. The Procurement Package Checklist has a check mark in the box that indicates compliance documents “not required for grants or for this payment if less than \$25,000.” This contract was for \$200,000 and would have, therefore, required that the compliance documents be obtained prior to contract execution. Under current Hawaiian law, any business entity intending to enter into (or bid on) a contract with an

---

<sup>178</sup> Mr. Riley, who was on the Selection Committee was a direct report of Ms. Nu’uhiwa, prior to Ms. Nu’uhiwa’s employment ending with OHA.

agency of the State is required to obtain a tax clearance certificate prior to entering into a State contract.<sup>179</sup>

Based on the totality of the above mentioned observations, it appears to CLA that there are red flags or indicators of possible fraud, waste, or abuse as it pertains to the procurement of this contract.

See recommendation 41.

---

<sup>179</sup> There were additional observations relating to this contract, which CLA has not included in this section. These are observations such as the failure to take steps to verify the independence of the selection committee and the internet posting of the selected contract within seven days of the contract being awarded. CLA did not add these observations here because they were observations that applied to all of the 14 contracts tested under the Professional Services procurement process.



#### d) Small Purchase Contracts

Only one of the contracts selected for testing was procured by OHA using the small purchases method. HRS §103D-305 Small Purchases, provides the circumstances under which the small purchasing method may be used. A copy of HRS §103D-305 is included in **Exhibit 16**.<sup>180</sup>

A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the approval and execution of OHA small purchases is included in **Attachment 08**. It should be noted that the most current update to the OHA Fiscal Procedures Manual was made on March 2, 2009, and when the update was made, a page related to the procurement of Small Purchases, page 61, was seemingly replaced as this entire page was crossed out; however, the updated page was not included.<sup>181</sup> This was the most current version of the OHA Fiscal Procedures Manual and there was no other more recent version provided to CLA.<sup>182</sup> For this reason and because the process outlined by the page that was crossed out was the same as the procedure dictated by HRS §103D-305 effective in 2012, and the procedure described in the original June 2008 manual, CLA tested contracts procured under the Small Purchase method using the original June 2008 OHA Fiscal Procedures Manual.<sup>183</sup>

Included in Table 10 below is a summary of the results identifying for each criteria tested the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>184</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 08** includes a table containing the results at the contract level and tickmarks explaining each contract with an observation.<sup>185</sup>

---

<sup>180</sup> The universal citation for this HRS is HI Rev Stat § 103D-305 (2012). In performing this testing CLA used the HRS in effect for the scope period.

<sup>181</sup> The OHA Fiscal Procedures Manual provided contains a date of June 2008 on the cover; however, the second page of this manual contains a list of effective changes which includes the latest change on March 2, 2009. For this reason, CLA refers to this manual's latest update, March 2, 2009, as the most recent version.

<sup>182</sup> CLA was originally provided with the OHA Fiscal Procedures Manual dated June 2008 that did not include any updates.

<sup>183</sup> OHA confirmed that the March 2009 copy of the Fiscal Procedures Manual provided to CLA was the most recent update that was available.

<sup>184</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>185</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 08**, tickmarks for contracts tested for the Small Purchase procurement process are numbered with the letter "F" as the prefix to correspond to this section of the report and are included in red font to

**Table 10: Summary of Results – OHA Small Purchase Contracts<sup>186</sup>**

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interests</b>					
[1]	Employees selecting the contractor did not have a financial interest.	0	0	1	1
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or any other agency capacity.	0	0	1	1
<b>HRS §84-15: Contracts</b>					
[3]	The contract was not with a legislator or employee who has controlling interest.	0	0	1	1
[4]	If the contract was with a legislator or employee who has controlling interest, alternative criteria were met.	0	0	1	1
[5]	The person or business entering into contract with OHA was not represented by a person employed by OHA in the preceding 2 years.	0	0	1	1
[6]	If the person or business entering into contract with OHA was represented by a person employed by OHA in the preceding 2 years, the person did not participate in the matter with which the contract is directly concerned.	0	0	1	1
<b>HRS §103D: Hawaii Public Procurement Code</b>					
<b>HRS §103D-101(a): Requirements of Ethical Procurement</b>					
[7]	No evidence was observed of OHA employee(s) not acting as a fiduciary of public funds.	0	0	1	1
[8]	No evidence was observed of OHA employee(s) not remaining independent of bidder, offeror, contractor, or business.	0	0	1	1
[9]	No evidence was observed of OHA employee(s) not acting only in the public interest.	0	0	1	1
[10]	No evidence was observed of disobedience to of statutes and administrative rules relating to public procurement.	0	0	1	1
[11]	No evidence was observed of inefficiencies in the public procurement process.	0	0	1	1
[12]	No evidence was observed that persons were not afforded an equal opportunity to compete in a fair environment.	0	0	1	1
[13]	No evidence was observed of intent or appearance of unethical behavior.	0	0	1	1
[14]	No evidence was observed of social interactions with actual/prospective bidder.	0	0	1	1
[15]	No evidence was observed of a failure to maintain confidentiality in a manner that ensures a fair procurement process.	0	0	1	1
[16]	No evidence was observed of a failure to remain impartial in dealings with actual or prospective bidders, offeror, contractor, business, or interested parties.	0	0	1	1

be easily identified. For example, observation **F01** is the first observation reference for the Small Purchase contracts tested.

<sup>186</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §103D-101(b) &amp; (c): Requirements of Ethical Procurement</b>					
[17]	No evidence was observed of a failure to identify and eliminate conflict of interests for this contract.	0	0	1	1
[18]	No evidence was observed that any party involved in the negotiation, performance, or administration of this contract did not act in good faith.	0	0	1	1
<b>HRS §103D-305(a): Small Purchases</b>					
[19]	Procurement was of less than \$100,000 (\$250,000 for construction projects) was made in accordance with the policy board that are designed to ensure administrative simplicity and as much competition as practicable.	0	0	1	1
[20]	Multiple expenditures were not created at the inception of the transaction or project so as to evade the requirements of 103D-305	0	0	1	1
<b>HRS §103D-305(b): Small Purchases</b>					
[21]	Security by performance and payment bonds was required for procurements relating to construction greater than \$50,000 for construction projects.	0	0	1	1
<b>HRS §103D-305(c): Small Purchases</b>					
[22]	Procurement of \$25,000 - \$249,999 was made in accordance with small purchase procedures and through an electronic system (HePS)	0	0	1	1
<b>P-10: OHA Purchase and Procurement Procedures, revised June 2008</b>					
<b>2.2.1.5: Small Purchases Procedures</b>					
[23]	At least 3 verbal quotes were obtained.	0	0	1	1
[24]	Form SPO-10 Record of Procurement was prepared.	0	0	1	1
[25]	The purchaser completed the Procurement Check List (PCL).	0	0	1	1
[26]	Form SPO-10 was submitted to Hale Director for review and approval.	0	0	1	1
[27]	The purchaser completed the review process outlined in 2.2.4.4 Purchase Review Process for Contracts and Grants	0	0	1	1
[28]	A contract was prepared for purchase of services	0	0	1	1
[29]	Vendors were notified to register with HePS for procurements of \$25,000 - \$249,999.	0	0	1	1
[30]	A requisition/solicitation was created for procurements of \$25,000 - \$249,999.	0	0	1	1
[31]	The Hale Director submitted a solicitation notice and recommended names of bid review committee members for procurements of \$25,000 - \$249,999.	0	0	1	1
[32]	The solicitation notice and bid review committee members were approved by the Administrator/Division Manager for procurements of \$25,000 - \$249,999.	0	0	1	1
[33]	The solicitation was released through HePS with closing date indicated for procurements of \$25,000 - \$249,999.	0	0	1	1
[34]	An HePS PO Summary Report was prepared for procurements of \$25,000 - \$249,999.	0	0	1	1
<b>2.2.1.10: Small Purchases Procedures- P Cards</b>					
[35]	A request for issuance of a P-Card was transmitted by the Deputy Administrator or Hale Director, including the reason and need for the card, the people responsible for the card's use and security measures for the card.	0	0	1	1
[36]	The P-Card charge was reviewed and approved by the Administrator.	0	0	1	1

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>2.2.2.1: Purchases Requisition Procedures<sup>187</sup></b>					
[37]	The Purchase Requisition information was entered in the online Oracle Purchase Requisition form.	0	0	1	1
[38]	If funds are available, the Purchase Requisition was sent to the appropriate manager for review	0	0	1	1
[39]	The Purchase Requisition was approved	0	0	1	1
[40]	If not approved, the Purchase Requisition was appropriately cancelled	0	0	1	1
<b>2.2.5: Purchase Orders<sup>188</sup></b>					
[43]	The Purchase Order was reviewed and signed by the Controller or the CFO, as applicable.	0	0	1	1
[44]	The Request for Contract Payment, signed by the Hale Director for contracts, or a receipt of goods/services was received.	0	0	1	1
<b>2.2.5.2: Receiving on a Purchase Orders</b>					
[47]	The payment was approved by the appropriate level based on Operational Authority Delegation Hierarchy revised 12/12/12, 5/19/15, and 10/21/15 as applicable.	0	0	1	1
<b>2.2.7.5: Check Issuance and Distribution</b>					
[48]	The invoice was stamped "paid" and marked with the check number.	0	1	0	1
<b>Other Testing Results</b>					
[49]	Deliverable was met by the contractor	0	0	1	1
[50]	There was sufficient oversight of project/work by the contract monitor/manager	0	0	1	1
[51]	There was no evidence of fraud, waste, or abuse.	0	0	1	1

Within each observation, CLA has listed the OHA contract sample number with that particular observation. The specific contract number and a more detailed discussion of the observation can be found by referring to **Attachment 08**. Each observation also includes a reference to the applicable criteria listed in the table above.

1. Compliance with HRS §84: Standards of Conduct (criteria [1] through [6])

CLA did not identify any evidence of non-compliance with HRS §84-14 or with HRS §84-15.

<sup>187</sup> Criteria [41] and [42] were also tested her but are excluded as they were used to document the name of the individual approving the Purchase Requisition and the date of the approval; however, this information is not necessary to report the final results of the testing.

<sup>188</sup> Criteria [45] and [46] were also tested her but are excluded as they were used to document the name of the Hale Director or Administrator (Deputy Administrator) and the date of receipt of services; however, this information is not necessary to report the final results of the testing.

2. Compliance with HRS §103D – Hawai'i Procurement Code (criteria [7] through [22])

The one contract selected for testing that was procured through the Small Purchases method was for recruitment assistance to permanently fill OHA's Land and Property Director vacancy. The contract was with Inkinen and Associates Inc. for a total amount of \$24,998, which is under the threshold of \$25,000 that would have required OHA to release the solicitation through an electronic system (HePS).

Although eight separate payments totaling \$125,757 were made to this vendor during the period of review, it was evident that the services provided were discrete and not part of a single project, nor were multiple projects created at the inception of the transaction so as to evade the requirements of HRS §103D-305. Therefore, CLA did not have observations relating to compliance with HRS §103D-305.

3. Compliance with OHA Internal policies and procedures (criteria [23] through [48])

As stated previously, the internal policies and procedures included in the most recent update of OHA's Fiscal Procedures Manual related to the procurement process for Small Purchases was crossed out. There was no other more recent update provided to CLA. For this reason, the version updated in January 2008 was used. The procurement process followed for this contract appeared consistent with the process outlined in the OHA Fiscal Procedures Manual; however, there was one observation made related to the payment process followed as explained below.

a) Contract payment process

The OHA Fiscal Procedures Manual, in the Check Issuance and Distribution Process section (**Exhibit 02**, page 114), states that invoices are to be stamped paid and marked with the check number. CLA noticed for the payment on this contract, and the payments on all other contracts, that the actual process followed included applying the stamp on the Request for Payment on Contract form and no stamp was applied or check number recorded on the actual invoice.

See recommendations 47 and 48.

4. Deliverable was met by the contractor (criteria [49])

CLA verified that the deliverable was met by the contractor for the one contract tested for this procurement method.

5. Sufficiency of contract oversight (criteria **[50]**)

The sufficiency of contract oversight appeared appropriate for the one contract tested for this procurement method.

6. No evidence of fraud, waste, or abuse (criteria **[51]**)

CLA did not identify indications of fraud, waste, or abuse related to the one contract tested for this procurement method. The procurement records indicate that, although quotes were requested from three vendors (via email), only two vendors responded to the request. From the two vendors that responded to the request, the contract was not awarded to the lowest quoting vendor; however it was documented that due to the urgency of the request and the number of successful high profile COO and CEO replacements with OHA, the award was made to this vendor as “best value” to provide the most qualified and vetted candidate. The process and the documentation appeared appropriate to CLA for this procurement, and, therefore, CLA does not make an observation regarding fraud, waste, or abuse relating to this contract.

### e) Exempt Contracts

Seventeen contracts were procured by OHA using the exempt contract method. HRS §103D-102, Application of this chapter, subsection (b) provides a specific list of goods, services, and contract types that are exempt from the procurement requirements specified in HRS §103D. A copy of HRS §103D-102(b) is included in **Exhibit 17**. As referenced in OHA's Fiscal Procedures Manual, revised March 2, 2009, the Hawai'i Administrative Rules Section 3-120-4 – Exhibit A exempts additional items from Chapter 103D.<sup>189</sup>

A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the approval and execution of OHA exempt contracts is included in **Attachment 09**. As part of this testing, criteria **[7]** through **[10]** were used by CLA to determine if the goods, services, or contract type appeared to qualify as exempt under the listed exemptions included in HRS §103D-102(b) or Hawai'i Administrative Rules Section 3-120-4 – Exhibit A. OHA's Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.1.3 identifies the process for procuring exempt goods or services (see **Exhibit 02**, page 56). Based on these procedures, OHA can identify a contractor from which to procure goods or services without obtaining any quotes or bids. The exempt procurement method requires various steps for internal review and approval, which were tested as part of CLA's procedures.

Included in Table 11 below is a summary of the results identifying for each criteria tested the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>190</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 09** includes a table containing the results at the contract level and tickmarks explaining each observation for a contract.<sup>191</sup>

---

<sup>189</sup> **Exhibit 02** includes a copy of OHA's Fiscal Procedures Manual, revised March 2, 2009. Page 55 of the manual includes a list of exemptions under Hawai'i Administrative Rules Section 3-120-4 – Exhibit A.

<sup>190</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>191</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 09**, tickmarks for exempt contracts tested are numbered with the letter "E" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **E01** is the first observation tickmark for OHA's exempt contracts.

Table 11: Summary of Results – OHA Exempt Contracts

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	0	0	17	17
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or other agency capacity.	0	0	17	17
<b>HRS §84-15: Contracts</b>					
[3]	The contract was not with a legislator or employee who has controlling interest.	0	1	16	17
[4]	If the contract was with a legislator or employee who has controlling interest, alternative criteria were met.	0	1	16	17
[5]	The person or the business entering into contract with OHA was not represented by a person employed by OHA in the preceding 2 years.	0	0	17	17
[6]	If the person or business entering into contract with OHA was represented by a person employed by OHA in the preceding 2 years, the person did not participate in the matter with which the contract is directly concerned.	0	0	17	17
<b>HRS §103D: Hawai'i Public Procurement Code</b>					
<b>HRS §103D-102(b): Application of this chapter</b>					
[7]	The service or goods qualify as a listed exemption in 103D-102(b).	0	11	6	17
[8]	Document the specific exemption number.	0	11	6	17
<b>P-10: OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.1.3: Exempt Procurements<sup>192</sup></b>					
[9]	If not qualified under the list of exemptions in 103D-102(b), the goods/service qualify as an exempt purchase under Exhibit A - Procurements Exempt from Chapter 103D, HRS.	0	11	6	17
[10]	Document the specific exemption number.	0	11	6	17
<b>2.2.1.3: Exempt Purchase Procedure</b>					
[11]	The need to create a Purchase Requisition was identified by a Hale Director or Deputy Administrator.	1	0	16	17
[12]	The Purchase Requisition complied with the OHA Procurement Policy (Attachment 19 to Fiscal Procedures Manual). Attachment 19 is a table that summarizes the value (amount) and type of good/service being purchased and the procurement method required. The testing of proper procurement method is documented in criteria [7] - [10] above.	1	11	5	17
[13]	The Purchase Requisition representative checked if funds were available for the procurement.	1	1	15	17
[14]	The Purchase Requisition was approved by the appropriate manager (see Operational Authority Delegation Hierarchy for appropriate approval levels).	1	1	15	17
[15]	For amounts under \$2,500, identify the name of the Purchaser.	0	0	17	17
[16]	For amounts under \$2,500, identify the name of person preparing the check request.	0	0	17	17
[17]	For amounts under \$2,500, identify the name of the person(s) approving the check request.	0	0	17	17
[18]	For amounts equal to or greater than \$2,500, the Purchaser completed the Procurement Check List (PCL). (See section 2.2.4 below)	0	1	16	17

<sup>192</sup> Criteria [7] and [8] were also tested as part of OHA Fiscal Procedures Manual (revised March 2, 2009) section 2.2.1.3. Exempt Procurements, but are not shown in this section to avoid duplication.



Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>2.2.4: Grants, Procurement, and Contracts Review Process</b>					
[19]	A complete Purchase Requisition was submitted by a designated Purchase Requisition Representative for the review process.	1	0	16	17
[20]	[a] An Accounting Checklist was submitted.	0	17	0	17
	[b] Funds were verified by the Budget Analyst.	1	1	15	17
	[c] Funds were certified by the CFO.	2	5	10	17
[21]	Unless not required by statute, the contractor submitted a Tax Clearance to OHA prior to entering into the contract.	0	1	16	17
[22]	A Procurement Document Checklist was submitted and signed by a Hale Manager.	0	4	13	17
[23]	The owner of the business, except for sole proprietorships, charitable organizations, unincorporated associations, and foreign insurance companies, submitted a DCCA Verification showing Proof of Good Standing with the State of Hawaii.	0	1	16	17
[24]	The Hale Manager submitted a Contract for Purchase of Services.	0	0	17	17
<b>2.2.4.2: Purchase of Goods and Services Review Process</b>					
[25]	For the purchase of services, staff used the standard contract and it include all required provisions.	0	8	9	17
<b>2.2.4.3: Review Documentation</b>					
[26]	The senior staff attorney signed the Procurement Check List.	0	0	17	17
[27]	The senior staff attorney signed the contract.	0	0	17	17
<b>2.2.4.4: Purchase Review Process for Contracts<sup>193</sup></b>					
[28]	The Accounting Check List (ACL) was submitted to the Budget Analyst to ensure availability of funding, correct coding, and installment payments coincided with contract language.	0	17	0	17
[29]	[a] Appropriate signatures were obtained on the contract (see Operational Authority Delegation Hierarchy).	0	7	10	17
	[b] Services began after the contract was fully executed by OHA.	0	14	3	17
<b>2.2.5: Purchase Orders</b>					
[32]	The Purchase Order was reviewed and signed by the CFO.	2	5	10	17
<b>2.2.5.2: Receiving on a Purchase Order Process<sup>193</sup></b>					
[33]	The "Request for Payment on Contract" was reviewed and signed by the Hale Director and Administrator, or Deputy Administrator, based on the table on page 108 of the Fiscal Procedures Manual.	0	10	7	17
<b>2.2.7.3: Contract Payment Process<sup>193, 194</sup></b>					
[38]	The payment was approved by the appropriate level based on the delegation of authority.	0	2	15	17
[39]	The invoice was stamped paid and marked with the check number.	0	17	0	17
<b>Other Testing Results</b>					
[40]	Deliverable was met by the contractor.	5	6	6	17

<sup>193</sup> Criteria [30], [31], [34], [35], [36], and [37] are excluded as they were used by CLA to document information pertaining to the contract approval and execution, such as the name of the OHA staff that approved the Purchase Requisition; however, are not necessary to report the final results of the testing.

<sup>194</sup> Criteria [33] was also tested as part of OHA Fiscal Procedures Manual (revised March 2, 2009) section 2.2.7.3. Contract Payment Process, but is not shown in this section to avoid duplication.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[41]	There was sufficient oversight of the project/work by the contract monitor/manager.	0	7	10	17
[42]	There was no evidence of fraud, waste or abuse.	0	10	7	17

Within each observation, CLA has listed the OHA contract sample number with that particular observation. The specific contract number and a more detailed discussion of the observation can be found by referring to **Attachment 09**. Each observation also includes a reference to the applicable criteria listed in the table above.

1. Compliance with HRS §84: Standards of Conduct

a. HRS §84-14: Conflicts of Interest (criteria [1] and [2])

Based on the procedures performed and publicly available information, CLA did not identify information that provides evidence of a conflict as defined under HRS §84-14.

b. HRS §84-15(a): Contract with a legislator (criteria [3] and [4])

One contract was identified by CLA as possibly not compliant with HRS §84-15(a), which states, "A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless" other procurement conditions are met by the agency.

i. K-20 – OHA Contract #2879 – Kuauli Aina-Based Insights LLC

Kamanamaikalani Beamer, Ph.D. is the listed owner of Kuauli Anina-Based Insights LLC. Based on an internet search, Mr. Beamer is a commissioner for the Hawai'i State Commission on Water Resource Management, currently serving his second term. The first term began on July 1, 2013 (**Exhibit 18**). Mr. Beamer was a commissioner during the term of the contract with OHA, which was fully executed on June 7, 2013.

CLA is unable to make a conclusion as to whether a commissioner on the Hawai'i State Commission on Water Resources qualifies as a legislator according to the requirements of HRS §84-15(a), and only the State of Hawai'i can make a final determination on this. Additionally, the contract with OHA was fully executed prior to when Mr. Beamer began his first term as commissioner, and CLA was unable to determine the date that

Mr. Beamer was confirmed as a commissioner or when this information was initially made public.

If the commissioner position qualifies as a legislator, the contract exceeded \$10,000 and OHA did not meet the other procurement conditions required, which would have required a competitive proposal process and the posting of a notice of the intent to award the contract.

- c. HRS §84-15(b): Contract with a former employee (criteria [5] and [6])

Based on the procedures performed and publicly available information, CLA did not identify any contracts where the person or business entering into contract with OHA was presented by a person employed by OHA in the preceding two years.

2. Compliance with HRS §103D – Hawai'i Procurement Code (criteria [7] through [10], [12])

Based on the scope of work described in the contracts tested, 11 of the 17 exempt contracts tested are for services that do not appear consistent with the stated exemption identified by OHA or the other exemptions allowed under HRS §103D-102(b) and Hawai'i Administrative Rules Section 3-120-4 – Exhibit A.

The following contracts are those identified by CLA as possibly not compliant:

- a. K-09 – OHA Contract #2721 – The Kalaimoku Group LLC

The scope of work from the contract indicated public relations and messaging services related to the proposed Kaka'ako Makai settlement. The specific exemption cited by OHA was Hawai'i Administrative Rule Section 3-120-4 exemption #1, which states, "Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

The State Procurement Office issued a letter dated May 1, 2017 regarding a different OHA procurement (**Exhibit 19**). The letter stated on page 4, "The SPO notified OHA, on December 16, 2016, that Exemption #1 is used for already published research material and not for contracting a vendor to conduct research and create a report, which is a service."<sup>195</sup> The contract with The Kalaimoku Group LLC was also for a service and not for already published research material. CLA could not identify any other allowed exemption under which this particular service seemed to apply. Additionally, this contractor

---

<sup>195</sup> Although this letter was related to a different OHA contract and was issued after the period covered by this engagement, CLA used this letter to interpret the intent of exemption #1 under Hawai'i Administrative Rule Section 3-120-4 – Exhibit A.

was on the list of approved professional service providers under the category of “Community Planning” along with 20 other vendors. It appears that this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

b. K-18 – OHA Contract #2857 – Native Hawaiian Education Association

According to the scope of the contract, Native Hawaiian Education Association (NHEA) was paid for the "production and facilitation of eighteen (18) scholarship 'aha for Native Hawaiian students." The specific exemption cited by OHA was Hawai'i Administrative Rule Section 3-120-4 exemption #3, which states, "Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter."

The contract manager was no longer employed by OHA to interview; however, OHA did respond that this contract was exempt from procurement as it involved services of a facilitator. Although the scope of work included "facilitation," it appears that this was not a service provided directly to OHA but was a program to benefit Native Hawaiians, similar to a grant or sponsorship. NHEA's website lists 'aha dates for 2018-19, which may be an indication that this is an ongoing program of the organization and not a service to OHA. Additionally, OHA awarded grants to other organizations for a similar purpose.<sup>196</sup> Lastly, several invoices from NHEA indicate “OHA sponsorship.”

It appears that this contract should not have been processed as an exempt contract, and OHA should have considered this funding as a grant or sponsorship based on the purpose of services performed by NHEA. Although grants are exempt from the procurement requirements of HRS §103D, there are specific requirements in HRS §10-17 related to awarding grants.

c. K-20 – OHA Contract #2879 – Kuauli Aina-Based Insights LLC

According to the scope of the contract, Kuauli Aina-Based Insights LLC (Kuauli) was paid to “examine the original source deeds of former Hawaiian Kingdom Government and Crown Lands sold” for the period 1845 through 1959 and “document each sale on an Excel spread sheet [sic].”<sup>197</sup> The specific exemption cited by OHA was Hawai'i Administrative Rule Section 3-120-4 exemption #1, which states, "Research, reference, and educational materials

<sup>196</sup> See CLA contract sample number K-42, OHA Contract #2962, awarded to Hawai'i Community Foundation for the purpose of carrying out the Higher Education Scholarship Program to assist Native Hawaiians.

<sup>197</sup> The contract and related amendments provided for additional detail related to the scope and the required deliverable from Kuauli. For the purpose of summarizing the nature of the work performed, CLA included only an excerpt from the scope.

including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

The State Procurement Office issued a letter dated May 1, 2017 regarding the procurement method used for this purchase (**Exhibit 19**). The letter stated on page 4, "The SPO notified OHA, on December 16, 2016, that Exemption #1 is used for already published research material and not for contracting a vendor to conduct research and create a report, which is a service. The subject contract's scope of work did not fit within the confines of this exemption and therefore the subject contract's award to Kuauli 'Aina-Based Insights does not comply with the Procurement Code." CLA could not identify any other allowed exemption under which this particular service seemed to apply. This contract should not have been processed as an exempt contract, and OHA should have used a different procurement method (e.g., Competitive Sealed Proposals or Professional Services) to secure these services.

d. K-21 – OHA Contract #2880 – DL Consulting Ltd.

According to the scope of the contract, DL Consulting Ltd. (DL Consulting) was paid to make specific updates to the Papakilo Database.<sup>198</sup> The contract and related amendments identify specific revisions to be made to the database by DL Consulting (i.e., "Implement a Native Hawaiian Questionnaire/Statistic Report"). The specific exemption cited by OHA was Hawai'i Administrative Rule Section 3-120-4 exemption #1, which states, "Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

CLA interviewed the contract manager, who indicated that OHA went through an RFP process in 2007 to select the digital platform that would be used to create the Papakilo Database. DL Consulting was the selected vendor, and they have been working with OHA to continue updating and customizing the database. It was the understanding of the contract manager that this contract was processed as a sole source contract because the database had been customized to such a great extent.

Under HRS §103D-306, a sole source procurement requires that a different procurement method be followed, which includes posting a notice regarding the intent to award a contract as a sole source and a seven-day waiting period.<sup>199</sup> The FY 2018-19, 2019-20, and 2020-21 contracts awarded to DL Consulting by OHA related to the Papakilo Database appear to have been

---

<sup>198</sup> The Papakilo Database is an online repository of data pertaining to "historically and culturally significant places, events, and documents in Hawai'i's history." <https://www.papakilodatabase.com/main/main.php>

<sup>199</sup> <http://spo.hawaii.gov/for-vendors/vendor-guide/methods-of-procurement/goods-services-construction/sole-source-procurement-method/>

awarded under the sole source procurement method as OHA completed and posted a Notice & Request for Sole Source (**Exhibit 20**).

It appears that this contract should not have been processed as an exempt contract, and OHA should have used the sole source procurement method to award the work to DL Consulting.

e. K-44 – OHA Contract #2967 – Rider Levett Bucknall Ltd.

According to the scope of the contract, Rider Levett Bucknall Ltd. (RLB) was paid to “present the management and development framework on the Kaka'ako Makai land parcels to OHA leadership, project managers and other designated groups, as described in Contract No. 2865, the Contract between the Office of Hawaiian Affairs and Rider Levett Bucknall, Ltd., dated April 11, 2013.” The specific exemption cited by OHA was HRS §103D-102(b)(4)(G), which is “Performances, including entertainment, speeches, and cultural and artistic presentations.”

This does not seem to be an appropriate exemption for this contract as the listed exemption appears applicable to entertainment performances, speeches and other cultural and artistic works. Whereas, this contract was a presentation of the results of professional services previously provided to OHA. Additionally, this vendor had a previous contract with OHA (#2865) to perform the analysis and other work related to the Kaka'ako Makai lands. It seems more appropriate that this additional cost for a presentation would have been processed as an addendum to the original contract.

f. K-47 – OHA Contract #2979 – David Keanu Sai, PhD

According to the scope of the contract, David Keanu Sai, PhD (Dr. Sai) was paid to “conduct research to address strategies to support acknowledgement of the Kingdom of Hawaii’s sovereignty under international law,” draft memoranda, and provide lectures based on the memorandum developed. The specific exemption cited by OHA was Hawai'i Administrative Rule Section 3-120-4 exemption #3, which states, “Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter.”

OHA was unable to provide evidence that lectures were ever requested by OHA or provided by Dr. Sai. If lectures were not provided, it is not apparent that this would have been exempt under statute, as there is no exemption for research services. Additionally, it is unclear whether the original intention of this contract was to have Dr. Sai provide lectures as an email dated May 12, 2014 from OHA’s Procurement Manager stated, “Regarding the Scope of Services, I added item #6, which meets the requirement for, [sic] exemption 3-120-4-3 HAR where upon we are utilizing lecture services from Dr. Sai.”

The Professional Services procurement process includes a category for Legal Services - "Native Hawaiian Affairs." This includes two subcategories: "sovereignty" and "Native Hawaiian Rights and Entitlements," which had nine approved vendors for FY 2013-14 (the year this contract was signed). It is possible this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

- g. K-54 – OHA Contract #3019; K-69 – OHA Contract #3072; and K-70 – OHA Contract #3037 – McCorriston Miller Mukai MacKinnon LLP

Three contracts were executed with McCorriston Miller Mukai MacKinnon LLP (McCorriston Miller) using the exempt procurement method. All three contracts related to litigation of which OHA, its Board of Trustees (or certain members), and/or the former Chief Executive Officer were parties to. OHA indicated that the contracts were exempt under Hawai'i Administrative Rule Section 3-120-4 exemption #6, which states, "Insurance to include insurance broker services."<sup>200</sup>

According to OHA, its insurance broker helps it obtain appropriate insurance coverage for OHA's assets and activities. For OHA's Public Official/Employment Practices (POL/EPL) policy, the insurance carrier has an approved panel of counsel and/or OHA can obtain a Choice of Counsel endorsement. OHA opted for the Choice of Counsel endorsement and provided two firm names to the insurance carrier for approval. OHA then selected this firm from the two available on the endorsement.

The Professional Services procurement process includes a category for Legal Services, of which there are many subcategories based on the type of legal services/expertise needed. McCorriston Miller, along with several other law firms, were approved vendors for FY 2014-15 and 2015-16 (the years these contracts were signed). It is possible these contracts should not have been processed as exempt contracts, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

- h. K-73 – OHA Contract #3101 – Ayda Aukahi Austin Seabury

According to the scope of the contract, Ayda Aukahi Austin Seabury (Ms. Seabury) was paid to "provide transcription and facilitation services for use

---

<sup>200</sup> For contract #3019, the Procurement Document Checklist did not indicate the reason for the exemption; however, the document provided to CLA by OHA which listed the procurement methods used for each contract selected in CLA's sample indicated "exempt insurance appointed defense counsel." For contract #3072, the Procurement Document Checklist did not cite the specific exemption number, but stated "insurance appointed defense counsel." For contract #3037, the Procurement Document Checklist did not cite the specific exemption number, but stated "counsel appointed by BOT." Upon inquiry by CLA, OHA indicated this contract was exempt under Hawai'i Administrative Rule Section 3-120-4 exemption #6.



in focus group and interview settings with Native Hawaiian Practitioners as part of the research project for Kukulu Ola Project.” The specific exemption cited by OHA was Hawai'i Administrative Rule Section 3-120-4 exemption #1, which states, "Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

The State Procurement Office issued a letter dated May 1, 2017 regarding a different OHA procurement (**Exhibit 19**). The letter stated on page 4, "The SPO notified OHA, on December 16, 2016, that Exemption #1 is used for already published research material and not for contracting a vendor to conduct research and create a report, which is a service."<sup>201</sup> The contract with Ms. Seabury was also for a service and not for already published research material. CLA could not identify any other allowed exemption under which this particular service seemed to apply.

It appears that this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

i. K-75 – OHA Contract #3110 – Raedeen M. Keahiolalo LLC

According to the scope of the contract, Raedeen M. Keahiolalo LLC (Raedeen) was paid to “finish the writing and editing of the documents created during this portion of the Kūkulu Hou Assessment Project.” The specific exemption cited by OHA was Hawai'i Administrative Rule Section 3-120-4 exemption #1, which states, "Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

The State Procurement Office issued a letter dated May 1, 2017 regarding a different OHA procurement (**Exhibit 19**). The letter stated on page 4, "The SPO notified OHA, on December 16, 2016, that Exemption #1 is used for already published research material and not for contracting a vendor to conduct research and create a report, which is a service."<sup>202</sup> The contract with Raedeen was also for a service (writing and editing) and not for already

---

<sup>201</sup> Although this letter was related to a different OHA contract and was issued after the period covered by this engagement, CLA used this letter to interpret the intent of exemption #1 under Hawai'i Administrative Rule Section 3-120-4 – Exhibit A.

<sup>202</sup> Although this letter was related to a different OHA contract and was issued after the period covered by this engagement, CLA used this letter to interpret the intent of exemption #1 under Hawai'i Administrative Rule Section 3-120-4 – Exhibit A.



published research material. CLA could not identify any other allowed exemption under which this particular service seemed to apply.

It appears that this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

OHA's procurement procedures require that the purchaser complete a Procurement Document Checklist when the purchase is \$2,500 or more. According to OHA's Fiscal Procedures Manual, one of the purposes of this form is to "validate the procurement method used" (see **Exhibit 02**, page 91). The purchaser indicates on the form the procurement method to be used (e.g., exempt purchase, small purchase, etc. (see **Exhibit 21** for an example)). On page 2 of the Procurement Document Checklist is a signature line for "LEGAL." For all exempt contracts listed above, the Procurement Document Checklist was signed by OHA's Corporate Counsel at the time. According to Figure 2.2.4.4 of the Fiscal Procedures Manual, the "senior staff attorney reviews the final form (not drafts) of contracts...If corrections are not required, the senior staff attorney will sign the contract and the Procurement Check List (PCL) and return to the responsible staff person."<sup>203</sup> The presence of OHA's Corporate Counsel's signature on the Procurement Document Checklist would indicate that he reviewed the listed exemption and services to be performed and concluded that the services qualified as exempt under HRS §103D-102(b) or Hawai'i Administrative Rules Section 3-120-4 – Exhibit A.

CLA's assessment of whether the services provided qualified as exempt was limited to a comparison of the services as stated in the scope section of the contract to the goods and services listed in HRS §103D-102(b) and Hawai'i Administrative Rules Section 3-120-4 – Exhibit A. CLA's assessment is not a legal analysis or conclusion. Whether the contracts reviewed by CLA qualify as exempt under the statutes would require a review and final determination by the State Procurement Office.

However, it is in the best interest of the trust for OHA to use a procurement method that includes some level of competition whenever possible. When a contract is processed as exempt, there is no requirement for OHA to obtain competitive quotes or bids unlike other procurement methods. Although OHA is not required to use a formal solicitation process to award contracts that qualify as exempt, HRS §103D-102(d) states that governmental bodies are "encouraged to adopt and use provisions of this chapter and its implementing rules as appropriate..." OHA's internal policies and procedures do not require it to perform a solicitation process or obtain quotes/bids prior to awarding an exempt contract. Therefore, when a contract is improperly awarded through the exempt

---

<sup>203</sup> The Procurement Check List is another name used by OHA for the Procurement Document Checklist. It has also been referred to as the Procurement Document Checklist.

procurement method, all forms of competition are removed from the procurement process. This removes any ability of OHA to ensure that it is awarding contracts fairly and is obtaining the best value for its money. Additionally, it makes it easier to direct work to specific organizations or individuals, which increases the risk of vendor favoritism or conflicts of interest.

See recommendations 49, 50, and 51.

3. Compliance with OHA internal policies and procedures (criteria **[11]** through **[39]**)

The internal policies and procedures identified by CLA that address the approval and execution of OHA contracts include a review of the Purchase Requisition, Procurement Document Checklist, Purchase Order, Tax Clearance and DCCA Verification submitted by the contractor, contract, and Request(s) for Payment on Contract. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. See **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's procurement process.

a. Purchase Requisition:

- i. One contract was missing the Purchase Requisition (K-12 – criteria **[11]** through **[14]**, **[19]**, **[20b]**).
- ii. One Purchase Requisition was not signed by the Budget Analyst to verify the availability of funds as required for purchases over \$2,500 (K-47 – criteria **[13]** and **[20b]**).
- iii. One Purchase Requisition did not have the appropriate approvals based on the delegation hierarchy (K-09 – criteria **[14]**).

b. Accounting Checklist:

- i. All 17 contracts did not contain the Accounting Checklist, which was supposed to be used by OHA to verify and certify the availability of funds (criteria **[20a]** and **[28]**). According to discussions with OHA, the Accounting Checklist has not been used in a long time, and the Procurement Document Checklist is used instead. The Budget Analyst verifies the availability of funds on the Purchase Requisition, and the CFO certifies the funds on the Purchase Order.

c. Procurement Document Checklist:

- i. One Purchase Document Checklist was completed, reviewed, and signed after the Purchase Requisition was approved and the contract was signed

by OHA (K-70 – criteria **[18]**). The Purchase Document Checklist should be reviewed and approved prior to creating and approving a Purchase Requisition and the contract.

- ii. Four Procurement Document Checklists were not initialed by the Procurement Manager, which was used to document that the checklist was reviewed and went through the Purchasing Department (K-09, K-21, K-69, K-70 – criteria **[22]**).<sup>204</sup>
- d. Purchase Order:
- i. Two contracts were missing the Purchase Order (K-02, K-12 – criteria **[20c]** and **[32]**).
  - ii. Five Purchase Orders were signed by the Controller on behalf of the CFO; however, there was no documentation that the Controller was given signing authority by the CFO (K18, K-20, K-21, K72, K73 – criteria **[20c]** and **[32]**). When the CFO signs the Purchase Order, he is certifying to the availability of funds.
- e. Tax Clearance and DCCA Verification:
- i. One contract was approved and signed prior to OHA obtaining a copy of the Certificate of Vendor Compliance, which documents the tax clearance and DCCA verification (K-70 – criteria **[21]** and **[23]**).
- f. Contract:
- i. Eight contracts did not include all required provisions of the standard contract, as described further below (criteria **[25]**).
  - 1. Three contractor agreements were documented on a OHA Cooperative Agreement (OHA Form CAG-1), which did not include the required contract provisions of the standard contract template provided by OHA’s legal office (K-02, K-12, K59).<sup>205</sup>

---

<sup>204</sup> OHA’s Fiscal Procedures Manual (revised March 2, 2009), section 2.2.4 – Grants, Procurement, and Contracts Review Process, indicates in the table on page 91 that the Hale Manager (i.e., Department Manager) signs the Procurement Document Checklist. According to Phyllis Ono-Evangelista, OHA Procurement Manager, the checklist requires only the identification of the preparer in Purchasing, approval by Corporate Counsel, and the initials of the Procurement Manager. The Hale Manager does not have to sign the checklist. This is the way that Ms. Ono-Evangelista was trained when she became the Procurement Manager. CLA’s review of the checklist verified that the preparer was identified, the signature of Corporate counsel, and the initials of Ms. Ono-Evangelista (or her predecessor, Emmit Ford Jr.). In these four instances, the initials of the Procurement Manager were not on the checklist.

<sup>205</sup> Page 93 of OHA’s Fiscal Procedures Manual provides a complete list of the provisions required to be in each contract (**Exhibit 02**).

2. Five contracts did not include all of the required contract provisions of the standard contract template provided by OHA's legal office (K-44, K-49, K-54, K-69, K-75). The missing contract provisions included, but were not limited to, Insurance, Dispute, Severability, and Termination of Agreement.
- ii. Seven contracts did not contain the appropriate signatures based on the Operational Delegation Hierarchy in effect at the time, as described further below (criteria **[29a]**).
    1. Two contracts were executed under the Operational Authority Delegation Hierarchy dated February 9, 2010 (K-02, K-12). The delegation hierarchy did not list the required signatures for contracts.
    2. Five contracts did not contain the appropriate signatures based on the Operational Authority Delegation Hierarchy in effect at the time (K-44, K-47, K-69, K-70, K-72). These contracts were missing one of the required signatures of the CEO, COO, or CFO when the delegation hierarchy indicated that one or more of these individuals should have signed the contract (based on contract type and amount).
  - iii. Fourteen contracts included a Time of Performance (TOP) beginning date that preceded the date the contract was fully executed by OHA (criteria **[29b]**).<sup>206</sup> The TOP beginning date represents the effective date of the contract and when the contractor can begin services.
    1. Five contracts did not include sufficient information on the invoices to identify when the contractor actually began performing services (K-02, K-09, K-20, K-49, K-59).
    2. Eight contracts included information on the invoices or other documentation provided that indicated the contractor began performing the services prior to when OHA fully executed the contract (K-18, K-44, K-47, K-54, K-69, K-70, K-73, K-74).<sup>207</sup>

---

<sup>206</sup> The 14 contracts include: K-02, K-09, K-18, K-20, K-44, K-47, K-49, K-54, K-59, K-69, K-70, K-73, K-74, K-75.

<sup>207</sup> For the three contracts with McCorriston Miller Mukai MacKinnon LLP (K-54, K-69, K-70), the effective date of the contracts were prior to when they were executed and services began close to or on the effective date. For Contract #3072 (K-69), OHA indicated that the intention was for McCorriston Miller to bill OHA under "the then active Board Counsel contract. However, due to substantial time and legal fees expended on the case during August, 2015, the Board Counsel contract would be rapidly depleted. Hence, a new contract was necessary and adequate time was required for negotiations of the contract terms and for drafting, finalizing, and executing a new contract." For Contracts #3019 (K-54) and #3037 (K-70), legal services began prior to having a contract in place as McCorriston Miller began providing legal services when

3. One contract did not provide a TOP beginning date in the contract; however, the invoice from the contractor was dated one day prior to when the contract was fully executed by OHA (K-75).
- g. Request(s) for Payment on Contract:
- i. Ten contracts included payments for which the Request for Payment on Contract was not signed by the Administrator (CEO) or Deputy Administrator (COO) as designated by the table on page 108 of OHA's Fiscal Procedures Manual (**Exhibit 02**) (criteria **[33]**).<sup>208, 209</sup>
  - ii. Two contracts included payments for which the Request for Payment on Contract was not signed by the appropriate level based on the Operational Authority Delegation Hierarchy in effect at the time (K-49, K-73 – criteria **[38]**). According to OHA, both contracts were approved by the CEO and were considered CEO contracts. Therefore, the CEO would be considered the LOB Director. The delegation hierarchy identifies the required signatures based on the contract type and/or amount. For example, the delegation hierarchy effective as of May 19, 2015, which was applicable for the payment on contract K-49, indicates that contract payments up to \$100,000 must be approved by the Program Manager and LOB Director. Because the CEO would have been the LOB Director for this particular contract, he should have signed as such. Similar circumstances apply for contract K-73, the payments of which were approved under the delegation hierarchy effective as of October 21, 2015.
  - iii. The Operational Authority Delegation Hierarchy identifies the appropriate approvers using titles such as Program Manager and LOB Director. OHA provided to CLA a listing of the Program Managers and LOB Directors in place during the time period covered by this engagement (see **Exhibit 22**). In most instances, CLA was able to easily identify the Program Manager or LOB Director based on the division indicated on the Procurement Document Checklist. However, there were some instances in which the division (or LOB) was not obvious from the documentation provided or the division was not shown on the listing provided by OHA.

---

the legal matters arose, but adequate time was needed to negotiate the contract terms, draft, finalize and execute the contract.

<sup>208</sup> The table on page 108 of OHA's Fiscal Procedures Manual identifies when the Administrator or Deputy Administrator must review and approve a contract payment based on the Hale. According to discussions with OHA staff, a Hale is the department in OHA, the Administrator is the CEO, and the Deputy Administrator is the COO. Although the table identifies a Deputy Administrator for Operations and one for BAE, OHA indicated that there is only one Deputy Administrator, the COO. Depending on the department under which the contract resided, CLA verified whether the Administrator (CEO) or Deputy Administrator (COO) signed the Request for Payment on Contract.

<sup>209</sup> The ten contracts include: K-12, K-18, K-20, K-21, K-44, K-49, K-59, K-72, K-73, K-74.

This made identifying the appropriate approvers difficult and CLA had to inquire with OHA regarding who the appropriate approvers should be.

- iv. Seventeen contracts included paid invoices that were not stamped paid or marked with the check number (criteria **[39]**). Rather than the invoice, the Request for Payment on Contract form is stamped paid and marked with the check number.

See recommendations 52, 53, and 54.

4. Deliverable was met by the contractor (criteria **[40]**)
  - a. Six contracts included documentation from the contractor to indicate that the contractor completed and provided to OHA the deliverables required by the contract terms (K-09, K-12, K-21, K-59, K-72, K-74). These are the contracts without observations in this area.
  - b. Five contracts did not include documentation from the contractor to indicate that the contractor completed and provided to OHA the deliverables required by the contract terms (K-18, K-44, K-49, K-73, K-75). CLA is unable to assess whether the contractor did not complete the deliverable as required or if OHA could not locate the deliverable documents. The following bullets provide additional information for each contract.
    - i. K-18: Reports and other communications required of the contractor were not provided to CLA. OHA indicated that staff with firsthand knowledge of the contract were no longer employed by OHA.
    - ii. K-44: Contract scope required a presentation to OHA management. CLA requested the date(s) of the presentation(s) and any presentation materials (i.e., agenda, presentation, list of attendees, etc.). OHA did not provide any of this documentation and indicated that staff with firsthand knowledge of the contract were no longer employed by OHA.
    - iii. K-49: The payments tested by CLA required the contractor provide a copy of the press release of proof thereof acknowledging OHA's funding support and a written mid-year report. OHA indicated that it was unable to locate the documents.
    - iv. K-73: The contract required the contractor to provide to OHA completed transcripts in electronic format in Word and PDF. Two of the payments tested by CLA required that the contractor provide transcripts for interviews conducted from January 15, 2016 through February 29, 2016. OHA did not provide the transcripts related to these invoices/payments and indicated that staff with firsthand knowledge of the contract were no longer employed by OHA.

- v. K-75: The contract required the contractor to delivery of a manuscript, and payment would be based on submittal and approval of a draft and final manuscript. OHA did not provide the draft or final manuscript and indicated that staff with firsthand knowledge of the contract were no longer employed by OHA.
- c. Three contracts included invoices from the law firm related to legal services performed; however, the descriptions on the invoices were redacted by OHA's Corporate Counsel (K-54, K-69, K-70).<sup>210</sup> The unredacted portion of the invoices displayed the law firm's employee name, date and hours worked, and the extended cost. The contracts did not require a deliverable beyond providing the legal services needed and submitting detailed invoices. The level of detail on the invoices appears to be adequate; however, CLA cannot verify without the descriptions that the services provided relate to the scope of work per the contract. These contracts make up three of the six with observations in this area.
- d. Three contracts included only partial documentation from the contractor to indicate that the contractor completed and provided to OHA the deliverables required by the contract terms (K-02, K-20, K-47). These contracts make up three of the six with observations in this area. CLA is unable to assess whether the contractor did not complete all deliverable as required or if OHA could not locate all the deliverable documents. The following bullets provide additional information for each contract.
  - i. K-02 – OHA Contract #2659 – University of Hawai'i

Amendment 1 to the contract indicated in section 1.a. of the Scope of Services that the contractor shall "research, write, edit, publish, and distribute one legal primer that summarizes quiet title and partition law in the State of Hawai'i and one additional primer on a topic approved by OHA's Contract Monitor."<sup>211</sup> OHA provided to CLA a copy of the legal primer on quiet title and partition law published in April 2013. However, a second legal primer was not provided. A report from the contractor dated June 29, 2013 stated that "Due to: (1) the unforeseen delays in the publication of the quiet title and partition primer, and (2) the importance of having Sheryl Nicholson review it, we consulted with OHA and collectively decided not to complete a second primer." See **Exhibit 23** for a copy of the report. Therefore, it appears that the contractor never published a second primer as originally required by Amendment 1. The

---

<sup>210</sup> According to discussions with OHA's current Corporate Counsel, Raina Gushiken, all documents were reviewed by her for attorney-client privileged information prior to providing the documents to CLA. If she deemed any communications to be attorney-client privileged, the information was redacted.

<sup>211</sup> The copy of Amendment 1 (OHA Contract #2659.01) provided to CLA did not include the Scope of Services section. CLA obtained the Scope of Services for Amendment 1 by reviewing the Scope of Services section in Amendment 2 (OHA Contract #2659.02), which included the language from Amendment 1.

total cost of Amendment 1 was \$125,000, which included \$10,000 for researching, drafting, and editing the primer (see **Exhibit 24**). It does not appear that the contract price was reduced to account for the decision not to proceed with a second primer.

ii. K-20 – OHA Contract #2879 – Kuauli Aina-Based Insights LLC

According to the contract and four amendments, the contractor was to provide the following materials to OHA upon their completion:

- Excel data sheets for the sale of Hawaiian Kingdom Government and Crown Lands from the years 1845 through 1959
- A report which analyzes the sales and highlights the most relevant portions of the data and provides a breakdown of the percentage of acreage sold by island
- Digital copies of the original source materials and other relevant source materials
- Complete a report that: (1) explains the methodology for the data collection, compilation and presentation of information; (2) contains an analysis of data gaps, an explanation of how the inventory should be used and how it should not be used; and (3) will propose additional research for understanding the History of Hawaii's land tenure.
- Submission of geo-reference maps to OHA

OHA did not provide the Excel data sheets for the sale of Hawaiian Kingdom Government and Crown Lands for the period from 1845 through 1892. The content of the reports listed above were included in a PowerPoint presentation that OHA provided to CLA. Additionally, OHA provided to CLA files that were represented to contain the digitized information (geo-reference maps); however, the files require a specific GIS software to view, which CLA does not have.

iii. K-47 – OHA Contract #2979 – David Keanu Sai, Ph.D.

According to the contract, the contractor was to “conduct research to address strategies to support acknowledgement of the Kingdom of Hawaii’s sovereignty under international law,” draft memoranda, and provide lectures based on the memorandum developed. The invoices submitted by the contractor indicate that one letter was drafted and one memorandum was drafted. CLA was provided a copy of the memorandum; however, a copy of the letter was not provided. The invoice indicates that the letter drafted was dated May 5, 2014 and was to United States Secretary of State John Kerry. Through an internet



search, CLA identified several articles that referenced the letter; therefore, it appears that the letter was prepared.

Because the contract indicated that the contractor would also provide lectures, CLA requested that OHA provide the dates and locations of the lectures conducted. OHA did not provide this information; therefore, it is unknown whether the contractor provided said lectures.

See recommendation 55.

5. There was sufficient oversight of the project/work by the contract monitor/manager (criteria **[41]**)
  - a. Ten contracts included sufficient documentation from the contractor for CLA to assess that there appeared to be sufficient oversight of the project/work by the contract manager (K-02, K-09, K-12, K-21, K-54, K-59, K-69, K-70, K-72, K-74). OHA's internal policies and procedures do not indicate the methods that must be used by the contract manager to provide oversight of the contractor's work. Therefore, CLA's assessment was based on whether there was evidence of deliverables from the contractor, invoices provided detail of the work performed, and/or CLA was able to speak with the contract manager to discuss the work performed.
  - b. Six contracts were missing all deliverables or a portion of the deliverables; therefore, CLA is unable to assess whether the contract manager provided sufficient oversight (K-18, K-20, K-47, K-49, K-73, K-75). These contracts make up six of the seven contracts with observations in this area. The fact that not all deliverables could be provided may be an indication that sufficient oversight was not provided.
    - i. For four of the contracts, the contract manager was no longer employed by OHA; therefore, CLA could not make inquiries to assess the appropriateness of the oversight (K-18, K-20, K-73, K-75).
    - ii. For two of the contracts, the contract was a CEO level contract approved by the former CEO, Crabbe (K-47, K-49). CLA attempted to meet with Dr. Crabbe prior to his last day at OHA, which was June 30, 2019. CLA scheduled a call with Dr. Crabbe for Tuesday, June 25, 2019. CLA provided the conference call information and called into the number at the scheduled time. CLA waited for approximately 15 minutes, but Dr. Crabbe did not call in. CLA sent a follow-up email to Raina Gushiken, Corporate Counsel, and Dr. Crabbe for a possible reschedule of the call and provided its availability. CLA did not get a response on a new day/time.

- c. One contract (K-44) provided for additional services to be provided related to work performed under a separate contract.<sup>212</sup> The original scope of work provided by the contractor was included in OHA Contract #2865, which was selected by CLA as OHA contract sample K-19. This contract was processed as a Competitive Sealed Proposal Contract and the results of that testing are included in Section VI.D.1.b. beginning on page 76. This is the seventh of the seven contracts with observations in this area.
6. There was no evidence of fraud, waste, or abuse (criteria **[42]**)

A review of the documents for ten of the contracts tested in this area identified red flags or indicators that indicate a possibility of fraud, waste, or abuse. The identification of a red flag or indicator does not, on its own, confirm that fraud, waste, or abuse did occur. This section simply identifies the observations made by CLA during the testing that can be indicators of fraud, waste, or abuse, and, therefore, CLA is not making a conclusion as to the existence of fraud, waste, or abuse. Additional investigation of each contract would be required, which was beyond the scope of this engagement. Each of the ten contracts is discussed further below.

- a. K-09 – OHA Contract #2721 – The Kalaimoku Group LLC

The contract with The Kalaimoku Group LLC was executed by OHA on December 30, 2011 for \$50,000. There were no amendments to this contract. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid \$38,931.93 toward this contract.

The Kalaimoku Group LLC was retained by OHA to provide public relations and messaging services related to the proposed Kaka'ako Makai settlement. The following observations were made by CLA pertaining to this contract:

- As discussed previously, it appears that this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method to secure these services.
- Based on an internet search, the vendor was established in 2011, the same year as the contract with OHA, which was executed on December 30, 2011 (**Exhibit 25**).
- The effective date of the contract was December 1, 2011, which was prior to when the contract was executed by OHA.

---

<sup>212</sup> K-44 is OHA Contract #2967 with Rider Levett Bucknall, LTD. The services covered by contract #2967 related to a presentation to OHA leadership of the management and development framework on the Kaka'ako Makai land parcels. The original services provided by this contractor were covered by OHA Contract #2865.

- The invoices submitted are sequentially numbered; however, they are dated approximately six weeks apart (**Exhibit 26**).

Because the contract was processed as an exempt contract when it possibly should not have been, OHA did not go through a process to obtain competitive quotes or bids to obtain these services. Therefore, it is unknown whether OHA paid a fair price for the services. This could be an indication of possible waste.

Additionally, the fact that the contractor was formed in the same year that the contract was executed with OHA and the invoices are sequentially numbered, indicates that OHA may be (or was) its only customer/client. This could be an indication that the company was formed solely to provide services to OHA. Combined with the possible inappropriate use of the exempt contract procurement method, this raises the question of whether this contract was handled properly, which could be an indication of possible favoritism to this particular vendor. Any mishandling of contracts or vendor favoritism poses a risk to OHA of possible fraud, waste, or abuse.

b. K-18 – OHA Contract #2857 – Native Hawaiian Education Association

The original contract with Native Hawaiian Education Association (NHEA) was executed by OHA on February 14, 2013 for \$59,600. One amendment was approved that expanded the scope and increased the total contract value to \$99,600. OHA paid the full \$99,600 toward this contract.

NHEA was retained by OHA for the production and facilitation of 36 scholarship ‘aha for Native Hawaiian students. The following observations were made by CLA pertaining to this contract:

- i. As discussed previously, it appears that this contract should not have been processed as an exempt contract, and OHA should have considered this funding as a grant or sponsorship based on the type of activity performed by NHEA.
- ii. OHA was unable to provide any documentation to support that NHEA provided the documentation or reports required by the contract.
- iii. The contract was executed by OHA on February 14, 2013; however, the effective date of the contract is December 3, 2012. A schedule attached to the contract provides the Scholarship ‘Aha dates for 2012-13, which begin on November 27, 2012 and go through January 24, 2013. All dates are prior to when the contract was executed by OHA. This indicates that the activities of NHEA may have occurred prior to when the contract was approved and executed.
- iv. The scope indicated that 36 scholarships of no more than \$500 each were to be awarded at each ‘aha, which would have been awarded

during calendar years 2013 and 2014. CLA reviewed the 990 tax returns filed by NHEA for both years. The 2013 990 tax return (Schedule I) indicated that 18 scholarships were awarded; however, the 2014 990 tax return did not include a Schedule I (**Exhibit 27**). A majority of the expenses for 2014 were for conferences, conventions, and meetings. This calls into question whether the full scope of the contract and amendment was fulfilled.

- v. Through the grant testing, CLA tested a grant issued to another organization for a similar activity.<sup>213</sup> This raises the question of whether NHEA applied for a grant for the 2012-13 year that was not approved or if NHEA missed the deadline for submission of a grant application, and the exempt procurement method was used instead to award funds to NHEA.

If the funds for this activity had been awarded through the grant process, OHA would have had additional oversight measures in place that could have been used to monitor the overall performance and activity of NHEA. Because the funding for this activity was possibly not awarded properly, and OHA could not provide the deliverables required by the contract, it appears that there was not sufficient oversight of the activities. Combined with the fact that NHEA did not report any scholarship costs in their 990s for 2013 and 2014, these factors could be an indication of possible waste or abuse. Indicators of possible waste are the lack of documentation to support that NHEA performed the activities identified in the contract. If the contract was knowingly processed as an exempt contract when it likely should have been processed as a grant, this may be an indicator of possible abuse.

- c. K-20 – OHA Contract #2879 – Kuauli Aina-Based Insights LLC

The original contract with Kuauli Aina-Based Insights LLC (Kuauli) was executed by OHA on June 7, 2013 for \$150,000. Four amendments were approved that expanded the scope and increased the total contract value to \$435,000. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid \$250,000 toward this contract.

Based on the scope of work in the original contract and amendments, Kuauli was retained by OHA to “examine the original source deeds of former Hawaiian Kingdom Government and Crown Lands sold” for the period 1845 through 1959 and “document each sale on an Excel spread sheet [sic].” Kuauli was also required to produce certain other deliverables that were discussed above.

---

<sup>213</sup> See CLA contract sample number K-42, OHA Contract #2962, awarded to Hawai'i Community Foundation for the purpose of carrying out the Higher Education Scholarship Program to assist Native Hawaiians.

The following observations were made by CLA pertaining to this contract:

- As previously discussed, this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method to secure these services.
- Only partial evidence was provided to show that Kuauli completed the work required under the scope of the contract and amendments.
- Several of the invoices were numbered sequentially but were dated months apart (for example: invoice #0011 dated September 2, 2013; invoice #0012 dated January 16, 2014; invoice #0013 dated May 16, 2014).
- Based on an internet search, Kuauli has a filing date of February 4, 2013 (**Exhibit 28**), which was approximately four months prior to when the contract was executed by OHA.
- A “Petition of Support for CEO Dr. Crabbe” was posted on hawaiiankingdom.org on May 10, 2014 and lists Kamana Beamer as a supporter (**Exhibit 29**). Kamana Beamer is the listed owner of Kuauli (**Exhibit 28**). This petition was posted while work was being performed by Kuauli.

Because the contract was processed as an exempt contract, OHA did not go through a process to obtain competitive quotes or bids to obtain these services. Therefore, it is unknown whether OHA paid a fair price for the services. This could be an indication of possible waste.

Additionally, the fact that the contractor was formed in the same year that the contract was executed with OHA and the invoices are sequentially numbered, indicates that OHA may be (or was) its only customer/client. This could be an indication that the company was formed solely to provide services to OHA. The online petition in support of Dr. Crabbe may indicate a close personal relationship between the contractor and Dr. Crabbe. Combined with the possible inappropriate use of the exempt contract procurement method, this information raises the question of whether this contract was handled properly and could be an indication of possible favoritism to this particular vendor. Any mishandling of contracts or vendor favoritism could pose a risk to OHA of possible fraud, waste, or abuse.

d. K-44 – OHA Contract #2967 – Rider Levett Bucknall, LTD.

This contract with Rider Levett Bucknall, LTD (Rider Levett) was executed by OHA on April 28, 2014 for \$10,000. There were no amendments on this contract, and OHA paid the full \$10,000. Based on the scope of work in this contract, Rider Levett was retained by OHA to “present the management and

development framework on the Kaka’ako Makai land parcels to OHA leadership, project managers and other designated groups...”

The following observations were made by CLA pertaining to this contract:

- Item #7 in the scope of services of the original contract with Rider Levett (OHA Contract #2865 and tested by CLA as contract sample #K-19), included the contractor presenting “these findings to OHA project managers and decision-makers upon request.” The scope that was included with the previous contract with Rider Levett appears duplicative or similar to the scope covered by this contract.
- The invoice related to this contract identified the \$10,000 as “additional fees” for a total of \$160,000 (including billings under OHA Contract #2865).
- CLA requested the dates of the presentations by Rider Levett and the presentation materials; however, OHA did not provide this information.

There is a close similarity in the services to be provided by Rider Levett as covered by the initial contract (OHA Contract #2865) and this contract, and there is no indication as to why this contract was processed as a new, exempt contract rather than an amendment to the initial contract. OHA informed CLA that there were no staff at OHA with firsthand knowledge of this contract to answer CLA’s questions. The additional payment for similar services could be an indication of possible waste.

e. K-47 – OHA Contract #2979 – David Keanu Sai, Ph.D.

The contract with David Keanu Sai, Ph.D. (Dr. Sai) was executed by OHA on June 23, 2014 for \$25,000. There were no amendments to the contract. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid the full \$25,000 toward this contract.

Dr. Sai was retained by OHA to “conduct research to address strategies to support acknowledgement of the Kingdom of Hawaii’s sovereignty under international law,” draft memoranda, and provide lectures based on the memorandum developed.

The following observations were made by CLA pertaining to this contract:

- As previously discussed, it is possible that this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method to secure these services.
- OHA was unable to provide CLA with any evidence that lectures were ever requested by OHA or provided by Dr. Sai. Additionally, it is

unclear whether the original intention of this contract was to have Dr. Sai provide lectures as an email dated May 12, 2014 from OHA's Procurement Manager stated, "Regarding the Scope of Services, I added item #6, which meets the requirement for, [sic] exemption 3-120-4-3 HAR where upon we are utilizing lecture services from Dr. Sai." Other email communications included in the documentation provided to CLA were redacted.

- The contract was executed by OHA on June 23, 2014; however, the effective date of the contract was May 1, 2014. The invoice was dated June 26, 2014, only three days after the contract was executed.
- According to the description included on the invoice, the letter was dated May 5, 2014 and the memorandum was dated May 27, 2014, both were before the Purchase Order was approved and the contract was executed. There is no indication on the invoice that Dr. Sai provided any lectures.
- CLA located a copy of Dr. Sai's curriculum vitae (CV) through an internet search (**Exhibit 30**). According to his CV, he is faculty and a lecturer on Hawaiian studies at the University of Hawai'i. Providing lectures was already a part of his work through the University.

Based on the timing of the letter and memorandum produced by Dr. Sai and when the contract was actually executed by OHA, Dr. Sai had performed the services covered by this contract prior to being retained by OHA. Additionally, it appears that the scope of work included "lectures" as a means to get this contract processed and approved, but it may not have been the intention to have Dr. Sai perform lectures and there is no evidence that he ever did provide lectures at the request of OHA. Combined with the possible inappropriate use of the exempt contract procurement method, this information raises the question of whether this contract was handled properly and could be an indication of possible favoritism to this particular vendor. Any mishandling of contracts or vendor favoritism could pose a risk to OHA of possible fraud, waste, or abuse.

- f. K-54 – OHA Contract #3019; K-69 – OHA Contract #3072; and K-70 – OHA Contract #3037 – McCorriston Miller Mukai MacKinnon LLP

Three contracts were executed with McCorriston Miller Mukai MacKinnon LLP (McCorriston Miller) to provide legal services to OHA related to various litigation matters. The following bullets provide additional details on each contract:

- Contract #3019 was executed by OHA on February 25, 2015 for \$150,000. There were no amendments to the contract. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid \$23,161.90 toward this contract.

- Contract #3072 was executed by OHA on October 5, 2015 for \$250,000. There were no amendments to the contract. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid \$126,081.27 toward this contract.
- Contract #3037 was executed by OHA on October 5, 2015 for \$80,000. There was one amendment to the contract, which brought the total contract value to \$179,500. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid \$70,910.75 toward this contract.

These contracts are included in this category primarily because they were processed as exempt contracts when they do not appear to qualify as exempt procurements. As discussed previously, when a contract is improperly awarded through the exempt procurement method, all forms of competition are removed from the procurement process. This removes any ability of OHA to ensure that it is awarding contracts fairly and is obtaining the best value for its money. Additionally, it makes it easier to direct work to specific organizations or individuals, which increases the risk of vendor favoritism or conflicts of interest.

g. K-73 – OHA Contract #3101 – Ayda Aukahi Austin Seabury

The contract with Ayda Aukahi Austin Seabury (Ms. Seabury) was executed by OHA on January 26, 2016 for \$25,000. There was one amendment to the contract that provided an extension of time and increased the total contract value to \$30,062.50. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid \$15,187.50 toward this contract.

Ms. Seabury was retained by OHA to “provide transcription and facilitation services for use in focus group and interview settings with Native Hawaiian Practitioners as part of the research project for Kukulu Ola Project.”

The following observations were made by CLA pertaining to this contract:

- As previously discussed, it appears this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method to secure these services.
- Two of the payments made required Ms. Seabury to provide specific deliverables, which OHA did not provide to CLA. Therefore, there is no evidence that Ms. Seabury performed or completed the work required under the contract.
- The contract was executed by OHA on January 26, 2016; however, the effective date was January 15, 2016. Based on the timing of interviews indicated in the contract, it appears that services were



supposed to begin on January 15, 2016, prior to when the contract was executed.

Because the contract was processed as an exempt contract, OHA did not go through a process to obtain competitive quotes or bids to obtain these services. Therefore, it is unknown whether OHA paid a fair price for the services. Combined with the fact that there is no evidence of deliverables being provided as required by the contract, these are red flags or indicators of possible fraud, waste, or abuse.

h. K-75 – OHA Contract #3110 – Raedeen M. Keahiolalo LLC

The contract with Raedeen M. Keahiolalo LLC (Raedeen) was executed by OHA on March 8, 2016 for \$45,000. There were no amendments to the contract. During the period covered by the scope of this engagement (FY 2011-12 through 2015-16), OHA paid the full \$45,000 toward this contract. Raedeen was retained by OHA to “finish writing and editing of the documents created during this portion of the Kūkulu Hou Assessment Project.”

The following observations were made by CLA pertaining to this contract:

- As discussed previously, it appears that this contract should not have been processed as an exempt contract, and OHA should have used a different procurement method to secure these services.
- OHA did not provide CLA with any evidence of deliverables required by the contract.

Because the contract was processed as an exempt contract when it possibly should not have been, OHA did not go through a process to obtain competitive quotes or bids to obtain these services. Therefore, it is unknown whether OHA paid a fair price for the services. Combined with the fact that there is no evidence of deliverables being provided as required by the contract, these are red flags or indicators of possible fraud, waste, or abuse.

See recommendations 49, 50, and 51.

## 2) Disbursement Testing

CLA tested a total of 50 OHA disbursements that, once selected, were determined to be within different subcategories, as follows:<sup>214</sup>

- Ten disbursements were CEO Sponsorships, which were awarded using the grant methodology.<sup>215</sup> HRS §10-17 Grants; conditions and qualifications provides a set of criteria in which OHA's grant awards must comply. The results for these disbursements are discussed in section f) included below.
- Thirty disbursements were procured by OHA using the exempt disbursement method. HRS §103D-102, Application of this chapter, subsection (b) provides a specific list of good, services, and contract types that are exempt from the procurement requirements specified in HRS §103D. A copy of HRS §103D-102(b) is included in **Exhibit 17**. As referenced in OHA's Fiscal Procedures Manual, revised March 2, 2009, the Hawai'i Administrative Rules Section 3-120-4 – Exhibit A exempts additional items from Chapter 103D. The results for these disbursements are discussed in section g) included below.
- Four disbursements were procured by OHA using the small purchase method. The small purchase method is described in OHA's Fiscal Procedures Manual, revised March 2, 2009, section 2.2.1.5. The results for these disbursements are also discussed in section g) included below.
- Five disbursements were procured by OHA using the Purchasing Card (pCard) method. The procurement method for pCard is described in OHA's Fiscal Procedures Manual, updated March 2, 2009, and OHA's Purchasing Card Program Internal Guidelines and Procedures, July 2016. The results for these disbursements are discussed in section h) included below.
- One disbursement did not indicate the procurement method used by OHA. The disbursement was for a lease guaranty, so CLA tested the disbursement using the

---

<sup>214</sup> All fifty disbursements consisted of payments paid on a single check. In some cases, the payments consisted of multiple line items, such as the multiple charges to the Procurement Card. When there were multiple line items, CLA tested a sample of the line items.

<sup>215</sup> CEO Sponsorships are one-time awards to community organizations for events or projects. CLA tested CEO Sponsorships under the scope of work for disbursements because OHA's policies and procedures for awarding CEO Sponsorship do not require a signed contract for the award. Awards are made through an administrative review process, and, unlike the formal grant application process, CEO Sponsorships do not involve a solicitation process.

exempt disbursement method.<sup>216</sup> The results for this disbursement are also discussed in section i) included below.

Each of the respective subcategories of disbursements that CLA tested are provided in their own sections for discussion.

#### **f) CEO Sponsorships**

Ten disbursements tested were CEO Sponsorships and were awarded using the grant methodology.<sup>217</sup> HRS §103D-102, Application of this chapter, subsection (b) specifically exempts grants from the procurement requirements in HRS §103D. CLA utilized HRS §10-17 Grant; conditions and qualifications, which provides requirements for OHA's grant awards and contracts. The statute regulates OHA's process for accepting qualified applications, executing grant contracts, and monitoring grantee. A copy of HRS §10-17 is included in **Exhibit 05**.

A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the approval and award of CEO Sponsorships is included in **Attachment 10**. OHA's Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.4.4 identifies the process for reviewing procurement documents for grant applications approved by the Board of Trustees (**Exhibit 02**, page 95).

Included in Table 12 below is a summary of the results of identifying for each criteria tested the number of CEO Sponsorships (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>218</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators or possible fraud, waste, or abuse. **Attachment 10** includes a table containing the results at the disbursement level and tickmarks explain each disbursement with an observation.<sup>219</sup>

---

<sup>216</sup> OHA exempts the leases of real property and office rentals from HRS §103D. The exemption is based upon corporate counsel's interpretation of the definition of "goods," "services," and "construction" in HRS §103D, which excludes leases of real property and office rentals.

<sup>217</sup> Throughout this section, CLA may refer to CEO Sponsorships as sponsorships or grants.

<sup>218</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>219</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 10**, tickmarks for CEO Sponsorship disbursements tested are numbered with the letter "F" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **F01** is the first observation tickmark for CEO Sponsorships.

Table 12: Summary of Results – OHA Disbursements – CEO Sponsorships

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	0	2	8	10
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or other agency capacity.	0	2	8	10
<b>HRS §84-15(a): Contracts</b>					
[3]	The contract was not with a legislator or employee who has controlling interest.	0	0	10	10
[4]	If the contract was with a legislator or employee who has controlling interest, alternative criteria were met.	0	0	10	10
<b>HRS §84-15(b): Contracts</b>					
[5]	The person or the business entering into contract with OHA was not represented by a person employed by OHA in the preceding 2 years.	0	0	10	10
[6]	If the person or business entering into contract with OHA was represented by a person employed by OHA in the preceding 2 years, the person did not participate in the matter with which the contract is directly concerned.	0	0	10	10
<b>HRS §10: Office of Hawaiian Affairs</b>					
<b>HRS §10-17(a): Grants; conditions and qualifications</b>					
[7]	The Office of Hawaiian Affairs received an application for the grant.	6	0	4	10
[8-12]	The application met the minimum qualifications detailed in HRS §10-17(a).	6	1	3	10
[13]	The activities of the grant were consistent with HRS §10-17.	6	1	3	10
<b>HRS §10-17(b): Grants; conditions and qualifications</b>					
[14]	The applicant applied for or received all licenses and permits, when required to conduct the activities.	6	4	0	10
[15]	The applicant agreed to comply with federal, state, and county laws.	6	4	0	10
[16]	The grant was not used for entertainment or perquisites.	6	1	3	10
[17]	The applicant agreed to comply with federal, state, and county statutes and ordinances, including building code and agency rules.	6	4	0	10
[18]	The applicant indemnified OHA.	6	4	0	10
[19]	The applicant procured insurance if requested by OHA.	6	4	0	10
<b>HRS §10-17(c): Grants; conditions and qualifications</b>					
[20-23]	Based on the grant application, the applicant was an eligible organization as defined by HRS §10-17(c).	0	0	10	10
[24]	If the applicant was a nonprofit organization,				
	[a] the governing board members have no material interest and serve without compensation,	0	10	0	10
	[b] has bylaws regarding nepotism and conflict of interests, and	0	10	0	10
	[c] employs no more than two or more family members.	0	10	0	10
[25]	The applicant made all records relating to its operation of the activity available to OHA.	0	10	0	10
[26]	The applicant satisfied OHA that sufficient funds were available for its operation or the grant activity.	0	10	0	10
<b>HRS §10-17(d): Grants; conditions and qualifications</b>					
[83]	The monitoring requirements defined under HRS §10-17(d) were tested concurrently with the criteria at [83].	10	0	0	10

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.4.1: Grants Review Process</b>					
[27]	Staff completed the sections for scope of work, compensation/payment and reporting requirements.	0	1	9	10
[28]	No sections of the forms were altered.	0	1	9	10
[29-31]	The grant was documented and completed on the appropriate form for the type of grant.	0	0	10	10
[32]	The proof of award was submitted, including the grant award letter, Board minutes, or the approved Administrative Memo.	6	4	0	10
[33]	If the award was over \$2,500, the senior staff attorney signed the Procurement Document Checklist (PCL).	2	0	8	10
[34]	If the award was over \$2,500, the award was submitted with the Procurement Document Checklist (PCL).	6	4	0	10
<b>2.2.4.3: Review Documentation<sup>220</sup></b>					
[35]	A completed Purchase Requisition (PR) was submitted by a PR Representative.	0	0	10	10
[36]	For grants using the OHA Long Contract,				
	[a] an Accounting Checklist was submitted,	0	10	0	10
	[b] funds were verified by the Budget Analyst, and	0	0	10	10
	[c] funds were certified by the CFO.	10	0	0	10
[37]	For grants using the OHA Long Contract, a PCL was submitted and signed by a Hale Director.	0	0	10	10
[38-41]	The legal relationship was documented on the appropriate form for the type of grant. <sup>221, 222, 223, 224</sup>	0	0	10	10
<b>OHA Operational Authority Delegation Hierarchy issued by the Chief Executive Officer on Interoffice Memorandum</b>					
<b>Issued February 9, 2010 and revised December 12, 2012, May 19, 2015, October 21, 2015</b>					
[42-45]	Purchase Requisition had appropriate approvals based on the Operational Authority Delegation Hierarchy.	0	1	9	10
<b>OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.4.4: Purchase Review Process for Contracts and Grants</b>					
[46]	For grants over \$2,500 the AP Supervisor approved the Procurement Document Checklist (PCL).	2	0	8	10
[47]	The Budget Analyst verified the availability of funding and correct coding.	0	0	10	10
[48]	A Purchase Order (PO) was issued by the Treasury and Other Services (TOS) to the preparer.	10	0	0	10

<sup>220</sup> The testing of criteria [36] and [39] also satisfied the requirements of the Fiscal Procedures Manual, Section 2.2.6: Grants Contract Funding Certification.

<sup>221</sup> Grant Agreement Form GA-1 is used for Kaialu grants up to \$100,000, CBED grants up to \$50,000, and Kauhale grants up to \$24,999.

<sup>222</sup> Grant Agreement Form CGA-1 is used for University of Hawai'i grants.

<sup>223</sup> 'Ahahui Agreement Form is used for 'Ahahui grants up to \$10,000.

<sup>224</sup> Small Governance Award Letter is used for Hawaiian Governance grants.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>2.2.7.4: Grants Payment Processing<sup>225</sup></b>					
[49]	Payments were processed appropriately based on the type of Grantee Requirements and Grant Monitor Requirements.	0	0	10	10
[50]	The Grant Monitor reviewed and approved the required grant reports within 5 working days.	10	0	0	10
<b>OHA Operational Authority Delegation Hierarchy issued by the Chief Executive Officer on Interoffice Memorandum</b>					
<i>Issued February 9, 2010 and revised December 12, 2012, May 19, 2015, October 21, 2015</i>					
[54-57]	Request for Check Issuance had appropriate approvals based on the Operational Authority Delegation Hierarchy.	0	4	6	10
<b>OHA Grants Program Standard Operating Procedures, revised July 1, 2015<sup>226, 227</sup></b>					
<b>III. Procedures: (C) Sponsorships</b>					
[80]	The formal letter of request includes the information required by the Grants Program Standard Operating Procedures.	6	3	1	10
[81]	The CEO approved the final award.	5	3	2	10
[82]	OHA documented evidence that the applicant received the Notice of Award, either via email or a letter signed by the Transitional Assistance Program (TAP) Manager.	9	1	0	10
[83]	OHA documented evidence that it received participation and/or recognition benefits.	9	1	0	10
<b>Other Testing Results</b>					
[84]	Compliance with budget restrictions.	0	3	7	10
[85]	No fraudulent or wasteful disbursements were made.	0	5	5	10

Within each observation, CLA has listed the OHA disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 10**. Each observation also includes a reference to the applicable criteria listed in the table above.

1) Compliance with HRS §84-14: Conflicts of Interest

Two disbursements were identified by CLA as possibly not compliant with HRS §84-14(a), which states, “No employee shall take any official action directly affecting: (1) A business or other undertaking in which the employee has a

<sup>225</sup> Criteria [51] through [53] refer to the Fiscal Procedures Manual, Section 2.2.7.4: Grants Payment Processing. The criteria applied to the Request for Payment on Contract, which CLA determined was not applicable, since CEO Sponsorships were paid with the Request for Check Issuance form.

<sup>226</sup> Criteria [58] through [79] relate to Grants Program Standard Operating Procedures for CEO Sponsorships and results for these criteria are included in the Grants Contract Testing section.

<sup>227</sup> The Grants Program Standard Operating Procedures are applicable only to grants awarded after July 1, 2015.

substantial financial interest; or (2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity” (criteria [1], [2]).

a. D-03 – Hi'ipaka LLC

The purpose of the CEO Sponsorship awarded to Hi'ipaka was to cover 'Aha 'Aina related costs and entertainment for the Association of Hawaiian Civics Clubs at Waimea Valley on October 29, 2011. When the OHA CEO awarded the grant to Hi'ipaka, the CEO took an official action directly affecting a business in which the CEO was already engaged in an agency capacity. As both the CEO of OHA and one of the LLC Managers of Hi'ipaka, Mr. Nāmu'o approved the use of OHA funds to cover costs for an event that Hi'ipaka incurred. CLA could not determine in which capacity the CEO was exercising his fiduciary duties to safeguard and manage the funds of OHA or Hi'ipaka. Likewise, the Hi'ipaka Managers are comprised of OHA executives that have a direct material conflict of interest because they receive compensation for their roles and responsibilities in managing the LLCs. Since the OHA CEO is one of the LLC Managers of Hi'ipaka, this arrangement creates an inherent conflict of interest any time the CEO can exercise authority to award grants (or other disbursements) to Hi'ipaka.

b. D-08 – Hi'ilei Aloha LLC

The purpose of the “Administrative Grant” awarded to Hi'ilei Aloha was to conduct due diligence relating to the Maritime Museum as a potential new office location. There is no guidance in OHA's Fiscal Procedures Manual or Grants Program Internal Guidelines and Procedures identifying and describing an “Administrative Grant” or how it is processed. The disbursement does not contain a grant application, but there is an email dated February 6, 2012, from the CFO to the COO and Transitional Assistance Program Manager that indicated the Interim CEO requested an "Administrative Grant" and to "please reallocate funding and prepare all necessary paperwork for the issuance of this administrative grant no later than 02/15/12.”

When the Interim OHA CEO requested the grant for Hi'ilei Aloha the Interim CEO took an official action directly affecting a business in which the Interim CEO was already engaged in an agency capacity. As both the Interim CEO of OHA and one of the LLC Managers of Hi'ilei Aloha, the Interim CEO approved the use of OHA funds to cover costs that Hi'ilei Aloha incurred. CLA could not determine in which capacity the Interim CEO was exercising his fiduciary duties to safeguard and manage the funds of OHA or Hi'ilei Aloha. Likewise, the Hi'ilei Aloha Managers are comprised of OHA executives that have a direct material conflict of interest because they receive compensation for their roles

and responsibilities in managing the LLCs.<sup>228</sup> Since the OHA CEO is one of the LLC Managers of Hi'ilei Aloha this arrangement creates an inherent conflict of interest any time the CEO can exercise authority to award grants (or other disbursements) to Hi'ilei Aloha.

See recommendation 56.

## 2) Compliance with HRS §10: Office of Hawaiian Affairs

The statute requirements identified by CLA that address the acceptance of qualified applications, executing CEO Sponsorships, and monitoring grantees include a review of the grant application, cover sheet, or letter; grant agreement; proof of license, permits, and insurance; and monitoring and evaluation reports. When documentation was missing, CLA reviewed the procurement forms for evidence that OHA performed procedures to ensure compliance with HRS §10.

Included below is a summary of the observations for each of the requirements reviewed as part of the statute:

- a. HRS §10-17(a): Grant applications
  - i. One CEO Sponsorship included a formal letter requesting funding for Supporting the Language of Kauai, which contained enough information to identify the name of the organization, the purpose of the grant, the service to be supported by the grant, and the cost of the grant (D-19 – criteria [8] through [13]).<sup>229</sup> However, the letter was missing key elements required by HRS §10-17, namely: 1) the target group to be benefitted; 2) that the grant would be used for activities consistent with the purposes of HRS §10; 3) the grantee had applied or received all applicable licenses and permits; 4) that the grantee would comply with federal, state, and local law; 5) that the grantee would indemnify OHA; and 6) that the grantee would procure sufficient insurance to indemnify OHA, if requested to do so by OHA. In addition, the letter referred to a “confidential Business Plan” that was not provided to CLA, which inferred that additional information was withheld from the request letter.
  - ii. Six CEO Sponsorships did not contain documentation or evidence that the grant was requested through an application or a formal letter, as required

<sup>228</sup> CLA reviewed a sample of the IRS Form 990s for Hi'ilei Aloha filed for fiscal year 2015 and 2016. Although these forms did not cover the year in which this grant occurred, both forms indicated the OHA CEO received an “estimated amount of other compensation from the organization and related organizations.”

<sup>229</sup> HRS §10-17(a) refers only to applications for grants; however, OHA’s Grants SOP provides further clarification of CEO Sponsorship applications. It states, “Sponsorships do not require that a formal application be submitted in response to a solicitation. Interested applicants submit a formal letter of request.”



by HRS §10-17(a) and HRS §10-17(b) (D-03, D-08, D-09, D-29, D-40, D-43 – criteria [7] through [13]).

b. HRS §10-17(b): Conditions for awarding grants

The same observations noted in regards to HRS §10-17(a) also applied to HRS §10-17(b). HRS §10-17(b) requires the applicant has applied or received all applicable licenses and permits, agreed to comply with applicable federal, state, and county laws, agreed the grant would not be used for entertainment or perquisites, agreed to comply with all applicable federal, state, and county statutes and ordinances, and would indemnify OHA and procure sufficient insurance if requested by OHA. As such, CLA was unable to determine that the same seven grantees had applied for all applicable licenses and permits, agreed to comply with applicable federal, state, and county laws, agreed the grant would not be used for entertainment or perquisites, agreed to comply with all applicable federal, state, and county statutes and ordinances, and would indemnify OHA and procure sufficient insurance if requested by OHA (criteria [14] through [19]).<sup>230</sup>

- i. Four CEO Sponsorships had copies of formal letters requesting funding; however, the letters did not contain sufficient information to demonstrate that the grantee met the minimum qualifications of HRS §10-17(b) (D-19, D-30, D-31, D-32 – criteria [14] through [19]).<sup>231</sup>

c. HRS §10-17(c): Conditions for applicants

- i. Two CEO Sponsorships were awarded to OHA's LLCs (Hi'ipaka and Hi'ilei Aloha), which conflicted with the conditions set forth in HRS §10-17(c) for nonprofit organizations (D-03, D-08 – criteria [24]). HRS §10-17(c) requires that nonprofit organizations have governing boards whose members have no material conflict of interest and serve without compensation. The governing board of both Hi'ipaka and Hi'ilei Aloha are comprised of OHA's CEO, COO, and CFO, and all have a direct material conflict of interest because they are compensated for their roles as managers of the LLCs.
- ii. Four CEO Sponsorships were not documented on either a formal letter prepared by the applicant or a Sponsorship Review form prepared by OHA (D-03, D-08, D-09, D-29 – criteria [24], [25], [26]). Consequently, there is no documentation or evidence that the applicants agreed to make available to OHA all records the applicants had relating to their activity, business, or enterprise operations nor that the applicants would

---

<sup>230</sup> The seven CEO Sponsorships were: D-03, D-08, D-09, D-19, D-29, D-40, D-43.

<sup>231</sup> Three of these four CEO Sponsorships (D-30, D-31, D-32) included language in the grant agreement that the grantee would not use the funds for entertainment or perquisite purposes; therefore, criteria [16] includes only one observation (D-19).

establish that sufficient funds were available for the effective operation of the activity, business, or enterprise for which the grant was awarded. Two of these CEO Sponsorships also did not contain information regarding the composition of the nonprofits governing board (D-09, D-29). CLA could not determine if these two organizations were comprised of governing members that did not have a conflict of interest and served without compensation, and if the governing board had policies regarding nepotism, management of conflict of interests, or employing family members.

- iii. Four CEO Sponsorships had copies of formal letters requesting funding; however, the letters did not contain sufficient information to demonstrate that the grantee met the minimum qualifications of HRS §10-17(c) (D-19, D-30, D-31, D-32 – criteria [24], [25], [26]).
- iv. Two CEO Sponsorships were missing documentation that the applicant submitted a funding request letter; however, there was a Sponsorship Review Form prepared by OHA, which indicated that OHA received something on which to base their review (D-40, D-43 – Criteria [24], [25], [26]).

d. HRS §10-17(d): Grant monitoring and evaluation

- i. All ten CEO Sponsorships did not contain documentation or evidence that OHA monitored the grant to ensure compliance with HRS §10-17 or evaluated the grants annually to determine whether the grant attained the intended results (criteria [83]).<sup>232</sup>

See recommendations 07, 08, 10, and 26.

3) Compliance with OHA's applicable internal policies and procedures

The internal policies and procedures identified by CLA that address the approval and execution of CEO Sponsorships include a review of the grant approval, Purchase Requisition, Procurement Document Checklist, Purchase Order, Tax Clearance and DCCA Verification submitted by the applicant, grant agreement, and Request(s) for Check Issuance. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. See **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's CEO Sponsorship review and approval process:

---

<sup>232</sup> The ten CEO Sponsorships were: D-03, D-08, D-09, D-19, D-29, D-30, D-31, D-32, D-40, D-43.

- a. Sponsorship Review Form:
  - i. One CEO Sponsorship contained a Sponsorship Review Form that was inconsistent with the applicant's information (D-32 – criteria **[27]**, **[28]**). The information recorded on the Sponsorship Review Form contained additional information that was not on the formal letter requesting the CEO Sponsorship. Specifically, the Sponsorship Review Form includes the Event Date, Strategic Result, Benefit to Hawaiians, Budget, and Recognition Benefit for OHA -- all of which are not included on the applicant's formal letter request for CEO Sponsorship funds. According to the Grants SOP, the applicants should submit a formal letter of request that includes: the organization information; description of alignment with OHA's vision and Strategic Plan; description of benefit to Hawaiian Community; funding request and event overview; recognition benefits offered to OHA; and, funding information/budget.
- b. Proof of Award:
  - i. Four CEO Sponsorships contained either an Interoffice Memorandum or Sponsorship Review form demonstrating that the CEO Sponsorship award was approved. However, there is no evidence that a proof of award, including a grant award letter, Board minutes, approved Administrative Memo (or email as detailed in the Grants SOP), was sent to notify the applicant that their organization received the award (D-31, D-32, D-40, D-43 – criteria **[32]** and **[34]**).
  - ii. Six CEO Sponsorships were missing the CEO Sponsorship proof of award, including a grant award letter, BOT minutes, or an approved Administrative Memo (D-03, D-08, D-09, D-19, D-29, D-30 – criteria **[32]** and **[34]**).
- c. Procurement Document Checklist:
  - i. Two CEO Sponsorships were missing the Procurement Document Checklist (PCL) (D-40, D-43 – criteria **[33]** and **[46]**).
- d. Purchase Order:
  - i. All ten CEO Sponsorships were missing a Purchase Order (criteria **[36c]** and **[48]**).<sup>233</sup> As a result, there is no evidence that the CFO certified the availability of funds.<sup>234</sup>

---

<sup>233</sup> The ten CEO Sponsorships were: D-03, D-08, D-09, D-19, D-29, D-30, D-31, D-32, D-40, D-43.

<sup>234</sup> OHA's Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.4.4 identifies that the Purchase Requisition for a grant is converted to a Purchase Order.

- e. Grant Monitor approval:
  - i. All ten CEO Sponsorships were missing documentation that the grant event was attended by OHA Staff and that OHA received recognition benefits (criteria **[50]**).<sup>235</sup> As a result, there is no evidence that the Grant Monitor reviewed and approved any grant reports associated with the event within five working days.
- f. Request for Check Issuance:<sup>236</sup>
  - i. Two CEO Sponsorships contained a Request for Check Issuance that was not properly approved (D-29, D-30 – criteria **[54]** through **[57]**). Both sponsorships' highest level of approval was the manager.<sup>237</sup> According to the OHA Operational Authority Delegation Hierarchy in effect at the time, and based on the amount of the disbursement, the CEO was required to approve the Request for Check Issuance form; however, the CEO did not approve the form.
  - ii. One CEO Sponsorship contained a Request for Check Issuance that was not properly approved (D-43 – criteria **[54]** through **[57]**). The highest level of approval was the LOB Director. According to the OHA Operational Authority Delegation Hierarchy in effect at the time, and based on the amount of the disbursement, the COO was required to approve the Request for Check Issuance form; however, the COO did not approve the form.

See recommendations 26, 57, and 58.

#### 4) Compliance with OHA Grants Program Standard Operating Procedures

- a. Application/Funding Request:
  - i. One CEO Sponsorship was categorized as an “Other – Administrative Grant” (D-08 – criteria **[80]**). OHA’s Fiscal Procedures Manual and Grants Program Standard Operating Procedures do not address how an “administrative grant” is solicited, reviewed, recommended, or approved. The “administrative grant” contains a Procurement Document Checklist, Purchase Requisition, Procurement Package Checklist, Exempt Purchases Checklist, and Request for Check Issuance. There is also an email indicating that the Interim CEO was requesting the “administrative

---

<sup>235</sup> The ten CEO Sponsorships were: D-03, D-08, D-09, D-19, D-29, D-30, D-31, D032, D-40, D-43.

<sup>236</sup> Sample number D-09 is marked as an observation under criteria [42] through [45] and [54] through [57] and is discussed in section “6) No fraudulent or wasteful disbursements.” It is not shown in this section to avoid duplication.

<sup>237</sup> The individual who signed as the manager was the WDC Bureau Chief.

grant” for Hi’ilei Aloha for the purpose of due diligence relating to the Maritime Museum. There is no indication that Hi’ilei Aloha submitted an application or funding request; that the request was reviewed, recommended, and approved by the CEO; or monitored by a Grants Specialist. As such, this CEO Sponsorship did not adhere to criteria established for CEO Sponsorships in OHA’s Grants Program Standard Operating Procedures.

- ii. Two CEO Sponsorships indicated that the funding was for programmatic purposes (D-31, D-32 – criteria **[80]**). Per OHA’s Grants SOP, CEO Sponsorships are for events that provide OHA with event participation or recognition benefits. Allowing a CEO Sponsorship award for programmatic services allows an organization to bypass the competitive grants process for programmatic service funding.
  - iii. As discussed in the observations related to HRS §10-17, there were six CEO Sponsorships that did not contain a grant application or funding request (D-03, D-08, D-09, D-29, D-40, D-43 – criteria **[80]**).
- b. Recommendation by CEO:
- i. Five CEO Sponsorships did not contain documentation or evidence that the CEO approved the CEO Sponsorship on either a Sponsorship Review Form, Interoffice Memorandum, or Administrative Memorandum (D-03, D-09, D-19, D-29, D-30 – criteria **[81]**).
  - ii. One CEO sponsorship was classified as an “Other – Administrative Grant” (D-08 – criteria **[81]**). CLA was unable to determine if this grant type was required to have the CEO’s recommendation since it is a grant type that is not defined or covered by the OHA Grants Program Standard Operating Procedures.
  - iii. One CEO sponsorship included the Proof of Award, but it was not signed by the CEO; therefore, there is no documentation of the CEO’s approval (D-31 – criteria **[81]**).
  - iv. One CEO sponsorship included the Sponsorship Review Form, but it was not signed by the CEO; therefore, there is no documentation of the CEO’s approval (D-40 – criteria **[81]**).

- c. Notice of Award:
- i. Nine CEO sponsorships were missing documentation that the CEO Sponsorship applicant was notified of the award via email or an award letter signed by the TAP Manager (criteria **[82]**).<sup>238</sup>
  - ii. One CEO sponsorship was classified as an “Other – Administrative Grant” (D-08 – criteria **[81]**). CLA was unable to determine if this grant type was required to issue a Notice of Award since it is a grant type that is not defined or covered by the OHA Grants Program Standard Operating Procedures.
- d. OHA Event Attendance/Participation/Community Engagement
- i. Nine CEO Sponsorships did not contain any documentation or evidence, including the Sponsorship Review Form, that the grant event was attended by OHA Staff, OHA Grants Program Standard Operating Procedures, and the purposes and intent of the grants (criteria **[83]**).<sup>239</sup> There were no OHA Staff Attendance Reports Forms included with the sponsorships or evidence that OHA event attendance, participation, or community engagement occurred.
  - ii. One CEO sponsorship was classified as an “Other – Administrative Grant” (D-08 – criteria **[83]**). CLA was unable to determine if this grant type was required to be attended by OHA staff since the Grants Standard Operating Procedures do not address this grant type.

See recommendations 13, 47, 59, and 60.

#### 5) Compliance with budget restrictions

Based on our discussion with a former OHA Grants Specialist, CEO Sponsorship have a maximum award amount of \$25,000.

- a. Two CEO Sponsorships contained Budget Adjustment Request Forms that reallocated funds from other accounts to fund the CEO Sponsorship award (D-31, D-43). Both budget adjustment forms appear to be properly approved by the Budget Analyst, Controller, and CFO. One form also includes the approval of the CEO (D-31). One sponsorship required the adjustment of 11 different accounts in order to fund the award for \$25,000 (D-43). This same sponsorship included an email between the CEO’s Executive Assistant and the Procurement Manager that the award was “a RUSH at KP’s request.”<sup>240</sup> CLA

<sup>238</sup> The nine CEO Sponsorships were: D-03, D-09, D-19, D-29, D-30, D-31, D-32, D-40, D-43.

<sup>239</sup> The nine CEO Sponsorships were: D-03, D-09, D-19, D-29, D-30, D-31, D-32, D-40, D-43.

<sup>240</sup> The “KP” mentioned in the email is referring to the Ka Pouhana, Dr. Crabbe, OHA’s former CEO.

was unable to determine if the use of the Budget Adjustment Request Form constituted a violation of any budget restrictions.<sup>241</sup>

- b. One CEO Sponsorship contained an email between the Controller and Executive Assistant to the CEO that indicated the award amount was approved for \$25,000 but that a portion, \$12,000, was not available without a Budget Realignment approved by the BOT (D-30). There is no indication that the Budget Realignment was approved by the BOT before the grant award was approved by the CEO and paid.

See recommendation 61.

#### 6) No fraudulent or wasteful disbursements

A review of the documents for five of the sponsorships tested in this area identified red flags or indicators that indicate a possibility of fraud, waste, or abuse. The identification of a red flag or indicator does not, on its own, confirm that fraud, waste, or abuse did occur. This section simply identifies the observations made by CLA during the testing that can be indicators of fraud, waste, or abuse, and, therefore, CLA is not making a conclusion as to the existence of fraud, waste, or abuse. Additional investigation of each CEO Sponsorship would be required, which was beyond the scope of this engagement. Each of the five sponsorships is discussed further below.

- a. D-09 – University of Hawai'i, Office of Research Services<sup>242</sup>

The University of Hawai'i, Office of Research Services was awarded a CEO Sponsorship of \$30,000 to sponsor the GEAR-UP Hawai'i Program. This CEO Sponsorship award appears to have been split to avoid restrictions on the maximum award amount of CEO Sponsorships. The award is split into two components: \$24,950 for "Grants in Aid" and \$5,050 for "Services on a Fee Basis." According to the OHA Operational Authority Delegation Hierarchy effective at the time of the award, dated February 9, 2010, the maximum CEO Sponsorship was \$24,999. The entire amount was paid to the grantee on a single check for \$30,000. In addition, the grantee's proposal shows they requested \$28,500; the Procurement Package Checklist indicates the award amount was \$30,000; and, the Grantee Invoices indicate the award amount was \$30,000. It appears the award was split to circumvent the sponsorship award dollar restriction. This sponsorship raises the question of whether it

---

<sup>241</sup> CLA's testing of budget restrictions was limited to confirming whether or not the Budget Analyst verified the request was in accordance with BOT approval of the Program's operating budget. CLA did not review the operating budget or any restrictions that may have been imposed on the Program's operating budget.

<sup>242</sup> This observation is relevant to criteria [42-45], [54-57], and [85] in **Attachment 10**.

was handled properly, which could be an indication of possible abuse of the grant award process to benefit the grantee.

b. D-19 – Supporting the Language of Kaua'i

Supporting the Language of Kaua'i, Inc. (SLK) was awarded a CEO Sponsorship of \$25,000 to “help cover operational start-up costs.” The request was dated December 26, 2012. On December 31, 2012, Hi'ipoi transferred the poi mill and all its assets to SLK. It appears that the intention of this sponsorship was to provide SLK with the poi mill and funds to operate the mill.

The funding request letter from Supporting the Language of Kauai, Inc. states, “as mentioned in our confidential Business Plan that was recently submitted and approved by the managers of Hi'ipoi, we are requesting support from OHA in the amount of \$25,000.” CLA requested the confidential business plan; however, OHA did not provide a copy of the business plan or the LLC Managers' approval of that plan. In addition, there are notes within the procurement documents that indicate the award was a “rush” request.

All of these factors could be an indication of possible waste or abuse. Indicators of possible waste are the lack of documentation to support that the confidential business plan was properly reviewed and approved. This sponsorship raises the question of whether it was handled properly, which could be an indication of possible abuse of the grant award process to benefit the grantee.

c. D-30 – Smithsonian National Museum of the American Indian

The Purchase Requisition, Procurement Package Checklist, and Procurement Document Checklist indicate that the OHA Forms were not completed in chronological order. There are duplicates of all three documents in the file, which indicates that a simultaneous procurement and disbursement process was taking place. The order is as such:

- February 10, 2014: Date of the funding request letter
- April 2, 2014: Email between OHA Controller and the CEO's Executive Assistant requesting a budget realignment to increase funding from \$13,000 to \$25,000
- May 12, 2014: Purchase Requisition #1 is approved by the CEO
- May 20, 2014: Purchase Requisition #2 is approved by the CEO
- May 12, 2014: Procurement Document Checklist #1 is approved by Senior Staff Attorney on May 12, 2014
- June 10, 2014: Procurement Document Checklist #2 is approved by Senior Staff Attorney



- May 13, 2013: Procurement Package Checklist #1 is approved by the Accounting Manager for \$13,000 but scratched out and written over as \$25,000
- June 16, 2014: Procurement Package Checklist #2 is approved by the Controller for \$25,000
- April 28, 2014: Request for Check Issuance is approved for \$25,000
- May 19, 2014: Check issued for \$25,000

There is no indication why there were duplicate forms created and issued for different dates, some of which show the procurement process was not properly followed. For instance, the Request for Check Issuance was approved before any of the other documents. Procurement Document Checklist #2 and Procurement Package Check #2 were approved after the check was issued. In addition, a sticky note attached to the documents included the words, "Why duplicate docs?" CLA reviewed the OHA check register and determined that only one check was issued for this event, so there does not appear to be a reason why an additional set of procurement documents were completed for this CEO sponsorship. The combination of these duplicate documents, anachronisms in the preparation of the documents, and OHA's internal notes question the existing of duplicate documents are red flags or indicators of possible abuse of the procurement process.

d. D-31 – The Nature Conservancy

All of the documentation that preceded the Purchase Requisition indicated that OHA knew the purpose of the sponsorship was to support a programmatic service.<sup>243</sup> CEO Sponsorships are intended to be used for one-day events that provide OHA with recognition benefits. This grant did not meet that intended use. This grant should have been submitted under the competitive grant process for programmatic services, such as the Community Grant or Kūlia Initiative program. This sponsorship raises the question of whether it was handled properly, which could be an indication of possible abuse of the grant award process to benefit the grantee.

---

<sup>243</sup> According to the OHA Grants SOP, grants for programmatic services fall into two categories: Community Grants and Kūlia Initiative grants. The OHA grant solicitation documents define these two grant categories. Community Grants are two-year grants designed for programs that specifically address narrow focus areas aligned with OHA's Strategic Plan. Kūlia Grants are for one-year grants designed for the foregoing broad Strategic Priorities. Examples of eligible Kūlia Grant requests include projects for capacity building and capital improvement projects (CIP).

---

e. D-43 – The Edith Kanaka'ole Foundation

As discussed in the preceding section, this CEO Sponsorship contained an email that implicated that the award was a rush at the request of the CEO. In addition, it appears that the CFO approved the Request for Check Issuance before the Purchase Requisition was approved. CLA could not determine if the "RUSH at KP's request" resulted in the CFO preparing the Request for Check Issuance before the Purchase Requisition.

CLA also observed that this grant was missing a formal funding request letter or application and Procurement Document Checklist, which are required by the Grants SOP and Fiscal Procedures Manual, respectively. The grant did include the Procurement Package Authorization Checklist, which listed the payment method as "Purchase Order, which is required by the Fiscal Procedures Manual. However, the grant was missing a copy of the Purchase Order. These documents show proof of the original applicant's information and grant intentions, that the documentation was reviewed and approved by the Senior Staff Attorney, and that the proper procurement procedures were followed.

Regardless, the evidence that the CEO directed staff to rush the award may have resulted in circumventing the Grants Program Standard Operating Procedures. Combined with the Budget Adjustment Request Form that used 11 accounts to fund the award, this sponsorship raises the question of whether it was handled properly, which could be an indication of possible favoritism to this particular grantee.

See recommendations 26, 40, 60, and 62.

**g) Exempt (Non-Grant) and Small Purchase Disbursements<sup>244</sup>**

Thirty-four disbursements were processed as exempt (non-grant) and small purchase.<sup>245</sup> A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the approval and execution of OHA exempt, small purchase, and other disbursements is included in **Attachment 11**. As part of this testing, CLA sought to determine if the goods, services, or disbursement type appeared to qualify as exempt under the listed exemptions included in HRS §103D-102(b) or Hawai'i Administrative Rules Section 3-120-4 – Exhibit A. OHA's Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.1.3 identifies the process for procuring exempt goods or services (see **Exhibit 02**, page 56). Based on these procedures, OHA can identify a vendor from which to procure goods or services without obtaining any quotes or bids. The exempt procurement method requires various steps for internal review and approval, which were tested as part of CLA's procedures.

Included in Table 13 below is a summary of the results identifying for each criteria tested the number of disbursements (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>246</sup> Included below the tables is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 11** includes a table containing the results at the disbursement level and tickmarks explaining each disbursement with an observation.<sup>247</sup>

---

<sup>244</sup> CLA tested the exempt and small purchases within the same table because the criteria for these purchases were similar. Instances where the criteria did not apply to either an exempt or small purchase were marked with "N/A" for not applicable.

<sup>245</sup> The 34 disbursements are: D-01, D-02, D-04, D-05, D-06, D-10, D-11, D-13, D-14, D-15, D-16, D-17, D-18, D-20, D-21, D-22, D-24, D-25, D-26, D-27, D-28, D-33, D-34, D-36, D-37, D-38, D-41, D-42, D-44, D-45, D-46, D-47, D-48, D-50.

<sup>246</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>247</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 11**, tickmarks for exempt (non-grant), small purchase, and other disbursements tested are numbered with the letter "G" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation "**G01**" is the first observation tickmark for this section of disbursements.

**Table 13: Summary of Results – Exempt (Non-Grant) and Small Purchase Disbursements**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	0	0	34	34
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or in any other agency capacity.	0	0	34	34
<b>HRS §103D: Hawai'i Public Procurement Code</b>					
<b>HRS §103D-102(b): Application of this chapter</b>					
[3]	The service or goods qualify as a listed exemption in 103D-102(b).	0	1	33	34
[4]	Document the specific exemption number.	0	1	33	34
<b>OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.1.3: Exempt Procurements</b>					
[5]	If not qualified under the list of exemptions in 103D-102(b), the service or good qualifies as an exempt purchase under Hawai'i Administrative Rules Section 3-120-4 – Exhibit A.	0	10	24	34
[6]	Document the specific exemption number.	0	10	24	34
<b>2.2.2.1: Purchase Requisition Procedure<sup>248</sup></b>					
[8]	The Budget Analyst verified that funds were available for the procurement and sent the Purchase Requisition to management for review.	7	2	25	34
<b>OHA Operational Authority Delegation Hierarchy issued by the Chief Executive Officer on Interoffice Memorandum</b>					
<b>Issued February 9, 2019 and revised December 12, 2012, May 19, 2015, October 21, 2015</b>					
[11-14]	The Purchase Requisition had appropriate approvals based on the Operational Authority Delegation Hierarchy.	7	6	21	34
<b>OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.4: Grants, Procurement, and Contracts Review Process</b>					
[15]	Funds were verified by the Budget Analyst and certified by the CFO using the Accounting Checklist.	0	29	5	34
[16]	Unless not required by statute, the contractor submitted a Tax Clearance to OHA prior to entering into the contract.	14	0	20	34
[17]	The Procurement Document Checklist was signed by the Hale Manager.	13	0	21	34
[18]	The owner of the business, except for sole proprietorships, charitable organizations, unincorporated associations, and foreign insurance companies, submitted a DCCA Verification showing Proof of Good Standing with the State of Hawai'i.	15	0	19	34
<b>2.2.4.3: Review Documentation<sup>249</sup></b>					
[23]	The senior staff attorney signed the PCL to ensure compliance with State Procurement Laws for the purchase if was for more than \$2,500.	13	0	21	34
<b>2.2.5: Purchase Orders</b>					
[24]	The Purchase Order was reviewed and signed by the CFO.	4	2	28	34

<sup>248</sup> Criteria [7], [9], and [10] are excluded as they were used by CLA to document information pertaining to the Purchase Requisition, including the names of the individuals preparing and approving the form. CLA determined these criteria are not necessary to report the final results of testing.

<sup>249</sup> Criteria [19] through [22] pertain to the forms used to document grants. CLA determined these criteria are not necessary to report the final results of testing.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>2.2.7.1.a: Request for Check Issuance<sup>250</sup></b>					
[26]	For amounts under \$2,500, receipts and/or invoices were included as supporting documentation.	0	0	34	34
<b>2.2.7.1.b: Request for Reimbursement Payment Process<sup>251</sup></b>					
[28]	The staff member obtained approval from the appropriate manager to make the purchase.	0	0	34	34
[32]	Original receipts and/or invoices were included as supporting documentation.	0	0	34	34
<b>2.2.7.2 Purchase Order Payments</b>					
[33]	For amounts over \$2,500, the goods or services were marked as received on the original invoice.	5	1	28	34
[34]	For amounts over \$2,500, receipts and/or invoices were included as supporting documentation and match the Purchase Order.	5	0	29	34
<b>2.2.7.5 Check Issuance and Distribution</b>					
[35]	The invoice was stamped "Paid" and marked with the check number.	0	0	34	34
<b>OHA Operational Authority Delegation Hierarchy issued by the Chief Executive Officer on Interoffice Memorandum</b>					
<i>Issued February 9, 2019 and revised December 12, 2012, May 19, 2015, October 21, 2015</i>					
[36-39]	Request for Check Issuance or Request for Reimbursement had appropriate approvals based on the Operational Authority Delegation Hierarchy.	12	5	17	34
<b>Other Testing Results</b>					
[40]	Compliance with budget restrictions.	6	2	26	34
[41]	No fraudulent or wasteful disbursements were made.	0	7	27	34

Within each observation, CLA has listed the OHA disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 11**. Each observation also includes a reference to the applicable criteria listed in the table above.

1) Compliance with HRS §84-14: Standard of Conduct

Based on the procedures performed and publicly available information, CLA did not identify information that provides evidence of a conflict of interest as defined under HRS §84-14 (criteria [1] and [2]).

<sup>250</sup> Criteria [25] and [27] are excluded as they were used by CLA to document information pertaining to the Request for Check Issuance form, including the names of the individuals preparing and approving the form. CLA determined these criteria are not necessary to report the final results of testing.

<sup>251</sup> Criteria [29] through [31] are excluded as they were used by CLA to document information pertaining to the Request for Reimbursement, including the names of the individuals preparing and approving the form. CLA determined these criteria are not necessary to report the final results of testing.

## 2) Compliance with HRS §103D: Hawai'i Public Procurement Code

Based on the scope of work described in the disbursements tested, 11 of the 34 disbursements tested are for services that do not appear consistent with the stated exemption identified by OHA or the other exemptions allowed under HRS §103D-102(b) and Hawai'i Administrative Rules Section 3-120-4 – Exhibit A (criteria [3], [4], [5], [6]. When a disbursement is processed as exempt, there is no requirement for OHA to obtain competitive quotes or bids as there are under other procurement methods.

The following disbursements are those identified by CLA as possibly not compliant:

### a. D-28 – Kalihi-Palama Culture & Arts Society, Inc.

According to the scope of work, Kalihi-Palama Culture & Arts Society, Inc. was paid \$30,000 for a television sponsorship of the Queen Liliuokalani Keiki Hula Competition in July 2015. OHA cited Hawai'i Administrative Rules §3-120-4 exemption #14, "Procurement of repair services when dismantling is required to assess the extent of repairs."

OHA was the sponsor that helped this event to be televised so that more Hawaiian residents could appreciate and value Native Hawaiian history and culture. Per the exemption cited on the Purchase Order, it appears it was miscategorized by OHA as an exempt purchase under Hawai'i Administrative Rules §3-120-4 exemption #14. It is likely that OHA meant to document exemption #16, which is for radio and television airtime. However, OHA paid the nonprofit organization as a television sponsorship rather than directly to the television station for airtime specifically for OHA.<sup>252</sup> CLA was unable to review the exemption cited and approved by the Senior Staff Attorney on the Procurement Document Checklist because the form was missing.

The Procurement Package Checklist indicated the type of purchase as "exempt," while Kalihi-Palama Culture & Arts Society, Inc.'s letter requesting the funding noted the funds were an "OHA Media Grant," and the Purchase Order noted the purchase was a "television sponsorship." It appears that this contract should not have been processed as an exempt contract, and OHA should have considered this funding as a grant or sponsorship based on the purpose of the funds disbursed. Although grants are exempt from the procurement requirements of HRS §103D, there are specific requirements in HRS §10-17 related to awarding grants.

---

<sup>252</sup> HAR §3-120-4(16) exempts radio and television airtime when the selection of the station is based on the targeted audience.

b. D-33 – The Kālainmoku Group, LLC

According to the scope of work, the Kālainmoku Group, LLC was paid \$28,115 for the production of the Native Hawaiian Roll Commission Kana'iolo'owalu Concert Series on August 31, 2013 at Maili Beach Park on Oahu. Using the Procurement Document Checklist, OHA categorized the purchase as exempt under Hawai'i Administrative Rules §3-120-4 exemption #8, "New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc."

This conflicts with the type of procurement that OHA selected on the Purchase Requisition. The Purchase Requisition indicates that the procurement was "Purchasing of Services – Professional." CLA determined that this disbursement was miscategorized and treated as an exempt purchase when it should have been subject to the professional services procurement method.

c. D-36 – Marimed Foundation for Island Health Care Training

According to the scope of work, Marimed Foundation for Island Health Care Training was paid \$49,000 for the chartering of the 96' triple masted schooner, *Makani Olu*, two 12' launches, tools, equipment, with a maximum capacity of 14 sail trainees for voyage to Nihoa and Mokumanamana islands. It was categorized by OHA as exempt under Hawai'i Administrative Rules §3-120-4 exemption #1, "Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

The State Procurement Office issued a letter dated May 1, 2017 regarding a different OHA procurement (**Exhibit 19**). The letter stated on page 4, "The SPO notified OHA, on December 16, 2016, that Exemption #1 is used for already published research material and not for contracting a vendor to conduct research and create a report, which is a service."<sup>253</sup> This disbursement to the Marimed Foundation for Island Health Care Training was also for a service and not for already published research material. CLA could not identify any other allowed exemption under which this particular service seemed to apply.

In addition, the payment was made directly to the Marimed Foundation; however, an Interoffice Memorandum, the Purchase Requisition, and the Contract Routing form all indicate that the purpose of the procurement is to

---

<sup>253</sup> Although this letter was related to a different OHA contract and was issued after the period covered by this engagement, CLA used this letter to interpret the intent of exemption #1 under Hawai'i Administrative Rule Section 3-120-4 – Exhibit A.

charter the voyage for the Edith Kanaka'ole Foundation and the University of Hawai'i, Manoa, Center for Hawaiian Studies. The Interoffice Memorandum suggests that if OHA cannot execute the contract, than "two separate OHA contracts with the organizations (the Edith Kanaka'ole Foundation and the University of Hawai'i, Manoa, Center for Hawaiian Studies)...may have to be executed." The intention of the purchase appears to be to provide a charter vessel for two nonprofits to conduct their activities. This arrangement appears to align with the intentions of OHA's grant program. It appears that this disbursement should not have been processed as an exempt disbursement, and OHA should have considered this funding as a grant or sponsorship based on the purpose of arrangement between OHA and the Edith Kanaka'ole Foundation and the University of Hawai'i, Manoa, Center for Hawaiian Studies.

d. D-38 – Windows Catering Company

According to the scope of work, Windows Catering Company was paid \$24,986 to provide catering services for the Kamehameha Day Reception at the U.S. Botanical Gardens. OHA categorized the purchase as an exempt purchase citing Hawai'i Administrative Rules §3-120-4 exemption #8 "New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc."

CLA determined that the exemption cited is not applicable to catering services nor is there an applicable exception in HRS §103D. It appears that this disbursement should not have been processed as an exempt purchase, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

e. D-42 – Hale Kealoha – 'Ai Pono Catering Services, LLC

According to the scope of work, Hale Kealoha - 'Ai Pono Catering Services LLC was paid \$15,000 to provide food catering services for 300 people for the Kalani'opu'u Cape Presentation on March 17, 2016. OHA categorized the purchase as an exempt purchase, citing Hawai'i Administrative Rules §3-120-4 exemption #1 "Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

The State Procurement Office issued a letter dated May 1, 2017 regarding a different OHA procurement (**Exhibit 19**). The letter stated on page 4, "The SPO notified OHA, on December 16, 2016, that Exemption #1 is used for already published research material and not for contracting a vendor to



conduct research and create a report, which is a service."<sup>254</sup> This disbursement to the Marimed Foundation for Island Health Care Training was also for a service and not for already published research material. CLA could not identify any other allowed exemption under which this particular service seemed to apply.

CLA determined that the exemption cited is not applicable to catering services nor is there an applicable exception in HRS §103D. It appears that this disbursement should not have been processed as an exempt purchase, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

f. D-44 – Makaha Studios, LLC

According to the scope of work, Makaha Studios, LLC was paid \$20,000 to provide videography services of 29 candidates for political races. OHA categorized the purchase as an exempt purchase, citing Hawai'i Administrative Rules §3-120-4 exemption #1 "Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases."

The State Procurement Office issued a letter dated May 1, 2017 regarding a different OHA procurement (**Exhibit 19**). The letter stated on page 4, "The SPO notified OHA, on December 16, 2016, that Exemption #1 is used for already published research material and not for contracting a vendor to conduct research and create a report, which is a service."<sup>255</sup> This disbursement to the Makaha Studios, LLC was also for a service and not for already published research material. CLA could not identify any other allowed exemption under which this particular service seemed to apply.

CLA determined that the exemption cited is not applicable to political campaigns, nor is there an applicable exception in HRS §103D. It appears that this disbursement should not have been processed as an exempt purchase, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

---

<sup>254</sup> Although this letter was related to a different OHA contract and was issued after the period covered by this engagement, CLA used this letter to interpret the intent of exemption #1 under Hawai'i Administrative Rule Section 3-120-4 – Exhibit A.

<sup>255</sup> Although this letter was related to a different OHA contract and was issued after the period covered by this engagement, CLA used this letter to interpret the intent of exemption #1 under Hawai'i Administrative Rule Section 3-120-4 – Exhibit A.

## g. D-45 – Fields Masonry

According to the scope of work, Fields Masonry was paid \$14,250 to help finish the reinternment of the 146 po'o arriving from England.<sup>256</sup> OHA categorized the purchase as an exempt purchase, citing Hawai'i Administrative Rules §3-120-4 exemption #13 "Interpreter services." CLA determined that the exemption cited is not appropriate; however, Hawai'i Administrative Rules §3-120-4 exemption #15 "Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses" appears to be the correct citation.

This would be a qualified exempt purchase had the other supporting documents in the disbursement file indicated that this was a service that OHA procured itself rather than a request by another organization. This type of arrangement should disqualify OHA's use of the exemption procurement method. The issue is not that the payment was made to the vendor Fields Masonry but that the disbursement contains a letter from the Executive Director of Hui Mālama I Nā Kūpuna O Hawai'i Nei (Group Catering for the Ancestors of Hawai'i) requesting OHA to review the budget for the reburial site. The letter includes a document prepared by Hui Mālama I Nā Kūpuna O Hawai'i Nei titled "Waipao Reburial Site - Phase I" with a cost breakdown for the burial site. The letter also states "Hui Mālama and Fields Masonry respectfully requests OHA to contribute \$14,250 toward this effort."

It appears that Hui Mālama requested Field Masonry to provide a cost estimate and in turn requested OHA to pay for the service. When CLA inquired about the procurement method chosen, OHA responded that the disbursement was in fact a grant; however, none of the documentation indicates that the procurement underwent the grant review process. This arrangement appears to align with the intentions of OHA's grant program. It appears that this disbursement should not have been processed as an exempt disbursement, and OHA should have considered this funding as a grant or sponsorship based on the purpose of arrangement between OHA, Hui Mālama, and Fields Masonry.

## h. D-46 – Marilyn L. Khan

According to the scope of work, Marilyn "Leimomi" Khan was paid \$10,000 to be the Project Manager for the Native Hawaiian Roll Commission's Huli-A-Mahi event at the 'Iolani Palace on January 20, 2013. OHA categorized the purchase as exempt, citing on the Procurement Document Checklist Hawai'i Administrative Rules §3-120-4 exemption #3, "Services of lecturers, speakers,

---

<sup>256</sup> Po'o is Hawaiian for heads, but in this context OHA is referring to *iwi po'o*, human skulls.

trainers, facilitators and scriptwriters, when the provider possesses specialized training methods, techniques or expertise in the subject matter.”

However, the Purchase Requisition marked the procurement method as "Purchase of Service(s) – Professional." In addition, Ms. Khan's responsibilities are defined in a Native Hawaiian Roll Commission document titled "Roles and Responsibilities" and they do not include lecturing or providing learning materials, but instead she was responsible for planning, organizing, and supervising the execution of all aspects of the event. Furthermore, flyers for the Huli-A-Mahi event describe "Live Performances," "Cultural Exhibits," "Keiki Activities," and "Ono Food," but no mention of lectures or training. Ms. Khan was not responsible for providing training or learning materials; therefore, the citation for the exempt purchase method does not appear to be appropriate. It appears that this disbursement should not have been processed as an exempt purchase, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

i. D-47 – Kualoa Ranch Hawaii, Inc.

According to the scope of work, Kualoa Ranch Hawaii, Inc. was paid \$9,199 for “facility fees OHA Meeting.” OHA categorized the purchase as exempt, citing Hawai'i Administrative Rules §3-120-4 exemption #10, “Facility costs for conference, meetings, and training sessions.”

The disbursement did not contain a meeting agenda, schedule, or documentation of the purpose of the meeting. The invoice listed "Secret Island Fees" (quantity 207), “Adult Signature Ranch Buffets” (quantity 150), “Child Signature Ranch Buffets” (quantity 57), “BBQ Grill Station” (quantity 1) and two lifeguards. The Kualoa Ranch Hawaii invoice also includes complimentary admission for eight children under three years old. CLA determined that the facility costs do not appear to be for an official OHA conference, meeting, or training session, but rather an opportunity for OHA employees to visit a tourist attraction at a private nature reserve. Therefore, the citation for the exempt purchase method does not appear to be appropriate. It appears that this disbursement should not have been processed as an exempt purchase, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

## j. D-48 – Wet ‘N’ Wild Hawaii

According to the scope of work, Wet 'N' Wild Hawaii was paid \$8,483 for “OHA-NA Day” on August 17, 2013.<sup>257</sup> Wet ‘N’ Wild Hawaii is a water theme park on Oahu. OHA categorized the purchase as exempt, citing Hawai'i Administrative Rules §3-120-4 exemption #10, “Facility costs for conference, meetings, and training sessions.”

The disbursement did not contain a meeting agenda, schedule, or documentation of the purpose of the meeting. According to the Procurement Document Checklist, the purpose of the procurement was to “provide meeting facilities for OHA staff and families.” The Wet ‘N’ Wild Hawaii invoice charged for OHA "Package A" admissions and lunch (quantity 242) and “Lunch Wristbands” for Season Pass Holders (quantity 20). These costs do not appear to be for a conference, meeting, or training session, but rather a family entertainment day for OHA employees. Therefore, the citation for the exempt purchase method does not appear to be appropriate. It appears that this disbursement should not have been processed as an exempt purchase, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

## k. D-50 – McCorriston, Miller, Mukai, Mackinnon

According to the scope of work, McCorriston, Miller, Mukai, Mackinnon LLP (McCorriston Miller) was paid \$5,541 for legal services rendered to the Asset and Resource Management Committee between February 4, 2015 and February 24, 2015. The disbursement did not contain a Procurement Document Checklist, so there was no citation for the exemption method used.

The only exemption in HRS §103D-102(b) is for “services of attorneys employed or retained to advise...the State or any of its agencies, on matters arising under laws of another state or foreign country.” Hawai'i Administrative Rules §3-120-4 exemption #14 is for “services of legal counsel...when required by court order.” However, none of these exemptions are referenced or cited in the supporting document, and the purpose of the services provided by McCorriston Miller do not appear to meet the allowable exemptions.

The disbursement contains a letter from Chairperson Robert Lindsey that stated, “I am exempting the Committee on Asset and Resource Management's one-time arrangement with Mr. McCorriston from the regular procurement method and directing our Chief Executive Officer and

---

<sup>257</sup> “OHA-NA Day” is not defined in the procurement documents but appears to play on the word *’ohana*, Hawaiian for family. Furthermore, a sticky note in the file read, “OHA ohana day.” CLA interpreted this word play as “OHA family day.”

Corporation's Counsel to take the appropriate steps to ensure that expenses accrued from Mr. McCorrison's legal services are paid." There is no language in HRS §103D that allows the Chairperson of OHA's BOT to authorize the CEO or staff to exempt a purchase from the required procurement methods.

In addition, the Purchase Order is dated March 18, 2015 and the invoice is dated March 24, 2015 for services between February 4, 2015 and February 24, 2015; however, the Chairperson's letter is dated May 7, 2015. This indicates the procurement documents and the Chairperson's letter were prepared after the law firm provided the services. Therefore, the citation for the exempt purchase method does not appear to be appropriate. It appears that this disbursement should not have been processed as an exempt purchase, and OHA should have used a different procurement method (e.g., Professional Services) to secure these services.

See recommendations 49 and 50.

3) Compliance with OHA's applicable internal policies and procedures

The internal policies and procedures identified by CLA that are applicable to the processing of disbursements include a review of the Procurement Document Checklist, Purchase Requisition, Tax Clearance and DCCA Verification submitted by the contractor, Purchase Order, vendor invoice, and Request for Check Issuance. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. See **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's disbursement process. Within each observation, CLA has listed the OHA disbursement sample number with that particular observation. Specific information about the disbursement and a more detailed discussion of the observation can be found by referring to **Attachment 11**.

a. Procurement Document Checklist:

- i. Thirteen disbursements were missing the Procurement Document Checklist (criteria **[17]** and **[23]**).<sup>258</sup>

---

<sup>258</sup> The 13 disbursements were: D-04, D-11, D-13, D-15, D-17, D-22, D-26, D-28, D-34, D-38, D-41, D-47, D-50.

- b. Purchase Requisitions:
- i. One disbursement contained a Purchase Requisition that was not signed by the Budget Analyst (D-10 – criteria **[8]**).
  - ii. One disbursement contained a Purchase Requisition that was approved by a person with insufficient approval level required for the type and amount of the disbursement, according to the Operational Authority Delegation Hierarchy in effect at the time (D-04 – criteria **[11]** through **[14]**). CLA observed that the disbursement file contained a Purchase Requisition dated May 27, 2010 for \$75,000 for “lease guarantee for Waikiki Beach Walk,” and another Purchase Requisition dated January 24, 2011 for \$75,000 for “additional funds to be encumbered for lease guarantee.” The total payment was \$150,000 but the Purchase Requisition created near the time the check was issued was only for an amount of \$75,000, not the entire amount of \$150,000. The amount of \$150,000 appears to be split into two Purchase Requisitions of \$75,000 each. Therefore, when each Purchase Requisition was approved, it required the approval of only the LOB Director. Had the Purchase Requisition included the full amount of \$150,000, the Operational Authority Delegation Hierarchy would have required the CFO’s approval.
  - iii. Two disbursements contained Purchase Requisitions that were completed and approved by individuals not directly employed by OHA (D-33, D-46 – criteria **[11]** through **[14]**). The Purchase Requisitions were requested by the Native Hawaiian Roll Commission Staff and approved by the Native Hawaiian Roll Commission Executive Director, OHA’s former CEO, who were both employees at Kana’iolowalu, the organization operating the Native Hawaiian Roll Commission. The Executive Director was not listed as an employee in OHA’s Organizational Chart for the fiscal year and, therefore, would not be authorized to sign according to the Operational Authority Delegation Hierarchy in effect at the time.
  - iv. Two disbursements contained Purchase Requisitions that were completed and approved after the services were already rendered (D-41, D-46 – criteria **[11]** through **[14]**).
  - v. One disbursement contained a Purchase Requisition that was approved for \$6,000, but there was a request to increase it to \$8,500 by an internal email (D-48 - criteria **[11]** through **[14]**). The Purchase Requisition did not contain evidence that the CEO approved the increase.
  - vi. One disbursement was missing the Purchase Requisition; however, there is a Board of Trustees ARM/BAE action item that was approved for the acquisition of the Galbraith Estate land (criteria **[8]**, **[11]** through **[14]**). Action Item ARM/BAE 11-07 indicated that the BOT approved the

purchase of the land for \$3,000,000 (D-17). The procurement appears to be properly approved but was not documented on a Purchase Requisition.

- vii. Seven disbursements were missing the Purchase Requisition (criteria **[8]**, **[11]** through **[14]**).<sup>259</sup>
- c. Budget Verification and Certification:
  - i. Twenty-nine disbursements did not contain the Accounting Checklist, which was supposed to be used by OHA to verify and certify the availability of funds.<sup>260</sup> According to discussions with OHA, the Accounting Checklist has not been used in a long time, and the Procurement Document Checklist is used instead. The Budget Analyst verifies the availability of funds on the Purchase Requisition, and the CFO certifies the funds on the Purchase Order (criteria **[15]**).
- d. Tax Clearance:
  - ii. Fourteen disbursements were missing the Tax Clearance certificate (criteria **[16]**).<sup>261</sup>
- e. DCCA Verification:
  - i. Fifteen disbursements were missing the DCCA Verification showing Proof of Good Standing with the State of Hawai'i (criteria **[18]**).<sup>262</sup>
- f. Purchase Order:
  - i. Two disbursements contained Purchase Orders that were completed and approved after the service was performed or after OHA received the vendor invoice (D-33, D-50 – criteria **[24]**).
  - ii. Four disbursements were missing the Purchase Order (D-13, D-15, D-17, D-22 – criteria **[24]** and **[34]**).

---

<sup>259</sup> The seven disbursements were: D-11, D-17, D-22, D-26, D-28, D-34, D-38, D-47.

<sup>260</sup> The 29 disbursements were: D-02, D-04, D-10, D-11, D-13, D-14, D-15, D-17, D-18, D-20, D-21, D-22, D-24, D-25, D-26, D-27, D-28, D-33, D-34, D-36, D-38, D-41, D-42, D-44, D-45, D-46, D-47, D-48, D-50.

<sup>261</sup> The 14 disbursements were: D-02, D-04, D-14, D-17, D-28, D-33, D-36, D-38, D-44, D-45, D-46, D-47, D-48, D-50.

<sup>262</sup> The 15 disbursements were: D-02, D-04, D-17, D-22, D-28, D-33, D-36, D-38, D-42, D-44, D-45, D-46, D-47, D-48, D-50.

---

- g. Vendor Invoice:
  - i. One disbursement contained a vendor invoice that was dated before the vendor rendered services (D-33 – criteria **[33]**). In addition, the invoice does not contain a cost breakdown of the services performed.
  - ii. Five disbursements were missing an invoice from the vendor (D-04, D-10, D-22, D-28, D-45 – criteria **[33]**, **[34]**).
- h. Request for Check Issuance:
  - i. One disbursement contained a Request for Check Issuance that did not have the appropriate approvals for the type and amount of the disbursement based on the delegation hierarchy in effect at the time (D-20 – criteria **[36]** through **[39]**). The Request for Check Issuance contained an electronically printed amount of \$50,000, but a second copy of the form included a handwritten amount of \$100,000. The Communications Manager approved the Request for Check Issuance for \$100,000, and, ultimately, the disbursement was made for \$100,000.

According to the Operational Authority Delegation Hierarchy in effect at the time, the Request for Check Issuance required the "Appropriate Budget Authority" to approve the form. It is unclear who qualifies as the Appropriate Budget Authority.<sup>263</sup> OHA's response was that they treat the "check request as an invoice to refill postage account; prior approvals received during procurement process when PO is generated." OHA did not provide examples of the prior approvals for the Request for Check Issuance for postage invoices. According to the Operational Authority Delegation Hierarchy in effect at the time, Requests for Payment on Contracts for \$100,000 required the COO approval, which may be a more appropriate person to approve a Request for Check Issuance of this size.

- ii. One disbursement contained a Request for Check Issuance where the Appropriate Budget Authority did not date his approval of the form (D-22 – criteria **[36]** through **[39]**).

---

<sup>263</sup> The Operational Authority Delegation Hierarchies provided to CLA include a section for disbursement authorizations. The section for "Requests for Check Issuance (any amount)" state the required approvals are "Appropriate budget authority." This is unlike other types of disbursements listed, which include the title or level of the required approvals. Based on our discussion with the Procurement Manager on June 10, 2019, CLA learned that there is no listing of who the "appropriate budget authority" individuals are or what criteria CLA could use to determine who is qualified as an "appropriate budget authority." As a result, CLA accepted the signature of any OHA employee at the time as an "appropriate budget authority," within reason. For example, disbursements over \$100,000 should have at least an LOB Director signing the approval.



- iii. One disbursement did not contain all of the Request for Check Issuance forms equal to the amount of the total disbursement (D-24 – criteria **[36]** through **[39]**). The disbursement file contained a single Request for Check Issuance for \$163,516.44; however the total amount paid was \$190,711.44. OHA’s response was, “no check request [for the unaccounted for amount], invoice paid with PO.”
- iv. Two disbursements contained Request for Check Issuance forms that were completed and approved by individuals not directly employed by OHA (D-33, D-46 – criteria **[36]** through **[39]**). The Request for Check Issuance forms were requested by the Native Hawaiian Roll Commission Staff and approved by the Native Hawaiian Roll Commission Executive Director, OHA’s former CEO, who were both employees at Kana’iolowalu, the organization operating the Native Hawaiian Roll Commission. The Executive Director was not listed as an employee in the Organizational Chart for the fiscal year and, therefore, would not be authorized to sign according to the Operational Authority Delegation Hierarchy in effect at the time of the disbursement.
- v. Twelve disbursements were missing the Request for Check Issuance (criteria **[36]** through **[39]**).<sup>264</sup>

See recommendations 14, 33, 40, 63, 64, 65, 66, and 67.

#### 4) Compliance with budget restrictions

##### a. Purchase Requisitions

- i. Six disbursements were missing the Purchase Requisition (criteria **[40]**).<sup>265</sup> Therefore, CLA could not determine the amount certified by the Budget Analyst, if the amount was in accordance with the BOT’s approval of the program’s operating budget, and that the amount would not exceed the BOT approved program budget for the fiscal year.

##### b. Disbursements that Exceeded Approved Budget

Two disbursements were identified that exceeded the approved budget amount, as follows (criteria **[40]**):

- i. D-15 – Hi’ilei Aloha LLC

The disbursement was for \$200,000, which consisted of \$150,000 already approved by the BOT for FY 2013 and an adjustment funding of \$50,000

---

<sup>264</sup> The 12 disbursements were: D-02, D-14, D-18, D-25, D-26, D-36, D-41, D-42, D-44, D-47, D-48, D-50.

<sup>265</sup> The six disbursements were: D-17, D-22, D-28, D-34, D-38, D-47.

for “interim Makaweli Poi operations while the organization transitions its assets and operations to an appropriate community-based nonprofit organization.” The \$50,000 adjustment was approved through a budget realignment during an ARM Committee meeting. Although the budget adjustment was properly approved, the operations of the poi mill exceeded the budget for the year, and, by year end, Hi'ipoi transferred the asset to a nonprofit organization. It appears that the poi mill had exceeded its operating budget, and the BOT approved additional funds to maintain its operation. However, CLA could not determine if there were any budget restrictions that were violated when the \$50,000 budget adjustment was approved.<sup>266</sup>

ii. D-25 – Pacific Park Plaza

This disbursement on January 30, 2014 for \$177,601.26 paid to Pacific Park Plaza was to cover Common Area Maintenance (CAM) fees for OHA for the period December 16, 2013 to February 1, 2014. The Purchase Requisition, Procurement Package Checklist, and Purchase Order indicate that the original amount requested was \$81,328.65; however, the total amount billed on the invoices and paid to the vendor was \$177,601.26. The amount paid appears to be the result of the vendor billing for two months at \$88,800.63 per month. The amount invoiced, \$88,800.63, is greater than the original amount requested, \$81,328.65. There is no documentation that shows the increase was approved or a budget realignment was requested to offset the increase in the billing.

See recommendation 63.

5) No fraudulent or wasteful disbursements were made

A review of the documents for seven of the disbursements tested in this area identified red flags or indicators that indicate a possibility of fraud, waste, or abuse. The identification of a red flag or indicator does not, on its own, confirm that fraud, waste, or abuse did occur. This section simply identifies the observations made by CLA during the testing that can be indicators of fraud, waste, or abuse, and, therefore, CLA is not making a conclusion as to the existence of fraud, waste, or abuse. Additional investigation of each disbursement would be required, which was beyond the scope of this engagement. Each of the nine disbursements is discussed further below.<sup>267</sup>

---

<sup>266</sup> CLA's testing of budget restrictions was limited to confirming whether or not the Budget Analyst verified the request was in accordance with BOT approval of the Program's operating budget. CLA did not review the operating budget or any restrictions that may have been imposed on the Program's operating budget.

<sup>267</sup> The disbursements in this section include instances in which there is no evidence that OHA received the services or goods that it paid for. These scope of work did not include a requirement to test that the

## a. D-02 – David R. Sanborn

The disbursement on June 17, 2013 for \$5,000 paid to David Sanborn was procured using the exempt procurement method. The scope of work was for David R. Sanborn to develop a Native Hawaiian Organization consultation policy development handbook. Mr. Sanborn was paid for the entire amount that he invoiced OHA. The disbursement documentation provided to CLA was missing the Native Hawaiian Organization consultation policy handbook or the date it was received, so CLA was unable to determine if the handbook was ever finished or if it was delivered on time. When CLA inquired, OHA could not locate the deliverable document. This could be an indication of possible waste.

## b. D-04 – ABW Holdings, LLC

The purpose of the disbursement was to pay ABW Holdings, LLC for a lease guaranty OHA had signed on behalf of Kauhale, LLC, a Native Hawaiian private corporation that defaulted on its commercial lease at the Waikiki Beach Walk. As previously discussed, this disbursement did not receive the appropriate approvals on the Purchase Requisition, which was processed for only \$75,000. The following observations were made by CLA in regard to this disbursement:

- The first Purchase Requisition, dated May 27, 2010, was for \$75,000 for “lease guarantee for Waikiki Beach Walk.”
- The second Purchase Requisition, dated January 24, 2011, was for \$75,000 for “additional funds to be encumbered for lease guarantee...previous \$75,000 already encumbered on PO #110004 from CEO's budget. Please add funding to this PO #110004.”
- CLA did not observe a Purchase Requisition for the amount of \$150,000.
- CLA observed a Purchase Order for \$150,000 was properly approved by the CFO.

This split the amount of \$150,000 into two amounts of \$75,000. Therefore, when the Purchase Requisition was approved, it only required the LOB Director to approve it. Had the full amount of \$150,000 been indicated on the Purchase Requisition, the Operational Authority Delegation Hierarchy would have required the CFO to approve the Purchase Requisition. The disbursement did not contain the Procurement Document Checklist because it was not required; therefore, there is no evidence that legal counsel reviewed the disbursement before the payment was issued. The

---

deliverable was met by the contractor; however, CLA has identified these instances as they can be in indication of possible fraud, waste, or abuse.

---

disbursement did not contain the vendor's invoice in the amount of \$150,000 or any evidence that indicated that Kauhale, LLC had defaulted on its lease obligation. Lastly, there remains a question as to why OHA was involved in guarantying commercial leases for a for-profit business. Because the disbursement lacked a singular Purchase Requisition for the total amount disbursed, and the file is missing a Procurement Document Checklist, there was not sufficient transparency of the activities. Combined with the fact that OHA did not retain a copy of the vendor invoice or file an explanation as to why it was in the business of providing a lease guaranty, these factors could be an indication of possible waste or abuse.

c. D-22 – Hu'ena Power, Inc.

This \$600,000 disbursement was an investment purchase of 500 limited partnership units (5%) in Hu'ena Power, LLP, a consortium that submitted a proposal to Hawaiian Electric Light Company to develop two 25MW geothermal power stations on the island of Hawai'i.<sup>268</sup> The disbursement file does not contain a Purchase Requisition, Accounting Checklist, Tax Clearance, DCCA verification, CFO Funding verification, Procurement Document Checklist, Procurement Package Checklist, Purchase Order, or an invoice, which are all required for exempt purchases. The file does contain a Term Sheet (Purchase Agreement) that is signed by Hu'ena Power, Inc., Innovations Development Group, Inc., and OHA's former CEO.<sup>269</sup> The following observations were made by CLA in regard to this disbursement:

- There is a BOT Agenda that indicates that there was a BOT Action, ARM #13-02, in Executive Session where the BOT considered the investment in Hu'ena Power. CLA requested a copy of the Action Item and OHA responded that "the Action Item ARM #13-02 and discussion of the Hu'ena investment was conducted in Executive Session and remain confidential unless and until reviewed by Board Counsel to release if the basis for confidentiality no longer exists." CLA was not provided with evidence of a public vote by the BOT that approved the investment.<sup>270</sup>

---

<sup>268</sup> Despite there being no Procurement Document Checklist, OHA confirmed that the investment was procured using the exemption method. OHA cited HRS §103D-102(b)(2)(F): "For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping."

<sup>269</sup> The Term Sheet stipulates, "These funds (payments to Hu'ena Power, LLP) will be provided in five installments associated with project milestones...the first installment of \$600,000 will be made 60 days after signing this term sheet." The term sheet does not provide any additional details as to what milestones will be achieved with the first installment payment of \$600,000.

<sup>270</sup> HRS §92-5(a)(4) states, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities." And HRS §92-5(b) states, "In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly

- The Peninsula Preliminary Due Diligence Evaluation Report states, "Should HP (Hu'ena Power) not get selected as a Final Award Group, \$600,000 of the investment would have been expended and no further funds will be required."<sup>271</sup> Public records indicate that Hu'ena Power was not selected by HELCO to develop the geothermal stations (**Exhibit 31**). As a result, OHA did not recover its investment of \$600,000 in the venture.

The structure of this investment agreement required that OHA provide \$600,000 of funding with no guarantee that Hu'ena Power would be selected for the contract, which put all of OHA's investment funds at risk. Additionally, there is no information within the documentation that indicates what the \$600,000 was used for or why such a significant investment was needed when the contract had not yet been secured. This was a highly risky investment from which OHA received no return, and OHA lost all of its initial investment. These factors indicate a waste of funds and the possibility of fraud as CLA does not know what the funds were used for.

d. D-33 – The Kālainmoku Group, LLC

The purpose of the disbursement was for Kālainmoku Group to produce the Native Hawaiian Roll Commission Kana'iolo'lowalu Concert Series on August 31, 2013 at Maili Beach Park on Oahu. There were several inconsistencies regarding the dates on the procurement documents. The following inconsistencies were observed by CLA in regard to this disbursement:

- The invoice for the concert production was dated on August 12, 2013, which was 19 days before the concert on August 31, 2013. OHA could not provide an explanation as to why the vendor invoiced OHA before they had completed the services they were hired to provide.
- The Purchase Order was issued by OHA and dated September 9, 2013, which was nine days after the concert. OHA could not provide an explanation why it created the Purchase Order after services were rendered.
- The check was issued on September 9, 2013, the same day that OHA prepared the Purchase Order; however, the Request for Check Issuance was dated September 6, 2013, three days before the Purchase Order was created.

---

related to the purposes specified in subsection (a) [Exceptions]." CLA did not assess whether the Executive Meeting session was in accordance with the cited HRS.

<sup>271</sup> Peninsula Preliminary Due Diligence Evaluation Report 032513.pdf, pg. 9

- Lastly, OHA cited Hawai'i Administrative Rules §3-120-4 exemption #8, "New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc." This is not an applicable exemption and there is no applicable exemption with HRS §103-102(b) or Hawai'i Administrative Rules §3-120-4 – Exhibit A.<sup>272</sup> Therefore, CLA determined this disbursement did not qualify as an exempt procurement.

Because the contract was processed as an exempt contract when it possibly should not have been, OHA did not go through a process to obtain competitive quotes or bids to obtain these services. Therefore, it is unknown whether OHA paid a fair price for the services. This could be an indication of possible waste. The various inconsistencies with the timing of the documentation indicates that the procurement of these services were not handled properly, which could be an indication of possible favoritism to this particular vendor.

e. D-34 – Hi'ilei Aloha LLC

The purpose of this disbursement was to fulfill Hi'ilei Aloha's funding request for \$50,000 to hire a Grant Writer for Hi'ilei Aloha. There was no documentation that the grant writer position was advertised or filled. CLA requested evidence that Hi'ilei Aloha advertised or filled the position. OHA did not provide any documentation to answer this request. Without documentation or other proof that Hi'ilei Aloha hired a Grant Writer, OHA was unable to demonstrate that the purpose of this disbursement met its intended use. The fact that there is no evidence of deliverables being provided as required by the funding request, this is a red flag or indicator of possible fraud, waste, or abuse.

f. D-47 – Kualoa Ranch Hawaii, Inc.

As identified in the preceding section, this disbursement was used to rent facilities to entertain OHA staff and their families at a tourist attraction. This is an indication of possible use of public funds for entertainment and could be considered a wasteful use of funds. The HRS §103D statute may broadly apply because it prohibits the unethical use of State funds. HRS §103D-101(a) states, "All public employees shall conduct and participate in public procurement in an ethical manner. In conducting and participating in procurement, public employees shall (1) act as a fiduciary and trustee of public moneys...[and] (7) avoid the intent and appearance of unethical

---

<sup>272</sup> HRS §103-102(b)(4)(G) allows an exemption for "Performance, including entertainment, speeches, and cultural and artistic presentations." This sample is not a disbursement for a performance, it is a disbursement to hire a production company to host a concert.

behavior.” The use of public funds for a private function limited to OHA’s employees and families has the appearance of unethical behavior.

The other statute that may be applicable is within HRS §84. HRS §84-13 Fair treatment, states, “No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:...(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.” CLA interpreted this statute to mean that no OHA employee can use their position to grant unwarranted privileges to others. In this case, it appears that the former OHA COO agreed to use the trust’s funds to grant an unwarranted privilege, i.e., an OHA trip to a tourist attraction, to other OHA employees.

The combination of using the exemption procurement method for an unqualified expenditure and the use of the trust’s funds to provide entertainment to OHA employees, could be an indication of waste or abuse. Indicators of possible waste are the lack of documentation to support that the activities undertaken qualified as an exempt disbursement. If the disbursement was knowingly processed as an exempt disbursement when it likely should not have been processed at all, this may be an indicator of possible abuse. Whether this is an appropriate use of the trust’s funds would require a further legal analysis or assessment by the State.

g. D-48 – Wet ‘N’ Wild Hawaii

As identified in the preceding section, this disbursement was used for the entertainment of OHA staff and their families at a water theme park. This is an indication of possible use of public funds for entertainment and could be considered a wasteful use of funds. The HRS §103D statute may broadly apply because it prohibits the unethical use of State funds. HRS §103D-101(a) states, “All public employees shall conduct and participate in public procurement in an ethical manner. In conducting and participating in procurement, public employees shall (1) act as a fiduciary and trustee of public moneys...[and] (7) avoid the intent and appearance of unethical behavior.” The use of public funds for a private function limited to OHA’s employees and families has the appearance of unethical behavior.

The other statute that may be applicable is within HRS §84. HRS §84-13 Fair treatment, states, “No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:...(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided

by law.” CLA interpreted this statute to mean that no OHA employee can use their position to grant unwarranted privileges to others. In this case, it appears that the former OHA COO agreed to use the trust’s funds to grant an unwarranted privilege, i.e., an OHA trip to a tourist attraction, to other OHA employees.

The combination of the using the exemption procurement method for an unqualified expenditure and the use of the trust’s funds to provide entertainment to OHA employees, could be an indication of possible waste or abuse. Indicators of possible waste are the lack of documentation to support that the activities undertaken qualified as an exempt disbursement. If the disbursement was knowingly processed as an exempt disbursement when it likely should not have been processed at all, this may be an indicator of possible abuse. Whether this is an appropriate use of the trust’s funds would require a further legal analysis or assessment by the State.

See recommendations 31, 40, 50, 51, 64, 65, and 70.



## h) Procurement Card (pCard) Disbursements

Five disbursements tested were processed as pCard disbursements. A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the approval and use of OHA's Procurement Cards (Pcard) is included in **Attachment 12**. As part of this testing, CLA sought to determine if the goods or services met the expected use of the pCard as defined in OHA's Purchasing Card Program Internal Guidelines and Procedures, June 2016. These guidelines also include a list of use expectations and examples of unauthorized or inappropriate card use. OHA's Fiscal Procedures Manual, revised March 2, 2009, Section 2.2.8.1, 2.2.8.2., and 2.2.8.3 identifies the process for use of the pCard to book travel arrangements. Based on these procedures, OHA can use the pCard to procure goods or services without obtaining any quotes, bids, or entering into a contract. The use of a pCard requires various steps for internal review and approval, which were tested as part of CLA's procedures.

Included in Table 14 below is a summary of the results identifying for each criteria tested the number of disbursements (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>273</sup> For each pCard disbursement, CLA selected only a sample of pCard charges related to each disbursement. Thus, some of the pCard disbursements contain multiple observations because there were one or more pCard charges that did not comply with OHA's internal policies and procedures. Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 12** includes a table containing the results at the disbursement level and tickmarks explaining each disbursement with an observation.<sup>274</sup>

**Table 14: Summary of Results – OHA Procurement Card Disbursements**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	0	0	5	5

<sup>273</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>274</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 12**, tickmarks for pCard disbursements tested are numbered with the letter "H" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **H01** is the first observation tickmark for pCard disbursements.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or other agency capacity.	0	0	5	5
<b>HRS §103D: Hawai'i Public Procurement Code</b>					
<b>HRS §103D-102(b): Application of this chapter</b>					
[3]	The service or good qualifies as a listed exemption in 103D-102(b).	0	0	5	5
[4]	Document the specific exemption number.	0	0	5	5
<b>P-10: OHA Purchase and Procurement Procedures, revised March 2, 2009</b>					
<b>2.2.1.3: Exempt Procurements<sup>275</sup></b>					
[6]	If not qualified under the list of exemptions in 103D-102(b), the service or good qualifies as an exempt purchase under Hawai'i Administrative Rules Section 3-120-4 – Exhibit A.	0	0	5	5
[7]	Document the specific exemption number.	0	0	5	5
<b>OHA's Purchasing Card Program Internal Guidelines and Procedures, effective June 2016</b>					
<b>3. Use Expectations</b>					
[8]	The purchase met the expected use of a pCard.	0	0	5	5
[9]	The pCard holder is qualified to have a pCard.	0	0	5	5
<b>4. Unauthorized and/or Inappropriate Card Use<sup>276</sup></b>					
[10]	The purchase is not an unauthorized or inappropriate use of the pCard, including the state of Hawai'i's Restricted Purchases and Block Merchant Category Codes. <sup>2</sup>	0	0	5	5
[11]	If the purchase appears to be unauthorized or inappropriate, there is sufficient justification or extenuating circumstances to grant an exception.	0	0	5	5
[12]	The cardholder is the person utilizing the pCard for the purchase.	0	0	5	5
<b>7. Forms<sup>277</sup></b>					
[14]	If the purchase was initiated by a person other than the cardholder, authorization was obtained to use the pCard prior to the purchase.	0	4	1	5
[15]	An appropriate person approved the Request for Use of Purchase Card form.	0	0	5	5
[16]	If the receipt(s) were missing, a Missing Purchase Card Documentation Form was submitted.	1	0	4	5

<sup>275</sup> Criteria [5] is excluded as it was used by CLA to document information pertaining to use of the pCard including the cardholder, date, and amount charged along with testing of criteria [8] and [9] in section 3. Use Expectations. CLA determined that this criteria is not necessary to report the final results of the testing.

<sup>276</sup> The State of Hawai'i's Purchasing Card Program and Procedures, revised October 2004, categorized Restricted Purchases as: 1) any purchase over an amount established by the agency; 2) automotive gasoline; 3) cash; and 4) goods and services for personal use. It defines Blocked Merchant Category Codes as: 1) Entertainment/Recreation; 2) Financial services; 3) Food; 4) Hotels; 5) Laundry/Cleaning Services; and 6) Entertainment.

<sup>277</sup> Criteria [13] was excluded because it was used by CLA to document the name of the person who used the pCard but was not the cardholder. CLA determined that this criteria is not necessary to report the final results of the testing.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>OHA Fiscal Procedures Manual, revised March 2, 2009<sup>278</sup></b>					
<b>2.2.8: Travel</b>					
[30]	The travel request form was submitted to the Travel Services Units in a timely manner. (In-State: 10 or more days; Out-of-State: 30 or more days)	0	4	1	5
[31]	There is supporting documentation that justifies the travel.	2	0	3	5
[32]	Other allowable travel expenses are properly supported.	0	0	5	5
<b>2.2.8.1: OHA Trustee Travel Procedures</b>					
[33]	The Trustee or designated staff person transmits a Travel Allowance Authorization (TAA) form and completed Travel Order (TO) for each travel arrangement.	0	0	5	5
[34]	The Travel Services Unit obtains estimated costs for the travel.	0	0	5	5
[35]	The TAA was approved by the Chair or Administrator.	0	0	5	5
[36]	A signed Statement of Completed Travel with original receipts was submitted to the Administrator within 5 days.	0	2	3	5
<b>2.2.8.2: OHA Employee Travel Procedures</b>					
[37]	The Trustee or designated staff person transmits a Travel Allowance Authorization (TAA) form and completed Travel Order (TO) for each travel arrangement.	0	0	5	5
[38]	The Travel Services Unit obtains estimated costs for the travel.	0	0	5	5
[39]	The TAA was approved by the Hale Director.	0	0	5	5
[40]	The TAA was approved by the Deputy Administrator.	0	0	5	5
[41]	If applicable, the travel was approved by the Administrator.	0	0	5	5
[42]	A signed Statement of Completed Travel with original receipts was submitted to the Administrator within 5 days.	0	3	2	5
<b>2.2.8.3: OHA Non-Employee Travel Procedures</b>					
[43]	The traveler or designated staff person transmits a Purchasing Card Request & Authorization (PCRA) form and completed Travel Order (TO) with supporting documents for each travel arrangement.	0	0	5	5
[44]	The Travel Services Unit obtains estimated costs for the travel.	0	0	5	5
[45]	The TAA was approved by the Hale Director.	0	0	5	5
[46]	The TAA and TO were approved by the Deputy Administrator.	0	0	5	5
[47]	The TAA and TO were approved by the Administrator.	0	0	5	5
[48]	If applicable, a completed Request for Check Issuance form was submitted.	0	0	5	5
<b>OHA Operational Authority Delegation Hierarchy issued by the Chief Executive Officer on Interoffice Memorandum</b>					
<b>Issued February 9, 2010 and revised December 12, 2012, May 19, 2015, October 21, 2015</b>					
[49-52]	The Purchase Requisition had appropriate approvals based on the Operational Authority Delegation Hierarchy.	1	4	0	5
[53-56]	The Request for Check Issuance form had appropriate approvals based on the Operational Authority Delegation Hierarchy.	5	0	0	5
<b>Other Testing Results</b>					
[57]	Compliance with budget restrictions.	1	4	0	5

<sup>278</sup> Criteria [17] through [29] were related to an overview of the pCard process discussed by the former OHA CFO and current controller. These criteria were not documented in any official OHA policy or procedure and were similar to officially documented procedures. CLA determined that this criteria are not necessary to report the final results of the testing.

Description of Criteria Tested	Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[58] No fraudulent or wasteful disbursements were made.	0	0	5	5

Within each observation, CLA has listed the OHA disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 12**. Each observation also includes a reference to the applicable criteria listed in the table above.

1) Compliance with HRS §84-14: Standards of Conduct

Based on the procedures performed and publicly available information, CLA did not identify information that provides evidence of a conflict of interest as defined under HRS §84-14 for any of the pCard charges tested. Compliance with OHA's applicable internal policies and procedures.

2) Compliance with HRS §103D: Hawai'i Public Procurement Code

Based on the description of the charges for the disbursements tested, four of the five pCard disbursements are for services or goods that are consistent with the stated exemption identified by OHA or the other exemptions allowed under HRS §103D-102(b) and Hawai'i Administrative Rules Section 3-120-4 – Exhibit A (criteria [3], [4], [6], [7]).<sup>279</sup> The one pCard disbursement that did not cite an exemption, consisted of charges less than \$2,500. Accordingly, this pCard disbursement qualified as a Small Purchase under HRS §103-305.

CLA also noted that one of the pCard disbursements incorrectly identified the exemption citation; however, the charge was for facility costs for a conference, which is an allowable exemption under the Hawai'i Administrative Rules Section 3-120-4 – Exhibit A. Therefore, this pCard disbursement did not rise to the level of an observation, but instead appeared to be a documentation error. Therefore, CLA did not have observations relating to compliance with HRS §103D.

<sup>279</sup> The number of disbursements in this section refers to each pCard disbursement selected, not the multiple pCard charges within each disbursement. For efficiency, CLA tested only a sample of the pCard charges within each disbursement. When CLA tested a portion of pCard charges, it noted if any of the charges cited the exempt procurement method. The four out of five disbursements, therefore, consisted of pCard charges that cited the exempt procurement method one or more times. The one disbursement that did not cite the exempt procurement method consisted of a portion of pCard charges that CLA tested that did not cite an exemption. It is possible that other pCard charges within the sample did cite the exemption procurement method; however, CLA did not test these charges.

### 3) Compliance with OHA's applicable internal policies and procedures

The internal policies and procedures identified by CLA that are applicable to the processing of pCard disbursements include a review of the Request for Use of Purchasing Card, Travel Allowance Authorization, receipts and supporting documentation, Statement of Completed Travel, Purchase Requisition, and Request for Check Issuance. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. See **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

Included below is a summary of the observations for each of the documents reviewed as part of OHA's pCard disbursement process.

#### a. Request for Use of Purchasing Card:

- i. Four disbursements included Request for Use of Purchasing Card forms that were completed after the purchase was made (D-12, D-23, D-35, D-39 – criteria **[14]**). According to OHA's Purchasing Card Program Internal Guidelines and Procedures, all purchases of goods or services with a pCard by someone other than the cardholder, should be approved by an authorized person prior to the purchase and documented on the Request for Use of Purchasing Card form.

#### b. Travel Allowance Authorization:

- i. Two disbursements included Travel Allowance Authorization forms that were approved after the travel reservations were made (D-12, D-39 – criteria **[14]**). According to OHA's Fiscal Procedures Manual, all travel reservations with a pCard, should first be approved by an authorized person prior to making the reservation and documented on the Travel Allowance Authorization form.
- ii. Four disbursements included Travel Allowance Authorization forms that were not submitted within the period that OHA's policy defines as "timely" for the type of travel (D-12, D-23, D-35, D-39 – criteria **[30]**). According to OHA's Fiscal Procedures Manual, the Travel Allowance Authorization form must be submitted to the Travel Services Unit a minimum of 30 working days before the date of travel. All four disbursements included out-of-state travel arrangements, and the Travel Allowance Authorization form was submitted less than 30 days before the date of travel.

- c. Receipts and Supporting Documentation:
- ii. One disbursement did not include the receipt supporting the purchase (D-35 – criteria **[16]**). The pCard was used to purchase desktop phone units from Walmart, but the purchaser did not submit a receipt or copy of a receipt.
  - iii. Two disbursements did not include the supporting documentation justifying the travel (D-39, D-49 – criteria **[31]**). According to OHA’s Fiscal Procedures Manual, section 2.2.8, “All requests from staff, Trustees, and non-employees, must be accompanied by supporting documentation justifying the travel (conference/event invitation, event flyer or notice, event agenda, etc.).” These disbursements did not contain such documentation.<sup>280</sup>
- d. Statement of Completed Travel:<sup>281</sup>
- i. Two disbursements included a Statement of Completed Travel that an OHA Trustee submitted to the OHA CEO more than five days after returning from the trip (D-23, D-39 – criteria **[36]**). According to OHA’s Fiscal Procedures Manual, the traveler must submit a signed Statement of Completed travel with original receipts to the CEO within five days of returning from the trip.
  - ii. Three disbursements included a Statement of Completed Travel that an OHA employee submitted to the OHA CEO more than five days after returning from the trip (D-12, D-23, D-39 – criteria **[42]**). According to OHA’s Fiscal Procedures Manual, the traveler must submit a signed Statement of Completed travel with original receipts to the CEO within five days of returning from the trip.
  - iii. One disbursement included a Statement of Completed Travel on which the OHA employee did not include the date it was submitted (D-39 – criteria **[42]**). Without the date submitted, CLA could not determine if the Statement of Completed Travel was submitted to the OHA CEO within five days after returning from the trip. According to OHA’s Fiscal Procedures Manual, the traveler must submit a signed Statement of

---

<sup>280</sup> Selection D-39 contained three charges without justifying documents. These three charges were comprised of two charges for air travel for two individuals to New Zealand, costing \$2,488.70 each; and one charge for the Hilton Arlington, costing \$2,328.93. Selection D-49 contained one charge without justifying documents. It was for housing from May 16, 2013 to June 1, 2013 in New York, New York, costing \$6,405.00.

<sup>281</sup> Each pCard disbursement consisted of multiple charges, and CLA tested only a sample of the charges within each disbursement. It is possible that there is more than one observation per disbursement due to the multiple charges tested.

Completed travel with original receipts to the CEO within five days of returning from the trip.

e. Purchase Requisitions:

- i. Four disbursements included a copy or copies of the Purchase Requisition that were not signed and dated by the Budget Analyst (D-12, D-23, D-35, D-39 – criteria [49] through [52]).<sup>282</sup>
- ii. Four disbursements included a copy or copies of the Purchase Requisition; however the Purchase Requisition forms used for pCard disbursements does not include a section where the manager, LOB Director, CFO, or CEO can approve the form (D-12, D-23, D-35, D-39 – criteria [49] through [52]).<sup>282</sup> One disbursement also required the approval of the BOT Chairperson, and, similarly, the Purchase Requisition form did not include a section where the BOT Chairperson could approve the form (D-35). According to the Operational Authority Delegation Hierarchy, these individuals may be required to approve the form depending on the amount charged to the pCard. CLA inquired about this observation, and OHA responded that the “approval is on the Request for Use of Purchasing Card form and Travel forms.” CLA reviewed the forms and noted that there is an area for the manager, Program Budget Authority, and Procurement Unit Approval, but it is unclear if the LOB Director, CFO, or CEO are required to approve the forms. It appears that the Fiscal Procedures Manual does not reflect the actual approval process for pCards that OHA currently uses.
- iii. One disbursement was missing the Purchase Requisition form (D-49 – criteria [49] through [52]).

f. Request for Check Issuance:

- i. All five pCard disbursements were missing the Request for Check Issuance form (D-12, D-23, D-35, D-39, D-49 – criteria [53] through [56]). According to OHA, the Request for Check Issuance form is not used, and pCard disbursements are paid from the Purchase Order. CLA noted that the disbursements contained a Statement of Account Report that was stamped with the payment information, including the date, check number, check date, and Purchase Order number.

See recommendations 63, 68, and 69.

---

<sup>282</sup> The charges made to the pCard occurred over a period of time by different cardholders, and, as such, were organized onto one or more Purchase Requisitions.

#### 4) Compliance with budget restrictions

For each disbursement selected by CLA for testing, CLA requested a copy of the respective purchase requisition. CLA reviewed the purchase requisition to identify that the Budget Analyst certified and agreed that the requisition was in accordance with BOT Approval of the Program's operating budget and would not exceed the BOT approved Program Budget for the applicable fiscal year.

- a. As noted previously, four disbursements included a copy or copies of the Purchase Requisition that were not signed and dated by the Budget Analyst (D-12, D-23, D-35, D-39 – criteria **[57]**). As a result, the Purchase Request was not certified that it was in accordance with BOT approval of the program's operating budget and that the amount will not exceed the BOT approved program budget for the fiscal year.
- b. As noted previously, one disbursement was missing the Purchase Requisition (D-49 – criteria **[57]**). As a result, there was no evidence that the Purchase Request was certified that it was in accordance with BOT approval of the program's operating budget and that the amount will not exceed the BOT approved program budget for the fiscal year.

See recommendation 63.

#### 5) No fraudulent or wasteful disbursements

Based on the procedures performed and publicly available information, there are no red flags or indicators of fraud, waste, or abuse related to the pCard charges and disbursements. Although there are some observations for these disbursements that were discussed previously, the overall results from the testing performed did not identify red flags or indicators, which would suggest possible fraud, waste, or abuse.



### i) Lease Disbursements

One disbursement did not specify the disbursement method used; however, it was a lease payment (D-07). OHA exempts the leases of real property and office rentals from HRS §103D. The exemption is based upon corporate counsel’s interpretation of the definition of “goods,” “services,” and “construction” in HRS §103D, which excludes leases of real property and office rentals. Therefore, CLA tested this disbursement as an exempt disbursement and separate from section g) because it consisted of twelve line items on three different invoices for one month of base rent and fees.

A detailed list of the applicable HRS rules and OHA policies and procedures identified by CLA to test the approval and execution of the lease disbursement is included in **Attachment 13**. As part of this testing, CLA sought to determine if the goods, services, or disbursement type appeared to qualify as exempt under the listed exemptions included in HRS §103D-102(b) or Hawai’i Administrative Rules Section 3-120-4 – Exhibit A. OHA’s Fiscal Procedures Manual, revised March 2, 2009, Figure 2.2.1.3 identifies the process for procuring exempt goods or services (see **Exhibit 02**, page 56). Based on these procedures, OHA can identify a vendor from which to procure goods or services without obtaining any quotes or bids. The exempt procurement method requires various steps for internal review and approval, which were tested as part of CLA’s procedures.

Included in Table 15 below is a summary of the results identifying for each criteria tested the number of disbursements (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>283</sup> Included below the tables is a discussion of the more significant observations from CLA’s testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 13** includes a table containing the results at the disbursement level and tickmarks explaining each disbursement with an observation.<sup>284</sup>

---

<sup>283</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>284</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 13**, tickmarks for the lease disbursement tested are numbered with the letter “I” as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation “**I01**” is the first observation tickmark for this lease disbursement.

**Table 15: Summary of Results – Exempt (Lease) Disbursement**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>HRS §84: Standards of Conduct</b>					
<b>HRS §84-14: Conflicts of Interest</b>					
[1]	Employees selecting the contractor did not have a financial interest.	0	0	1	1
[2]	Employees selecting the contractor were not engaged as legal counsel, advisor, consultant, representative, or in any other agency capacity.	0	0	1	1
<b>HRS §84-15: Contracts</b>					
[3]	The contract was not with a legislator or employee who has controlling interest.	0	0	1	1
[4]	If the contract was with a legislator or employee who has controlling interest, alternative criteria were met.	0	0	1	1
[5]	The person or the business entering into contract with OHA was not represented by a person employed by OHA in the preceding 2 years.	0	0	1	1
[6]	If the person or business entering into contract with OHA was represented by a person employed by OHA in the preceding 2 years, the person did not participate in the matter with which the contract is directly concerned.	0	0	1	1
<b>HRS §103D: Hawai'i Public Procurement Code</b>					
<b>HRS §103D-102(b): Application of this chapter</b>					
[7]	The service or good qualifies as a listed exemption in 103D-102(b).	0	0	1	1
[8]	Document the specific exemption number.	0	0	1	1
<b>OHA Fiscal Procedures Manual, revised March 2, 2009</b>					
<b>2.2.1.3: Exempt Procurements<sup>285</sup></b>					
[9]	If not qualified under the list of exemptions in 103D-102(b), the service or good qualifies as an exempt purchase under HAR 3-120-4, Exhibit A - Procurements Exempt from Chapter 103D, HRS.	0	0	1	1
[10]	Document the specific exemption number.	0	0	1	1
<b>2.2.1.3: Exempt Purchase Procedure<sup>286</sup></b>					
[11]	The need to create a Purchase Requisition was identified by a Hale Director or Deputy Administrator.	0	0	1	1
[12]	The Purchase Requisition complied with the OHA Procurement Policy (Attachment 19 to Fiscal Procedures Manual). Attachment 19 is a table that summarizes the value (amount) and type of service or good being purchased and the procurement method required. The testing of proper procurement method is documented in criteria [7] - [10] above.	0	0	1	1
[13]	The Purchase Requisition representative verified funds were available for the procurement.	0	0	1	1
[14]	The Purchase Requisition was approved by the appropriate manager (see Operational Authority Delegation Hierarchy for appropriate approval levels).	0	0	1	1
[18]	For amounts of \$2,500 or greater, the Purchaser completed the Procurement Check List (PCL). (See section 2.2.4 below)	0	0	1	1

<sup>285</sup> Criteria [7] and [8] were also tested as part of the OHA Fiscal Procedures Manual, revised March 2, 2009, section 2.2.1.3. Exempt Procurements, but are not shown in this section to avoid duplication.

<sup>286</sup> Criteria [15], [16], and [17] are excluded as they were used by CLA to document information pertaining to the Purchase Requisition, including the names of the individuals preparing and approving the form. CLA determined that these criteria are not necessary to report the final results of testing.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>2.2.4: Grants, Procurement, and Contracts Review Process</b>					
[19]	A complete Purchase Requisition was submitted by a designated Purchase Requisition Representative for the review process.	0	0	1	1
[20]	[a] An Accounting Checklist was submitted.	0	1	0	1
	[b] Funds were verified by the Budget Analyst.	0	0	1	1
	[c] Funds were certified by the CFO.	0	0	1	1
[21]	Unless not required by statute, the contractor submitted a Tax Clearance to OHA prior to entering into the contract.	0	0	1	1
[22]	A Procurement Document Checklist was submitted and signed by a Hale Manager.	0	0	1	1
[23]	The owner of the business (except for sole proprietorships, charitable organizations, unincorporated associations, and foreign insurance companies) submitted a DCCA Verification showing Proof of Good Standing with the State of Hawai'i.	0	0	1	1
[24]	The Hale Manager submitted a Contract for Purchase of Services.	0	0	1	1
<b>2.2.4.2: Purchase of Goods and Services Review Process</b>					
[25]	For the purchase of services, staff used the standard contract and it include all required provisions.	0	0	1	1
<b>2.2.4.3: Review Documentation</b>					
[26]	The senior staff attorney signed the Procurement Check List.	0	0	1	1
[27]	The senior staff attorney signed the contract.	0	0	1	1
<b>2.2.4.4: Purchase Review Process for Contracts<sup>287</sup></b>					
[28]	The Accounting Check List (ACL) was submitted to the Budget Analyst to ensure availability of funding, correct coding, and installment payments coincided with contract language.	0	1	0	1
[29]	Appropriate signatures were obtained on the contract (see Operational Authority Delegation Hierarchy).	0	0	1	1
<b>2.2.5.1: Auto-create Purchase Order Process</b>					
[32]	The Purchase Order was reviewed and signed by the CFO.	0	0	1	1
<b>2.2.5.2: Receiving on a Purchase Order Process</b>					
[33]	The Purchase Requisition Representative received the invoice on the Purchase Order.	0	1	0	1
<b>2.2.7.3: Contract Payment Process</b>					
[35]	The Request for Payment on Contract was approved by the Administrator or Deputy Administrator.	0	1	0	1
<b>2.2.7.5: Check Issuance and Distribution</b>					
[38]	The invoice was stamped "Paid" and marked with the check number.	0	1	0	1
<b>Other Testing Results</b>					
[39]	Compliance with budget restrictions.	0	0	1	1
[40]	No fraudulent or wasteful disbursements were made.	0	0	1	1

Within each observation, CLA has listed the OHA disbursement sample number with that particular observation. The specific disbursement number and a more detailed

<sup>287</sup> Criteria [30], [31], [34], [36], and [37] are excluded as they were used by CLA to document information pertaining to the approval and execution of the disbursement. CLA determined that these criteria are not necessary to report the final results of testing.

discussion of the observation can be found by referring to **Attachment 13**. Each observation also includes a reference to the applicable criteria listed in the table above.

1) Compliance with HRS §84: Standards of Conduct

Based on the procedures performed and publicly available information, CLA did not identify information that provides evidence of a conflict of interest as defined under HRS §84 (criteria **[1]** through **[6]**).

2) Compliance with HRS §103D: Hawai'i Public Procurement Code

Based on the nature of the disbursement tested, the disbursement appears consistent with the stated exemption identified by OHA under HRS §103D-102(b) (criteria **[7]**, **[8]**).

3) Compliance with OHA's applicable internal policies and procedures

The internal policies and procedures identified by CLA that are applicable to the processing of disbursements include a review of the Procurement Document Checklist, Purchase Requisition, Tax Clearance and DCCA Verification submitted by the contractor, Purchase Order, vendor invoice, and Request for Check Issuance. When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Operational Authority Delegation Hierarchy in effect at the time. See **Exhibit 03** for each delegation hierarchy in effect during the period covered by this engagement.

There are two observations for this disbursement pertaining to compliance with OHA's internal policies and procedures, which are as follows:

- a. The disbursement contained a vendor invoice that was not stamped with "Goods/services Rec'vd Satisfactory" indicating the invoice was approved for payment, the person reviewing the invoice, the date of the review, and whether to close out the purchase order (criteria **[33]** and **[38]**). Furthermore, one of the vendor invoices stamped with "Approved for Payment" was approved by the Land Management Officer at the time. The Land Management Officer did not appear on the list of Program Managers and LOB Directors and did not appear to be the appropriate Budget Authority to approve the disbursement.
- b. This disbursement of \$130,049 was paid to PPPH Associates for the base rents of OHA's headquarters, Common Area Maintenance (CAM) fees, CAM fees for the Native Hawaiian Roll Commission, and after-hours air-condition

use.<sup>288</sup> OHA categorized the payments as an exempt procurement; however, it was not processed as an exempt contract and it was not assigned a contract number. Instead, the lessor's invoices were received against a Purchase Order, and payments were made directly to the vendor without using a Request for Payment on Contract or a Request for Check Issuance. CLA observed that OHA stamped the invoices with "Goods/Services Recv'd Satisfactory; Approved for Payment," and there was a line for an OHA employee to sign and approve the payment. OHA treated the lease payments as though they were separate individual disbursements rather than contract payments; however, there was a lease agreement (i.e., contract) in place. (criteria [35])

See recommendation 67.

4) Compliance with budget restrictions

There were no observations pertaining to compliance with budget restrictions for this disbursement.

5) No fraudulent or wasteful disbursements were made

Based on the procedures performed, there are no red flags or indicators of fraud, waste, or abuse related to the lease disbursement.

---

<sup>288</sup> The Native Hawaiian Roll Commission was located within OHA's office space. This arrangement was based on the Hawai'i Senate Act 195, approved on July 7, 2011, which included the provisions that the NHRC was a five-member commission established within OHA for administrative purposes only.

## **E. ANNUAL REPORTS TO THE BOARD OF TRUSTEES**

On an annual basis, OHA staff prepare an annual report on the results of OHA's activities for the preceding fiscal year. The annual report is issued in approximately November of each year for the fiscal year ending June 30. A copy of the annual report issued for FY 2015-16 is included in **Exhibit 32**.

To assess the sufficiency of the internal controls in place to ensure the integrity of the performance indicators reported in the annual report, CLA inquired with OHA staff regarding the process to prepare the report. For the report issued for the fiscal year ended June 30, 2016, CLA traced the information in the report to OHA's audited financial statements and general ledger to determine the accuracy of the information in the report.

### 1) Staff Inquiries

Based on discussions with OHA staff, the following process is used to prepare the annual report to the Board of Trustees. The Director of Community Engagement is responsible for preparing the report with the assistance of staff in the Community Engagement (CE) department. Around June or July, CE staff meets with appropriate OHA staff, including the CEO, COO, CFO, and grants department to discuss the information that will need to be sent to CE to prepare the report. The purpose of the discussions with the CEO and COO are to develop the general message that will be communicated in the report. The meetings with the CFO and grants department is to discuss the specific information that will be provided.

The CFO and accounting department staff prepare the financial information and charts that will be included in the annual report (i.e., budget information, unaudited financial statements – see pages 5 and 16-19 in **Exhibit 32**). CE department staff work with accounting to determine how the financial information can best be presented in the report, as the CE department works on graphically displaying the meaning of the numbers provided. Ultimately, the CFO has to approve the financial information presented.

The grants department provides the detail of the specific grants issued during the year (see pages 12 to 15 of **Exhibit 32**). The grants department is also responsible for compiling and providing the overall impact of the grants as reported. Other OHA departments provide information that gets included in the report. For example, the loan department provides the information on economic self-sufficiency (**Exhibit 32**, page 11).

Both the CFO (accounting) and the grants department have to approve the annual report before it is published.

### Observations

The reports and other information provided by the various departments is not kept by CE for future reference. Additionally, the Director of Community Engagement could not indicate if the grants information reported was based on awards made or

dollars disbursed. The plan for this coming year is to clarify this with the grants department for the upcoming report.

See recommendations 71 and 72.

## 2) Reconciliation of Report to OHA's Financial Information

On a sample basis, CLA compared the specific grants and sponsorships listed in the June 30, 2016 annual report to the general ledger detail, grants tracking schedule, and audited financial statements provided to CLA. The purpose was to assess whether the financial information presented in the annual report to the BOT appeared accurate.

The grants tracking schedule provided to CLA for the year ended June 30, 2016 consisted of only programmatic grants and did not include 'Ahahui event grants.

### Observations

The comparison of the grants listed in the annual report to the grants tracking schedule provided the following observations:

- a) Not all grants listed in the annual report were shown in the grants tracking schedule provided. For example, the annual report lists a \$1.5 million programmatic grant to Kanu Oka 'Āina Learning 'Ohana "to support Hawaiian-focused charter schools." This grant was not listed in the grants tracking schedule provided to CLA; however, this grant was tested as part of CLA's sample selection. Additionally, all 'Ahahui event grants listed in the annual report are not included in the grants tracking schedule provided to CLA. The grants tracking schedules provided to CLA were in Excel and do not appear complete for each fiscal year.
- b) When comparing the grant amounts in the annual report to the amounts disbursed as shown in the general ledger, it is evident that the amounts disbursed in the respective fiscal year are less than the amounts awarded. This seems appropriate and logical as the grant funds should not be disbursed until the activities have been performed and the grantee has submitted all required documentation. It is also possible that not all funds awarded were ultimately disbursed if a grantee did not meet the requirements of the grant award. There were no instances in which the amounts disbursed exceeded the award amounts.

See recommendations 22 and 73.

**F. RECOMMENDATIONS**

- 01) Update policies and procedures to require that all vendors hired by OHA complete the Standards of Conduct Declaration form and retain the completed form in the contract files.
- 02) Require grant applicants to disclose on the grant application form any previous or existing financial relationships that any of the grantee's governing board or executives had or have with OHA, the LLCs, or its employees. Additionally, grant applicants should be required to disclose any personal relationships with OHA staff that may be perceived as a potential conflict of interest. This information should be reviewed and used by OHA in making its assessment on whether to award a grant to the applicant.
- 03) Provide training to OHA grants staff to ensure that they document any apparent or perceived conflicts of interest between OHA staff and a grant applicant or grantee. Grants files should maintain documentation of how the grants staff reached its determination of whether the conflict existed and/or how the conflict was resolved prior to awarding a grant.
- 04) Require any OHA employee that has an existing relationship with a grantee, or had a relationship with a grantee in the prior two years, to disclose whether he or she is receiving compensation for his or her involvement with the grantee and its activities. OHA employees with an existing relationship (personal or professional) with a grant applicant should abstain from making any decisions pertaining to the grant award.
- 05) Grantees should be required to communicate and report to OHA any time that it intends to change or alter the intended purpose and outcome of the activities for which the grant is awarded. Changes or alterations to the grants purpose and outcome should be documented on a grant contract amendment, which should clearly state what the new purpose and outcome of the grant is and an updated budget to reflect how grant funds will be used. Any additional supporting documentation that reflects how OHA and the grantee resolved the change should be retained in the grant file. OHA must review and approve the revised purpose and outcome and document its decision to continue funding the grant.
- 06) Implement a process whereby the Hawai'i State Ethics Commission Short Form Disclosure of Financial Interests filed by OHA's officers are reviewed to ensure there are no potential conflicts with OHA vendors or grantees. Copies of the disclosure forms and documentation of the internal review should be retained according to OHA's document retention policy.
- 07) Ensure that the OHA grant contract and procurement forms are compliant and clearly document that the grantee is meeting the conditions for awarding grants as described in HRS §10-17(b). There should be documentation in the procurement forms that OHA verified if the grantee had applied or received all applicable licenses and permits and that OHA verified the grantee's insurance was sufficient to provide indemnification, when requested by OHA. OHA should require the grantee submit copies of the applicable licenses and insurance certificates and retain them in the grantee file. If



the grantee was not required to obtain licenses, permits, or insurance, the grant documentation should indicate so with an explanation for why the grantee was exempt.

- 08) Ensure that the OHA grant contract and procurement forms are compliant and clearly document that the grantee is meeting the conditions for grantees as described in HRS §10-17(c). There should be documentation in the procurement forms that OHA verified the composition of the grantee's governing board, the governing board does not receive compensation, the grantee has bylaws that address conflicts of interest and nepotism, and the grantee does not employ or contract with two or more family members. OHA should retain in the grant files all related documentation obtained during this verification process.
- 09) Ensure that OHA grants are consistently executed on the most current OHA templates, including Memorandum of Agreements and Fiscal Sponsorship Agreements. The same language from the OHA grant contract should apply to all OHA grants awarded. Add a revision date to the bottom of all grant templates so that grant staff are able to easily identify the most current version.
- 10) Ensure that the grants staff is conducting grant monitoring and evaluation in accordance with HRS §10-17(d). Grants are required to be evaluated annually to determine whether the grant attained the intended results in the manner contemplated. Documentation of the evaluation must be retained in the grant file. OHA should consider whether the development of a standard annual evaluation form will assist in this process.<sup>289</sup>
- 11) Implement a process whereby the Grant Monitor reviews the grant file to ensure that Purchase Requisitions have been prepared and approved in an amount equal to the total grant award. The Grant Monitor should also notify procurement of multi-year awards to ensure that a Purchase Requisition is prepared and approved for the grant award for each fiscal year.
- 12) CLA observed that certain grants that were not fully spent contained a Request to Close a Purchase Order; however, CLA did not observe a policy regarding this in the Fiscal Procedures Manual. Update the Fiscal Procedures Manual to indicate when a Request to Close a Purchase Order should be used in the grant process, train staff accordingly, and enforce the use of this form and process.
- 13) Implement a review process whereby each grant contract file is reviewed to ensure that each of the documents required for the monitoring and evaluation of grants is appropriately completed and retained in the grant file. This should include all monitoring and evaluation documents required by HRS §10-17, OHA's Fiscal Procedures Manual, and OHA's Grants Standard Operating Procedures.

---

<sup>289</sup> If OHA has a template to perform monitoring and evaluation, it appears that it is rarely used based on the results of CLA's testing.

---

- 14) A check should never be issued for an amount different than what was approved on the Request for Payment on Contract or Request for Check Issuance. Implement a policy and train staff to ensure this practice does not continue. If the amount requested for payment must be modified, a new or revised Request for Payment on Contract (or Request for Check Issuance) should be prepared and approved, and supporting documentation should be retained to document the reason for the change.
- 15) Implement a process to mark digital and hard copies of grant applications with the date the grant was received so that grant staff that review the application can verify that the application was received before the solicitation deadline.
- 16) Ensure that the grant committee scoring and recommendation documentation is retained in the grant file to provide evidence that the review and recommendation processes occurred.
- 17) Ensure that attachments and schedules to BOT minutes are retained in the grant file to provide evidence that the grant was reviewed and approved by the BOT.
- 18) Enforce the requirement that Kūlia Initiative grant files contain a statement explaining why the grant requests and awards were not made through the Community Grants Program. Ensure that the Certificate of Vendor Compliance and IRS letter of determination are retained in the grant files.
- 19) Ensure that Kūlia Initiative grants are assessed using the Kūlia Initiative Review Form and that a copy of the form is retained in the grant file.
- 20) Implement a process whereby the grant staff, when reviewing a new grant application for award, conduct research to determine whether the grant applicant has received prior grants from OHA or has other historical business relationships with OHA. For example, if a grant applicant has previously received grants from OHA, and the purpose or intended results of the grant were not attained, OHA should consider this information in the review process for the new grant application. This information should be documented in the grant file and used by the grant staff to determine whether the grant applicant is in good standing with OHA as required by the Grants SOP.
- 21) Provide all grants department staff with ongoing training to ensure all policies and procedures are being followed and necessary documentation is being retained in the grant files.
- 22) Implement the use of a software program for tracking all grant applications and awards. OHA currently uses Excel spreadsheets to track and monitor grants awarded. To ensure that there is one reliable source of information for grants, OHA should implement the use of a software program that allows the following:
  - a. Input of all grant applications with applicant information
  - b. Uploading of all applicable grant documents for each application and award
  - c. Status of grant applications, including those that were not awarded

- d. Grant awards with total dollar amount, time period, and award per year
- e. Tracking of all monitoring activities, including uploading electronic copies of evaluation and monitoring reports
- f. Customization of reports

Using a software program for tracking grants will assist OHA in retaining grant information on a long-term basis and prevent the accidental loss of information. Additionally, the program will result in a comprehensive database that OHA can use when assessing future grant applications for award.

- 23) Establish a process to ensure that all documentation related to the RFP process is retained in the contract procurement file. This documentation should include (1) written determination on the use of the RFP method, (2) appointment of the evaluation committee, (3) a copy of the RFP, (4) a copy of the published notice, (5) a copy of the registry of proposals received by OHA, (6) copies of the acknowledgment of receipt of proposal (7) a copy of the evaluation documents, (8) a copy of the evaluation matrix, (9) a copy of the evaluation committee recommendation to hire, and (10) any other documents relevant to the RFP process.
- 24) Ensure that in accordance with OHA policy, a written determination is made by the Administrator that a competitive sealed proposal is the more appropriate method of contracting rather than competitive sealed bidding.
- 25) Implement the requirement for a review of the RFP draft by legal counsel prior to publication, and document this review on the Procurement Solicitation Routing form.
- 26) Conduct a review of each contract to ensure that each of the documents required for the establishment of a contract is appropriately completed and retained in the contract file. See also recommendation 47.
- 27) Ensure that whenever an amendment is executed for an existing contract, the amendment document is retained in the contract file.
- 28) Ensure that the senior staff attorney performs a review of the contract file prior to signing the contract. The senior staff attorney must ensure compliance with State Procurement Laws for purchases of more than \$2,500 and document the review on the Procurement Document Checklist as indicated by OHA Policies and Procedures Manual. See also recommendations 48 and 52.
- 29) Provide training to OHA staff, especially accounts payable staff, to ensure that once a payment is processed for a vendor, the payment is mailed or otherwise delivered directly to the vendor. It is not a best practice to deliver a prepared check to the staff requesting the payment. This practice heightens the risk of an employee not mailing or otherwise delivering the payment to the intended vendor.
- 30) Ensure that individuals in the accounts payable department are trained to double check their work to reduce the risk of overpayment in error.

- 31) Implement a process whereby record of the deliverables submitted by the vendor are retained in the contract file. If the deliverable by the vendor consists of verbal updates or meetings, ensure that some type of documentation is included in the contract file as reference for the deliverable.
- 32) Ensure that OHA staff and administration are aware that it is not a best practice to execute a contract for which the effective date precedes the execution date. There may be certain instances when a contract must be executed in this manner; however it should be only in rare occasions and a note should be included in the contract file to indicate the reason for this.
- 33) OHA must retain, within the contract file, the invoice and other supporting documents for all payments made on a contract. OHA should consider the risk of payment a vendor upon the execution of a contract and before the vendor has performed any work. If at all possible, OHA should avoid executing contracts that require a payment upon execution. If this type of arrangement continues to be used, it should be infrequent, and payment should not be made to the vendor without first obtaining an invoice.
- 34) If additional fees must be paid to a vendor on an existing contract, a contract amendment should be processed. Clear documentation must be included in the contract amendment language to describe the reasons for the amendment. If additional funds are needed for the vendor to complete work that was already accounted for within the original contract, there should be documented evidence of what prevented the vendor from accomplishing the deliverable within the original contract price. For example, if the vendor encountered delays that were outside of its control but within OHA's control, then a case could be made of the need for additional funds to be added as an amendment to the contract.
- 35) Implement a process for all contracts whereby the contract manager reviews all contracts no less than 60 days prior to the termination of the contract to assess whether there is a need for a contract amendment to document an extension in the effective period and, if applicable, an increase in contract fees. The contract manager, LOB Director, CFO, or any other OHA staff should never approve for payment an invoice that includes time or costs incurred after the contract period has expired for which no amendment has been executed. See also recommendation L10.
- 36) Establish a process whereby the contract procurement file maintains the names of the persons serving on a professional services review committee and selection committee and the following documents providing evidence that an appropriate selection process was completed: (1) Memorandum to CEO to appoint the Selection Committee, (2) evidence that the Procurement Officer ensured the impartiality and independence of committee members, (3) the Selection Committee individual scoring sheets, (4) the Selection Committee Scoring Matrix, (5) Memorandum to CEO recommending the top three ranked candidates with the CEO's approval.
- 37) Consistently require a process is in place to ensure the impartiality and independence of committee members. This process may include requiring that persons serving on a

professional services review committee and selection committee complete and sign an affidavit attesting to having no personal, business, or any other relationship that would influence their decision.

- 38) Ensure that, in accordance with HRS §84-18(c) and (e), no former employee of OHA who was employed for more than 181 days in the prior year, is hired for compensation nor any other consideration to perform the same type of work the person had performed while employed by OHA.
- 39) Provide training and education to all levels of OHA employees involved in the execution of contracts. It must be clear to them that completed documentation and approvals must be in place, such as the completed Authorization to Proceed with Contract, before a contract is actually executed.
- 40) Ensure that the contract procurement process is followed as dictated by current OHA policies and procedures without circumvention and without completing the required steps in the wrong order. For example, a contract should never be executed prior to all of the necessary steps being completed. See also recommendation 51.
- 41) Consistently follow the process outlined by HRS §103D-304 and by OHA's policy for the selection of Professional Service providers from the approved list when the need arises during the year for a specific service.
  - a. An administrator should designate a Selection Committee to evaluate the Statements of Qualification submitted by the approved professional service providers and rank at a minimum three providers using the selection criteria.
  - b. Professional service providers should not be selected without written documentation of the process followed and reason for selection.
  - c. The vendors approved for inclusion on the list of approved professional service providers must have submitted a Statement of Qualification and Expression of Interest for the year applicable to the contract for which they are being considered. The Statement of Qualifications and Expression of Interest should not be carried forward from one year to the next.
- 42) Ensure that a copy of the published Notice to Providers of Professional Services is included in the Professional Service Providers binder for reference along with evidence that the notice was published. This may include a newspaper clipping or screenshot of the Procurement Notices System to provide evidence that the notice was posted.
- 43) Ensure that compliance documents are always obtained from the vendors prior to contract execution. It would be prudent to establish a policy that requires an explanation as to why compliance documents may not be required from a vendor whenever this designation has been listed on the Procurement Package Checklist for procurements that are not grants or purchases of less than \$25,000.

- 44) Ensure that a Purchase Requisition is always completed not only at the beginning of the procurement process for a new contract, but also when the need for a contract amendment is identified so that there is verification of availability of funds, encumbering funds, and for use in creating the Purchase Order. See also recommendations 47, 48, and 54.
- 45) In the event that a procurement violation is identified, ensure that the appropriate steps are taken to complete a Report of Procurement Violation on State Procurement Office (SPO) Form-016, which lists five steps including determining whether appropriate corrective action has been taken, and forwarding the form (request) to the CFO for after-the-fact payment approval if one has been requested. In addition to completing the appropriate documentation, ensure that a copy of the completed form is retained in the related contract file.<sup>290</sup>
- 46) Implement a process to increase communication with the Board of Trustees with respect to the procurement of professional services, particularly when the services involve action items from the Board of Trustees. For any contract for which it is expected that the results of the work will require action or agreement by the Board of Trustees, it is prudent that discussions with the Board of Trustees take place prior to the commencement of the procurement process. This will help reduce possible waste from decisions made by the Board of Trustees not to proceed on an action item.
- 47) Perform revisions and updates to the OHA Fiscal Procedures Manual to ensure that it is complete and accurately reflects the policies and procedures as currently mandated by applicable Hawai'i Revised Statutes and as practiced by OHA. The manual should also be updated to reflect current titles and approval authorities. The review and update of this manual should take place at least every two years to ensure that current policies are reflected.
- 48) Consider implementing the process of stamping each invoice paid, indicating the check number on the invoice itself instead of, or in addition to, applying this stamp to the Request For Payment form. It is a best practice to apply this type of marking to the invoice itself to prevent the risk of the invoice being paid again should the invoice become separated from the Request for Payment form.
- 49) Consider developing and implementing a policy and procedures that require the procurement office to obtain a minimum of three quotes, when feasible, when seeking services that qualify as exempt. Although obtaining quotes are not required for goods or services that qualify as exempt under HRS §103D-102(b), the statute states in subsection 102(d) that “[g]overnmental bodies making procurements which are exempt from this chapter are nevertheless encouraged to adopt and use provisions of this chapter and its implementing rules as appropriate...” Obtaining three quotes before awarding a contract for exempt goods or services will help ensure that OHA receives a fair price, increases competition, and helps reduce the risk of

---

<sup>290</sup> Form SPO-016 is titled Report of Procurement Violation: Findings and Corrective Actions and/or Request for After-the-Fact Payment Approval.

vendor favoritism or other unethical behavior in the procurement process. Documentation of the quotes received should be retained in the procurement files.

- 50) Require staff to use other procurement methods (e.g., Professional Services), whenever possible, prior to using the exempt procurement method. The exempt procurement method should be used only when the goods or services qualify under the statute and when other procurement methods are not feasible. The use of other procurement methods will provide more competition and ensure OHA is receiving a fair and competitive price for its purchases.
- 51) Consider seeking guidance from the State Procurement Office regarding the appropriate application of the exemptions under HRS §103D-102(b) and Hawai'i Administrative Rules Section 3-120-4 – Exhibit A. The State Procurement Office may be able to provide additional training or guidance to OHA staff, especially the procurement department, to ensure the proper interpretation and application of the list of exempt goods and services. Appropriate OHA staff should be sufficiently trained. If staff are unsure of whether a service or good qualifies as exempt, they should be encouraged to contact the State Procurement Office for guidance.
- 52) Update the Operational Authority Delegation Hierarchy, Request for Payment on Contract, and Request for Issuance of Check to ensure that the approval signatures included on the request for payment/check align with the signatures required per the delegation hierarchy. If necessary, include a location on the payment request where the program, line of business, or other pertinent information is included so that staff can easily verify that the appropriate signatures were obtained.
- 53) Update the Procurement Document Checklist to include a location for the Procurement Manager to sign indicating that the form was reviewed.
- 54) Implement a process for obtaining and retaining documentation when signing authority is delegated to another member of OHA staff, such as the CFO giving signing authority to the Controller while the CFO is absent. Ensure that this documentation is kept with the procurement, contract, and payment files for later verification.
- 55) Implement procedures to ensure that documents are retained according to OHA's document retention policy and the Hawai'i state requirements. Consider the implementation of a digital document repository that would allow OHA to easily scan, upload, and store all relevant documents. This could assist OHA in the retention of important documents on a long-term basis.
- 56) Update the Operational Delegation Authority Hierarchy regarding grants awarded to the LLC's. The Operational Delegation Authority Hierarchy should require the approval of the Board of Trustees, regardless of dollar amount, to ensure there is no conflict of interest in the grant award process.
- 57) Ensure that information on the sponsorship review forms are consistent with the grantees formal letter or application. Grantee information received by OHA that is



not on the letter or application should be retained in the sponsorship file to ensure that a record of all relevant information is retained.

- 58) Revise the Operational Authority Delegation Hierarchy to specify the departments or titles required to approve and sign Requests for Check Issuance. Currently, the delegation hierarchy simply states "Appropriate Budget Authority," and OHA was unable to identify for CLA who the "Appropriate Budget Authority" was for disbursements. If necessary, consider creating a budget authority document that identifies the appropriate budget authority by line of business, division, etc.
- 59) Ensure that grants are issued only for the grant types established within the OHA Grants Program Standard Operating Procedures. Disbursements described as "Other" grants should be required to use another procurement method.
- 60) Ensure that sponsorships are not awarded for programmatic services. Grants awarded for programmatic services should use other grant methods (e.g., Community Grants Program).
- 61) Implement a process whereby the accounts used for a Budget Realignment to fund a sponsorship or grant are presented to the BOT for consideration and review.
- 62) Enforce the requirement that sponsorships, and other awards and disbursements, not exceed the dollar limits established by OHA. All appropriate OHA staff (i.e., grants, procurement, and accounting) should be adequately trained to scrutinize the supporting documentation to ensure that amounts are not split to circumvent spending/award limits. Any request that exceeds such spending limits should not be awarded, approved, or paid.
- 63) Ensure that accounting staff are sufficiently trained to not pay requests for payment that do not contain sufficient supporting documentation. All disbursements should equal the approved requests for payment and supporting invoices. Any exceptions should be returned by accounting to the appropriate OHA staff for correction and resubmission.
- 64) Require that disbursements not exceed the amount approved on a Purchase Requisition. If it is determined that the amount approved on a Purchase Requisition is not sufficient for the required disbursement, issue a new Purchase Requisition for the full amount of the disbursement and not only for the incremental increase. Approval of Purchase Requisitions is based on the dollar amount; therefore, issuing disbursements based on incremental Purchase Requisitions could be used to circumvent appropriate approval requirements.
- 65) Disbursements and other financial transactions should not be approved by individuals other than OHA staff and designated on the Operational Authority Delegation Hierarchy. If OHA desires an approval from staff working in the Native Hawaiian Roll Commission (NHRC) regarding a disbursement, there should be an additional approval required of the appropriate staff of NHRC; however, it should not replace the approval signatures required of OHA staff. The Operational Authority Delegation



Hierarchy should be updated to include the additional approval signatures required of NHRC staff.

- 66) Ensure that OHA staff and administration are sufficiently trained on the appropriate order of documents that must be approved before purchasing goods or services. CLA observed instances in which a check request was prepared prior to or at the same time as other documents that require approval before requesting payment. Goods and services should not be purchased or paid for prior to obtaining adequate approval for the purchase.
- 67) Consider implementing a policy that requires all disbursements to be approved via a Request for Check Issuance or Request for Payment on Contract. These documents include information indicating that the approver has certified to the receipt of goods or services, which is an important step for approving all disbursements.
- 68) Implement a process to enforce the requirements that (1) the Request for Use of Procurement Card form is completed and appropriately signed before a pCard is used, (2) all receipts and other supporting documentation are retained within the disbursement file, (3) the Statement of Completed Travel form is submitted within the deadline, and (4) all forms are signed and dated. Provide additional staff training regarding the appropriate process for pCard approval, documentation, and use. Ensure that steps are taken to immediately address instances when the policy is not followed. Consider revoking pCard privileges for staff that consistently do not follow policy.
- 69) Implement a process to enforce the requirement that the Travel Allowance Authorization form is submitted within the deadline required for in-state and out-of-state travel. Provide additional staff training regarding the required process, and ensure that steps are taken to immediately address instances when the policy is not followed.
- 70) Implement a process whereby leases and long-term rentals are procured using the Exempt Procurement method for contracts. Using contracts for leases and long-term rentals will provide assurance that a contract manager is assigned, the contract has appropriate oversight and monitoring, and the invoice amounts and rates are compared to the rental or lease agreement.
- 71) The Community Engagement department should retain in the department files the information provided by various OHA staff to prepare the annual report to the Board of Trustees. This information should be retained in accordance with OHA's standard retention policy to ensure that there is support for the information and numbers reported.
- 72) The Community Engagement department should clarify with the grants department regarding whether the reported grant and sponsorship information is based on dollars awarded or disbursed. The report should be updated to clarify the nature of the dollars reported (awarded versus disbursed).

- 73) Consider including information in OHA's annual report to the BOT that addresses the amount of grant awards disbursed. Currently, the annual report provides only grant awards. Providing disbursed dollars will help the BOT and other readers assess the overall results of the grant programs.

## **VII. Limited Liability Companies (LLCs)**

### **A. SUMMARY OF WORK PERFORMED**

In order to complete the scope of work outlined above, the following procedures and methodology was used by CLA to complete the contract and disbursement testing for the LLCs.

#### **1) Preliminary information gathering and document review**

On June 7, 2018, CLA met with LLC representatives Mona Bernardino, Chief Operating Officer (COO) for Hi'ilei Aloha, and Richard Pezzulo, Executive Director of Hi'ipaka (Waimea Valley), to receive an introductory overview of the LLCs and details of how they functioned in relation to OHA.<sup>291</sup> During this meeting, CLA learned the history of the LLCs and how they were structured, at their inception, to function independently of OHA, but with oversight from OHA's Chief Executive Officer, Chief Financial Officer, and Chief Operational Officer as managers of the LLCs. The LLCs functioned as private nonprofit entities separate from OHA, while providing OHA with quarterly reports and annual audit reports.

Subsequent to this meeting, CLA was given access to a secure file share portal that contained certain LLCs documents and financial information. CLA downloaded those documents deemed relevant to this engagement, including, general ledgers, check registers, policy documents, quarterly reports to OHA, and published annual reports. CLA performed a preliminary review of these documents to gain an understanding of the type and volume of the LLCs' financial activity.

#### **2) Process interviews of LLC staff**

On October 11, 2018, CLA met with Richard Pezzulo, Hi'ipaka's Executive Director, and Donna Mathes, Hi'ipaka's Controller/Accountant. On November 13, 2018, CLA met with Mona Bernardino, Hi'ilei Aloha's COO.<sup>292</sup> The purpose of the interviews was to gain a more comprehensive understanding of the LLCs' function and the policies and procedures used by the LLCs pertaining to contracting and disbursements for the period under review.

#### **3) Document request**

As stated above, CLA was granted access to a secure file share portal that contained certain documents needed to conduct this engagement, and CLA downloaded those documents deemed relevant. Between September 14, 2018 and September 27, 2018, CLA submitted a document request list to ES&A, Inc. requesting additional documents that were not available in the file share portal. A total of 54 items were requested. On

---

<sup>291</sup> The LLC's legal counsel, Anna Elento-Sneed and Sam M.P. Sneed of ES&A, Inc. were present during this meeting with the LLC representatives.

<sup>292</sup> The LLC's legal counsel, Anna Elento-Sneed of ES&A, Inc. was present for each of these interviews with the LLC representatives.

September 27, 2018, ES&A, Inc. sent to CLA a copy of the document request list updated to denote whether the requested documents (1) did not exist, (2) were in OHA's possession, (3) were designated by the LLCs as "Confidential," and/or (4) were available but the LLCs needed time to locate the requested documents.

Due to some concerns raised by the LLCs regarding the scope of CLA's engagement, there were delays in getting the documents on the request list. However, on April 30, 2019, ES&A, Inc. once again gave CLA access to the secure file share portal that housed certain documents of the LLCs. CLA downloaded additional financial data of the LLCs that allowed CLA to complete its data analysis of the LLCs in order to select a sample of contracts and disbursements.

There were nine items outstanding from the original request list sent to the LLCs that ultimately the LLCs communicated did not exist or were not able to be located.<sup>293</sup> These included items such as certain quarterly reports to OHA from Hi'ilei Aloha, organizational charts, and policies and procedures relating to Hi'ipoi and Ho'okele Pono.

#### **4) Data collection and analysis**

CLA received the general ledger and the check register for each of the LLCs that had activity for the period under review.<sup>294</sup> Using the general ledger and check register data, CLA summarized the quantity and total dollar value of payments to payees for each of the years under review in order to understand the types of transactions and the more significant vendors. CLA also reviewed the payee names to identify payments to the COO for Hi'ilei Aloha, the Executive Director of Hi'ipaka, the names of the LLC managers, and any payee that shared their last name.<sup>295</sup>

CLA prepared a listing of contracts for each of the LLCs based on copies of the contracts that were uploaded to the FileShare which CLA was told contained all of the contracts that existed for the period under review. CLA compared the names of vendors identified in the check register to the listing of contracts prepared and performed analytics on the types and frequencies of payments. CLA also identified any payees for which it was understood from the interviews and research conducted that disbursements or payments to these vendor may be of concern.

---

<sup>293</sup> There were no additional documents downloaded from the file share portal as the last nine items outstanding as CLA was informed that the remaining items were not located or did not exist.

<sup>294</sup> CLA was informed by Hi'ilei Aloha's COO that that Hi'ilei Aloha was asked by OHA to create the structure of Hi'ikualono with the intent that this LLC would at some point manage the land properties owned by OHA; however, with changes to the composition to the Board of Trustees it was decided that the management of the land properties would not be transferred to Hi'ikualono. Therefore this LLC existed under Hi'ilei Aloha, but had never had any activity and thus no general ledger or check register was available for this LLC.

<sup>295</sup> Part of the scope of work for the LLCs was to review contracts for possible "conflicts of interest with LLC managers and directors." Identifying payments to these individuals would allow CLA to include in its sample selection payments that could represent potential conflicts.

## 5) Selection of sample contracts and disbursements

On May 10, 2019, CLA sent to ES&A the sample selection for contracts and disbursements for the LLCs. According to the approved scope of work, CLA was to test 30 contracts and 25 disbursements for the LLCs. The sample selection sent to the LLCs consisted of 23 contracts and 21 disbursements. CLA reserved seven contracts and four disbursements to select after the trustee interviews that occurred the week of July 22, 2019. On Friday, August 2, 2019, CLA selected the remaining sample of seven contracts and four disbursements for the LLCs and emailed this list to ES&A, Inc.

## 6) Interviews of OHA trustees

As discussed in Section VI.A.6., beginning on page 35, during the week of July 22, 2019, CLA was in Honolulu and conducted in-person interviews of all nine current OHA trustees. The purpose of the interviews was to allow the trustees the opportunity to meet with CLA and share with CLA any thoughts or concerns they had regarding OHA or the LLCs relative to the scope of work of this engagement. Table 5 on page 35 includes a list of the trustees interviewed and the date of the interview.

## 7) Document production to CLA

### a) Contracts

For each contract selected, CLA requested that the LLCs provide the following documents, if applicable:

- Purchase Requisition
- Procurement documents such as RFP or Request for Quotes
- Executed contracts and any related amendment or change orders
- Purchase order
- Final deliverable
- Invoices and support for payments

### b) Disbursements

For each disbursement, CLA requested that the LLCs provide the following documents, if applicable:

- Purchase Requisition
- Purchase order
- Procurement documents such as RFP or Request for Quotes
- Proof of receipt/packing slip
- Invoices/receipts
- Any other relevant documents

On July 3, 2019, CLA was informed that the LLCs had gathered the supporting documents for the contract and disbursement sample selection, and that the documents would be available in hardcopy at the respective LLC offices. The hard-

copy documents identified were provided to CLA during its visit to Hi'ipaka the week of August 12, 2019, and during its visit to Hi'ilei Aloha the week of August 19, 2019. While on site, CLA identified additional documents needed and communicated the subsequent request to the respective LLC contact. While CLA was on site, the requested documents that were located were provided to CLA; however, not all documents had been located by the end of CLA's visit. The LLCs followed up with CLA to provide the additionally located items from the requests made during CLA's visit. All documents available were provided to CLA by October 15, 2019. In total, the LLCs provided to CLA approximately 122 supporting documents related to the sample of contracts and disbursements.

## **8) Inquiries with LLC staff**

### Hi'ilei Aloha LLC

The COO for Hi'ilei Aloha has been with the entity since its inception and was familiar with most of the contracts and disbursement transactions selected for Hi'ilei Aloha, Hi'ipoi, and Ho'okipaipai. When CLA arrived at Hi'ilei Aloha's office on August 12, 2019, CLA was provided with copies of supporting documents for contracts, contract payments, and disbursements; however, other documentation needed, such as deliverables, had not been gathered and made available to CLA. At the time CLA visited Hi'ilei Aloha, the COO was the only Hi'ilei Aloha employee in the office due to recent structural changes to the LLC. To ensure that the necessary documentation could be provided to CLA, the COO cleared her calendar and attempted to locate the additional support needed. Some of the support for contracts had to be transported back to Hi'ilei Aloha from ES&A, Inc.'s office where it had been stored. Because all of the supporting documentation had been provided in hard-copy format, CLA scanned the documents provided in order to retain for reference.

CLA met with the COO each day to provide additional requests for documents and to review questions that arose during the day related to contract and disbursement testing for each of the LLCs aside from Hi'ipaka.

### Hi'ipaka LLC

The Executive Director for Hi'ipaka has been with the organization for the entire period under review and was familiar with all of the contracts and disbursements for the entity. When CLA arrived to Hi'ipaka's office on August 19, 2019, CLA was provided with banker boxes that contained the sample disbursement support as well as the selected contract files. The contract files, for the most part, included documentation relating to the procurement process, the original contract, copies of deliverables (if applicable), invoices, and related payment support. Because the documentation had been provided in hard-copy format, CLA scanned the documents provided in order to retain for reference.

CLA met with the Executive Director each day to review questions that arose during the day related to contract and disbursement testing for Hi'ipaka.<sup>296</sup> At this time, it was also communicated whether additional documentation for the contract and disbursement selection was needed. CLA also met with other Hi'ipaka employees who assisted the Executive Director in locating additional documents.

**9) Assessment of Board of Trustees Oversight of LLCs**

In order to assess the Board of Trustees oversight of OHA and the LLCs, CLA conducted interviews of the current trustees, reviewed the State Audit reports issued in September 2013 and June 2018, reviewed board minutes to identify and understand current actions taken by the trustees pertaining to the Permitted Interaction Group on Organizational Guidance (Governance PIG), and researched general guidance and best practices pertaining to governance. Additionally, CLA considered the totality of the results from the testing of contracts and disbursements. The observations and recommendations pertaining to the trustee's oversight is included in Section VIII. Board of Trustees Oversight of OHA and the LLCs beginning on page 294.

**10) Status updates and communications with the Resource Management Committee**

See Section VI.A.10. beginning on page 37 for a detailed discussion of the status updates and communications with the Resource Management Committee.

---

<sup>296</sup> CLA was informed that for the week of CLA's visit, CLA could be on site at Hi'ipaka to conduct the testing all week except Wednesday August 14, 2019, as the Executive Director had a commitment to meet with the State auditors. For this reason, on Wednesday, August 14, 2019, CLA conducted the testing remotely from OHA's office using the scanned copies CLA had made.

## **B. TESTING CRITERIA**

Testing criteria refers to the specific requirements of the LLCs' internal policies and procedures that were identified by CLA to be covered during the testing of the LLCs' contracts and disbursements. For example, Hi'ipaka's SOP No. BUS-004 – Contracts with Suppliers, vendors, and contractors, dated May 7, 2009 states that the contractor or service vendor must demonstrate they are "responsible" offerors by providing a certificate of good standing with the DCAA. CLA established the receipt of good standing as one of the criteria for testing contract oversight.

### **1) Contracts**

The specific areas identified in the scope of work to be tested by CLA for LLC contracts (see Section V. Scope of Work – subsection 4.a. beginning on page 26) required that CLA develop and apply specific audit procedures to inspect contracts for:

- Conflict of interest with LLC managers and directors
- Deliverables were met by the contractor/grant recipient,
- Sufficiency of contract/grant oversight provided appropriately by the assigned contract manager/monitor, and
- Indicators of fraud, waste, or abuse.<sup>297</sup>

For each of the LLCs, CLA obtained the internal policies and procedures related to the approval and execution of contracts and contract payments. Compliance with policies and procedures was required under the disbursement testing only, but CLA referred to the LLC policies to identify if any policies existed pertaining to the oversight of contracts, conflicts of interest, and the general procurement process, which is relevant to the oversight of contracts. Based on the LLC, a set of internal policies and procedures was in place, but because of the size and objectives of each LLC, not all LLCs had established contracts for the period under review. Only Hi'ilei Aloha, Ho'okāpaipai, and Hi'ipaka had established contracts during the scope period. For each of these three LLCs, CLA identified the specific criteria to be tested. The following list identifies the LLC and includes the specific list of criteria tested by CLA.

#### **a) Hi'ilei Aloha LLC – Attachment 14**

Hi'ilei Aloha provided its Fiscal Policies and Procedures manual, a 17-page document.<sup>298</sup> Within this document, CLA identified the procedures applicable to the

---

<sup>297</sup> The order of the scope of work as listed here is in the same sequence as it is discussed in this report and is in slightly different order than presented in CLA's scope of work included as attachment to CLA's agreement with OHA.

<sup>298</sup> The manual did not contain an effective date, and the COO communicated that the manual was in effect for the time period under review.



contracting process that includes basic procurement process, purchase request, check request, and check signing authority. The policies and procedures outlined in this manual were brief and high level.

b) Hi'ipaka LLC – **Attachment 15**

Hi'ipaka provided its Standard Operating Procedures as well as its Corporate Procedures manual. These were two separate manuals that contained some overlap for the policies and procedures used by the LLC. The following Standard Operating Procedures (SOP) were relevant to contract procurement and payments on contracts, and CLA used them to develop criteria against which the contracts selected would be tested.

- SOP No. ADMIN-004 – Area: Administration - Procurement of goods and services dated May 7, 2009<sup>299</sup>
- SOP No. BUS-004 – Area: Business Group - Contracts with suppliers, vendors and others not on list of approved suppliers and vendors dated, May 7, 2009
- SOP No. CPM 005 – Area: Corporate Procedures Manual – Contracts, dated February 2, 2008
- SOP No. CPM-001 – Area: Ethics – Financial Conflict of Interests, dated December 18, 2007
- SOP No. BUS-005 – Area: Business Group – Accounts payable processing, dated July 15, 2009

c) Ho'okīpaipai LLC – **Attachment 16**

Ho'okīpaipai provided its Fiscal Policies and Procedures manual dated November 2012, which detailed its methods for a basic procurement process, purchase request, check request, and check signing authority. The contracts selected for Ho'okīpaipai were tested against the criteria outlined for each step of the contract process.

## 2) Disbursements

a) Hi'ilei Aloha LLC and Ho'okīpaipai LLC – **Attachment 17**

1. Purchase Requests and Check Requests

Hi'ilei Aloha and Ho'okīpaipai employ similar policies and procedures for non-contract disbursements. Purchases made through Hi'ilei Aloha must be approved by the Chief Operating Officer and purchases made through Ho'okīpaipai must be approved by the Program Manager, who in both cases is currently Mona

---

<sup>299</sup> For reference, CLA was also provided with SOP No. Admin-004 updated on February 19, 2018.

Bernardino. The Chief Operating Officer/Program Manager has authority to spend the amounts approved in the budget if the purchases are in compliance with purchasing guidelines and are allowable, reasonable, and allocable. The Chief Operating Officer/Program Manager is responsible for ensuring all purchases comply with the budget. The Chief Operating Officer/Program Manager has the option to approve requested purchases that are not part of the approved budget; however, all purchase requests must be supported by appropriate documentation.

After a purchase is approved, requests for payment must be submitted in writing on a "Request for Check Issuance" form. The purchase requestor must attach the invoice, original receipts, and any other supporting documentation. The purchase requestor must sign the "Request for Check Issuance" form and submit it to their supervisor and the Chief Operating Officer/Program Manager for approval. After all approval signatures are obtained, the form is submitted to accounting staff for payment. If a purchase is submitted without a receipt, the purchase requestor must submit a typewritten statement explaining why a receipt is not available and certifying that the purchase was made as represented.

## 2. Small or Simplified Purchasing<sup>300</sup>

Ho'okipaipai classifies purchases of goods or services costing between \$2,500 and \$25,000 as small or simplified purchases. This purchasing method is used to reduce administrative costs and create opportunities for small businesses to secure purchases and contracts. This purchasing method requires the purchase requestor to obtain three quotes for rate or price. Requests for quotes can be made in a variety of ways, using telephone calls, written requests, publishing notices in local newspapers, and posting notices on "bid" boards and web pages. Legal advisement is not required for these procurements. For purchases of goods or services less than \$2,500, the purchase requestor should procure the lowest and best price, but written records of such efforts are not required. For purchases of goods or services equal to or greater than \$2,500, the purchase requestor should document the quotations on a memorandum that includes the date the calls were made, date parties were contacted, and prices obtained. When requested, vendors should provide quotes that meet a specific requirement. Purchase orders are only issued for quotations that meet the requirements.

The quotes are evaluated for price and determining if the offeror is responsible. Quotes should be analyzed for quantitative factors such as trade discounts, all-or none qualifications, and transportation charges in determining the lowest price. In order to determine that the price offered is a "fair market price," a price analysis, which includes evaluating other quotes, historical purchases, advertised list prices, other market prices, and cost estimates, must be performed.

---

<sup>300</sup> This procurement method is not applicable to Hi'ilei Aloha, and all Hi'ilei Aloha disbursements tested by CLA followed either the Purchase Request and Check Request process or the Travel process.

When a vendor is selected, the Program Manager may issue a written purchase order to initiate the purchase transaction. Only when the vendor accepts the purchase order is the agreement binding.

### 3. Travel

Both Hi'iilei Aloha and Ho'okīpaipai pay for business-related travel costs of employees, including airfare, hotel, and ground transportation. Registration fees for conferences are not included in this method. Requests for payment of registration fees must be submitted in advance on a Request for Check Issuance form. Per diem expenses can be requested in advance, but the preferred arrangement is to submit per diem expenses after travel is complete.

The purchasing method begins when a traveler submits a "Request for Business Travel" form. Travelers must submit flyers and other event information, including event dates, travel method, and hotel information to support the requested travel arrangements. All requests must be approved in writing before reservations can be made. The Chief Operating Officer/Program Manager is responsible for ensuring airfare, hotel, and ground transportation is economical and reasonable for the trip and is responsible for using the corporate card to book the approved travel reservations.

When travel is complete, the traveler must submit a "Statement of Completed Travel" form within a week, itemize all business expenses, and include all applicable receipts. Personal expenses are not reimbursed. The completed "Statement of Completed Travel" form must be approved by the Chief Operating Officer/Program Manager. Documentation submitted with the "Statement of Completed Travel" may include airline confirmations, boarding passes, receipts for baggage charges, car rental, gas for car rental, taxi receipts, hotel charges, airport parking, and any other valid business charges. If the final "Statement of Completed Travel" shows the employee was advanced more funds than expended, the employee is required to return the overpayment.

## b) Hi'ipaka LLC – **Attachment 17**

### 1. All Procurements

Hi'ipaka's procurement method of good and services is made at the direction of the Executive Director or designated staff member. The procurement process begins with the Hi'ipaka Managers, who annually approve the total operating budget, capital equipment budget, and capital improvement projects budget. These budgets impose spending limits on the Executive Director for the purchase of routine supplies, equipment, and capital items. The Executive Director shall not exceed authorized spending limits as per the approved annual total operating budget and capital budgets without consent of the Hi'ipaka Managers.

When it is determined that goods or services are needed, the purchase requestor submits procurement requests in writing for the goods, services, or construction.

Purchases should be made in the best interest of Hi`ipaka, and the purchaser should consider price, quality, availability, timeliness, reputation and prior dealings when evaluating a vendor. The purchaser should also determine if the good or service is available from the Hi`ipaka vendor list. The Hi`ipaka approved vendor list is comprised of reputable vendors who can supply commonly used goods or services at best value for money.<sup>301</sup> If the goods or service cannot be provided by one of the companies or individuals on the approved vendor list, the items/services will be researched online.

Invoices received for goods or services rendered are forwarded to the responsible department head to verify that the service or product has been received. The department head completes a check request form and forwards it to the Business Manager for review. Once reviewed, the Business Manager forwards the check request form and the invoice to the Executive Director for approval. The Executive Director forwards the approved check request form and invoice to the accountant for payment. The accountant issues the check and forwards it to the Executive Director for signature. Checks over \$10,000 require two signatures. For regularly reoccurring invoices, a check request form is not required. In lieu of the form, the expense code is written on the invoice, along with the proper signature from the authorized staff member.

## 2. Small Purchases: Under \$15,000

When there is a purchase of goods or services costing less than \$15,000, the Executive Director has authority to approve the purchase based on the securing of three verbal or online quotes.

## 3. Request for Proposals

When the costs are greater than \$15,000, and the plan for meeting the objective of the purchase is unknown, then the purchase requestor uses the Request For Proposal (RFP) method. This process requires the Executive Director to evaluate

---

<sup>301</sup> According to Hi`ipaka's Corporate Policy Manual, CPM-001, "The Executive Director and the Business Group Manager may develop a list of pre-approved suppliers and vendors for routine and ongoing goods and services (e.g., office supplies, vehicle maintenance, portable lavatory services, etc.) of Ten Thousand Dollars (\$10,000) or less. Suppliers and vendors seeking to be included on the Pre-Approved List shall submit a price list of the goods and/or services they offer, as well as their proposed terms for billing, payment, delivery, and warranties (if any). Service vendors must also demonstrate that they are 'responsible offerors' by providing: (a) a certificate of good standing with the Department of Commerce & Consumer Affairs, State of Hawaii; (b) a copy of their FEIN; (c) proof that they have a current GET license; (d) certificates of insurance which meet the minimum levels set by the LLC Managers for the fiscal year; and (e) a copy of their contractor's license in the case of construction contractors...Selection of suppliers and vendors for inclusion on the Pre-Approved List shall be based on a number of factors including, but not limited to, price, quality, availability, timelines, reputation and prior dealings...The Executive Director and Business Group Manager shall review each supplier and vendor on the Pre-Approved List at least once every three (3) years. Suppliers and vendors with a history of unsatisfactory goods, unsatisfactory service and/or non-competitive prices shall be replaced."

several approaches to meet the needs and to request price offers from acceptable vendors/suppliers only. When determining which vendor to select, the Executive Director shall consider factors other than price, which may result in awarding the purchase to a vendor other than the low bidder.

c) Hi'ipoi LLC – **Attachment 17**

Hi'ipoi did not document its policies and procedures for the procurement of goods and services. CLA developed criteria and “best practices” that were consistent with the Stand Operating Procedures and Fiscal Policies implemented by the other LLCs for testing the Hi'ipoi disbursements. The criteria adopted a centralized accounts payable processing and reporting methodology, that required that an approved purchase request be submitted prior to the purchase, that payment was not issued until an invoice that matched the purchase order was received and the good or service was verified, that the Chief Operating Officer or authorized designated employee approved the check request form, and that the check was signed by the Chief Operating Officer or an LLC Manager.

### C. TESTING METHODOLOGY

The testing methodology is the strategy or thought process applied by CLA when reviewing the supporting documentation and information to determine whether a contract or disbursement complied with the LLCs' internal policies and procedures or other criteria identified for testing.

The following methodology was used by CLA to test or assess each criteria or testing area included in the scope of work. Next to each bulleted item below is a note on whether that item was applicable to only contracts, only disbursements, or both contracts and disbursements.

1) Conflict of interest with LLC managers and directors (contracts and disbursements)

The LLCs all have included within their written fiscal policies and procedures a Financial Conflicts of Interest policy. The policy states that managers and employees must complete and submit a Financial Conflicts of Interest Disclosure form: (a) upon becoming affiliated with the company, and annually thereafter; and (b) whenever a potential conflict of interest arises (see **Exhibit 33** for the policy for one LLC).

CLA reviewed the completed forms provided and also conducted public internet searches for all of the vendors to identify any indicators of potential, actual, or apparent conflict of interests.<sup>302</sup> This step included searching for the names of the vendors (company names and individual names), the LLC managers, Hi'ilei Aloha's COO, and Hi'ipaka's Executive Director.

2) Deliverables were met by the contractor/grant recipient (contracts only)

For each contract selected by CLA for testing, CLA requested and the LLCs provided a copy or the original of the respective contract. CLA reviewed the contract to identify the specific deliverables required of the contractor. As part of the document request to the LLCs, CLA requested all deliverables from the contractor for each contract selected.

CLA reviewed the deliverables provided and made an assessment on whether the contractor provided a product that appeared to comply with the deliverable requirements specified in the contract (and related amendments). Many of the contracts selected for Hi'ipaka were for capital improvement projects, and the Executive Director of Hi'ipaka took CLA through Waimea Valley to show CLA the work that had been done for the contracts selected. CLA did not assess whether the deliverables met the expectations of the LLCs or were to the standard expected for the type of service or industry. For all the contracts selected for the LLCs, CLA inquired

---

<sup>302</sup> If the vendor was a company or organization, CLA searched for the names of the individuals who owned the company and the names of the individuals listed in the contract, such as the individual signing the contract or the individual having communications with the LLCs during the contract negotiation process and the period of work.

with the COO of Hi'ilei Aloha and the Executive Director of Hi'ipaka whether the deliverable(s) met the LLCs' expectations.

- 3) Sufficiency of contract/grant oversight provided by the assigned contract manager/monitor (contracts only)

Through discussions with the LLCs' personnel and a review of the LLCs' internal policies and procedures, there are no written policies for how LLC personnel must provide oversight of a contract. The LLCs conveyed to CLA that contracts are normally managed by staff responsible for the applicable department related to the contract, and the mentioned staff would be responsible for the oversight of the contract and communications with the contractor. Ultimately, the COO of Hi'ilei Aloha was responsible for the contracts of all of the LLCs with the exception of the contracts for Hi'ipaka. The Executive Director of Hi'ipaka was responsible for the Hi'ipaka contracts. Because there were a limited number of contracts for the LLCs, the COO of Hi'ilei Aloha and the Executive Director for Hi'ipaka expected to be familiar with most, if not all, of the contracts since they had been in their same positions since the beginning of the period under review. When CLA sent the contract sample list to the LLCs, CLA requested that they identify the contract manager for each contract selected. **Attachment 03** includes a list of all contracts selected for testing and identifies the contract manager identified by the LLCs.

In order to make the assessment relating to the sufficiency of contract oversight, CLA primarily relied on whether the LLC processes and procedures, as documented in their respective standard operating procedures, were followed for contract procurement and the accounts payable process. If a contract had several related payments, CLA selected a sample of the related payments to test in order to assess whether the appropriate process was followed. After review of the provided documentation, if CLA had questions that were not answered by the documentation provided, CLA requested to meet with the COO of Hi'ilei Aloha or the Executive Director of Hi'ipaka. During CLA's on site visit, the COO of Hi'ilei Aloha and the Executive Director of Hi'ipaka made themselves available to CLA to answer questions relating to the contracts. Questions that they were not able to answer without further research, were answered via email communications subsequent to CLA's visit.

- 4) No evidence of fraud, waste, or abuse (contracts and disbursements)

As stated in Section V. Scope of Work beginning on page 24, this engagement was not an investigation. CLA's procedures were designed to detect and identify possible fraud, waste, or abuse; however, CLA has not made a conclusion as to whether fraud, waste, or abuse actually exists. Based on the totality of information gathered through the testing procedures performed, CLA has identified whether there are red flags or indicators of possible fraud, waste, or abuse. Those contracts or disbursements with red flags or indicators have been identified and are discussed within Section D. Results of Work Performed (beginning on page 239).

There are a multitude of transaction characteristics or situations that can be a red flag or indicator of possible fraud, waste, or abuse, and there is not one comprehensive

list to identify all possible red flags or indicators. Red flags or indicators can be specific to a transaction (i.e., how a transaction was processed) or the general attitude or environment in an organization (i.e., “get it done now” behavior). Red flags or indicators can also vary by the nature or type of transaction. Some of the more common red flags or indicators related to contracting and disbursements include, but are not limited to:

- Missing documents and/or no supporting documents
- Documents being completed out of the normal sequence
- Back-dating of documents
- Management override of processes or controls
- Little or no review or supervision over a transaction
- Non-compliance with policies or procedures
- Unexplained or unusual favoritism toward a particular vendor/contractor
- Failure to disclose an actual or apparent conflict of interest
- Contract awards made without adequate documentation of all actions taken to award the contract

The most exhaustive list of red flags of fraud identified by CLA is on the website for the Department of Defense (<https://www.dodig.mil/Resources/Fraud-Detection-Resources/Fraud-Red-Flags/>). The website lists “Fraud Red Flags and Indicators” by the type of transaction or fraud scheme, with over 40 areas covered. CLA extracted from this website those areas most applicable to contracts and disbursements, and included the list of fraud red flags and indicators in **Exhibit 04**.



#### **D. RESULTS OF WORK PERFORMED**

CLA's scope of work included testing 30 LLC contracts and 25 LLC disbursements. The following sections, sections 1) and 2), summarize the results of the testing performed on contracts and disbursements of the LLCs. To the extent supporting documents requested by CLA were missing or not available, CLA attempted to apply other procedures to verify the criteria being tested. Generally, CLA attempted to verify information pertaining to each contract or disbursement as follows: (1) supporting documentation validated the criteria being tested, (2) inquired with the COO for Hi'ilei Aloha and the executive director for Hi'ipaka, 3) performed visual observations of work performed for capital improvement projects, and 4) searched publicly available information.

##### **1) Contract Testing**

The contracts selected for testing included 30 LLC contracts. Only Hi'ilei Aloha, Hi'ipaka, and Ho'okīpaipai had entered into contracts during the scope period. The internal policies and procedures related to the approval and execution of contracts and contract payments for each of the LLCs varied. For this reason, CLA grouped the sample contracts for testing and for presentation in this report. Letters j) through l) of this report communicate the number of contracts tested for each LLC.

- j) Hi'ilei Aloha LLC – 9 contracts tested
- k) Hi'ipaka LLC – 18 contracts tested
- l) Ho'okīpaipai LLC – 3 contracts tested

The sections below contain the detailed results of the testing for the 30 LLC contracts selected by CLA.

##### **j) Hi'ilei Aloha LLC Contracts**

Nine Hi'ilei Aloha contracts were selected for testing by CLA. A detailed list of the applicable Hi'ilei Aloha policies and procedures identified by CLA to test the approval and execution of these contracts is included in **Attachment 14**. Included in Table 16 below is a summary of the results identifying each criteria tested with the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>303</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 14**

---

<sup>303</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

---

includes a table containing the results at the contract level and tickmarks explaining each observation for a contract.<sup>304</sup>

**Table 16: Summary of Results – Hi'ilei Aloha LLC Contracts**

Description of Criteria Tested <sup>305</sup>		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>Conflict of Interest with LLC Managers and Directors</b>					
[1]	No conflicts of interest between the LLC managers or directors and the vendor/service provider were identified.	0	0	9	9
<b>Deliverables Were Met by the Contractor/Grant Recipient</b>					
[2]	There was evidence that the service or product was verified and received by a staff member.	0	0	9	9
[3]	There was evidence that the deliverable was met by the contractor and CLA confirmed the deliverable.	1	0	8	9
<b>Sufficiency of Contract/Grant Oversight Provided Appropriately by the Assigned Contract Manager/Monitor</b>					
<b>Hi'ilei Aloha Fiscal Policies - Purchase Procedures</b>					
[4]	A written contract was executed for this work.	0	2	7	9
[5]	A purchase request was approved by the COO.	0	9	0	9
[6]	The COO ensured that all purchases complied with the budget.	0	9	0	9
<b>Hi'ilei Aloha Fiscal Policies - Accounting Procedures</b>					
[7]	The check request was submitted on a <i>Request for Check Issuance</i> form.	0	2	7	9
[8]	The invoice was attached to the supporting documentation for payment.	0	3	6	9
[9]	If applicable, the <i>Request for Check Issuance</i> form was approved by a supervisor.	0	2	7	9
[10]	The <i>Request for Check Issuance</i> form was approved by the COO.	0	1	8	9
[11]	If the form did not include a receipt, a typewritten explanation was submitted with the <i>Request for Check Issuance</i> form.	0	0	9	9
[12]	The <i>Request for Check Issuance</i> form contained or described why the purchase was necessary and included a cost or price analysis.	0	9	0	9
<b>No Fraudulent or Wasteful Disbursements were Made</b>					
[13]	There was no evidence of fraud, waste, or abuse.	0	2	7	9

1. Conflict of Interest with LLC Managers and Directors (criteria [1])

CLA reviewed whether Hi'ilei Aloha had a conflict of interest policy and located the Financial Conflicts of Interest policy in the area of ethics within its Corporate Policy manual. The policy explains that Hi'ilei Aloha is considered a nonprofit organization, and the “purpose of this policy is to protect the company’s interests when it is contemplating entering into a transaction or arrangement that might

<sup>304</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 14**, tickmarks for contracts tested for Hi'ilei Aloha are numbered with the letter “J” as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **J01** is the first observation tickmark for Hi'ilei Aloha.

<sup>305</sup> Hi'ilei Aloha did not assign contract numbers to any of its contracts, for this reason, CLA references the contracts tested by using the CLA sample selection numbers beginning with the prefix LK for the LLCs.

benefit the private financial interest(s) of a manager or employee of the Company, or might result in a possible excess benefit transaction.”<sup>306</sup>

For the scope period, CLA was provided with the Financial Conflicts of Interest Disclosure Statements completed in January 2011, August/September 2013, and January 2016 by the COO and by the LLC Managers. The Financial Conflicts of Interest Disclosure Statements completed indicate that the COO and the LLC managers did not have any direct or indirect financial interest in any transaction or arrangement with the LLC. CLA inquired of the COO whether these disclosure statements were completed on an annual basis as delineated by the policy, and it was communicated to CLA that they were supposed to be completed but since they were not located, it was possible that the forms were not completed for the 2012 and 2014 years.<sup>307</sup>

CLA did not identify any evidence of a conflict; however, Hi'ilei Aloha did not retain the conflict of interest forms for all years and it is possible that they were not always completed.

See recommendation L01.

2. Deliverable was met by the contractor (criteria **[2]** and **[3]**)

Of the nine contracts selected for testing for Hi'ilei Aloha, CLA was provided with evidence of a deliverable for eight of these contracts. The deliverable consisted of reports and or training materials depending on the type of contract. There were also some contracts for which the deliverable was a service, such as the provision of information technology system support, or office space rental, for example. For these types of contracts, CLA was able to verify the deliverable based on discussions with the COO and observation of the current process.

Information about the one contract deliverable that was not located and, therefore, not provided to CLA is explained below.

a. **LK-28** – Hi'ilei Aloha contract with Hawai'i Alliance for Community-Based Economic Development for \$10,000

The scope of work from the contract detailed the provision of capacity building services and assistance to Waiohuli Hawaiian Homesteaders Association with a feasibility study and business plan for phase 1 for the WHHA Community Center Complex. The work included monthly project team meetings, facilitation of site visits to relevant community center sites, one-on-one interviews with stakeholders and industry experts to inform the business planning process to ultimately draft a feasibility analysis and

---

<sup>306</sup> An excess benefit transaction refers to a profit that originates unfairly from a relationship with a nonprofit organization.

<sup>307</sup> Some of the contracts tested by CLA were for the years of 2012 and 2014.

business plan for this organization, which was the recipient of Hi'ilei Aloha's capacity building assistance.<sup>308</sup> However, the feasibility and business plan was not located by the COO. The COO explained that it is generally not Hi'ilei Aloha's practice to retain client's product after the work is done. The LLC may maintain drafts while helping the recipient organization; however, when the final product is done, Hi'ilei Aloha turns over the final product to the client.

See recommendation L02.

3. There was sufficient contract/grant oversight of the project/work by the assigned contract manager/monitor (criteria **[4]** to **[12]**)

In order to assess the sufficiency of the contract/grant oversight, CLA assessed whether the deliverable was ultimately met and whether Hi'ilei Aloha's policies and procedures were followed. Items *a* through *d* below describe the general observations made that related to all Hi'ilei Aloha contracts. Item *e* communicates the observations made only for certain contracts.

#### General Observations

- a. Purchase order system is not used and contracts are not assigned contract numbers.<sup>309</sup>

The Hi'ilei Aloha's Fiscal Policies and Procedures manual does not require the use of a purchase order system and it does not require the assignments of contract numbers. However, it is a best practice to use a purchase order system and to assign contract numbers for purposes of organization and reference. Having a purchase order and contract numbers assigned to each contract is specifically useful when a contractor has more than one open contract at the same time. The use of a purchase order and reference to a contract number helps to distinguish between different contracts which would allow the LLC to distinguish financial activity (i.e., vendor payments) by contract number.

- b. Purchase Request forms were not completed (criteria **[5]**)

The Fiscal Policies and Procedures manual for Hi'ilei Aloha, was ambiguous in its requirement for the completion of Purchase Requests. Even though the policy requires that all purchases be approved by the COO in advance and all purchase requests be supported by appropriate documentation, Hi'ilei Aloha does not use a Purchase Request form for any purchase other than the

---

<sup>308</sup> Hi'ilei Aloha refers to these recipients of capacity building assistance as clients.

<sup>309</sup> This is a general observation made for all of the LLCs for which contracts were tested. Although this observation does not relate to a specific criteria identified for procedure manuals of the LLCs, CLA believes these two items are critical for appropriate oversight and management of contracts, even for smaller organizations.

purchase of office supplies. The COO explained that, although Hi'ilei Aloha did not use a Purchase Request form for purchases other than office supplies, purchases were made only with her approval. The process to obtain the COO's approval included her staff communicating procurement ideas to her, such as hosting a conference, and the COO would ask her staff to obtain and provide pricing and estimates. Once her staff brought in estimates, she would work with them to decide which vendor(s) to use and would give her staff a verbal approval to initiate the purchase. The COO stated that the only record of the purchase request discussions would have been emails exchanged between her staff and potential vendors. Because the only place to record the COO's approval as required by the Fiscal Policies and Procedures manual would be on a Purchase Request form, these forms should have been completed for all purchases and not only for the purchase of supplies.

- c. No documentation that purchases complied with the established budget (criteria **[6]**)

The Fiscal Policies and Procedures manual for Hi'ilei Aloha details that the COO is responsible for ensuring that all purchases comply with the established budget; however, no documentation of this review was provided to CLA. The COO explained that because Hi'ilei Aloha is a small organization, she always knew what the established budget was, as she recalled from memory, but there was no documentation in the contract files for this review because this step was not documented on paper or in any other manner. This review should have been documented, and a Purchase Request form would have been an appropriate document in which to document this review.

- d. No documentation that a cost or price analysis was conducted (criteria **[12]**)

The Fiscal Policies and Procedures manual for Hi'ilei Aloha communicates that a cost or price analysis should be conducted to determine reasonableness, allocability, and allowability of each purchase. This may be accomplished in various ways, including the comparison of price quotation, market prices, and similar indicia; however, no documentation existed in the contract files to indicate that this assessment was conducted. The COO explained that although Hi'ilei Aloha employees would normally review prices to ensure that it was receiving the best contract possible, there was no documentation retained in the contract file of the cost or price analysis. When this assessment is conducted, the results of this assessment should be included in the contract file.

See recommendations L03, L04, and L05.

Specific Contract Observations

- e. Contract Signing Authority (criteria **[4]**)
  - i. One contract was signed by an individual without authority to sign contracts (LK-28). Although the Fiscal Policies and Procedures manual for Hi'ilei Aloha does not specifically communicate who has the authority to execute contracts, the COO communicated to CLA that only the COO had the authority to execute contracts.
  - ii. One contract was signed by the vendor three days after the effective date (LK-29). Although the Fiscal Policies and Procedures manual for Hi'ilei Aloha does not specifically address timing of execution of contracts, it is a best practice to have the contract execution date precede the contract effective date.
- f. Request for Check Issuance (criteria **[7], [9], [10]**)
  - i. One contract included one contract payment for which a Request for Check Issuance was not completed for one payment as required by the Fiscal Policies and Procedures manual for Hi'ilei Aloha (LK-27 – criteria **[7], [9], [10]**).
  - ii. One contract included three payments made with one check that did not have a Request for Check Issuance as required by the Fiscal Policies and Procedures manual for Hi'ilei Aloha. This same contract also had one Request for Check Issuance form that was not signed by the COO for the payment (LK-29 – criteria **[7], [9]**).
- g. Invoice (criteria **[8]**)
  - i. One contract included a payment for which an invoice was not submitted (LK-26).
  - ii. One contract included a payment for which an invoice was not submitted. Only the executed contract was included as supporting documentation for the payment (LK-27).
  - iii. One contract included a payment for which although it contained an invoice, it did not contain the statement of completed travel that should have been included in the supporting documentation along with the invoice (LK-29).

See recommendations L06, L07, L08, and L09.

4. There was no evidence of waste, fraud, or abuse (criteria **[13]**)

In the contract review process for evidence of fraud, waste, or abuse, CLA did not observe indicators of fraud or abuse; however, there are two contracts for which some indicators exist that a potential waste may have occurred.

- a) Contract Sample LK-26: Contract for \$1,960 in February 2016 to cover only transportation and hotel costs for the vendor to provide training services (only transportation and hotel expenses included as part of the contract).<sup>310</sup> The payments to the vendor exceeded the contract amount by \$600.68. A payment of \$500 was issued to the vendor as a stipend that was not included in the contract, and travel costs exceeded the contract amount by \$100.68.
- b) Contract Sample LK-28: Contract for \$10,000 in March 2013 to provide capacity building services. The payments to the vendor exceeded the contract amount by \$406 for out-of-pocket expenses that were invoiced to Hi'iilei Aloha but for which no receipt was provided.

See recommendations L10 and L11.

---

<sup>310</sup> The vendor agreed to not be compensated for the actual services provided, and instead Hi'iilei Aloha was to pay for only transportation and hotel costs. The cost of the training time was covered by the vendor company.

### k) Hi'ipaka LLC Contracts

Eighteen Hi'ipaka contracts were selected for testing by CLA. A detailed list of the applicable Hi'ipaka policies and procedures identified by CLA to test the approval and execution of these contracts is included in **Attachment 15**. Included in Table 17 below is a summary of the results identifying for each criteria tested the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>311</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 15** includes a table containing the results at the contract level and tickmarks explaining each contract with an observation.<sup>312</sup>

**Table 17: Summary of Results – Hi'ipaka LLC Contracts**

Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>Conflict of Interest with LLC Managers and Directors</b>					
[1]	No conflicts of interest between the LLC managers or directors and the vendor/service provider were identified.	0	1	17	18
<b>Deliverables Were Met by the Contractor/Grant Recipient</b>					
[2]	There was evidence that the service or product was verified and received by a staff member	0	6	12	18
[3]	There was evidence that the deliverable was met by the contractor and CLA confirmed the deliverable.	0	0	18	18
<b>Sufficiency of Contract/Grant Oversight Provided Appropriately by the Assigned Contract Manager/Monitor</b>					
<i>SOP ADMIN ACCT-004 May 7, 2009 - Procurement of Goods and Services</i>					
[4]	The Executive Director approved and signed the contract	0	0	18	18
[5]	The managers of Hi'ipaka LLC had the final approval on contracts of \$100,000 or more.	0	6	12	18
<i>SOP BUS-004 May 7, 2009 - Contracts with Suppliers, Vendors, and Contractors</i>					
[6]	A written contract was executed for this work.	0	6	12	18
[7]	The contractor or service vendor demonstrated they are "responsible offerors" by providing: [a] A certificate of good standing with the DCCA, State of Hawai'i	0	14	4	18

<sup>311</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>312</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 15**, tickmarks for contracts tested for Hi'ipaka are numbered with the letter "K" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **K01** is the first observation tickmark for Hi'ipaka.



Description of Criteria Tested		Contracts with Missing Documents	Contracts with Observations	Contracts without Observations	Total Contracts Tested
	<b>[b]</b> Their FEIN (Federal Tax ID Number or Social Security Number for artisans)	0	0	18	18
	<b>[c]</b> Current GET (General Excise Tax) license	0	0	18	18
	<b>[d]</b> Certificates of Insurance	0	12	6	18
	<b>[e]</b> Contractor's License (for construction projects)	0	12	6	18
<b>[8]</b>	The contract was signed by both parties.	0	0	18	18
<b>[9]</b>	There was evidence that the group manager was monitoring the performance of the contractor in accordance with the terms of the contract.	0	2	16	18
<b>[10]</b>	If applicable, the contract manager assessed to renew the contract 60 days prior to the termination of the contract.	0	1	17	18
<b>SOP BUS-005 July 15, 2009 - Accounts Payable Processing</b>					
<b>[11]</b>	A Check Request form was prepared.	1	2	15	18
<b>[12]</b>	The Office Manager (or contract manager) approved the check request.	1	6	11	18
<b>[13]</b>	The Executive Director (or other authorized person) signed the check.	0	2	16	18
<b>[14]</b>	Two signatures were included on checks greater than \$10,000.	0	1	17	18
<b>[15]</b>	The record of the contract payment contained the check stub and the invoice.	0	3	15	18
<b>[16]</b>	For reoccurring payments, the invoices contained the expense code and an authorized staff member's signature.	0	0	18	18
<b>No Fraudulent or Wasteful Disbursements were Made</b>					
<b>[17]</b>	There was no evidence of fraud, waste, or abuse.	0	0	18	18

## 1. Conflict of Interest with LLC Managers and Directors

Within the area of Ethics, Hi'ipaka has a Financial Conflicts of Interest policy (CPM-001) that is identical to the policy identified for Hi'ilei Aloha.

CLA was provided with the Financial Conflicts of Interest Disclosure Statements completed in January and September 2016 by the Executive Director and by the LLC Managers. CLA inquired of the Executive Director whether these disclosure statements were completed on an annual basis as delineated by the policy and it was communicated to CLA that it was possible that these forms were not completed in some years, however, if they were completed, they had not been retained and could not be located.

CLA did not identify any conflict of interests for the Hi'ipaka contracts selected for testing with one exception as follows (criteria **[1]**):

### a. **LK-18** – Hi'ipaka contract with OHA

This contract has an inherent conflict of interest because the LLC managers for Hi'ipaka are also the executives for OHA.

This is a sub-lease agreement between OHA and Hi'ipaka established in May 2015 for the Old Waialua Courthouse initially for \$7,514 annually. The original lease is between OHA and the Department of Land and Natural Resources (DLNR). The lease agreement stipulates a term of three years for the Old Waialua Courthouse, a building on the Hawai'i State Register for Historic Places. Hi'ipaka sub-leases the building and land from OHA to help perpetuate Hawaiian culture by preserving a site that can be used to engage in cultural practices.

The Executive Director provided further history about this contract. Originally, the DLNR asked OHA to lease the property and assume responsibility for its upkeep. OHA agreed to the arrangement because the courthouse could serve as a satellite office for the North Shore, just like the satellite offices on the other islands. OHA attempted to use the site and keep it open for community groups to use as well by hiring a property manager for the building, but the property manager only had one employee who could staff the building and did not serve the community needs. Ultimately, the plans for a satellite office did not work, and OHA reconsidered using a property management company for the site. The property management company was also too expensive for OHA, and OHA approached Hi'ipaka with the opportunity to sublease the property if Hi'ipaka would manage the site and its upkeep, keep the building open for community group use, and in exchange use the facilities to house Waimea Valley promotional videos and materials and a small gift shop, as a marketing effort for Hi'ipaka.

Although the contract was signed in May of 2015, no payments were made to OHA for this contract until October 2017, because no invoices were received from OHA. The payments included in the contract file provided to CLA related to a different agreement made between OHA and Hi'ipaka. When selecting the contract for testing it was not clear to what contract the payments belonged because Hi'ipaka does not assign contract numbers, and the Executive Director originally believed that the provided payment support was related to the selected contract. The Executive Director explained that the agreement was not being closely monitored by either OHA or Hi'ipaka.

See recommendations L03 and L12.

2. Deliverables were met by the contractor (criteria **[2]**, **[3]**)
  - a. All 18 contracts included documentation from the contractor or other evidence to indicate that the contractor completed and provided to Hi'ipaka the deliverables required by the contract terms.<sup>313</sup>

---

<sup>313</sup> There were also some deliverables for the contracts tested that were for capital improvement projects. For the capital improvement projects included in the contracts selected for testing, CLA was able to verify the deliverable by direct observation of the completed projects, such as restrooms built by the Waimea

- b. Six contracts included one or more payments for which the initials of the contract manager or the Executive Director were not present. The normal practice was for the invoice to be initialed by the contract manager or Executive Director to record the verification that the work was performed. CLA discussed this with the Executive Director, who mentioned that they may have failed to include the initials on these invoices, but the work had been performed and verified (LK-16, LK-17, LK-18, LK-19 and LK-24).

See recommendation L13.

3. There was sufficient contract/grant oversight of the project/work by the assigned contract manager/monitor (criteria **[4]** to **[16]**)

In order to assess the sufficiency of the contract/grant oversight CLA assessed whether the deliverable was ultimately met and whether the Hi'ipaka's policies and procedures were followed. Items *a* through *e* below describe the general observations made that related to all Hi'ipaka contracts. Items *f* through *k* communicate the observations made only for certain contracts.

#### General Observations

- a. Purchase order system is not used and contracts were not assigned a contract number.

Similar to Hi'ilei Aloha, Hi'ipaka's policies do not require the use of a purchase order system and do not require the assignment of contract numbers. Refer to the Hi'ilei Aloha section relating to this general observation.

- b. Conflicting information existed between Standard Operating Procedures and Corporate Procedures Manual relating to the individual responsible for contract executions, therefore, CLA could not verify the proper approvals for six contracts (criteria **[4]**, **[5]**).

The original Standard Operating Procedure (SOP BUS-004) dated May 7, 2009, stated the following about contracts: "Legal counsel will draft an agreement" and "Once the contract is finalized, the contract [sic] will be sent to the contractor/vendor for signature. The contractor/vendor will sign two original copies and return to Hi'ipaka LLC to be signed by a [sic] LLC manager" (**Exhibit 34**). However, the Corporate Procedures Manual (CPM-005) effective February 2, 2008, with revision date of March 5, 2015, stated that contracts would be drafted by the contract manager using the standard Hi'ipaka contract template created by Hi'ipaka's legal counsel. After the contract is

---

waterfall, upgrades to the welcome center, and upgrades to the Proud Peacock restaurant, for example. CLA was able to verify that the work was performed; however, CLA cannot provide an opinion on the quality of the work or whether it met contract specifications.

---

sent out to the contractor for review and signature, it is returned to Hi'ipaka for the Executive Director's signature. The contract is considered final once the Executive Director signs off (**Exhibit 35**).

Consequently, the Standard Operating Procedures and the Corporate Procedures Manual in place during the scope period communicated conflicting information. SOP BUS-004 stated that legal counsel would draft the contract agreements and an LLC manager would sign the contracts, while CPM-005 stated that the contracts would be drafted by the contract manager using the standard Hi'ipaka contract template and the Executive Director would sign the contracts. Because of the conflicting information between the two documents, CLA performed the testing based on the process communicated verbally. The Executive Director communicated to CLA that the process followed for contracts was for the Executive Director or contract manager to draft the contract using a Hi'ipaka contract template created by Hi'ipaka's legal counsel. After the vendor signed the contract and provided it to Hi'ipaka, the Executive Director would sign the contract and discuss the larger value contracts (\$100,000 or more) with the LLC managers during their quarterly meetings.

The Executive Director explained that this issue has since been addressed with SOP "ADMIN - 004" updated February 9, 2018, as the revised SOP states more clear guidelines as follows:

- Small purchase (Under \$15,000) - Executive Director has authority to approve
- Sole Source - Executive Director has sole authority to approve
- Emergency Procurement - Executive Director has sole authority to approve
- Competitive Bids - Executive Director has authority to approve
- Request for Proposals - Executive Director has authority to approve; however, procurements of \$100,000 or more are approved by the Executive Director with "final approval" by the Managers of Hi'ipaka.

The Executive Director further communicated that, during the quarterly meetings with the LLC managers, the new contracts were discussed, although, the contract itself did not have a location for one or more of the LLC managers to sign or any other form to document the approval by the LLC managers.

All of the contracts tested were signed by the Executive Director, including all contracts over \$100,000, except for contract sample LK-25. Contract sample LK-25, was signed by one of the LLC managers,

Aedward Los Banos, on June 20, 2012 (LK-06, LK-09, LK-10, LK-11, LK-14, LK-15).

- c. Certificates of Good Standings were not retained in the contract file (criteria **[7a]**).

Fourteen of the 18 contracts selected for testing required that a Certificate of Good Standing with the State of Hawai'i be provided by the vendor. None of the 14 contract files contained this document. The Executive Director communicated to CLA that typically the standing status is reviewed online but the print out is not added to the contract file. Subsequent to the onsite visit, the Executive Director provided CLA with printouts of the verification of the contractors' Good Standing with the Department of Commerce and Consumer Affairs (DCCA) for all of the years the contractor had a valid license, which encompassed the year of the contract. The verification consisted of printouts obtained directly from the DCCA State of Hawai'i website indicating the status for all filing years for all 14 contracts.

- d. Certificates of Insurance were not retained in the contract file (criteria **[7d]**).

Thirteen of the 18 contracts selected for testing required that a Certificate of Insurance be provided by the vendor. Only one of the contract files contained the Certificate of Insurance, while the other 12 did not.<sup>314</sup> The Executive Director explained that the certificates of insurance for all current contracts are kept in a binder with tabs for each month. They are kept in this manner so that all of the certificates of insurance are reviewed on a monthly basis to identify any that may be close to the expiration date. At the end of the year, a new binder is prepared for the current certificates of insurance and the old Certificates of Insurance are discarded. The certificates of insurance were normally not placed within the contract file. CLA reviewed the binder that contained the certificates of insurance for the 2019 year to verify the process and it appeared to be as described; however, because the certificates of insurance had been discarded for 12 of the 13 contracts that required them, CLA was unable to verify that this procedure was followed.<sup>315</sup>

- e. Contractor's License was not retained in the contract file (criteria **[7e]**).

Twelve of the 18 contracts selected for testing required that a contractor's license be obtained from the vendor. None of the 12 contracts contained the contractor's license within the contract file. The Executive Director explained that the process followed is to review the contractor's license online and a print out of the contractor's license was not included in the contract file.

---

<sup>314</sup> The only contract file that did contain a Certificate of Insurance was for sample LK-07, which was a contract for life-guard services.

<sup>315</sup> The 11 contracts were the following: LK-06 , LK-08 , LK-09, LK-10 , LK-11 , LK-12 , LK-14, LK-15 , LK-16, LK-21 , LK-24

Subsequent to CLA's visit, for 11 of the 12 contracts, the Executive Director provided CLA with a printout from the Professional & Vocational Licensing Search website of the Department of Commerce and Consumer affairs which provided evidence of the contractor's general license, which contained the License ID, current status, expiration date, legal license name, entity, original license date, and business address. It is advisable that the contractor's license be retained in the contract file for reference.<sup>316</sup>

See recommendations L14 and L15.

#### Specific Observations

- f. Contract: (criteria **[6]**)
  - i. One contract had two versions of the same contract and both versions had an effective date that was incorrect (LK-06).
  - ii. One contract did not list an execution date (LK-08). The contract template required to be used by Hi'ipaka has a section where the date of the agreement is to be listed. This section was left blank.
  - iii. Three contracts did not contain an effective date (LK-12, LK-21, LK-25). The contract template required to be used by Hi'ipaka normally lists the effective date.
  - iv. Two contracts did not use the Hi'ipaka contract template as required by Hi'ipaka's Standard Operating Procedure No. BUS-004 (LK-25, LK-26).
- g. Contractor's License: (criteria **[7e]**)
  - i. One contractor did not have a Contractor's License (LK-25).<sup>317</sup>
- h. Evidence of monitoring the performance of the contractor: (criteria **[9], [10]**)
  - i. Two contracts had change orders/amendments that were verbally approved. The change order was less than three percent of the total contract; nonetheless the amendment should have been memorialized in writing (LK-11, LK-14 – criteria **[9]**).

---

<sup>316</sup> One additional contract (LK-25) did not have the contractor's license on file because the contractor did not have a contractor's license at the time the work was performed. This observation is discussed under the Specific Observations section below.

<sup>317</sup> This contract is one of the 12 contracts tested for which a contractor's license was required, but was not included in the contract file. While the contractors' licenses were provided for 11 of the 12 contracts subsequent to CLA's visit, the contractor's license for this contract was not provided to CLA because it did not exist.

- ii. One contract had work that extended past the contract expiration date. The contract had an effective date ending on February 28, 2013 with a six-month automatic extension if notice of termination of the agreement was not delivered prior to the end of the initial term. The contract file did not have a notice of termination therefore the effective ending date was six months later, August 28, 2013. However, there were three invoices from the contractor for work performed after August 28, 2013 (LK-08 – criteria **[10]**).<sup>318</sup>
- i. Check Request Forms and approval: Criteria **[11], [12]**
  - i. One contract file did not contain the Check Request form (LK-21 – criteria **[11]** and **[12]**).
  - ii. One contract included one payment for which the Check Request Form was completed one day after the payment was processed (LK-09 – criteria **[11], [12]**).
  - iii. One contract included three payments that did not contain a copy of a Check Request Form (LK-17 – criteria **[11], [12]**).
  - iv. Four contracts included at least one payment for which the Check Request Form had not been signed by the Executive Director (LK-18, LK-19, LK-24, and LK-25 – criteria **[12]**).
- j. Executive Director (or other authorized person) signed the check: (criteria **[13], [14]**)
  - i. One contract had one payment for which the check number was recorded incorrectly in the general ledger. The Executive Director did sign the check. (LK-09 – criteria **[13]**).
  - ii. One contract had one payment for which the check did not contain any signatures (LK-18). The payment support provided by Hi'ipaka within this contract file for a contract between Hi'ipaka and OHA included payments for a different unrelated agreement with OHA. The unrelated agreement was for reimbursements to OHA for payments made by OHA to the US Department of Interior, US Geological Survey (DOI/USGS) on behalf of Hi'ipaka. These payments were made for the stream monitoring gage on Kamanau Stream at Waimea Valley. It was noticed by CLA that the payment support included check number 17182, which was paid from Hi'ipaka to OHA on February 3, 2016, for \$11,490. This check did not contain any signatures but was nonetheless deposited by OHA and honored by the bank. According to Hi'ipaka's policy, checks of \$10,000 or more must

---

<sup>318</sup> The total amount for the three invoices that were received after the contract expiration date was \$3,229.16.

be signed by at least one of the LLC managers (OHA executives) (criteria **[13], [14]**).<sup>319</sup>

k. Invoice: (criteria **[15]**)

- i. One contract included one payment for which the check was written to the name of the owner of the company instead of to the company's name (LK-13).<sup>320</sup>
- ii. One contract included one invoice that did not reflect the rates stated in the contract. The first invoice for this contract stated quantity of 1 and rate of \$850 per hour; while the contract specified a rate of \$85 per hour (LK-08 – criteria).<sup>321</sup>
- iii. One contract contained an invoice for which the vendor did not include a receipt for out-of-pocket expenses included in the receipt (LK-09).<sup>322</sup>

See recommendations L16, L17, L18, L19, L20, and L21.

4. There was no evidence of fraud, waste, or abuse (criteria **[17]**)

In the review process for evidence of fraud, waste, or abuse, CLA did not observe indicators of fraud, waste, or abuse. Furthermore, CLA noticed that in certain instances the total payment amounts were under the original contract amount due to negotiated discounts

---

<sup>319</sup> The Executive Director explained that Hi'ipaka sent the check to OHA with instructions that the LLC managers needed to sign the check because it exceeded the \$10,000 authorization threshold. He believes that his instructions were not read and the check was accidentally deposited without any signatures.

<sup>320</sup> CLA reviewed the back of the cancelled check and verified that the endorsement on the back of the check written to the individual was consistent with the endorsements on the checks written to the company's name.

<sup>321</sup> The remaining invoices appropriately reflected the \$85 per hour rate. The Executive Director explained that he believed the invoice had an error in stating the quantity of hours worked at 1 and the rate at \$850 per hour. The invoice should have listed 10 hours at the hourly rate of \$85.

<sup>322</sup> The terms of the contract did not require the vendor to submit receipts for out-of-pocket expenses. However, it is best practices that whenever such direct costs are passed on, supporting documentation such as receipts, should be attached to the invoice submitted for payment.



## I) Ho'okāpaipai LLC Contracts

Three Ho'okāpaipai contracts were selected for testing by CLA. A detailed list of the applicable Ho'okāpaipai policies and procedures identified by CLA to test the approval and execution of these contracts is included in **Attachment 16**. Included in Table 18 below is a summary of the results identifying each criteria tested with the number of contracts (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>323</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 16** includes a table containing the results at the contract level and tickmarks explaining each contract with an observation.<sup>324</sup>

**Table 18: Summary of Results - Ho'okāpaipai LLC Contracts**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>Conflict of Interest with LLC Managers and Directors</b>					
[1]	No conflicts of interest between the LLC managers or directors and the vendor/service provider were identified.	0	0	3	3
<b>Deliverables Were Met by the Contractor/Grant Recipient</b>					
[28]	There was evidence that the service or product was verified and received by a staff member.	0	0	3	3
[29]	There was evidence that the deliverable was met by the contractor and CLA confirmed the deliverable.	0	0	3	3
<b>Sufficiency of Contract/Grant Oversight Provided Appropriately by the Assigned Contract Manager/Monitor</b>					
<i>Ho'okāpaipai LLC HI-PTAC Fiscal Policies &amp; Procedures, revised November 2012<sup>325</sup>, 326</i>					
[3]	The Purchase Request was approved by the Program Manager.	3	0	0	3
[4]	The check request was submitted on a "Request for Check Issuance".	0	0	3	3
[5]	The Request for Check Issuance form was approved by the Program Manager.	0	0	3	3
[6]	The Request for Check Issuance form was approved by the COO.	0	1	2	3
[8]	The check was signed by the COO.	0	0	3	3

<sup>323</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>324</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 16**, tickmarks for Ho'okāpaipai contracts tested are numbered with the letter "L" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **L01** is the first observation tickmark for Ho'okāpaipai's contracts.

<sup>325</sup> Criteria [7] was only applicable if the Request for Check Issuance form did not include a copy of the receipt. All of the Request for Check Issuance forms included receipts.

<sup>326</sup> Criteria [15] to [25] and [27] were not applicable to the contracts CLA tested.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[9]	The Request for Check Issuance form provided justification for the purchase, an analysis of lease/purchase alternatives (if applicable), and included a cost or price analysis.	1	0	2	3
[10]	Purchases in excess of \$25,000 were supported by a written contract.	0	0	3	3
[11]	The transaction included all of the source documents (receipts, purchase orders, invoices, and bid materials).	0	0	3	3
[12]	Purchases between \$2,500 and \$25,000 contained three quotes in the contract file.	1	0	2	3
[13]	The quote evaluation selected the lowest priced, responsive, and responsible vendor.	1	0	2	3
[14]	There was documentation that a price analysis was performed.	1	0	2	3
[26]	Non-competitive negotiations were allowable when it was determined in writing that competitive negotiation or bidding was not feasible.	0	0	3	3
<b>No Fraudulent or Wasteful Disbursements were Made</b>					
[2]	No indication of fraud, waste, or abuse was identified.	0	0	3	3

Within each observation, CLA has listed the LLC disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 16**. Each observation also includes a reference to the applicable criteria listed in the table above.

1. Conflict of Interest with LLC Managers and Directors (criteria [1])

CLA reviewed whether Ho'okipaipai had a conflict of interest policy and located the Financial Conflicts of Interest policy in the area of ethics within its Corporate Policy manual. The policy explains that Ho'okipaipai is considered a nonprofit organization, and the "purpose of this policy is to protect the Company's interests when it is contemplating entering into a transaction or arrangement that might benefit the private financial interest(s) of a LLC Manager or employee of the Company, or might result in a possible excess benefit transaction."<sup>327</sup>

For the scope period, CLA was provided with the Financial Conflicts of Interest Disclosure Statements completed between August and October 2013, and January 2016 by the COO and the LLC Managers. The Financial Conflicts of Interest Disclosure Statements completed indicate that the COO and the LLC managers did not have any direct or indirect financial interest in any transaction or arrangement with the LLC. CLA inquired of the COO whether these disclosure statements were completed on an annual basis as delineated

<sup>327</sup> An excess benefit transaction refers to a profit that originates unfairly from a relationship with a nonprofit organization.

by the policy and it was communicated to CLA that they were supposed to be completed but since they were not located, it was possible that the forms were not completed for the 2011, 2012, 2014, and 2015 years.<sup>328</sup>

CLA did not identify any evidence of conflicts of interest for the Ho'okīpaipai contracts selected for testing; however, Ho'okīpaipai did not retain the conflict of interest forms for all years and it is possible that they were not always completed.

See recommendation L01.

2. Deliverable was met by the contractor (criteria [28], [29])

Of the three contracts selected for testing for Ho'okīpaipai, CLA was provided with evidence of a deliverable for all three of these contracts. The contracts were for professional services and office space; therefore, the deliverables consisted of invoices demonstrating the provision of database system support; human resources, benefits, and payroll processing; and office space rental. For these types of contracts, CLA was able to verify the deliverables were met based on discussions with the COO.

3. Sufficiency of contract/grant oversight provided appropriately by the assigned contract manager/monitor (Criteria [3] through [14], [26])

In order to assess the sufficiency of the contract/grant oversight, CLA assessed whether the deliverable was ultimately met and whether Ho'okīpaipai's policies and procedures were followed. Items *a* through *d* below describe general observations made by CLA that relate to all Ho'okīpaipai contracts tested. Items *e* through *g* discuss the observations made only for certain contracts tested.

General Observations

a. Purchase order system is not used and contracts are not assigned a contract number<sup>309</sup>

Ho'okīpaipai's Fiscal Policies and Procedures manual does not require the use of a purchase order system and it does not require the assignment of contract numbers. However, it is a best practice to use a purchase order system and to assign contract numbers for purposes of organization and reference. Having a purchase order and contract numbers assigned to each contract is specifically useful when a contractor has more than one open contract at the same time. This information would help distinguish

---

<sup>328</sup> Some of the contracts tested by CLA were for the years of 2011, 2012, 2014 and 2015.

between different contracts which would allow the LLC to distinguish financial activity (i.e., vendor payments) by contract number.

b. Purchase Request forms were not documented (criteria [3])

Ho'okīpaipai's Fiscal Policies and Procedures manual was ambiguous in its requirement for the completion of Purchase Request forms. Even though the policy requires that all purchases be approved by the Program Manager in advance and all purchase requests be supported by appropriate documentation, Ho'okīpaipai does not use a Purchase Request form for any purchase other than the purchase of office supplies.<sup>329</sup> The COO explained that, although Ho'okīpaipai did not use a Purchase Request form for purchases other than office supplies, purchases were made only with her approval. The process for approving started with the Ho'okīpaipai staff communicating procurement ideas to the COO, such as hosting a conference, and the COO would ask her staff to obtain and provide pricing and estimates. Once the staff brought in estimates, the COO would assist the staff with selecting a vendor(s) and giving the staff a verbal approval to initiate the purchase. The COO stated that the only record of the purchase request discussions would have been emails exchanged between her staff and potential vendors. This process resulted in no documentation that the purchase requests were approved. The only method to record the Program Manager's approval, as required by the Fiscal Policies and Procedures manual, is through a Purchase Request form. Therefore all purchases, not only for the purchase of supplies, should be recorded and approved on the Purchase Request forms.

c. No documentation that purchases complied with the established budget<sup>330</sup>

Ho'okīpaipai's Fiscal Policies and Procedures manual states that the Program Manager is responsible for ensuring that all purchases comply with the Defense Logistics Agency approved budget; however, no

---

<sup>329</sup> Ho'okīpaipai's Fiscal Policies and Procedures manual states that the Program Manager must approve all Purchase Request forms beforehand. Based on the documents available, it appears that other forms, such as the Request for Check Issuance, gave the final approving authority to the COO. Based on our discussions with the COO, she had the final approval on Ho'okīpaipai's operations; therefore, the processes in the *Fiscal Policies and Procedures* that refer to Program Manager were presumed to be under the authority of the COO.

<sup>330</sup> Ho'okīpaipai purchases were not specifically tested for compliance with budget because it was not part of the scope of work for the LLC contracts; therefore, no criteria number was assigned. Based on CLA's discussion with the COO, it was determined that there was no documentation regarding the budget review and noted this as a general observation.

documentation of the budget reviews were provided to CLA.<sup>331</sup> The COO explained that because Ho'okīpaipai is a small organization, she always knew what the approved budget was, as she recalled from memory, but there was no documentation in the contract files of this review.<sup>332</sup> The budget review should have been documented, and the Purchase Request form would have been an appropriate document in which to document this review.

- d. No documentation that a cost or price analysis was conducted (criteria **[9], [14]**)<sup>333</sup>

Ho'okīpaipai's Fiscal Policies and Procedures manual requires that a price or cost analysis be conducted to determine allowability, reasonableness, and allocability of each purchase. This may be accomplished in various ways, including the comparison of price quotation, market prices, and similar indicia; however, there was no documentation in the contract files that the price or cost analysis was conducted. The COO explained that although Ho'okīpaipai employees would normally review prices to ensure that it was receiving the best contract possible, there was no documentation retained in the contract file regarding how the contract was assessed or selected. When this assessment is conducted, the results of this assessment should be included in the contract file.

#### Specific Contract Observations

- e. Three Quotes:
  - i. One contract was missing documentation or evidence that three verbal quotations of rate or price were obtained as required by the Fiscal Policies and Procedures manual for Ho'okīpaipai (LK-22 – criteria **[12], [13]**).
- f. Request for Check Issuance:
  - iii. One Request for Check Issuance was not signed by the COO as required by the Fiscal Policies and Procedures manual for Ho'okīpaipai (LK-30 – criteria **[6]**).

---

<sup>331</sup> Ho'okīpaipai was the only LLC that had requirements regarding the Defense Logistics Agency in its Fiscal Policies and Procedures manual.

<sup>332</sup> The Defense Logistics Agency (DLA) is the United States of America's combat logistics support agency that manages the global supply chain and disposition for the Army, Navy, Air Force, Marine Corps, Coast Guard, and, other federal agencies, partners, and nations.

<sup>333</sup> Only one contract of the three tested was procured via a method that required a cost or price analysis, and there was no documentation that the cost or price analysis was performed.

See recommendations L03, L04, L05, L22, and L23.

4. No fraudulent or wasteful disbursements were made

Based on the procedures performed and information available to CLA, CLA did not observe red flags or indicators of fraud, waste, or abuse.

## 2) Disbursement Testing

The internal policies and procedures related to the approval and execution of disbursements for each of the LLCs varied. For this reason, CLA grouped the results of the disbursement testing by the respective LLC. However, there were certain observations pertaining to disbursements that were applicable to most or all of the disbursements tested for Hi'ilei Aloha, Hi'ipoi, and Ho'okīpaipai.<sup>334</sup> These general observations are included immediately below, and each indicates the LLCs to which it applies. The observations specific to each LLC and their disbursements are discussed in the respective LLC sections included in m) through p) below.

### General Observations

#### 1. Purchase Request forms were not completed

*Applicable to: Hi'ilei Aloha, Hi'ipoi, and Ho'okīpaipai.* The LLCs had a Fiscal Policies and Procedures manuals that were ambiguous in their requirement for the completion of Purchase Request forms.<sup>335</sup> In general, the policies require that all purchases be approved by the COO in advance and all purchase requests be supported by appropriate documentation; however, the LLCs do not use a Purchase Request form for any purchase other than the purchase of office supplies. The COO explained that the LLCs did not use a Purchase Request form except for purchases of office supplies; however, purchases were made only with her approval. The process for approving started with the LLC staff communicating procurement ideas to the COO, such as hosting a conference, and the COO would ask her staff to obtain and provide pricing and estimates. Once the staff brought in estimates, the COO would assist the staff on selecting a vendor(s) and giving the staff a verbal approval to initiate the purchase. The COO stated that the only record of the purchase request discussions would have been emails exchanged between her staff and potential vendors. This process resulted in no documentation that the purchase requests were approved. The only method to record the Program Manager's approval is through a Purchase Request form. Therefore all purchases, not only for the purchase of supplies, should be recorded and approved on the Purchase Request forms.

#### 2. No documentation that purchases complied with the established budget

*Applicable to: Hi'ilei Aloha, and Ho'okīpaipai.* The LLCs' Fiscal Policies and Procedures manuals state that the COO is responsible for ensuring that all purchases comply with the established budget; however, no documentation of the budget reviews were provided to CLA. The COO explained that because the LLCs are small organizations, she always knew what the approved budget was, as

---

<sup>334</sup> Hi'ipaka had a greater quantity of SOPs and more nuanced policies and procedures; therefore, the observations noted for Hi'ipaka were for specific disbursements.

<sup>335</sup> Hi'ipoi, was missing a policies and procedures manual, but CLA applied the criteria to its disbursements.

she recalled from memory, but there was no documentation in the disbursement files of this review. The budget review should have been documented and the Purchase Request form would have been an appropriate document in which to document this review.

3. No documentation that a cost or price analysis was conducted

*Applicable to: Hi'ilei Aloha, and Ho'okīpaipai.* The LLCs' Fiscal Policies and Procedures manuals require that a price or cost analysis be conducted to determine allowability, reasonableness, and allocability of each purchase. This may be accomplished in various ways, including the comparison of price quotation, market prices, and similar indicia; however, no there was no documentation in the disbursement files that the price or cost analysis was conducted. The COO explained that although LLC staff would normally review prices to ensure that it was receiving the best price possible, there was no documentation retained in the disbursement file that the vendor was selected based on the best pricing. When this assessment is conducted, the results of this assessment should be included in the disbursement file.

See recommendations L04 and L05.



### m) Hi'ilei Aloha LLC Disbursements

Seven Hi'ilei Aloha disbursements were selected for testing by CLA. A detailed list of the applicable Hi'ilei Aloha policies and procedures identified by CLA to test the approval and execution of these disbursements is included in **Attachment 17**. Included in Table 19 below is a summary of the results identifying each criteria tested with the number of disbursements (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>336</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 17** includes a table containing the results at the disbursement level and tickmarks explaining each disbursement with an observation.<sup>337</sup>

**Table 19: Summary of Results – Hi'ilei Aloha LLC Disbursements**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>Conflict of Interest with LLC Managers and Directors</b>					
[1]	No conflicts of interest between the LLC managers or directors and the vendor/service provider were identified.	1	2	4	7
<b>No Fraudulent or Wasteful Disbursements were Made</b>					
[2]	No indication of fraud or wasteful disbursement was identified.	1	3	3	7
<b>Compliance with Internal Policies and Procedures</b>					
<b>Hi'ilei Aloha LLC Fiscal Policies &amp; Procedures<sup>338, 339</sup></b>					
[4]	The purchase request was approved by the COO.	7	0	0	7
[5]	The check request was submitted on a Request for Check Issuance form.	1	0	6	7
[6]	The Request for Check Issuance form was approved by a supervisor.	1	0	6	7
[7]	The Request for Check Issuance form was approved by the COO.	1	1	5	7
[8]	If the Request for Check Issuance form did not include a receipt, an explanation was provided for the absence of a receipt.	1	0	6	7
[14]	The Request for Check Issuance form described why the purchase was necessary and a cost or price analysis.	5	0	2	7

<sup>336</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>337</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 17**, tickmarks for disbursements tested for Hi'ilei Aloha are numbered with the letter "M" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **M01** is the first observation tickmark for Hi'ilei Aloha.

<sup>338</sup> Criteria [3] (Hi'ilei Aloha) was only applicable to corporate card use for travel purposes. This criteria was not applicable to any of the Hi'ilei Aloha disbursements CLA tested.

<sup>339</sup> Criteria [9] through [13] were only applicable to travel-related purchases. These criteria was not applicable to any of the Hi'ilei Aloha disbursements CLA tested.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[15]	The transaction included all of the appropriate documentation.	6	0	1	7

Within each observation, CLA has listed the LLC disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 17**. Each observation also includes a reference to the applicable criteria listed in the table above.

1. Conflict of Interest with LLC Managers and Directors (criteria **[1]**)

CLA reviewed whether Hi'ilei Aloha had a conflict of interest policy and located the Financial Conflicts of Interest policy in the area of ethics within its Corporate Policy manual. The policy explains that Hi'ilei Aloha is considered a nonprofit organization, and the "purpose of this policy is to protect the Company's interests when it is contemplating entering into a transaction or arrangement that might benefit the private financial interest(s) of a LLC Manager or employee of the Company, or might result in a possible excess benefit transaction."<sup>340</sup>

For the scope period, CLA was provided with the Financial Conflicts of Interest Disclosure Statements completed in January 2011, August and September 2013, and January 2016 by the COO and the LLC Managers. The Financial Conflicts of Interest Disclosure Statements completed indicate that the COO and the LLC managers did not have any direct or indirect financial interest in any transaction or arrangement with the LLC. CLA inquired of the COO whether these disclosure statements were completed on an annual basis as delineated by the policy and it was communicated to CLA that they were supposed to be completed but since they were not located, it was possible that the forms were not completed for the 2012, 2014, and 2015 years.

CLA identified three disbursements with potential factual or apparent conflicts of interest for the Hi'ilei Aloha disbursements selected for testing as follows:

---

<sup>340</sup> An excess benefit transaction refers to a profit that originates unfairly from a relationship with a nonprofit organization.

a. LD-01 – Julie Bernardino<sup>341</sup>

The disbursement had an apparent conflict of interest because the contractor that was hired was the sister of Hi'ilei Aloha's COO, Mona Bernardino.

Julie Bernardino was hired by Hi'ilei Aloha to provide temporary administrative support while the administrative assistant was out on extended leave for medical reasons. According to documents provide to CLA, Hi'ilei Aloha's COO requested the LLC Managers to approve hiring her sister because she was familiar with Hi'ilei Aloha's operations, would more easily transition into the position, and was cheaper to hire than using an external temporary agency. CLA reviewed the Hi'ilei Aloha check registers and noted that Julie Bernardino was only paid once on July 20, 2011 for \$2,671.80.<sup>342</sup>

No historical records existed for CLA to test and review how the procurement process unfolded. However, CLA reviewed letters written after the fact by the now-former LLC Managers in which they recalled approving of this hire.<sup>343</sup> While this disbursement has the appearance of a conflict of interest, there is supporting documentation that the hiring was conducted on a temporary basis in order to save on costs, and, most importantly, was approved by the LLC Managers in advance. In future circumstances involving potential conflicts of interest, Hi'ilei Aloha should ensure that documents related to the procurement process are maintained to demonstrate a historical record of the disclosure of the potential conflict and ultimate approval by the LLC Managers.

## b. LD-03 – Lehua Poi Company and LD-05 – Supporting the Language of Kaua'i, Inc.

Two disbursements were made related to the Makaweli Poi Mill that appear to have been negotiated verbally by one of the managers for Hi'ilei Aloha, Dr. Crabbe, who was also the OHA CEO at the time. There is no evidence of a personal financial benefit to Dr. Crabbe; however, there may have been a personal benefit to one or more of his personal

---

<sup>341</sup> This disbursement is the one contract identified under "Contracts with Missing Document(s)" for criteria [1] due to there being no documentation to support this disbursement.

<sup>342</sup> Julie Bernardino was paid through the Hi'ilei Aloha check register, which indicates that she was paid through the same disbursement process as a vendor since payroll payments were processed by an external payroll provider.

<sup>343</sup> The letters written by the former LLC Managers were specifically addressed to CLA and were dated October 14, 2019 (**Exhibit 36**).

acquaintances. The following events occurred related to these disbursements:

- i. December 31, 2012: Hi'ipoi transferred the Makaweli Poi Mill to Supporting the Language of Kaua'i, Inc. (SLK) for no consideration. SLK hired Lehua Poi Company to operate the poi mill.
- ii. June 24, 2013: Hi'ilei Aloha paid \$20,000 to Lehua Poi Company as an emergency loan to "improve cash flow during start-up months of business."
- iii. September 3, 2015: Hi'ilei Aloha paid \$60,000 to SLK as a grant to "offset financial losses of Lehua Poi. Co (owner Naukulu Arquette), operator of former Makaweli Poi Mill."

Hi'ilei Aloha's COO, Mona Bernardino, provided historical context surrounding these disbursements. She verbally provided the following timeline pertaining to the transfer of the poi mill and subsequent disbursements:

- i. In May 2012, the LLC Managers and Hi'ipoi Executive Director determined that the operating cash for the poi mill had dropped below \$50,000 and the poi mill needed to be divested.
- ii. Dr. Crabbe began looking for an interested individual or organization to buyout Hi'ipoi's ownership of the mill.<sup>344</sup>
- iii. A Director of SLK, Kerry Perry, wanted to help keep the poi mill open, so he and Dr. Crabbe approached Al "Naukulu" Arquette to consider operating the mill. Mr. Arquette would operate the poi mill under his company, Lehua Poi Company. The arrangement was that Mr. Arquette would operate the mill and any profits would be turned into scholarships offered by SLK. This arrangement also included the \$20,000 emergency loan to assist the Lehua Poi Company in its start-up operations. According to Ms. Bernardino, this arrangement between Dr. Crabbe, Mr. Perry, and Mr. Arquette was made verbally.

---

<sup>344</sup> Ms. Bernardino stated that Dr. Crabbe attempted to work with the employees of the mill to buy out Hi'ipoi's ownership, but they only brought business ideas to the table and never presented a fully executed business plan. She stated that Dr. Crabbe and the former OHA CFO then searched for another interested party and found SLK.

- iv. On December 31, 2012, Hi'ipoi transferred its asset, the Makaweli Poi Mill, to SLK, a 501(c)(3) associated with the Kawaikini New Century Public Charter School.<sup>345</sup>
- v. In turn, SLK hired Lehua Poi Company to operate the Makaweli Poi Mill.

According to Ms. Bernardino, CLA was also informed that Dr. Crabbe, Mr. Perry, and Mr. Arquette were familiar with each other from their involvement in an association of Native Hawaiian men called 'Aha Kāne.<sup>346</sup>

After several years of losses, Mr. Arquette was forced to cease operations. CLA was told that Dr. Crabbe felt that it was OHA's obligation to make Mr. Arquette whole for his efforts. Dr. Crabbe and Mr. Arquette arranged a verbal agreement in which OHA would transfer \$60,000 through Hi'ilei Aloha to make Mr. Arquette "whole" and serve as a buyout for his losses, which Mr. Arquette estimated were approximately \$150,000. This resulted in the payment of \$60,000 to SLK in September 2015.<sup>347</sup> After this payment, Mr. Arquette transferred the poi mill operations to another local entity.<sup>348</sup> Hi'ilei Aloha was unable to locate a grant application, grant agreement, or grantee invoice related to the payment of \$60,000 to SLK for the losses at the mill. The only available documentation to support the disbursement was a letter, dated September 3, 2015, from Ms. Bernardino on official Hi'ilei Aloha letterhead (**Exhibit 37**). It reads, "Aloha e Ka Pouhana: Per our meeting on Kaua'i yesterday, attached please find two check requests and checks payable to SLK. Please sign both checks and both check request forms and return all to me."<sup>349</sup>

---

<sup>345</sup> CLA reviewed SLK's 2012 and 2013 IRS Form 990s for evidence that the poi mill was transferred to SLK and not to Lehua Poi Company. However, because the mill was transferred for no consideration, the asset was not reported on either Form 990. CLA could not determine if the poi mill was subsequently transferred to Lehua Poi Company.

<sup>346</sup> CLA did not perform any investigative procedures to determine the extent of the relationship between Dr. Crabbe, Mr. Perry, and Mr. Arquette.

<sup>347</sup> The specific flow of the funds from the payment of \$60,000 to SLK to make the owner of Lehua Poi Company "whole" is not apparent; however, the Hi'ilei Aloha Request for Check Issuance form reads, "Grant to offset financial losses of Lehua Poi Co. (owner Naukulu Arquette), operator of former Makaweli Poi Mill." Hi'ilei, Aloha understood at the time of payment that these funds would ultimately go to the owner of Lehua Poi Company.

<sup>348</sup> CLA could not determine whether SLK transferred the poi mill to Lehua Poi Company between 2013 and 2015. As a result, CLA could not determine whether Lehua Poi Company transferred the poi mill to its current operator.

<sup>349</sup> The September 3, 2015 letter referred to two checks. A review of the Hi'ilei Aloha check register showed that two checks were issued on September 3, 2015. Check # 4597 for \$60,000, which CLA tested, and Check

A review of the \$20,000 loan agreement and Hi'ilei Aloha's accounting records showed that the loan was never repaid and was written off as a loss in October 2015. A review of Hi'ilei Aloha's Fiscal Policies and Procedures manual did not include any guidance or policies related to loans or loan origination. CLA did not make an assessment of whether Hi'ilei Aloha was in the business of making loans to other organizations.<sup>350</sup>

CLA also reviewed Hi'ilei Aloha's accounting for any repayment of the \$60,000 grant but noted none. However, based on the description of this disbursement provided by Ms. Bernardino, there was never an intent that these funds be repaid to Hi'ilei Aloha. Hi'ilei Aloha's Fiscal Policies and Procedures manual did not include any policies or procedures related to the awarding of grants. Additionally, the mission of Hi'ilei Aloha as stated in its policy manual did not include awarding grants to organizations.

Both arrangements for the \$20,000 loan and \$60,000 grant had little to no documentation and appear to have been negotiated through verbal agreements between Dr. Crabbe (acting as Hi'ilei Aloha's Manager), SLK, and Lehua Poi Company. Information shared with CLA suggests a personal friendship and possible association through another organization, Aha Kane. Furthermore, the methods used to award and disburse the loan and grant funds did not comply with Hi'ilei Aloha's policies and procedures. There is no evidence that Dr. Crabbe personally benefitted from the transactions; however, it appears there was a financial benefit to possible acquaintances of Dr. Crabbe.

See recommendations L01 and L24.

2. Compliance with internal policies and procedures (criteria **[4]** through **[8]**, **[14]**, **[15]**)<sup>351</sup>

The internal policies and procedures identified by CLA that address the approval and execution of Hi'ilei Aloha's disbursements include a review of the purchase request, purchase explanation or a price or cost analysis, Request for Check Issuance, and all source documents supporting any given

---

#4596 for \$25,000, which CLA did not test. Ms. Bernardino confirmed that the total amount agreed to make Mr. Arquette "whole" was \$85,000.

<sup>350</sup> Hi'ilei Aloha's Operating Agreement, Article II, 2.02(f) states that one of its purposes is "to receive contributions and pay them over to organizations which are described in Section 501(cc)(3) and exempt from taxation under Section 501(a) of the Internal Revenue Code. CLA did not assess whether the loan was in compliance with this statement.

<sup>351</sup> Criteria [4] is addressed in the General Observations section, "1. Purchase Request forms were not completed," and is not discussed in this section to avoid duplication. Criteria [14] and [15] are addressed in the General Observations section, "3. No documentation that a cost or price analysis was conducted," and are not discussed in this section to avoid duplication.

transaction (receipts, purchase orders, invoices, and bid materials). When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Hi'ilei Aloha Fiscal Policies and Procedures manual.

CLA identified two disbursements for which the supporting documents did not comply with Hi'ilei Aloha's internal policies and procedures.

a. LD-01 – Julie Bernardino

On July 20, 2011, Hi'ilei Aloha paid \$2,617.80 to Julie Bernardino to provide temporary administrative support while the administrative assistant was out on extended leave for medical reasons. In addition to the observations noted above, this disbursement did not contain any of the source documents supporting the transaction, including an employment agreement, invoice for services, a Purchase Request, Request for Check Issuance, or cost analysis (criteria **[5]**, **[6]**, **[7]**, **[8]**).

b. LD-02 – RIM Architects

This disbursement for \$18,936.12 contained a Request for Check Issuance form that was approved by the LLC Managers after the check was issued. The check was dated July 5, 2012 but the second LLC Manager's approval was dated July 19, 2012 (criteria **[7]**).<sup>352</sup>

See recommendations L25.

3. No fraudulent or wasteful disbursements were made (criteria **[2]**)

A review of the documents for three of the disbursements tested in this area identified red flags or indicators that indicate a possibility of fraud, waste, or abuse. The identification of a red flag or indicator does not, on its own, confirm that fraud, waste, or abuse did occur. This section simply identifies the observations made by CLA during the testing that can be indicators of fraud, waste, or abuse, and, therefore, CLA is not making a conclusion as to the existence of fraud, waste, or abuse. Additional investigation of each disbursement would be required, which was beyond the scope of this engagement. Each of the three disbursements is discussed further below.<sup>353</sup>

---

<sup>352</sup> The first approval was before the check date.

<sup>353</sup> The one disbursement included in the "Contracts with Missing Document(s)" column for criteria [2] is the sample disbursement LD-01, which had no supporting documents available for review.

a. LD-03 – Lehua Poi Company

The disbursement of \$20,000 in June 2013 to Lehua Poi Company was categorized by Hi'ilei Aloha as an emergency loan to improve cash flow during start-up months of business. The purpose of the disbursement is questionable since Hi'ilei Aloha was not involved with the poi mill operations, and Hi'ipoi had already transferred the poi mill on December 31, 2012. In addition, there are no indications in Hi'ilei Aloha's Fiscal Policies and Procedures manual that its purpose was to make loans to third-parties. Lastly, the \$20,000 loan was not repaid and was eventually written off in October 2015. This raises the question of whether this disbursement adhered to the mission and goals of Hi'ilei Aloha, which could be an indication of possible waste of funds.

Additionally, the information discussed previously regarding the lack of documentation surrounding this transaction and the method in which it was handled are possible red flags or indicators of fraud, waste, or abuse.

b. LD-05 – Supporting the Language of Kaua'i, Inc.

This disbursement of \$60,000 in September 2015 to Supporting the Language of Kaua'i, Inc. (SLK) was categorized as a grant to offset the financial losses of Lehua Poi Company for operating the Makaweli Poi Mill. The Request for Check Issuance specifically stated the purpose of the grant was to "offset losses of Lehua Poi Co." Lehua Poi Co. is an organization that is independent and separate from Hi'ilei Aloha and OHA, yet Hi'ilei Aloha is providing them funding to stay in operation and subsidize their losses. This raises the question of whether this disbursement adhered to the mission and goals of Hi'ilei Aloha, which could be an indication of possible waste of funds.

Additionally, the information discussed previously regarding the lack of documentation surrounding this transaction and the method in which it was handled are possible red flags or indicators of fraud, waste, or abuse.

c. LD-22 – Commercial Dehydrator Systems, Inc.

A disbursement of \$13,367 on December 27, 2012 was made to purchase a commercial dehydrator system for the poi mill. The poi mill was transferred only four days later, which eliminated any benefit to Hi'ipoi of this purchase. According to Hi'ilei Aloha's COO, Mona Bernardino, this purchase of a dehydrator was part of the verbal agreement between Dr. Crabbe and Mr. Arquette during the negotiations to transfer the Makaweli Poi Mill from Hi'ipoi, to SLK. Mr. Arquette requested the commercial dehydrator so he could produce new products, including taro flour. Consequently, Ms. Bernardino stated it was unlikely there was a written agreement that resulted from the discussions between Dr. Crabbe and Mr. Arquette regarding the dehydrator. However, a January



28, 2013, letter from Ms. Bernardino (on Hi'ilei Aloha letterhead) to the LLC Managers stated, "we purchased a dehydrator for approximately \$16,000 to help SLK expand into flour and frozen taro products as quickly as possible." **See Exhibit 38.** This raises the question of whether this disbursement adhered to the mission and goals of Hi'ilei Aloha, which could be an indication of possible waste of funds.

See recommendations L24, L25, and L26.

## n) Hi'ipaka LLC Disbursements

Nine Hi'ipaka disbursements were selected for testing by CLA. A detailed list of the applicable Hi'ipaka policies and procedures identified by CLA to test the approval and execution of these disbursement is included in **Attachment 17**. Included in Table 20 below is a summary of the results identifying each criteria tested with the number of disbursements (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>354</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 17** includes a table containing the results at the disbursement level and tickmarks explaining each disbursement with an observation.<sup>355</sup>

**Table 20: Summary of Results – Hi'ipaka LLC Disbursements**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>Conflict of Interest with LLC Managers and Directors</b>					
[1]	No conflicts of interest between the LLC managers or directors and the vendor/service provider were identified.	0	0	9	9
<b>No Fraudulent or Wasteful Disbursements were Made</b>					
[2]	No indication of fraud or wasteful disbursement was identified.	0	0	9	9
<b>Compliance with Internal Policies and Procedures</b>					
<i>Hi'ipaka Standard Operating Procedures</i>					
<i>SOP ADMIN ACCT-002: Accounts Payable Processing, revised January 19, 2018</i>					
[3]	The service or product was verified by a staff member.	0	5	4	9
[4]	A check request was prepared.	1	3	5	9
[5]	The check request was approved by the Office Manager.	1	3	5	9
[6]	The check was signed by the Executive Director.	0	2	7	9
[7]	Checks over \$10,000 contained two signatures, including the Executive Director.	0	0	9	9
[8]	The file contained a check stub and invoice.	0	2	7	9
[9]	Reoccurring invoices contained the expense code and an authorized staff member's signature.	0	2	7	9
<i>SOP ADMIN-004: Procurement of Goods and Services, revised February 19, 2018</i>					
[10]	Procurement requests for goods, services and construction were requested in writing.	3	0	6	9

<sup>354</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>355</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 17**, tickmarks for Hi'ipaka disbursements tested are numbered with the letter "N" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **N01** is the first observation tickmark for Hi'ipaka's disbursements.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<i>SOP ADMIN-009: Ordering Office Supplies, revised February 15, 2018<sup>356</sup></i> <i>SOP BUS-013: Store: Inventory Control, revised November 9, 2010</i>					
[13]	Purchases of merchandise included a completed Purchase Order.	0	0	9	9

Within each observation, CLA has listed the LLC disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 17**. Each observation also includes a reference to the applicable criteria listed in the table above.

1. Conflict of Interest with LLC Managers and Directors (criteria [1])

Hi'ipaka has a Financial Conflicts of Interest policy (CPM-001) that is very similar to the policy identified for Hi'ilei Aloha. This policy states that Hi'ipaka is considered a nonprofit organization and therefore the purpose of this policy is to protect the company's interest when it is contemplating entering into a transaction or arrangement that might benefit the private financial interest(s) of a manager or employee of the company or might result in a possible excess benefit transaction.<sup>357</sup>

For the scope period, CLA was provided with the Financial Conflicts of Interest Disclosure Statements completed in January and September 2016 by the Executive Director and by the LLC Managers. CLA inquired of the Executive Director whether these disclosure statements were completed on an annual basis as delineated by the policy and it was communicated to CLA that it was possible that these forms were not completed in some years.

CLA did not identify any evidence of conflicts of interest for the Hi'ipaka vendors selected for testing; however, Hi'ipaka did not retain the conflict of interest forms for all years and it is possible that they were not always completed.

---

<sup>356</sup> Criteria [11] and [12] were only applicable to office supplies purchased with the Hi'ipaka credit card. These criteria was not applicable to any of the Hi'ipaka disbursements CLA tested.

<sup>357</sup> An excess benefit transaction refers to a profit that originates unfairly from a relationship with a nonprofit organization.

2. Compliance with internal policies and procedures (criteria **[3]** through **[10]**, **[13]**)

The internal policies and procedures identified by CLA that address the approval and execution of Hi'ipaka's disbursements include a review of the purchase request, purchase explanation or a price or cost analysis, Request for Check Issuance, and all source documents supporting the transaction (receipts, purchase orders, invoices, and bid materials). When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Hi'ipaka's Fiscal Policies and Procedures manual.

Included below is a summary of the observations for each of the documents reviewed as part of Hi'ipaka's disbursement process:

- a. Purchase Request
  - i. Three disbursements were missing documentation of a purchase request (LD-12, LD-14, LD-25 – criteria **[10]**).
- b. Service or product verification
  - i. One disbursement included an invoice with a "Received By" stamp that was not filled out (LD-12 –criteria **[3]**). The "Received By" stamp is used to indicate that the accountant verified that the service or product was received; therefore, this disbursement was missing the documentation to show the service or product was received.
  - ii. Two disbursements were missing the stamp or other indication that the service or product was verified and received by a staff member (LD-15, LD-24 – criteria **[3]**).
- c. Vendor invoice
  - i. Two disbursements were missing the invoice from the service vendor (LD-14, LD-25 – criteria **[3]**, **[9]**). The disbursement was a reoccurring variable fee from Heartland Payment Systems, Inc. for processing Waimea Valley's credit card charges.<sup>358</sup> Hi'ipaka was unable to locate the specific invoices for the fees.
- d. Check request
  - i. Two disbursements were missing the check request form because the payments were to Heartland Payment Systems, Inc. for processing

---

<sup>358</sup> The Hi'ipaka check register listed the vendor name as "Bankcard"; however, CLA reviewed the documentation and confirmed with the Executive Director that the fees were paid to Heartland Payment Systems, Inc.

Waimea Valley's credit card charges (LD-14, LD-25 – criteria **[4]**, **[5]**).<sup>358</sup> The Executive Director explained the payments are automatically deducted from the Hi'ipaka's bank account. A check request form is not created because a check is not issued. Instead, the accountant performs a reconciliation between the statement from the service provider and the bank statement.

- ii. One disbursement contained a check request that was missing the signature of the person approving the form (LD-24 – criteria **[4]**, **[5]**).
  - iii. One disbursement was missing the check request form (LD-17 – criteria **[4]**, **[5]**).
- e. Check Image
- i. Two disbursements were missing a physical check because the payments were automatically deducted from the Hi'ipaka's bank account for processing Waimea Valley's credit card charges (LD-14, LD-25 – criteria **[6]**, **[8]**). A physical check is not created in order to make the disbursement. As a result, the Executive Director did not have to approve these disbursements. Instead, the accountant performs a reconciliation between the statement from the service provider and the bank statement.

See recommendations L08, L09, and L13.

3. No fraudulent or wasteful disbursements were made

In the review process for evidence of fraud, waste, or abuse, CLA did not observe indicators of fraud, waste, or abuse.

### o) Hi'ipoi LLC Disbursements

Three Hi'ipoi disbursements were selected for testing by CLA. A detailed list of the applicable Hi'ipoi policies and procedures identified by CLA to test the approval and execution of these disbursements is included in **Attachment 17**. Included in Table 21 below is a summary of the results identifying each criteria tested with the number of disbursements (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>359</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 17** includes a table containing the results at the disbursement level and tickmarks explaining each disbursement with an observation.<sup>360</sup>

**Table 21: Summary of Results – Hi'ipoi LLC Disbursements**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>Conflict of Interest with LLC Managers and Directors</b>					
[1]	No conflicts of interest between the LLC managers or directors and the vendor/service provider were identified.	0	1	3	3
<b>No Fraudulent or Wasteful Disbursements were Made</b>					
[2]	No indication of fraud or wasteful disbursement was identified.	0	1	2	3
<b>Compliance with Internal Policies and Procedures</b>					
<i>Hi'ipoi "Best Practices" consistent with the other LLC Fiscal Policies</i>					
[3]	There is an approved purchase request.	3	0	0	3
[4]	There is an invoice or receipt that matches the check amount.	0	1	2	3
[5]	There is an approved check request form.	2	0	1	3
[6]	The check was signed by the Hi'ipoi COO or LLC Manager.	1	0	2	3

Within each observation, CLA has listed the LLC disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 17**. Each observation also includes a reference to the applicable criteria listed in the table above.

<sup>359</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>360</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 17**, tickmarks for contracts tested for Hi'ipoi are numbered with the letter "O" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **O01** is the first observation tickmark for Hi'ipoi.

1. Conflict of Interest with LLC Managers and Directors (criteria **[1]**)

Hi'ipoi has a Financial Conflicts of Interest policy (CPM-001) that is very similar to the policy identified for Hi'ilei Aloha. This policy states that Hi'ipoi is considered a nonprofit organization and therefore the purpose of this policy is to protect the company's interest when it is contemplating entering into a transaction or arrangement that might benefit the private financial interest(s) of a manager or employee of the company or might result in a possible excess benefit transaction.<sup>361</sup>

CLA was provided with the Financial Conflicts of Interest Disclosure Statements completed in January 2011, August through October 2013, and July through August 2016 by the Executive Director and by the LLC Managers. CLA inquired of the Executive Director whether these disclosure statements were completed on an annual basis as delineated by the policy and it was communicated to CLA that it was possible that these forms were not completed some years.

CLA identified one disbursement with a potential conflict of interest related to Hi'ipoi, as follows:

a. LD-21 – Supporting the Language of Kaua'i, Inc.

Hi'ipoi issued a \$10,000 disbursement on March 14, 2013 to SLK related to the Makaweli Poi Mill. The disbursement was referred to as a grant; however, there was little documentation to support that the disbursement was reviewed and processed like a grant. Additionally, CLA was informed that the representatives of SLK (Mr. Perry) and Lehua Poi Company (Mr. Arquette) were personally acquainted with Dr. Crabbe. There is no evidence of a personal financial benefit to Dr. Crabbe; however, there may have been a personal benefit to one or more of his personal acquaintances. The following events occurred related to these disbursements:

- i. December 24, 2012: Hi'ipoi paid \$5,000 to SLK.<sup>362</sup>
- ii. December 31, 2012: Hi'ipoi transferred the Makaweli Poi Mill to Supporting the Language of Kaua'i, Inc. (SLK) for no consideration.
- iii. In turn, SLK hired Lehua Poi Company to operate the Makaweli Poi Mill.

---

<sup>361</sup> An excess benefit transaction refers to a profit that originates unfairly from a relationship with a nonprofit organization.

<sup>362</sup> CLA did not test these disbursements; however, they have been included for additional context.

- iv. January 28, 2013: Hi'ipoi's COO, Mona Bernardino, issued a letter to the LLC Managers informing them that "to assist SLK in gearing up for operations, Hi'ipoi advanced initial funding of \$5,000 and OHA provided a grant in the amount of \$25,000. We will transfer the funds remaining in Hi'ipoi's operating account, estimated at \$20,000, after all of the bills that Hi'ipoi is responsible for have been paid. This amounts to total cash assistance of \$50,000." **(Exhibit 38)**
- v. February 14, 2013: Hi'ipoi paid \$10,000 to SLK.<sup>362</sup>
- vi. March 14, 2013: Hi'ipoi paid \$10,000 to SLK categorized as "final payment on grant."

This disbursement of \$10,000 on March 14, 2013 represented the third and final payment on the grant. The first payment, of \$5,000, occurred on December 24, 2012, just one week before the poi mill was transferred to SLK. The second payment, of \$10,000, occurred on February 14, 2013, nearly two months after the poi mill was transferred to SLK. CLA reviewed the Hi'ipoi check registers and determined that these were the only recorded payments to SLK from Hi'ipoi subsequent to the transfer of the poi mill. However, there were also two checks totaling \$385.67 that Hi'ipoi paid to Lehua Poi Company in April 2013.

Ms. Bernardino provided historical context surrounding this disbursement. Prior to the poi mill's transfer, a Director of SLK, Kimo Perry, wanted to help keep the mill open, so he and Dr. Crabbe approached Mr. Arquette to consider operating the mill. The arrangement was that Mr. Arquette would operate the mill and any profits would be turned into scholarships offered by SLK. CLA does not know to what extent any monies paid to SLK were transferred or paid to Lehua Poi Company, as CLA does not have access to SLK's books and records. However, CLA was also informed that SLK hired Lehua Poi Company to operate the mill, and operational assistance from SLK would have to be provided for the poi mill. Ms. Bernardino informed CLA that Dr. Crabbe, Mr. Perry, and Mr. Arquette were familiar with each other from their involvement in an association of Native Hawaiian men called 'Aha Kāne.

The supporting documentation included a funding request letter from SLK that stated, "as mentioned in our confidential Business Plan that was recently submitted and approved by the managers of Hi'ipoi, we are requesting support from OHA in the amount of \$25,000." CLA requested the confidential business plan; however, Hi'ipoi did not provide a copy of the business plan or the LLC Managers' approval of that plan. Additionally, although this was a grant supposedly approved by OHA, there was no documentation to support that the grant was reviewed and approved through OHA's standard grant process.



This \$10,000 disbursed as a grant may have the appearance of a conflict of interest for several reasons. The disbursement of funds occurred immediately before and several months after Hi'ipoi transferred the Makaweli Poi Mill to SLK. The timing indicates that Hi'ipoi continued to finance the poi mill even after it had transferred its operations to an external entity. There is also little documentation to support the review and approval of the grant by OHA, or the "confidential business plan" and the LLC Manager approval of that plan. Lastly, Dr. Crabbe, Mr. Perry, and Mr. Arquette appear to have had a prior relationship that was not disclosed. There is no evidence that Dr. Crabbe personally benefited from the transactions; however, it appears there was a financial benefit to possible acquaintances of Dr. Crabbe.

2. Compliance with internal policies and procedures (criteria [3] through [6])<sup>363</sup>

Hi'ipoi did not document its internal policies and procedures for the procurement of goods and services. CLA developed criteria and "best practices" that were consistent with the Stand Operating Procedures and Fiscal Policies implemented by the other LLCs for testing the Hi'ipoi disbursements. The criteria adopted a centralized accounts payable processing and reporting methodology that required an approved purchase request be submitted prior to the purchase, payment not be issued until an invoice that matched the purchase order was received and the goods or service was verified, the Chief Operating Officer or authorized designated employee approve the check request form, and the check be signed by the Chief Operating Officer or an LLC Manager.

Included below is a summary of the observations for each of the documents reviewed as part of Hi'ipoi's disbursement process:

a. Vendor invoice

- i. One disbursement did not include an invoice (LD-19 – criteria [4]). According to the Hi'ipoi Executive Director, the items purchased were raw taro from a farmer, and the farmer did not create an invoice. The Makaweli Poi Mill purchased raw taro from Kaua'i farmers who would drop off 80lb burlap bags at the poi mill and self-report the amount of taro they sold to the mill. There was no verification performed on the quantity dropped off by each farmer. The support included a summary prepared by Hi'ipoi of the annual amount purchased from each farmer based on the amounts that were self-reported. Because

---

<sup>363</sup> Criteria [3] is addressed in General Observations section "1. Purchase Request forms were not completed" and is not discussed in this section to avoid duplication.

---

there was no independent verification by the poi mill at the time, CLA is unable to determine the reliability of the amounts.

b. Request for Check Issuance

- i. Two disbursements were missing the Request for Check Issuance form (LD-19, LD-20 – criteria **[5]**).

c. Check signatures

- i. One disbursement was missing a copy of the check image that showed the Hi'ipoi Executive Director authorized the payment (LD-21 – criteria **[6]**).

3. No fraudulent or wasteful disbursements were made (criteria **[2]**)

In the disbursement review process for evidence of fraud, waste, or abuse, CLA did not observe indicators of fraud or abuse; however, there was one disbursement in which indicators exist that a potential waste may have occurred.

a. LD-21 – Supporting the Language of Kaua'i, Inc.

This disbursement of \$10,000 in March 2013 to SLK was categorized as a grant. The disbursement was made after Hi'ipoi transferred the poi mill to SLK. The Request for Check Issuance specifically stated the purpose of the disbursement was the "final payment on grant." SLK is an organization that is independent and separate from Hi'ipoi and OHA, yet Hi'ipoi continued to fund the operation of the poi mill after it was transferred. Although Hi'ipoi's mission was to help preserve the cultural production of poi, it is CLA's understanding that the intent was to support this through the acquisition and operation of the poi mill. Because there were no policies or procedures for Hi'ipoi, CLA is unable to determine whether a process was established for awarding grants to support poi production.

Additionally, it appears that the grant was actually funded by OHA. In its funding request letter, SLK stated, "we are requesting support from OHA in the amount of \$25,000 to help cover operational start-up costs." If SLK was requesting a grant of \$25,000 from OHA, then it would have been subject to both HRS §10-17 and OHA's Grants SOP. CLA reviewed OHA's check register and could not determine if any specific payments were made to Hi'ipoi to fund this grant request.<sup>364</sup>

---

<sup>364</sup> CLA reviewed the OHA check register and noted two payments of \$150,000 to Hi'ilei Aloha, the parent entity for Hi'ipoi. These payments, on November 27, 2012 and January 25, 2013, were categorized as

Ms. Bernardino issued a letter on January 28, 2013, on Hi'ipoi letterhead to the LLC Managers informing them that “to assist SLK in gearing up for operations, Hi'ipoi advanced initial funding of \$5,000 and OHA provided a grant in the amount of \$25,000. “ This letter serves to confirm that OHA funded the grant that SLK requested. There was no documentation to support that the grant was reviewed and approved through OHA’s standard grant process, which indicates that this payment may have been structured to avoid OHA’s grant policies and procedures by using Hi'ipoi as a conduit to make the grant payments to SLK.

Even though the payments were made through Hi'ipoi, it appears that OHA was actually funding the grant. If OHA wanted to continue funding the operation of the Makaweli Poi Mill, it should have used a more transparent way to award grant funds to SLK. The complicated structure of the grant raises the question of whether there was a consensus on the continued funding of the poi mill.

The information discussed previously regarding the lack of documentation surrounding this transaction, the method in which the transaction was handled, and the possible personal relationships between Dr. Crabbe, Mr. Perry, and Mr. Arquette are possible red flags or indicators of fraud, waste, or abuse.

---

“capitalization.” CLA could not determine if these payments were intended to provide Hi'ipoi the funds to pay for the grant.

---

**p) Ho'okāpaipai LLC Disbursements**

Six Ho'okāpaipai disbursements were selected for testing by CLA. A detailed list of the applicable Ho'okāpaipai policies and procedures identified by CLA to test the approval and execution of these disbursements is included in **Attachment 17**. Included in Table 22 below is a summary of the results identifying each criteria tested with the number of disbursements (1) with missing document(s), (2) with observations resulting from the test work, and (3) without observations.<sup>365</sup> Included below the table is a discussion of the more significant observations from CLA's testing, which were used to assess whether there were red flags or indicators of possible fraud, waste, or abuse. **Attachment 17** includes a table containing the results at the disbursement level and tickmarks explaining each disbursement with an observation.<sup>366</sup>

**Table 22: Summary of Results – Ho'okāpaipai LLC Disbursements**

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
<b>Conflict of Interest with LLC Managers and Directors</b>					
[1]	No conflicts of interest between the LLC managers or directors and the vendor/service provider were identified.	0	0	6	6
<b>No Fraudulent or Wasteful Disbursements were Made</b>					
[2]	No indication of fraud or wasteful disbursement was identified.	0	0	6	6
<b>Compliance with Internal Policies and Procedures</b>					
<i>Ho'okāpaipai HI-PTAC Fiscal Policies &amp; Procedures, revised November 2012<sup>367, 368, 369</sup></i>					
[4]	The purchase request was approved by the Program Manager.	5	0	1	6
[5]	The check request was submitted on a Request for Check Issuance form.	0	0	6	6

<sup>365</sup> The quantity of observations listed in the table correspond to the number of contracts with at least one observation. Some contracts may have more than one observation for a particular testing criteria; however, the contract will be counted only once. Therefore, the total number of observations discussed after the table for a particular criteria may sum to a total that is greater than what is listed in the table.

<sup>366</sup> Tickmarks serve as a reference and can be thought of as footnotes that provide additional detail. In **Attachment 17**, tickmarks for disbursements tested for Ho'okāpaipai are numbered with the letter "P" as the prefix to correspond to this section of the report and are included in red font to be easily identified. For example, observation **P01** is the first observation tickmark for Ho'okāpaipai.

<sup>367</sup> Criteria [3] (Ho'okāpaipai) was only applicable to corporate card use for travel purposes. This criteria was not applicable to any of the Ho'okāpaipai disbursements CLA tested.

<sup>368</sup> Criteria [8] was only applicable to disbursements missing a receipt. This criteria was not applicable to any of the Ho'okāpaipai disbursements CLA tested.

<sup>369</sup> Criteria [12] was only applicable to a Statement of Completed Travel form approved by the program manager. The program manager field was marked "N/A" and the COO provided final approval. This criteria was not applicable to any of the Ho'okāpaipai disbursements CLA tested.

Description of Criteria Tested		Contracts with Missing Document(s)	Contracts with Observations	Contracts without Observations	Total Contracts Tested
[6]	The Request for Check Issuance form was approved by the Program Manager.	0	0	6	6
[7]	The Request for Check Issuance form was approved by the COO.	0	0	6	6
[9]	The travel request was submitted on a Request for Business Travel form.	0	0	6	6
[10]	The Request for Business Travel form was approved.	0	0	6	6
[11]	The Statement of Completed Travel form was submitted within a week of completing travel.	0	0	6	6
[13]	The Statement of Completed Travel form was approved by the COO.	0	0	6	6
[14]	The Request for Check Issuance form described why the purchase was necessary, an analysis of lease/purchase alternatives, and a cost or price analysis.	2	0	4	6
[15]	The transaction included all appropriate documentation.	0	0	6	6
[16]	Purchases between \$2,500 and \$25,000, contained three quotes in the contract file.	0	0	6	6
[17]	The quote evaluation selected the lowest priced, responsive, and responsible vendor.	0	0	6	6
[18]	There was documentation that a price analysis was performed.	0	0	6	6
[19]	The Purchase Order was signed by the Program Manager.	0	0	6	6

Within each observation, CLA has listed the LLC disbursement sample number with that particular observation. The specific disbursement number and a more detailed discussion of the observation can be found by referring to **Attachment 17**. Each observation also includes a reference to the applicable criteria listed in the table above.

1. Conflict of Interest with LLC Managers and Directors (criteria [1])

CLA reviewed whether Ho'okīpaipai had a conflict of interest policy and located the Financial Conflicts of Interest policy in the area of ethics within its Corporate Policy manual. The policy explains that Ho'okīpaipai is considered a nonprofit organization and therefore the "purpose of this policy is to protect the Company's interests when it is contemplating entering into a transaction or arrangement that might benefit the private financial interest(s) of a LLC Manager or employee of the Company, or might result in a possible excess benefit transaction."<sup>370</sup>

For the scope period, CLA was provided with the Financial Conflicts of Interest Disclosure Statements completed between August and October 2013, and January 2016 by the COO and the LLC Managers. The Financial Conflicts of Interest Disclosure Statements completed indicate that the COO and the LLC managers did not have any direct or indirect financial interest in any

---

<sup>370</sup> An excess benefit transaction refers to a profit that originates unfairly from a relationship with a nonprofit organization.

transaction or arrangement with the LLC. CLA inquired of the COO whether these disclosure statements were completed on an annual basis as delineated by the policy and it was communicated to CLA that they were supposed to be completed but since they were not located, it was possible that the forms were not completed for the 2011, 2012, 2014, and 2015 years.

CLA did not identify any evidence of a conflict of interest; however, Ho'okīpaipai did not retain the conflict of interest forms for all years and it is possible that they were not always completed.

2. Compliance with internal policies and procedures (criteria **[4]** through **[19]**)

The internal policies and procedures identified by CLA that address the approval and execution of Ho'okīpaipai's disbursements include a review of the purchase request, purchase explanation or a price or cost analysis, Request for Check Issuance, and all source documents supporting the transaction (receipts, purchase orders, invoices, and bid materials). When a signature was required on a particular document, CLA verified the appropriate signature(s) were obtained based on the Ho'okīpaipai's Fiscal Policies and Procedures manual.

In the review process for compliance with internal policies and procedures and with the exception of the general observations noted for Ho'okīpaipai, CLA did not observe specific deviations from the Ho'okīpaipai's Fiscal Policies and Procedures manual.<sup>371</sup>

3. No fraudulent or wasteful disbursements were made (criteria **[2]**)

In the review process for evidence of fraud, waste, or abuse, CLA did not observe indicators of fraud, waste, or abuse.

---

<sup>371</sup> Criteria [4] is addressed in the General Observations section "1. Purchase Request forms were not completed" and is not discussed in this section to avoid duplication. Criteria [14] is addressed in the General Observations section "3. No documentation that a cost or price analysis was conducted" and is not discussed in this section to avoid duplication.

**E. QUARTERLY REPORTS TO THE BOARD OF TRUSTEES**

On a quarterly basis, the LLCs staff prepares reports on the results of the LLCs' activities for the preceding quarter. One report is provided with the activity for Hi'ilei Aloha and a separate report is provided with the activity for Ho'okele Pono. The report provided by Hi'ilei Aloha contains the activity for Hi'ilei Aloha, Hi'ipaka, Hi'ipoi, and Hi'ikualono.<sup>372</sup> The report from Ho'okele Pono contains the activity for Ho'okīpaipai. The quarterly reports are provided to the Board of Trustees normally during a meeting taking place one month or more after the quarter has ended. A copy of the quarterly report issued for the quarter ending June 30, 2016 is included in **Exhibit 39**.

To assess the sufficiency of the internal controls in place to ensure the integrity of the performance indicators reported in the quarterly reports to the Board of Trustees, CLA inquired with LLCs staff regarding the process to prepare the reports. For the reports issued for the 2016 year, CLA performed a math check to determine if the amounts provided in the prior quarter's year-to-date column carried forward to the next quarter without differences. CLA additionally traced the information in the December 2016 report to the LLCs' audited financial statements and general ledger to determine the accuracy of the information in the report.

**1) Staff Inquiries**

Based on discussions with the COO for Hi'ilei Aloha, and the Executive Director for Hi'ipaka, the process to produce the quarterly reports is as follows: within a month after the quarter ending, the reports are finalized and provided to OHA for distribution to the Board of Trustees. The quarterly reports communicate a Summary of Activities, a Budget Comparison Report, and a Balance Sheet on a quarterly and year-to-date basis. Both the COO and the Executive Director work together with their staff to prepare these reports as discussed below for each Hi'ilei Aloha, Hi'ipaka, and Ho'okele Pono.

**Hi'ilei Aloha LLC**

The reports by Hi'ilei Aloha were prepared by the COO with the assistance of the accounting staff for the sections of Hi'ilei Aloha. The accomplishments for the quarter were gathered for its capacity building program and the highlights were included in the quarterly reports. The administration also communicated any new developments at a high level. The financial information included in the Budget Comparison Report and on the Balance Sheet was obtained directly from the financial system.<sup>373</sup> The Hi'ilei Aloha quarterly reports reviewed included information for Hi'ilei Aloha and

---

<sup>372</sup> In the year 2016 neither Hi'ipoi nor Hi'ikualono had any activity. Hi'ipoi was divested in 2012 and did not have any activity in 2016. Hi'ikualono, although established in 2010, according to the COO, has never had any activity. The report from Ho'okele Pono contains the activity for Ho'okīpaipai.

<sup>373</sup> Hi'ilei Aloha reported the Budget Comparison Report (revenues and expenses) for its Capacity Building program separately from the Hi'ilei Aloha operations. The Balance Sheet was reported as a single report for Hi'ilei aloha without separating between its Capacity Building program and the core operations.

Hi'ipaka. In the year 2016, neither Hi'ipoi nor Hi'ikualono had any activity. Hi'ipoi was divested in 2012 and did not have any activity in 2016 and Hi'ikualono never had any activity.

#### Hi'ipaka LLC

The reports by Hi'ipaka are prepared by the Executive Director and his staff after gathering from each department their respective highlights. The total visitor count and average daily visitor count is obtained from the point-of-sales system. The financial information included in the Summary – Year to Date Financial Performance section is obtained directly from the financial system. Once this information was prepared it was forwarded to Hi'ilei Aloha where the information included in the Budget Comparison Report and the Balance Sheet were added. The Executive Director explained that Hi'ilei Aloha's accounting staff would retrieve the information for the Budget Comparison Report also directly from the financial system. The Executive Director communicated that, typically, he did not review the final report after it had been completed by Hi'ilei Aloha. He stated that a few months before CLA's visit, it had been decided that he would provide to Hi'ilei Aloha with all of the sections for the Hi'ipaka report for inclusion in the quarterly reports. Instead of having Hi'ilei Aloha staff prepare the Budget Comparison Report and the Balance sheet for the Hi'ipaka's section.

#### Ho'okele Pono LLC

The quarterly report for Ho'okele Pono included information for Ho'okipaipai (Hawai'i PTAC) only. According to the COO all of the highlights for the quarter were gathered by her and her staff. Reports on new clients, counseling hours and contracts awarded were included based on the records kept for this type of work performed by Hi'ilei Aloha. The procurement outreach events were also included from records of outreach projects. The COO explained that there was not a lot of activity for this LLC so the quarterly reports were very brief. These reports also included Budget Comparison Reports as well as a balance sheet. The accounting staff gathered the financial information and the COO always reviewed the reports prior to finalizing and sending to OHA.

#### Observations

1. The finalized report for Hi'ipaka that was included in the Hi'ilei Aloha quarterly report was not reviewed by the Hi'ipaka's Executive Director prior to the report being finalized and sent to OHA.

See recommendation L27.



## 2) Reconciliation of Quarterly Reports

### Hi'ilei Aloha LLC

- Horizontal Analysis (Quarter to Quarter) comparison: CLA identified various differences in tracing the actual amounts from quarter to quarter. For example, the December 31, 2016 Budget Comparison report for Hi'ilei Aloha's Capacity Building Program did not include any expenses in the area of legal expenses for quarters one through three, then on quarter four, there was a total listed of \$5,888 for the quarter but as a year-to-date amount it included \$58,959. CLA discussed this concern with the COO and after some research she stated that legal expenses had been recorded to the prior quarters after the quarterly reports had been provided to OHA; therefore, the year-to-date amount was pulling the information for all quarters. She acknowledged that the quarterly reports are not structured to communicate differences arising after the quarterly reports have been prepared and how this may cause confusion to the readers of the quarterly reports if they were to compare the four reports for the entire year.
- Comparison of December 31, 2016 Quarterly Report to Audited Financial Statement: It was noticed that there were some differences in the numbers communicated in the Budget Comparison Report from the December 31, 2016 Quarterly Reports to the audited financial statements. For example the total assets listed in the December 31, 2016 Quarterly Reports total \$664,175, while the financial statements for year-end December 31, 2016 list total assets of \$688,567 for a difference of \$24,392. The COO explained that the differences may be due to additional transactions that took place after the quarterly reports were prepared but before the books were closed for the year. She acknowledged that the quarterly reports do not communicate that the figures reported are unaudited and that it may be reasonable to include such disclaimer.

### Hi'ipaka LLC

- Within Quarterly Report Comparison: For the 2016 year CLA reviewed the Hi'ipaka section of the Quarterly Reports to compare the information within the report itself to identify if there were differences between the total revenues and total expenses communicated in the Summary of Financial Performance when compared to the Budget Comparison Reports included within the same quarterly reports. There were differences identified.<sup>374</sup> The

---

<sup>374</sup> Some of the differences are due to the fact that the Summary Financial Performance included in the first page of the Hi'ipaka section are due to the fact that the revenue and expenses are communicated as a total while the Budget Comparison Report breaks it up into operating revenues and expenses and other income and expenses. However, some differences were as basic as the depreciation expense amount being different in the Summary when compared to the Budget Comparison Report. For example, on the quarter ended March 31, 2016 Quarterly Report, the Summary of Financial Performance communicates 2016 year-

---

Executive Director communicated that he runs the Summary Financial Performance reports directly from the system to provide the high level table of the quarterly reports and Hi'ilei Aloha's staff runs the Budget Comparison Report. As of 2016, the executive director would normally not receive the draft quarterly reports so he could not compare. He was not surprised that there were differences identified by CLA. He stated that he recalled being in a Board of Trustee's meeting one time when he realized that the numbers in the two reports within the same quarterly report did not match. He stated that the reason for the difference may be because the reports are run at different dates. He stated that recently he has learned how to run the Budget Comparison Report and he will be making sure to run both reports at the same time and on a designated day so that the reports match.

- Vertical Analysis of Budget Comparison Report: For the March 2016 Quarterly report CLA recalculated the variance communicated in the Budget Comparison Report and identified a math error in the calculation of the variance. The total variance number between actual and budget for total expenses was misstated. The error was due to the last expense line item not being included in the calculation.<sup>375</sup> The Executive Director understood this was a mathematical error and agreed that in all likelihood, because although the financial information is pulled directly from the system, the report is ultimately prepared in Excel and if a formula is not updated appropriately it is going to cause errors.
- Horizontal Analysis (Quarter to Quarter) comparison: CLA identified various differences in tracing the actual amounts from quarter to quarter. CLA discussed this concern with the Executive Director and he stated the reason for these differences was that, if, for example, an invoice was received for a quarter that was already reported in a quarterly reports, the expense is recorded to the appropriate quarter which then changes the amount for that quarter.
- Comparison of December 31, 2016 Quarterly Report to Audited Financial Statement: It was noticed that there were some differences in the numbers communicated in the Budget Comparison Report from the December 31, 2016 Quarterly Reports to Hi'ipaka's audited financial statements. For example, the total operating expenses in the December 31, 2016 quarterly report lists a total of \$5,904,312 total expenses for the year ended December 31, 2016, while the audited financial statement for the same period listed \$4,292,106 for a difference of \$1,612,206. The Executive Director, after

---

to-date depreciation amount of \$78,795, while the Budget Comparison Report reports a depreciation amount of \$52,530, which is a difference of \$26,265.

<sup>375</sup> The mathematical error identified in the Budget Comparison Report was the variance on the total expenses for the current quarter being stated as \$79,527 when it should have stated \$112,495. The difference was due to a \$14,600 amount not being captured in the formula.

consulting with the LLC's auditor communicated that the reason for the difference related to the difference in presentation of the cost of sales. The explanation provided to CLA appeared appropriate. The Executive Director understood that the difference in the presentation between the Quarterly reports and the audited financial statement may cause confusion to the reader.

#### Ho'okele Pono LLC

- Horizontal Analysis (Quarter to Quarter) comparison: CLA identified various differences in tracing the actual amounts from quarter to quarter. CLA discussed this concern with the COO. Similar to her response for Hi'ilei Aloha, she stated that the quarterly reports are not structured to communicate differences arising after the quarterly reports have been prepared.
- Comparison of December 31, 2016 Quarterly Report to Audited Financial Statement: It was noticed that there were some differences in the numbers communicated in the Budget Comparison Report from the December 31, 2016 Quarterly Reports to Ho'okīpaipai's audited financial statements. For example, the December 31, 2016 Quarterly Reports for Ho'okīpaipai communicate a total of total revenue for the year ended of \$329,927, while the financial statements for year-ended December 31, 2016 communicate \$190,157. The difference was attributed to grants and in-kind income received from OHA and from Hi'ilei Aloha.

#### Observations

2. Neither the Budget Comparison Reports nor the Balance Sheets included in the quarterly reports disclose the fact that these reports are unaudited.
3. The quarterly reports do not have a mechanism to communicate changes that may have taken place for a quarter that has already been previously reported. It does not make use of footnotes to provide a reconciliation or at a minimum a footnote to describe that transactions have been recorded to a quarter after the quarterly report has been provided to OHA.
4. There were differences in the amounts communicated within the Hi'ipaka report between the Summary Financial Performance revenue and expense figures and the Budget Comparison Report revenue and expense figures. These differences appear to be due to the production of these reports not being done at the same time.
5. Mathematical errors were identified in the quarterly reports for Hi'ipaka due to the fact that these reports although downloaded directly from the financial system are finalized through a manual process using Microsoft Excel to calculate totals.

See recommendations L28, L29, and L30.

**F. RECOMMENDATIONS**

- L01) Establish a process whereby it is ensured that the Financial Conflicts of Interest Disclosure Statements are completed on an annual basis, consistent with the policies established for the LLCs. These forms should be retained for reference to provide evidence that these disclosures were made for each year.
- L02) For reference and audit purposes, it is advisable that proof of deliverables for established contracts be retained in the contract file.
- L03) Implement a process to assign contract numbers to any new contracts entered into by the LLCs. Having contract numbers will aid in the process of reference and organization and is specifically helpful when one vendor may have more than one contract. When processing a payment, the related contract number should be recorded in the description for that payment. Having designated contract numbers will aid in ensuring that payments made are allocated to the appropriate contract number so that there is no confusion as to which payments belong to which contracts.
- L04) Implement the use of a Purchase Request form for all purchases. The Purchase Request form should document the COO's verification that the purchase complies with the established budget and record the COO's approval of the purchase.
- L05) For each new contract entered into, establish a process to document that a cost or price analysis was conducted to determine reasonableness, allocability, and allowability. The supporting documentation used to conduct this analysis may be attached to a form that may be used to document this process.
- L06) Consider updating the Hi'ilei Aloha's Fiscal Policies and Procedures manual to prescribe the position that is responsible for contract execution, whether the contract execution authority may be delegated, and the process that must be followed in order to perform such delegation of authority. For example, documentation of a delegation of authority may encompass the preparation of a memorandum communicating the details of delegation and containing the signature of the delegating party.
- L07) When updating the Hi'ilei Aloha's Fiscal Policies and Procedures manual, also consider including the detailed process to be followed when executing a contract to ensure that the contract effective date occurs after the execution date. The process may require the vendor to sign the contract first and then return to the LLC. After the LLC receives the signed contract, the LLC representative may sign the contract and include the effective date to be on or after the LLC representative has signed the contract.
- L08) Ensure that employees are trained on the established process for check issuances. Employees processing payments should ensure that payments are only processed after a completed Request for Check Issuance form has been signed by the individual with authority to approve.

- L09) Ensure that complete and appropriate documentation is received from the vendor prior to completing a Request for Check Issuance form so that payments may only be processed after the LLC has received a detailed invoice from the vendor.
- L10) At times, there is no way to predict that circumstances will change; however, if at all possible ensure that services that have been obtained are fully utilized so that funds are not utilized for services that although provided by the vendor do not bring a benefit to the organization because the resulting deliverable is not used.
- L11) Provide guidance and training to individuals processing payments and to individuals responsible for managing contracts to ensure that they are cognizant that payments made on a contract never exceed the total contract amount. If a price increase or a timing change is negotiated with the vendor, ensure that a documented contract amendment is fully executed by both the vendor and the LLC.
- L12) Ensure that appropriate monitoring of each contract is in place for those contracts entered into by Hi'ipaka and OHA. It was observed that the strict monitoring in place for other contracts was not followed for the contract between Hi'ipaka and OHA. It is possible that this was due to the close relationship between the two entities.
- L13) Ensure that verification of receipt of a product or service is documented consistently. This may include the application of a stamp to an invoice that provides an area for the contract manager to initial or sign indicating verification that the work was performed or goods were received. See also recommendation L03.
- L14) Update the Hi'ipaka's Standard Operating Procedures and existing Corporate Procedures Manual to ensure that policies and procedures for the organization are communicated consistently in both documents. Alternatively, consider the use of a single document to reduce the risk of inconsistencies. If there are any procedures that are followed as a matter of practice, ensure that the procedures are documented. If revisions to policies or procedures are needed, they should be made at this time. The document used to record the standard operating procedures must be reviewed on an annual or biannual basis to ensure that as new procedures are implemented they are appropriately documented.
- L15) Implement a process whereby items obtained or verified from a vendor, such as the Certificates of Good Standing with the State of Hawai'i, certificates of Insurance, and contractor's license, are not only verified but also included and retained as part of the contract file. Establishing this process will aid in reducing the risk that one of these important documents is not obtained from the vendor during the contract procurement process.
- L16) Ensure that appropriate steps are implemented to review contract drafts to verify that the contract contains accurate effective dates and execution dates are listed.
- L17) Ensure that any verbal changes to a contract (contract terms, increased contract amount, or a change in the contract's time of performance) are appropriately documented with a written contract amendment. Legal counsel should be involved

in designing a template that Hi'ipaka may use when a change to the contract terms, total compensation, and/or time of performance is necessary. The contract amendment should be signed by both the vendor and Hi'ipaka representative and should be included in the contract file.

- L18) Prior to processing any contract payments, the contract manager should ensure that the invoice accurately reflects the terms of the contract. Hi'ipaka may also consider updating the Hi'ipaka contract template to prescribe the vendor invoice format to include total amount of the contract, total amount previously invoiced, total amount received in payment, and total invoice amount. Having this invoice format will aid Hi'ipaka in ensuring that total invoices and payments do not exceed the total contract amount.
- L19) Provide training and education to individuals responsible for processing payments to require that a Check Request form be completed and appropriately approved (signed) prior to processing payment. Under no circumstance should a payment be prepared prior to receiving an invoice from the vendor and/or prior to having a completed Check Request form as support.
- L20) Implement a review process to ensure that accurate information is included in the general ledger to record payment information, such as payee name, check number, and date.
- L21) Consider requesting from the bank that images of the front and back of the cancelled checks be provided with the monthly bank statements. If the bank used does not provide this service inquire whether the images of the front and back of cancelled checks may be provided in electronic format (such as disk accompanying the monthly bank statement). Part of the bank reconciliation process should include viewing these copies to verify, at the minimum on a sample basis, that the payee, date, amount matches what was recorded in the general ledger and to ensure that the checks were signed in accordance with Hi'ipaka policy (Executive Director to sign check of less than \$10,000 and LLC Managers for check of \$10,000 or more).
- L22) Ensure that prior to selecting a vendor or service provider that three verbal quotations of rate or price are obtained as required by the Ho'okipaipai Fiscal Policies and Procedures manual.
- L23) Ensure that when competitive negotiation becomes infeasible, the basis for non-competitive negotiations is documented in writing. Evidence of this determination should be retained in the contract file.
- L24) As OHA is a funding source for the operations of the various LLCs, consider establishing a process whereby the disbursement of funds for "loans" and "grants" issued by the LLCs are reviewed by OHA's procurement staff to ensure that these "loans" and "grants" are in compliance with the regulations of HRS §10-17.
- L25) Implement procedures to ensure that each of the documents required for the disbursement is appropriately completed and retained in the contract file. Enforce

the requirement that all documents be completed by the appropriate method and in the appropriate order, and retained in the disbursement files. Disbursements should never be approved or issued without all of the necessary steps being completed. Consider whether additional training of staff is necessary.

- L26) The LLCs should not make purchases or issue disbursements for the benefit of a third-party without adequate and equal consideration. If it is the intent of OHA that any of the LLCs provide support to third-party organizations that further the mission of OHA or the LLCs, a process should be implemented whereby there is a transparent review and approval of funding support, similar to the grant process at OHA. This process should be documented in the respective LLCs' policies and procedures and include adequate steps for review and approval.
- L27) Ensure that a comprehensive quality review control is in place for the production of the LLCs' quarterly reports to the Board of Trustees. The Executive Director for Hi'ilei Aloha must review the final draft of quarterly reports prior to being finalized so that if there are any differences within the quarterly report, they are addressed. If a legitimate reason exists for a difference, at the very least a footnote should provide an explanation for the differences.
- L28) Consider adding a footnotes or notes to the quarterly reports to either disclaim that additional transactions may take place for a quarter after the quarterly report is provided to the Board of Trustees. If at all possible, include an area to communicate a reconciliation for amounts that may have been recorded after the quarterly report was prepared so that amounts carry without difference to year-to-date amount.
- L29) Ensure that a strict quality control review process is in place for the review of the quarterly reports so that any mathematical errors are identified and corrected prior to the report finalization.
- L30) Consider whether the format of the financial reports provided within the quarterly reports may mirror the format of the audited financial statements, so that the readers of the quarterly reports may be able to reference either report knowing that the financial information is presented uniformly for ease of reference.

## VIII. Board of Trustees Oversight of OHA and the LLCs

In addition to the specific recommendations made to address the various observations seen during the testing performed, CLA has also developed observations and recommendations pertaining to the Board of Trustees oversight of OHA and the LLCs. CLA identified three areas that pertain to general oversight and governance in an organization, as discussed further below.

### A. Governance: Development of Permitted Interaction Group on Organizational Guidance

#### Observation:

In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to investigate various elements of governance frameworks and models, including but not limited to, cultural, indigenous, native, national, and international contexts. In April 2019, the PIG recommended and the Board approved five elements of OHA's Board Governance Framework: 1) Identity, 2) Values and Mana, 3) Statutory Basis, 4) Policies, and 5) Supporting Documents and Practices (Operations). This is an excellent process to dig deep into the various areas of governance that need attention.

#### Recommendation:

This is an important function and it will be critical that an assessment of the progress be completed at least every six months or quarterly. The group is utilizing the best practices available from the Government Finance Officers Association, which CLA agrees is a great resource to be considered. CLA also suggests, if it has not already, the use of the self-assessment tool available from the State of Hawai'i – *"Self-Assessment of Internal Controls for State Departments and Agencies."* Resources are also available from the American Institute of Certified Public Accountants that could be helpful as this group develops best practices.<sup>376</sup>

In reviewing the minutes from the group, it appeared there were requests that the group investigate whether conflict of interest codes had been violated (minutes of June 20, 2019 meeting). If the group is going to be utilized in this manner, they may want to combine the efforts with outside resources, such as Certified Internal Auditors or Certified Fraud Examiners who will have the training and expertise to properly investigate such matters.

### B. Governance: Transparency and Financial Reporting

#### Observation:

On September 26, 2018, OHA adopted RM #18-12. This action was a comprehensive revision related to budget preparation, format, and reporting requirements. The action included various changes to the Executive Policy Manual and the Board of Trustees Operations Manual. This action was taken to address whether "sufficient" information is

---

<sup>376</sup> <https://www.aicpa.org/eaq/internal-control-resources.html>



available to the Board of Trustees. RM #18-12 is an attempt to assure that OHA's practices resemble best practices established by the Government Finance Association, as well as adhering to the State of Hawai'i's Executive Budget Act. One of the key aspects of this proposal is the creation of a Transparency portal available to the Board and public of financial reports comparing the Biennium budget to actual results. Because this action involves complex accounting and financial recommendations, the effective date for this action is deferred until submission of the FY 2022-23 Biennium Budget.

**Recommendation:**

It is believed that when RM #18-2 is fully implemented, financial reporting and transparency will be adequately addressed. However, in the meantime, to improve transparency, it is recommended that additional financial reporting be provided to the Board regarding contracts awarded, expenditures incurred, and grant submissions. It is recommended that a list of grantees be provided on a monthly basis to the Board. The purpose of the grant and expected total should be provided. This will help increase communication and transparency about grants awarded. It may also be prudent to provide a list of approved contracts and a copy of the check registers on a monthly basis as well, which provides complete transparency of expenditures.

**C. Governance: Internal Audit**

**Observation:**

Currently, OHA does not have an internal audit division or function. Having an internal audit function has proven to be an effective way for organizations to minimize the risk of error and fraud and strengthen internal controls. The Institute of Internal Auditors defines the fundamental purpose, nature, and scope of internal auditing as follows:

*Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.<sup>377</sup>*

The *2018 Report to the Nations*, published by the Association of Certified Fraud Examiners, reported in their study on occupational fraud, that 15% of occupational fraud cases had been discovered by internal auditors.<sup>378</sup> This is the second most common

---

<sup>377</sup> <https://na.theiia.org/standards-guidance/mandatory-guidance/Pages/Definition-of-Internal-Auditing.aspx>

<sup>378</sup> The Association of Certified Fraud Examiners (ACFE) is the world's largest anti-fraud organization and premier provider of anti-fraud training and education ([www.acfe.com](http://www.acfe.com)). The *Report to the Nations* is published by the ACFE every two years and is the largest global study on occupational fraud (<https://www.acfe.com/report-to-the-nations/2018/default.aspx>). The ACFE defines occupational fraud as "the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the organization's resources or assets" (<https://www.acfe.com/fraud-101.aspx>).

method of fraud detection. The report goes on to state that when an organization had an internal audit function in operation, fraud was detected much quicker and the loss was much less. For example, it reported the median loss with the internal audit function in place to be \$108,000 versus \$200,000 without, and detected in 12 months when the control was in place, versus 24 months without.<sup>379</sup>

In addition to the detection of fraud, other benefits of having an internal audit function include helping the organization ensure that:

- Risks are appropriately identified and managed.
- Significant financial, managerial, and operating information is accurate, reliable, and timely.
- Employee's actions are in compliance with policies, standards, procedures, and applicable laws and regulations.
- Resources are acquired economically, used efficiently, and adequately protected.
- Programs, plans, and objectives are achieved.
- Quality and continuous improvement are fostered in the organizations control process.
- Significant legislative or regulatory issues impacting the organization are recognized and addressed properly.
- The organization creates an internal accountability system with properly trained individuals that are independent from the accounting personnel.

**Recommendation:**

OHA should consider establishing an Internal Audit division or function within the organization. Internal auditors typically report to the Audit Committee or Governing Board. Internal audit should play a role in assisting management with the following areas:

- a) Control Environment – Assess various aspects of the control environment including policies, procedures, organizational structure, management philosophy, and ethical values. The internal auditors often perform proactive fraud audits and tests, investigations when needed, and provide remediation for findings.
- b) Fraud Risk Assessment – Internal auditors often evaluate management's fraud risk assessment and help in identifying and testing these risks. This may include high risk transactions and involve suppliers, contracts, and related parties.
- c) Control Assessments – Assess the design and operating effectiveness of internal controls including assessing the risk for fraud or misconduct.

---

<sup>379</sup> Association of Certified Fraud Examiners (2018) *Report to The Nations: 2018 Global Study of Occupational Fraud and Abuse*. Austin, TX, p. 28-29.

- d) Communications and Training – Assist management with assessing the effectiveness of information, systems and practices, and provide support for fraud-related training initiatives.
- e) Monitoring – Internal audit typically assists with assessing monitoring activities related to computer software and security, and conducting investigations as required through normal monitoring and as requested by the audit committee (or governing board), as needed.

The following steps are outlined for starting an internal audit function.<sup>380</sup>

- Clarify expectations with senior management, the board, and audit committee.
- Develop an audit charter, with audit committee (or governing board) input and approval.
- Consider the appropriate budget and staffing model (e.g. in-house, co-sourced, or outsourced). As part of the process, research actions taken by similar governmental organizations.
- Formulate reporting responsibilities of the internal audit function.
- Identify the “universe” of auditable entities within the organization.
- Complete an initial risk assessment with management and audit committee (or governing board) involvement. Consider using COSO’s internal control and enterprise risk management frameworks.<sup>381</sup>
- Develop an internal audit plan responsible to the risk assessment.
- Determine staffing requirements and whether the department will be staffed internally, co-sourced, or outsourced.
- Plan and execute audit work called for in the plan, including a system to monitor and follow up on audit recommendations.
- Update the risk assessment for changing circumstances during the year.
- Continuously enhance and modify the internal audit function to meet changing needs of management and the audit committee.

---

<sup>380</sup> Protiviti (2009) *Guide to Internal Audit: Frequently Asked Questions about Developing and Maintaining an Effective Internal Audit Function*, Second Edition. P. 12.

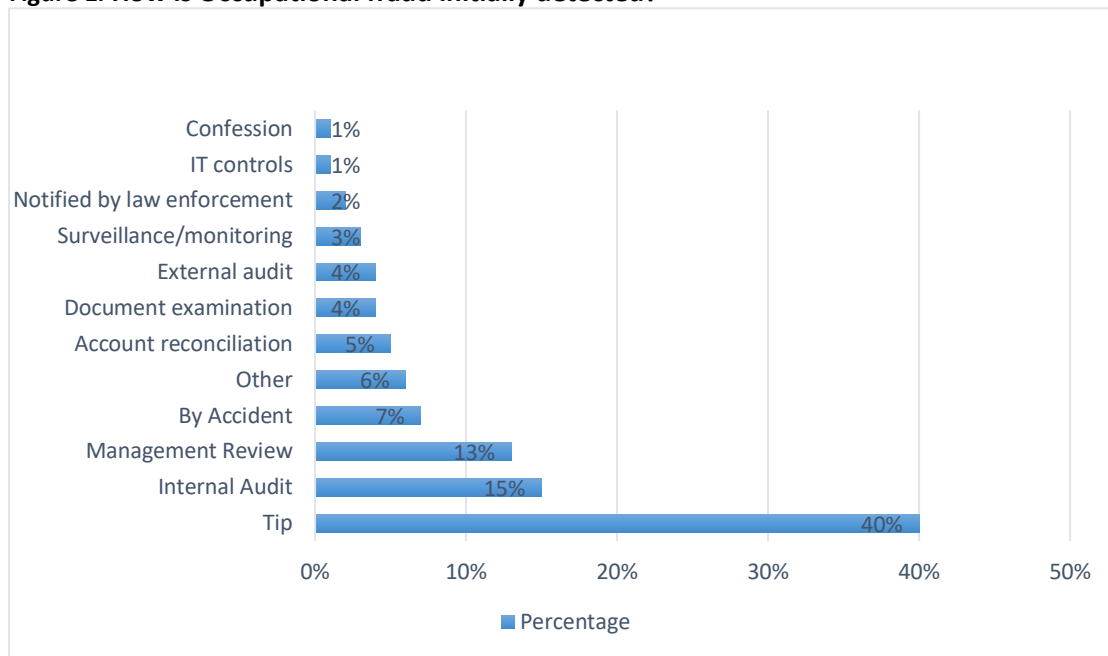
<sup>381</sup> COSO is the Committee of Sponsoring Organizations of the Treadway Commission, which is “a joint initiative of five private sector organizations dedicated to providing thought leadership through the development of frameworks and guidance on enterprise risk management, internal control, and fraud deterrence.” The internal control framework was developed by COSO and helps organizations design and implement internal control. The enterprise risk management framework was also developed by COSO and “addresses the need for organizations to improve their approach to managing risk to meet the demands of an evolving” environment. Source: <https://www.coso.org/Pages/default.aspx>

#### D. Governance: Hotline

##### Observation:

OHA does not have an established hotline for the reporting of fraud or abuse. This is one of the most effective and cost efficient tools available to organizations. As reported in the ACFE's *Report to the Nations: 2018 Global Study on Occupational Fraud and Abuse*, tips are the by far the most common means of detecting fraud (see Figure 1 below).<sup>382</sup> The report explains further that more than half of the tips were provided by employees of the victim organizations.

**Figure 1: How is Occupational fraud initially detected?**<sup>382</sup>



##### Recommendation:

OHA should consider the implementation of a hotline for anonymous reporting of fraud and abuse. This is an important and essential part of a successful ethics and compliance program in any organization. Hotline programs can be operated internally, especially if an internal audit division is in place, or can be outsourced to a reputable company offering such services. There are three key steps to consider when establishing a hotline:

- 1) Planning
- 2) Communication
- 3) Responding

<sup>382</sup> Association of Certified Fraud Examiners (2018) *Report To The Nations: 2018 Global Study of Occupational Fraud and Abuse*. Austin, TX, p. 16-17.

**Step 1 – Planning a successful hotline program**

Setting up a hotline may seem simple, but there are many factors to consider. It is important that the system adequately protects the confidentiality of anonymous callers while providing quality information. It is also important to establish how information will be received and distributed, and how records of complaints and investigations are maintained. Access to the hotline should be easily available to employees, suppliers and vendors, and outside stakeholders.

One important decision is whether the hotline calls will be answered by someone within the organization, like the human resources or legal department, or externally. Research has shown there are drawbacks to using internal employees. If employees realize they are calling an internal number, they may be afraid their identity will be traced, which often deters the choice to call. There are other operational complications such as consistency of handling sensitive calls and having the line open 24/7, which may mean leaving a message, which most are very reluctant to do. An internal hotline also leaves the organization vulnerable to covering up issues that involve high level executives. An external process provides greater safeguards of anonymity and avoids the possibility or appearance of impropriety.

Another important aspect in the planning stage involves the availability of the means of communication: telephone, voice messages, web based submission, and/or written submission through the mail. The most effective hotlines are staffed 24 hours a day, 365 days a year, and use experienced interviewers to take the calls.

It is important to note that the hotline may receive calls that are unrelated to fraud or abuse. It is important that the organization consider how these complaints will be handled. The line may be used to report sexual harassment, workplace environment matters, safety issues, discrimination, etc. Since these matters are legally sensitive for the organization, interviewers should be trained on how to handle these situations and be able to properly advise the caller.

Another important decision in the planning phase is to determine who will take ownership of the line. Typically this is in the human resources and legal departments. It may also be prudent to assign a member of the Board to the team in case there are reports about high level executives and to provide someone with governance oversight responsibilities.

Determining how the calls are documented and disseminated is another critical decision at the onset. A system of who receives the information and makes decisions on next steps is very important; therefore, it is critical that this be a shared role. Dual dissemination is a helpful practice. A sample report distribution structure is shown in Table 23.

**Table 23: Sample Hotline Report Distribution Structure**

<b>Issue</b>	<b>Potential Recipients</b>
Employee Mistreatment	Human Resources, Ethics Officer
Fraud	Internal Audit, Legal, Risk Management, Ethics Officer
Accounting Irregularities	Audit Committee, External Auditors, Internal Audit
Workplace Issues	Security, Legal, Human Resources
Employee Theft	Legal, Human Resources

Another factor to decide in the planning stage is the data security of the hotline documentation. There must be safeguards in place to protect the confidentiality of the information, which means the storage of the files should be secure and protected from others inside and outside. If emails are used to gather information it may be necessary to use encryption to properly secure the email transmission.

#### Step 2 – Communication

It is far too common that organizations create a hotline program but receive little to no complaints, which is typically because they did not adequately and consistently communicate about the plan. Communications about the hotline should be part of the ethics program of the organization in line with promoting ethical behavior throughout the organization. Communications about the hotline should encourage employees to not only help in detecting fraud, but to create the value of an ethical organizational culture.

It will be important that the message about integrity and high ethics start at the top and be embraced by management within the organization. Another important factor is to ensure that all employees receive information about this in their orientation and distribute reminders at least annually. It is also best if there is a document that is signed by all employees that they acknowledge receiving information about the ethics policies and the hotline. To encourage employees to come forward when there is knowledge of unethical behavior, some organizations choose to reward whistleblowers with financial incentives or other methods of appreciation for their actions to report the behavior. In this stage, consideration should be given to developing a mechanism for reporting outcomes of the hotline. Periodically reminding employees, suppliers/vendors, and other stakeholders about the avenues for reporting unethical behavior increases the usage and helps to protect the reputation of the organization.

#### Step 3 – After the call

A very important aspect of a hotline program relates to what is done after a call is received. There should be a named hotline implementation team that receives each complaint and determines the next course of action. Someone on the audit committee (or governing board) is typically part of this team. In order to continue conversations with the caller, the caller is generally given a unique code correlating to his/her report and is asked to call back after a pre-determined interval.

A decision will need to be made as to whether an allegation should be investigated. Procedures should be in place to determine who in the organization should conduct the investigation. Human resources and legal should be involved in making this decision. If the allegation involves possible financial irregularities, it may be warranted to hire independent auditors or Certified Fraud Examiners to assist in the investigation. Internal auditors can also be utilized for this purpose.

It is important to track the complaints received and add information regarding the actions that have been taken to investigate each allegation. The organization should create a database for this purpose that is confidentially stored. The database should record the final disposition of the investigation and the nature of any discipline or other corrective

action taken as a result of the complaint. Third-party hotline providers can typically assist with this system.

One of the advantages of having this database is that it often helps organizations identify areas that are in need of increased controls. This often results in opportunities for better training to improve the situation. For example, if there are continued complaints about credit card abuses, the organization can provide training to anyone using credit cards to alleviate the potential for abuse. Process and procedure changes may also be spurred by these reports.

These three steps are imperative in developing a hotline within OHA. Hotline usage has drastically increased across all sectors, especially since the passage of the Sarbanes-Oxley Act, in which lawmakers validated the need for such reporting mechanisms. By making these lines available to employees, vendors, contractors, and the general public, the quality and quantity of valid reports will increase. Although nuisance calls will occur, having a hotline will help OHA establish a culture of ethics and will help to deter illegal activity.

#### **E. Governance – Employee Training**

One aspect of an effective anti-fraud program within an organization is by providing robust and consistent employee training. Employees should receive training about the values and code of conduct within the entity. As stated in the Excerpt from SAS 99, the training should include expectations of employees in regards to (1) their duty to communicate certain matters; (2) a list of the types of matters, including actual or suspected fraud, to be communicated along with specific examples; and (3) information on how to communicate those matters.<sup>383</sup>

This type of training will be unique to the individual's position within the organization and should be specifically designed to cover OHA's policies and procedures and code of conduct, depending on their role. The training should also include basic fraud awareness for their area, such as the types of fraud that can happen within their area and red flags of fraud.

#### **F. Governance – Audit Committee**

Another key attribute of an effective anti-fraud program is the audit committee. An audit committee can help to reinforce management's commitment to creating a culture with "zero tolerance" for fraud. OHA should consider establishing an audit committee that could include the following responsibilities in its charter:

- Evaluate management's identification of fraud risks

---

<sup>383</sup> Excerpt from Statement on Auditing Standards (SAS) No. 99, *Consideration of Fraud in a Financial Statement Audit*, 2002 by American Institute of Certified Public Accountants, Inc. New York, NT. *Management Antifraud Programs and Controls: Guidance to Help Prevent and Deter Fraud*.

---

- Implementation of anti-fraud measures
- Create an appropriate “tone at the top”
- Ensure that senior management (in particular, the CEO) implements appropriate fraud deterrence and prevention measures to better protect stakeholders
- Evaluate the financial reporting process, especially considering the potential for management to override controls
- Work with the independent auditors regarding the external audit
- Assure there is a mechanism in place to report concerns about unethical behavior, actual or suspected fraud, or violations of OHA policies and procedures
- Ability to authorize and oversee alleged or suspected wrongdoing brought to their attention

It is also important that all members of the audit committee be financially literate and at least one member should be considered a financial expert. The financial expert should possess (1) the skills to understand generally accepted accounting principles and audits of financial statements; (2) experience in preparation and/or auditing of financial statements of an entity of similar complexity to OHA; and (3) experience in internal governance and procedures of audit committees, obtained either as an audit committee member, Chief Finance Officer or an external auditor responsible for reporting on the execution and results of annual audits.



**IX. CLA's Suggestions for Implementation of Recommendations**

CLA understands that the task at hand for the BOT, RMC, OHA, and LLC staff in addressing, assessing, and considering implementing these recommendations can be daunting. Therefore, CLA strongly encourages the Trustees to delegate to OHA's Administration the development of a "Recommendations Implementation Plan" that includes the following activities and considerations: comparison of recommendations to the current processes for contracts and disbursements (e.g., policies, procedures, practices, training, documentation, etc.) and implementation actions, including accountability measures, timetables, monitoring, and reporting to the RMC and BOT.

**X. List of Attachments**

<b>Attachment Number</b>	<b>Description</b>
Attachment 01	List of OHA Contracts Selected for Testing
Attachment 02	List of OHA Disbursements Selected for Testing
Attachment 03	List of LLC Contracts Selected for Testing
Attachment 04	List of LLC Disbursements Selected for Testing
Attachment 05	OHA Grants Contracts
Attachment 06	OHA Competitive Sealed Proposal (RFP) Contracts
Attachment 07	OHA Professional Services Contracts
Attachment 08	OHA Small Purchase Contracts
Attachment 09	OHA Exempt Contracts
Attachment 10	OHA Disbursements - CEO Sponsorships
Attachment 11	OHA Disbursements - Exempt & Small Purchases
Attachment 12	OHA Disbursements - pCard
Attachment 13	OHA Disbursements - Leases
Attachment 14	Hi'ilei Aloha LLC Contracts
Attachment 15	Hi'ipaka LLC Contracts
Attachment 16	Ho'okāpaipai LLC Contracts
Attachment 17	Hi'ilei Aloha LLC; Hi'ipaka LLC; Hi'ipoi LLC; and Ho'okāpaipai LLC Disbursements

**XI. List of Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
01	CLA and OHA contract number 3284
02	OHA's Fiscal Procedures Manual, revised March 2, 2009
03	Operational Authority Delegation Hierarchies FY 2011-12 through FY 2015-16
04	Department of Defense - Red Flags of Fraud
05	HRS §10-17
06	'Aha Kāne's IRS Form 990 - 2011
07	Kamana'opono Crabbe's Hawai'i State Ethics Commission Short Form Disclosure of Financial Interests - April 28, 2016
08	OHA Organizational Charts FY 2011-12 through FY 2015-16
09	Na'i Aupuni News Release - December 15, 2015
10	Public information searches on Kamana'opono Crabbe and Ola Lāhui, Inc.'s Executive Director - backgrounds
11	Public information searches on Kamana'opono Crabbe and Ola Lāhui, Inc.'s Executive Director - events
12	Na'i Aupuni Q&A - December 15, 2015
13	HRS §103D-303
14	HRS §103D-304
15	Committee on Beneficiary and Advocacy and Empowerment - Meeting Minutes - August 24, 2016
16	HRS §103D-305
17	HRS §103D-102(b)
18	Kamanamaikalani Beamer, Ph.D. - Biography
19	State Procurement Office letter dated May 1, 2017
20	Notice & Request for Sole Source - DL Consulting Ltd. - FY 2018-19 through FY 2020-21
21	Example of Procurement Document Checklist
22	OHA List of Program Managers and LOB Directors
23	Report dated June 29, 2013 from University of Hawai'i re: Contract #2659
24	University of Hawai'i - OHA Contract #2659 Amendment #1
25	The Kālainmoku Group - "About" section of website
26	The Kālainmoku Group invoices - OHA Contract #2721
27	Native Hawaiian Education Association - Form 990s - 2013 and 2014
28	Kuauili Aina-Based Insights LLC - Bizapedia Company Information
29	Hawaiian Kingdom Blog: "Petition of Support for CEO Dr. Kamana'opono Crabbe"
30	David Keanu Sai, Ph.D. - curriculum vitae
31	Article: "Legal proceedings continued over failed geothermal tender in Hawaii"
32	OHA Annual Report - June 30, 2016
33	LLC Conflict of Interest policy sample
34	Hi'ipaka LLC Standard Operating Procedures BUS-004
35	Hi'ipaka LLC Corporate Procedures Manual CPM-005
36	Letters from former LLC Managers to CLA - October 14, 2019
37	Letter from Mona Bernardino (Hi'ilei Aloha LLC) - September 3, 2015
38	Letter from Mona Bernardino (Hi'ilei Aloha LLC) - January 28, 2013
39	Hi'ilei Aloha LLC Report to the Office of Hawaiian Affairs for the Quarter Ending June 30, 2016