

**OPEN SESSION MEETING MINUTES**

Board/Commission		Cost Control Commission	Meeting Date	April 3, 2025
Location	<b>Piikoi Building, Boards and Commissions Conference Room 4444 Rice Street, Suite 300, Līhu'e, Hawai'i 96766</b>  <b>Remote Access VIDEO by Microsoft Teams</b> <b>Click on the URL below or type the URL into your computer or smartphone</b>  <b>Meeting ID: 254 537 757 312 Passcode: fG2o22WB</b> <a href="https://bit.ly/49P5bew">https://bit.ly/49P5bew</a>  <b>AUDIO Connection by Microsoft Teams</b>  <b>Phone: +1 469-848-0234, Phone Conference ID: 254 537 757 312</b>		Start of Meeting: 9:02 a.m.	End of Meeting: 10:34 a.m.
Present	Chair Alice Luck, Vice Chair Stacy Waikoloa, Commissioners Andre Lister, Paul Pancho, and Tyler Rodighiero. Also present: Boards and Commissions Support Staff: Administrator Ellen Ching; Administrative Specialist, Anela Davis, and Deputy County Attorney Chris Donahoe.			
Excused				
Absent				



SUBJECT	DISCUSSION	ACTION
<b>Meeting Called to Order</b>	The meeting started when Chair Alice Luck called the Cost Control Commission April 3, 2025, meeting to order at 9:02 a.m.  Commissioner Andre Lister was present. Commissioner Paul Pancho was present. Commissioner Tyler Rodighiero was present.	

Cost Control Commission Open Session Minutes  
of the April 3, 2025, Meeting

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SUBJECT	DISCUSSION	ACTION
	Vice Chair Stacy Waikoloa was present. Chair Alice Luck was present.	Quorum was established with 5 Commissioners present.
<b>Approval of Agenda</b>		Mr. Lister moved to approve the agenda as circulated. Mr. Pancho seconded the motion. Motion carried 5:0.
<b>Chair's Announcements</b>	<ul style="list-style-type: none"> <li>Next Monthly Meeting, Thursday, May 1, 2025, at the Office of Boards and Commissions Conference Room, Suite 300.</li> </ul>	
<b>Public Testimony</b>	<p>Individuals may testify on any agenda item or wait for the item to come up on the agenda.</p> <p>There was no one present from the public to provide testimony in-person or on Microsoft Teams.</p>	
<b>Business CCC 2025-1</b>	<p>Discussion and possible decision-making on recommendations to reduce the cost of county government while maintaining a reasonable level of public services under Section 28.02 of the Kaua'i County Charter Article XXVIII Cost Control Commission.</p> <ul style="list-style-type: none"> <li>Contract Procedures and Real Property Taxes (5 Years)</li> </ul> <p>There was no one present from the public to provide testimony in-person or via Microsoft Teams.</p> <p>The Committee heard from Michelle Lizama, Deputy Director of Finance and Scott Teruya, Real Property Tax Manager. Ms. Lizama noted that the briefing regarding real property taxes will take place before the contract procedures discussion.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Teruya stated that he started with the County of Kaua'i in June of 2024. He noted that he cannot speak about any past contracts with Real Property Assessment but can provide information on contracts that the Division has currently. Mr. Teruya further stated that he was not sure what the Commission was looking for specifically but would do his best to respond to any questions. Chair Luck responded that she was not present at the last meeting but assumed that the Commission would want to see any data on real property taxes for the last 5 years outside of what the Commission had already been presented previously. Mr. Lister added that the reason real property taxes were included as a topic of discussion is because the review of real property taxes is something that Charter mandates the Commission review each year.</p> <p>Mr. Rodighiero stated that what he appreciates from the employees who work for the County on a day-to-day basis is hearing about what kinds of proposals the Commission could possibly assist in helping to move forward that would assist the various departments in moving some of their priority initiatives forward that could be coupled with cost savings or cost expenditures with future cost savings tied to it.</p> <p>Mr. Teruya explained that Mr. Rodighiero brings up very good points and that prior to joining the County of Kaua'i, he was the Real Property Tax Administrator for twelve years and the Director of Finance for the County of Maui for five years. Mr. Teruya stated that he believes something the County of Kaua'i needs to do to go out for competitive bids so that they can get the best product at the best price point instead of using the same vendor repeatedly. He suggested leaning towards competitive contracts on a Request for Proposal (RFP) basis rather than an Invitation for Bid (IFB)</p>	

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	<p>process and taking the lowest bid since there are times where the scope of work does not really fit. Mr. Teruya shared that every vendor he is working with is already under contract and he has not yet had a chance to renew any contract to date as it has existing terms tied to it. Once the contract periods have elapsed, Mr. Teruya expressed his desire to go out through the RFP process to renew every contract that the County has.</p> <p>Mr. Rodighiero stated that as of yesterday, the escalation prices have been fluctuating due to uncertainty about how the President's tariffs might affect various goods and services. Mr. Rodighiero asked whether escalation would be written in to any contracts. Mr. Teruya responded that when looking at his Division's contracts, he does not have any contractor who is outside of the United States of America. The only prior contract his Division had with a vendor outside of the USA was with Esri Canada. Esri Canada also has a U.S. branch as well.</p> <p>Mr. Rodighiero again asked if there was any language within contracts regarding price escalation. Mr. Teruya responded that over his last seventeen years with the County of Maui, most contracts have had an escalation clause already built in. Both parties would have the ability within so many days to cancel a contract without default. Mr. Teruya noted that he would have to defer the specifics about various contracts to the Office of the County Attorney. Mr. Teruya noted that he does not believe any of his Division's contracts would be anything out of the ordinary as it relates to standard inflation.</p> <p>Vice Chair Waikoloa noted that a change to use RFPs and to address contracts at the conclusion of a second year is a big deal for the County of Kaua'i. She asked if there is a reason why other jurisdictions do not follow</p>	

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	<p>what the County of Maui has modeled its contracting practices after. Mr. Teruya responded that he was unsure of how that came to be. He also shared that he is a member of International Association of Assessing Officers (IAAO), so he knows that there is a lot of competition in the marketplace relating to contracts that deal with real property tax assessment software and the like. When he became the Real Property Tax Administrator for the County of Maui in 2008, the County always had a certain company that took care of the website. The year that he went out for an RFP, they received a better product for a lower price. The County of Maui was able to realize a cost difference from \$15,000 to \$8,000 for a better product. If you do not ever competitively bid, you will never know. You may oftentimes spend more money by staying within the comforts of the same vendor.</p> <p>Vice Chair Waikoloa asked if Mr. Teruya had any insight as to why the County of Kaua'i might not utilize the competitive bidding process through RFPs and whether it might be tied to the person making those decisions being too busy or whether it is tough to get to that point. Mr. Teruya responded that he believes that department heads need to know the players in the industry to know what other options are out there in the marketplace. If one does not attend conferences or annual meetings, you will not know who the competition is for various products and services. Mr. Teruya noted that he believes a lot of people stay with the same contractor or vendor just for the ease of things as well.</p> <p>Mr. Rodighiero asked Mr. Teruya to confirm that his goal is to put his contracts out to the competitive bidding process in the hope of getting a better product at quite possibly a lower price point. Mr. Teruya concurred. Mr. Rodighiero asked if the Commission could assist in recommending any</p>	

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	<p>changes to the County Council or whether that was regulated through procurement laws at the State level. Mr. Teruya responded that he would probably defer that question to Mr. Ernie Barreira, the County's Assistant Chief Procurement Officer. Mr. Teruya noted that in his experience, any contract over \$5,000 would get three bids or quotes. The RFP process is arduous but at the same time you know your scope of work and if you cannot complete that scope of work you cannot compete for the contract. Mr. Teruya stated that in his past, he has also bid out the current contract plus two additional years as option for extension. Today technology changes quickly so if you are locked into a long-term contract, oftentimes you do not get the bells and whistles of what is changing in the technological environment.</p> <p>Mr. Lister asked if the RFP process in the County of Kaua'i is the same as with the County of Maui. Mr. Teruya responded that it is, but that again he would defer to the Purchasing Division to elaborate on anything additional. Mr. Teruya explained that the County of Maui once went through an IFB process, and the low bidder was a single person doing assessment notices out of his condominium with no back-up of personnel or data. Mr. Teruya recommended that the County ensures that the scope of work is written and detailed properly and goes through the RFP process so that the County is always protected.</p> <p>Chair Luck asked if determining cost escalation is done by comparing it to a particular index or if it is determined by the Professional Services Consultant? Mr. Teruya responded that through his experience, escalation is always determined by the Consumer Price Index (CPI) but would defer that specific question to the Purchasing Division.</p>	

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	<p>Mr. Lister stated that he is excited to see if the changes Mr. Teruya explained can be implemented in the County of Kaua'i and what the results of those changes may be. Mr. Lister further stated that after Mr. Teruya has had a chance to modify the contracts that he has using his approach from the County of Maui, he could return to the Commission to provide them with information on whether the contracting practice changes he noted were fruitful or not. Chair Luck concurred that it is difficult for Mr. Teruya at this point in his tenure with the County of Kaua'i as he has had no opportunity to modify the contracts he is currently operating under. Mr. Lister stated that the Commission is not here to grill Mr. Teruya but appreciates the opportunity to learn from his experience.</p> <p>Mr. Rodighiero explained that part of the overall goal of the Commission is to not only learn, but to use that education to lead the Commission to provide recommendations to the County Council for policy changes that will lead to cost reduction. Mr. Lister reiterated that real property taxes and contracts were part of mandatory items that the Commission needed to review, but that he knows there is not much Mr. Teruya can do until he has been through the actual cycle of being able to bid out his contracts through a competitive process to see if cost reductions could be realized.</p> <p>Vice Chair Waikoloa asked if Mr. Teruya has experienced any contract that may not have been managed or contracted well. Mr. Teruya responded that he has several that come to mind. In the County of Maui, they used TransUnion and LexisNexis for homestead fraud. Kaua'i uses Accuron. Mr. Teruya stated that he is currently going through all of his contracts to know when each contract ends so that he can be prepared to go out through the RFP process to see if there is a better product that the County of Kaua'i can evaluate. Mr. Teruya further explained that he has his budget review with</p>	

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	<p>the County Council, and everyone is always looking at the revenue picture as it relates to the County's return on investment (ROI). A lot of times people take the lowest price, and they get what they paid for. With the various exemption programs in the Real Property Assessment Division, if the right software or consultants are not onboard, it could jeopardize the County's ability to validate whether people are entitled to the exemptions that they are receiving or applying for. Many of the software projects within the Division are so important because the programs need to do what they are purchased to do to preserve the revenue opportunities for the County.</p> <p>Vice Chair Waikoloa asked if given the differences in landscape, terrain, climate, etc. on each of the islands, if Mr. Teruya was aware of any major contract differences amongst the counties. Mr. Teruya responded that historically, the City and County of Honolulu always takes the lead. The four administrators for real property tax assessment meet quarterly and they all talk about economies of scale. A lot of the contracts the four counties try to go in together to get bulk pricing. One county might be the driver, which is typically the City and County of Honolulu. The other counties will jump onto that contract as a rider because of the economies of scale and pricing. The County of Kaua'i has a lot of jobs and tasks where they only have one person to do that task whereas the City and County of Honolulu could have four or five people to do that same type of job. The counties try to utilize the same software so that they can provide the necessary technical and manpower support should another county need it. Mr. Teruya further stated that he identified that the contracts that the County of Kaua'i has done on their own with unique vendors from the other jurisdictions has led him to want to go out for competitive bids through the RFP process as he does not feel the County of Kaua'i is getting the best</p>	



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	<p>value or product relating to those specific contracts. The County of Kaua'i also does not have any technical support from the other counties as they do with the bulk pricing contracts.</p> <p>Chair Luck asked for examples of contracts Mr. Teruya would like to see go out for competitive bidding through the RFP process. Mr. Teruya responded that the main contract that the County of Kaua'i has is for the real property assessment software, but that contract is a bulk pricing one, so they have the support from the other counties. The two contracts that he would like to see competitively bid on are the printing contracts for the printing and billing. The County of Kaua'i uses two separate contracts for assessments and collections. He feels it might be easier to have the same vendor for both services. Having one vendor would make things more efficient. The second contract would be the software to find homestead fraud, which is currently through the Accuron software. Mr. Teruya noted that he would like to see what Accuron's competition can provide and at what price point.</p> <p>Chair Luck stated that it will be important to utilize the knowledge of the staff and their shared experience to know what to write up as the scope of work when going out for an RFP. Chair Luck asked Mr. Teruya if he had different approval levels on his staff so that they could go with certain vendors without the need to go out for bids, etc. Mr. Teruya responded that his Division works closely with the Purchasing Division to ensure that all procurement processes are conducted legally and that most of his purchases are made with existing vendors who fall under sole-source procurement practices as they are the only vendors able to provide support for various system software, etc. Chair Luck responded that she was</p>	

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	<p>inquiring to ensure that the Division was getting the best price available to the County of Kaua'i.</p> <p>The Commission thanked Mr. Teruya for his appearance.</p> <p>The Commission heard from Ernie Barreira, Assistant Chief Procurement Officer. Mr. Barreira stated that he was uncertain of who was on the Commission the last time he appeared and was unsure of what the Commission wanted to hear about regarding contracts, etc. Mr. Barreira noted that he could give the same presentation he gave the last time he appeared before the Commission and could field questions thereafter. Mr. Barreira presented the following information:</p> <ul style="list-style-type: none"><li>• The Purchasing Division is the perfect example of cost control. By virtue of what they do under statute, most every bid that the Division entertains is awarded based on the most affordable price. The Division is forced by statute and by administrative rules to save money.</li><li>• Even in cases where there are negotiated procurements, the County departments and agencies are always finding ways to find the most competitive cost factors. Every dollar that is spent and every contract put in place to advance the work of the County is made possibly because of the people of the county who pay taxes.</li><li>• He has never lost sight of being responsible for taxpayer funding in his over forty years of government service.</li><li>• The Purchasing Division has done its share of achieving cost reductions over the years.<ul style="list-style-type: none"><li>○ In 2016, the Purchasing Division was the first County division to go completely paperless. This opened doors for electronic procurement, which revolutionized the process</li></ul></li></ul>	

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	<p>for other County departments and agencies, and the County's contractors.</p> <ul style="list-style-type: none"> <li>○ For professional services resumes and letters of intent, the printing and postage cost ranges for contractors. The system allows them to submit items electronically, which saves them on postage and printing costs as well.</li> <li>○ When the Division went paperless, the Division realized savings of \$60,000 just by eliminating that portion of the operation. The annual budget went from \$180,000 to \$120,000.</li> <li>○ The departments have done an excellent job in not requesting expensive methodologies such as certified and registered mail unless the statute or the County Charter requires it.</li> </ul> <p>Mr. Rodighiero stated that the Commission is open to hearing suggestions that they can pass along to the County Council to help the Division along. Mr. Barreira responded that in the procurement world, the concept that has consistently been brought up is the concept of green procurement or environmentally friendly procurement procedures. Green practices are ultimately good for the environment, but they are not necessarily inexpensive. The State and the County have pushed aggressively on green initiatives. Chapter 412 requires any non-emergency vehicle that is purchased to be done with a solicitation that prioritizes alternate fuel vehicles. If someone bids a regular fuel vehicle and it is the best deal in town and someone bids an alternate fuel vehicle that is triple the price, by law, the County must buy the alternate fuel vehicle. Those kinds of laws are expensive. Most of the vendors submit bids for regular fuel vehicles because it is more competitive. The County does have a lot of electric fuel</p>	

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	<p>and hybrid vehicles in its fleet. The Transportation Agency is also pursuing an initiative to purchase electric buses. The County is also procuring charging stations around the County to support those initiatives.</p> <p>Mr. Barreira noted that in the past, County government has been criticized for moving towards green initiatives but has often forgotten about the infrastructure needs to sustain those initiatives. The current Administration has done an excellent job in ensuring that the infrastructure is in place to be able to charge the vehicles and buses so that the people who need to use them are able to and they are not sitting idly being unused.</p> <p>Mr. Barreira stated that his Division only has eight employees in total. The Purchasing Division has been a telecommuting operation for approximately five years and that is due to their paperless initiative. The Division can work anywhere in the world if they have an internet connection. The Purchasing Division is the only Division that has hired and trained two new employees in a telecommuting environment. Mr. Barreira acknowledged Del Sherman, IT Manager for creating the pathway that allows his Division to operate as efficiently as they do using technology and telecommuting. In three separate occasions the space formerly occupied by the Purchasing Division has been used by other departments or agencies who needed to vacate and operate when their offices were being renovated, experienced flooding, etc.</p> <p>Mr. Barreira reminded the Commission that the island and country have still not yet fully recovered from the effects of the pandemic years. When the County lets out bids, contractors often inquire as to what the budgeted amount is for the project and when they submit their bids, they come in sometimes three to four times the budgeted amount because the supply</p>	

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	<p>chain has still not fully recovered. Mr. Barreira stated that he often has to remind departments that it is their responsibility to adequately budget and account for the various unknowns of what might be happening in the economy.</p> <p>Mr. Barreira stated that he does see the economy stabilizing a little as he just yesterday received a bid that was under budget. Many times, with construction projects like Vidinha Stadium Phase 1, that bid came in three times the budgeted amount. The County is hoping that the economy stabilizes, and that inflation calms so that contractors can reduce their costs and save the County money.</p> <p>Chair Luck asked if perhaps bids are coming over budget because of the knowledge and expertise of the staff who are developing the bid specifications and scope of work. Mr. Barreira responded that the Division relies heavily on consultants to help them develop their bids for the types of goods, services, and construction projects that the County needs and the likely costs of each. Even the consultants have been oftentimes off the mark. The marketplace is so volatile that it has led to projects being underestimated. County departments and agencies when they can develop their own bid specifications and technical requirements. The bid prices are market-driven so the County is hopeful that there is some calming in the market to help with the cost factor for various projects.</p> <p>Mr. Barreira noted that the economy is very cyclical and Hawai'i is the very last to experience everything that goes on in the economy. Hawai'i is also reliant on ocean and air transportation costs which adds another layer of costs that seem to be increasing each year. Doing any kind of project or even getting goods to the island is very costly. The County of Kaua'i does</p>	

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	<p>not have the luxury of bringing in products via trains like jurisdictions on the mainland can benefit from.</p> <p>Mr. Rodighiero asked if the Administration considered any of the tariff news that is currently on-going when developing the upcoming budget proposal. Mr. Barreira responded that the tariffs could go away if the other countries would stop placing tariffs on U.S. goods. The entire tariff process is a political argument going back and forth. Mr. Barreira noted that he has received calls from contractors regarding tariffs and his advice to them was to work with their material suppliers to include the cost in their pricing when submitting bid proposals. Mr. Barreira stated that he does not know what the exact market impact will be regarding tariffs. He also noted that he previously served as the Budget Chief for eight years, but since he has relinquished that responsibility, he relies heavily on the Director of Finance and Deputy Director of Finance to keep him informed of items related to the budget and budget process.</p> <p>Mr. Barreira stated that he hopes the tariff issue works itself out like the liquidated damages process experienced whereby both parties benefit some and they end up meeting somewhere in the middle.</p> <p>Vice Chair Waikoloa asked Mr. Barreira if he has noticed any projects being delayed because of the underestimations in the bidding process leading to contractor bids coming in three to four times higher than the budgeted amount. Mr. Barreira responded that the Administration has been able to find other sources of funding that have been repurposed to make up the budgetary shortfalls so that projects whose bids come in a lot higher than estimated have been able to move forward with minimal to no delays. Mr. Barreira noted a few projects that are very important projects but whose</p>	

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	<p>bids came in a lot over budget, including the Vidinha Stadium Improvements, Wawae Road, and the sinkhole project near Pua Loke. The Administration has been able to fill the budgetary gaps by repurposing funding from other sources. Mr. Barreira noted that there have been some delays especially with Federally funded projects or State Transportation Improvement Projects because if bids come in higher than anticipated, the County needs to secure additional funds and ask for additional funds from the State or Federal governments to increase both the contributed and matching funds necessary for the project to move forward. Delays have also been experienced due to other factors such as contractors not being able to meet insurance requirements like carrying enough for builder's risk. Insurance limits sometimes do not discriminate between a simple \$5,000 project versus a large multi-million-dollar project. The project may be simple, but the risk to the County is still great and in-play.</p> <p>Mr. Barreira again noted that the County departments and agencies have done an excellent job in funding the necessary resources to minimize any delays. The County can also re-define projects or change the scope of projects to meet the financial realities that the County is experiencing at the time. This was done with the Vidinha Stadium Improvement project. The project was dissected into smaller pieces so that the County could fund the project in phases and pursue the other phases with the appropriations from a future fiscal year. The Administration must also work with the County Council to ensure that there is support. Council approval is also necessary for some types of reappropriations or reallocations depending on whether those funds are being moved between departments or agencies.</p>	

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	<p>Mr. Rodighiero asked Mr. Barreira if he has seen large increases in insurance premiums. Mr. Barreira stated that the County's insurance premiums have increased, and it is not something that the County can operate without.</p> <p>Chair Luck asked how long contractors are on the hook should anything happen with a project or product. Mr. Barreira responded that generally contractors are liable for approximately one year. That year covers construction and goods and services. Departments or agencies would then embark on a sole-source procurement process for extension of warranties and additional support, as needed.</p> <p>Chair Luck asked if the extended warranty or additional support cannot be included in the original contract terms. Mr. Barreira noted that there are times when all of that is included in a contract. Former Deputy County Attorney Mona Clark approximately ten years ago also helped the County become familiar with multi-term contracts. This enables the County to pay a set amount per year and is only based upon an appropriation of funds through the budget process. This helps the County lock in prices for multiple years and allows the County to proceed with a project that spans multiple years without having to come up with the entire amount of funds in year one. The statute requires that the County have available funds for the first year and that subsequent appropriations approved in future years will cover those years of that specific multi-year contract. The downside of these multi-year contracts is that contracts are very leery of committing because there are no escalation provisions in the multi-year contracts. Most times contractors have only been able to commit for three to five year contracts instead of contracts that extend for longer terms. Multi-year contracts also allow departments to not have to go through the arduous</p>	



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	<p>procurement process to amend contracts. All that they need to do is to certify funds for the subsequent years of the multi-year contract.</p> <p>Vice Chair Waikoloa stated that the multi-year contract concept seems like it is a more efficient avenue to take. Mr. Barreira concurred and stated that his Division is not necessarily the most well-liked Division because procurement is governed by strict rules and laws that must be followed. Mr. Barreira reminded the Commission that though procurement is not the most appreciated process, they should not allow anyone to tell them that there is no flexibility in the process. There are some consolations that can be made if it stays within the confines of the Procurement Code and Administrative Rules.</p> <p>Chair Luck asked Mr. Barreira how often the County Council reviews the Procurement Code. Mr. Barreira responded that it is not under the Council's purview as the Procurement Code is a State Statute. In 1990, all of the counties adopted the Hawai'i State Procurement Code and all counties are bound to follow it. Chair Luck asked if there are any additional county provisions to this Code. Mr. Barreira responded that there are policies and procedures that the Purchasing Division developed to implement the Code and those are all available on the County's SharePoint portal. However, those policies are there to guide the Division on how to implement the existing law. Mr. Barreira noted that the Council can conduct audits and does oversee the County's Annual Comprehensive Financial Report handled by an external financial auditor, which has sometimes audited some of the projects that were procured and contracted by the Purchasing Division. Mr. Barreira further noted that the RAIN18 projects that were conducted after the heavy rains that ravaged the North Shore of Kaua'i in 2018 came under heavy scrutiny as it involved</p>	

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	<p>the Federal Emergency Management Agency (FEMA) and other Federal programs. Anytime there is use of any amount of Federal funds, the County must also follow the Federal Procurement Code that falls under Chapter 2 CFR Part 200. The employees of the County dealing with Federal funding must have additional knowledge and expertise of the Federal Procurement Code if they deal with Federal funding.</p> <p>Vice Chair Waikoloa asked what multi-year contract terms started with in terms of the length of the contract. Mr. Barreira responded that the longest multi-year contract was for twenty years, and it had provisions for escalation. This contract was with a utility company still in existence today. Mr. Barreira explained the differences between the types of procurement processes his Division handles. Invitations for Bids include developing specifications and pricing is the determining factor. The lowest bid that is responsive and responsible is awarded the contract. There is no negotiation. RFPs and competitive sealed proposals also do not provide the means for negotiation. Many times, when departments like Information Technology, Human Resources, and Finance need desperately to negotiate because of the nature of the work, the Division launches an exempt procurement which takes it out of the statute and the procurement process is customized to meet the needs of the department so that negotiations can occur. Sole-source, exempt, and professional services are all negotiable and allowable procurements. Those are handled at the departmental level and the Division validates that all the statutory and rule requirements are met.</p> <p>Mr. Lister stated that Mr. Teruya had previously mentioned that the County may not always want to take the lowest because you might get someone working out of his apartment doing assessments. Mr. Lister asked how one</p>	

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	<p>navigates and balances the process with having to take the lowest bid and risking having to contract with someone who is unqualified or unable to fulfill the contract. Mr. Barreira responded that the key words in procurement are “responsive” and “responsible.” The bidder that is awarded the contract must validate, through various means, that they are responsive and are able and possess the necessary qualifications and licensing to perform the services that are being asked for within the solicitation document. That is an evaluation process that is conducted by the department and the Purchasing Division. However, if a department wants the ability to conduct an evaluation and analysis other than price, then often they would be looking at the RFP competitive sealed proposal which is a far more complicated and painful procurement process, but that can be done. Mr. Barreira explained that he is often asked to figure out a way for the County to form a public-private partnership, but there is currently no State Statute that allows this to happen. Many times, departments will send a request wanting to use Hawai‘i Revised Statutes Chapter 103D-303, which is the competitive sealed proposal process. The word “negotiation” is not found anywhere in that statute. This cannot be done for a public-private partnership that requires negotiation unless the County is going to exempt it and go down the negotiation path. The Mayor even indicated his support for public-private partnerships in his recent State of the County address. The State lawmakers need to pass legislation to make it lawful to do public-private partnerships without having to be creative in the procurement process. Mr. Barreira stated that as the County needs to be creative with their procurement processes, the County will do so. Mr. Barreira did preface his entire discussion that there are risks involved with dealing with exemptions as it takes the due process out of the Procurement Code.</p>	

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	<p>Mr. Barreira explained that in the normal procurement process, if someone wants to protest, it will go to the Assistant Chief Procurement Officer and the Director of Finance. If the appeal is denied then it will go to the Administrative Appeals Board at the Department of Commerce and Consumer Affairs. If it is denied there then it would head to the Circuit Court for agency appeal. If an exemption is carried out and unless you incorporate those provisions within the solicitation, it automatically goes to the Circuit Court. It could be a much more expensive litigation when the Office of the County Attorney must be involved and perhaps even have the involvement of special counsel. There are risks and those kinds of exemptions are analyzed very carefully. The Workday HR software procurement was exempted as the County needed creativity and the ability to negotiate multiple contracts.</p> <p>Chair Luck asked Mr. Barreira to provide a list of consultants used to review bid specifications for the last couple of years. Mr. Barreira responded that he could put that list together for the Commission. Those services would all have been procured through Professional Services contracts. Mr. Barreira elaborated on the difference between Professional Services and Design-Build contracts. Professional Services is where you hire Chapter 464 licensed contractors, this includes engineers, architects, and surveyors. The County usually procures their services, and they conduct the technical design, prepare the specifications, and conduct the solicitation before the County publishes the competitive bidding process via a competitive sealed bid. In Professional Services, the County controls the professional contractor. In Design-Build, the contractor is hired, and they select their professional contractor and are responsible for them. The County only deals with the prime and not with subcontractors. The prime contractor is</p>	

SUBJECT	DISCUSSION	ACTION
	<p>responsible that all of their subcontractors meet their requirements and responsibilities under the law.</p> <p>Chair Luck thanked Mr. Barreira for the summary of the procurement processes that he provided to the Commission. Mr. Barreira noted that the Commission's questions covered all the highlights that he was going to cover and offered his assistance to the Commission if they have any additional questions. Mr. Barreira also joked that when the Boards and Commissions Administrator asked him to bring seven copies, he panicked as he no longer has means to print documents as his operations are all electronic. Mr. Barreira further stated that he will be providing his responses to the Commission's request electronically and would need to ask the Office of Boards and Commissions to kindly print copies at the request of the Commission.</p> <p>Mr. Rodighiero thanked Mr. Barreira for all that he does to try to keep the County on-track and for helping to keep costs down. Mr. Barreira assured the Commission that though he is nearing the end of his government service and career, he has a succession plan in place to continue the work that his Division has done over the years. Mr. Barreira noted that he intends to finish up his work with the County at the end of Mayor Kawakami's term and then he will be moving on to other life plans.</p> <p>The Committee heard from Del Sherman, IT Manager. Mr. Sherman explained that when the Commission's agenda item was discussed amongst the Department of Finance, one of the topics that arose was end-user license agreements (EULAs) which are handled by the IT Division when software is procured. A EULA is technically a contract if interpreted in a descriptive sense. In the County Charter, which was drafted in the '60s, it</p>	

SUBJECT	DISCUSSION	ACTION
	<p>mentions that the Office of the County Attorney must review all County contracts and must review all EULAs. For the Office of the County Attorney to review all EULAs, that could be a very time-intensive process. Whenever someone installs new software or even installs a new printer driver, there is a little window that pops up with terms and conditions. Each one of those EULAs could be considered a contract by definition and therefore need to be reviewed by the Office of the County Attorney. Mr. Sherman recommended that EULAs be handled in some other manner besides the strict interpretation that each of them being a contract and requires review by the Office of the County Attorney.</p> <p>Mr. Rodighiero asked if there are a lot of different types of EULAs or if most of them are similar or the same. Mr. Sherman responded that not one EULA is the same as another. Every software company has its own and every software product has its own. Using Microsoft as an example, each suite of projects has its own EULA. Just because you reviewed one for Microsoft Word, that does not mean that it is an automatic okay for the one that covers Microsoft's Business Intelligence Suite of products. Each one has a unique EULA and requires its own review.</p> <p>Chair Luck asked if there is any way to create a pre-approved list of vendors and that anything outside of that list must be reviewed by the Office of the County Attorney. The list could contain vendors that the County deems to be of no risk to the County. Chair Luck further inquired as to what the Department would propose be done to remedy this situation. Mr. Sherman responded that in the case of Microsoft the County enters into an Enterprise Agreement with Microsoft. It is a high-level contract with Microsoft that incorporates licenses for many of their products. At that time, all of the agreements are reviewed and approved in bulk for the term</p>	

SUBJECT	DISCUSSION	ACTION
	<p>of that contract. There are so many other software programs that are used by the County and many of them change so often. The license agreements for these products change so often that it is impossible to do a pre-approval review that just covers a blanket approach to this task. Every software requires a new review and new approval.</p> <p>Mr. Lister asked if the various software vendors send the County the changes that are incorporated in a newly published EULA or if the County must go through it word-for-word to figure out where changes are incorporated. Mr. Sherman responded that it rarely happens where a vendor will send over the specific changes that are being made in a EULA. The responsibility falls on the County to sift through the EULA's terms and conditions to see what might have changed, been updated, etc. Mr. Sherman noted that it may be that a vendor may be willing to do that work for the County, but it would come at a cost. Using software has become second nature to many and one does not realize how many times they agree to terms and conditions on a product. These terms and conditions pop up so often when you download an application, install a new driver, or install a new device, these EULAs pop up hundreds if not thousands of times across the County of Kaua'i. Mr. Sherman stated that he understands why the Charter provision was put in place as it is meant to protect the County on contracts that are large in scope for million-dollar projects. However, he does not feel that the thorough review was meant for the simple installation of a software application or the like. Mr. Sherman noted that though a literal interpretation of the Charter requires legal review of all contracts, including EULAs, one could argue that that is not what the authors of the Charter intended. Perhaps the discussion would branch over into a review of that specific Charter provision.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Luck asked Mr. Sherman if he had brought this topic to the attention of the Charter Review Commission. Mr. Sherman responded that he had not yet had the chance to do so.</p> <p>Mr. Rodighiero asked Mr. Sherman for his recommended changes if the topic was surfaced with the Charter Review Commission. Vice Chair Waikoloa interjected and asked if perhaps there could be county crossover of responsibility and review if the County were to use similar software as another jurisdiction or would the approval have to remain within the County of Kaua'i. Mr. Sherman responded that the approval would have to remain with the County of Kaua'i. The Division could not take a review done by another county and accept that as a valid review for the County of Kaua'i. Even with software products that are on the State Procurement List, those are still reviewed at the County-level.</p> <p>Mr. Rodighiero again asked if Mr. Sherman had a sound recommendation as to how this problem might be remedied. Chair Luck interjected and asked if Mr. Sherman could first explain what the potential harm or downfalls are if the County did not review each specific set of terms and conditions in the EULAs. Chair Luck asked if it had to do with data collection or other concerns. Mr. Sherman responded that there are some cases where data collection would be an issue of concern. That is a type of contract that presents more risk to the County of Kaua'i. Mr. Sherman noted that the County would want assurances that its data is being protected. A contract for those kinds of services and a more intense review would seem appropriate as compared to installing a printer driver on a PC so that an HP or Epson printer can be used. The risk to the County of accepting that kind of EULA is minimal. Mr. Lister added that the cost of</p>	



SUBJECT	DISCUSSION	ACTION
	<p>the review of the EULA might exceed the actual cost of the software or program.</p> <p>Mr. Donahoe stated that he is not currently assigned to review the EULAs.</p> <p>Mr. Rodighiero asked Mr. Donahoe if he could explain the risks or exposure to the County if the EULAs were not reviewed by the Office of the County Attorney. Mr. Donahoe responded that the terms and conditions are written by the legal counsel of the application designers or companies so the County of Kaua'i would be depending on the language they are providing which is more than likely meant to favor the protection of their client. Liability could be a term that is meant to speak to anytime there is an upgrade the cost would be a certain amount and that the County is willing to pay that. Not knowingly agreeing to what is in the EULA could put the County at risk to any hidden terms that could be contained therein. The terms of conditions could also include indemnity clauses which could hold the software company harmless should something happen and leave all the risk on the County of Kaua'i.</p> <p>Mr. Rodighiero asked what would happen if the County did not agree to the terms and conditions. Mr. Lister responded that the County could then not use the software needed for operations.</p> <p>Chair Luck asked if artificial intelligence (AI) could be used to do the tedious legal review of EULAs to see changes that are incorporated. Mr. Sherman responded that using AI to analyze those terms and conditions could be useful and save time. However, AI should be used to point someone in the right direction so that they know where to focus. AI should never be trusted to be the final say in something. AI could provide</p>	

SUBJECT	DISCUSSION	ACTION
	<p>recommendations on what was observed when comparing two sets of EULAs, but that would have to then be evaluated by someone. The Office of the County Attorney's hands are tied as they must abide by the Charter. The Charter states that contracts must be reviewed, and a EULA is a contract. Mr. Sherman stated that his position is that the level of review should be commensurate with the level of risk or the level of cost. A free software driver that is needed to make a printer work probably requires less attention than a \$3 million-dollar Microsoft contract. It would be nice if the zero risk EULAs could have a blanket approval or exemption.</p> <p>Vice Chair Waikoloa asked Mr. Sherman if he was aware of any type of study done to see how much time or money was spent by the Office of the County Attorney in reviewing EULAs over the last few years. Vice Chair Waikoloa further stated that the Commission could not change the review part of it but could look at the cost aspect of the review process and make recommendations related to that review. Mr. Lister asked if perhaps there could be a list created of EULAs that are simple in nature and do not need Office of the County Attorney review. Mr. Sherman responded that he is certain that the Office of the County Attorney has had internal discussion about the time it takes to review EULAs. Mr. Sherman stated that it is unlikely that the Office of the County Attorney would stop reviewing simple EULAs as they are still required to review them whether they are low risk or not.</p> <p>Mr. Lister stated that there are ways to make changes to the Charter. If those kinds of recommendations are identified by the Cost Control Commission where if a review was not necessary and it led to a cost reduction, then that could be a part of the recommendations made to the County Council, that then leads to a potential change to the Charter. Vice</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Waikoloa added that she was focused on a time study within the Office of the County Attorney to understand time and cost of reviews of EULAs as perhaps it could also be cheaper to hire an external attorney to conduct the review of these EULAs. Mr. Lister suggested that a list be created to identify EULAs that must be reviewed versus those that in the experience of IT, may not need to be scrutinized as closely and could be given a less thorough review. This could also include EULAs where the cost of the review is more than product itself is worth.</p> <p>Mr. Rodighiero stated that the Commission could look at either the time spent by the Office of the County Attorney on the review process, but it could also evaluate the lost productivity due to having to review the EULAs or by employees not being able to utilize their computer software or systems because a EULA is in the review process.</p> <p>The Commission mulled the idea of having AI assist in bringing up red flags in EULAs so that the Office of the County Attorney could easily identify EULAs that need more scrutiny than others.</p> <p>Administrator Ching informed the Commission that there are a variety of ways to make Charter Amendments. One is through the Charter Review Commission. The second is through the County Council. The third is through a citizen's petition. The discussion happening at the Cost Control Commission is timely. In a couple of months, the Charter Review Commission will be sending letters to all the departments and all the boards and commissions requesting proposals for Charter Amendments. If at that time, the Commission wishes to send a request to amend the Charter or reasons for cost control, that would be the time that the</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commission could send the Charter Review Commission something for their consideration.</p> <p>Chair Luck stated that the Commission would need to start categorizing the various types of EULAs to make the proper recommendation for a Charter change. Chair Luck asked if Mr. Sherman was aware of any other jurisdiction doing attorney reviews of EULAs. Mr. Sherman responded that to the best of his knowledge and in looking at what other counties do, they totally ignore reviewing EULAs, or they perhaps have a slightly different charter than the County of Kaua'i and maybe are not required to have EULAs be reviewed. The review of EULAs does not seem to be of concern elsewhere. Mr. Sherman did state that he cannot say that there have not been instances where some software programs were downloaded without the necessary review or approval of a EULA. In some cases, users can agree to their own terms and conditions. To police every computer system or employee in the County is impossible.</p> <p>Chair Luck asked if some kind of mass system could be used to alert IT if a EULA is prompted. Mr. Sherman responded that IT has as many controls in place as is feasibly possible. The County prohibits the installation of things without proper review for as much as it is possible with administrative controls and domain-wide policies and configurations. The really big things are usually caught by IT. It is the simplest and smallest thing that may slip through the cracks.</p> <p>Chair Luck asked if cybersecurity was a concern with letting EULAs be accepted without review. She expressed concern with possible hacking or a download of a piece of software that might infect someone's computer. Mr. Sherman responded that there are so many IT controls that are</p>	

SUBJECT	DISCUSSION	ACTION
	<p>intended to prevent those kinds of concerns from happening. For some people it is very frustrating because it inhibits them from operating at full speed, though it is a necessary type of protection to have in place. Mr. Sherman stated that he could not think of any other kinds of controls that he would like to see that would make things any better for the County. The licensing EULAs go beyond any of those types of controls.</p> <p>Mr. Lister asked Mr. Sherman if he could put together a list of the different types of EULAs that should not be subject to contract review by the Office of the County Attorney. Mr. Sherman responded that it may be possible for him to provide that information, though it may be a broad response. Mr. Sherman stated that the approach that he had in mind was more related to cost. Products that are of no cost or minimal in cost would be evaluated more heavily on whether introducing it into the computing environment would pose a security risk to the County versus any danger to the County in terms of liability. The liability for a fifty-dollar piece of software may not have as great of an impact both on security and liability. For Mr. Sherman, it seems like the dollar threshold is a more common-sense approach to the interpretation of the Charter. Mr. Sherman further stated that he is sure that the County Attorney would like something in place that would provide blanket approval or a different approach that would streamline the procurement process for those things. Mr. Sherman committed to putting together a broad list by category for the Commission.</p> <p>Mr. Lister asked Mr. Donahoe if he could get a compilation of the amount of time spent on review of EULAs, the costs associated with those types of reviews, and the liability of not having a thorough review process in place for EULAs.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Lister asked Administrator Ching if the Commission had time to squeeze something into the schedule to address this concern. Administrator Ching responded that the more definitive a proposal is to the Charter Review Commission, the more likely that they will take it up for consideration. The Charter Review Commission is going to want to ensure that the IT Division and the Office of the County Attorney agree with the proposal being recommended. If the Charter Review Commission does not feel that there is agreement within the County departments, then they are going to have to call people in for further discussions.</p> <p>Mr. Rodighiero asked whether the Commission should approach the County Council for introduction of the Charter Amendment proposal. Administrator Ching responded that the County Council would probably ask the Commission why they did not go through the Charter Review Commission as it is coming from the Administrative Branch and not the Legislative Branch. Mr. Rodighiero asked if the Commission can go to the Charter Review Commission instead of the County Council. Administrator Ching responded that the Commission could go through the Charter Review Commission. Administrator Ching noted that the Police Commission recently went to the Charter Review Commission to modify the minimum qualifications for the Chief of Police. Mr. Rodighiero again asked if it was within the purview of the Commission to recommend Charter Amendment changes to the Charter Review Commission. Mr. Donahoe responded that it would fall under the purview of the Commission as it is being done as a recommended way to save on costs. Mr. Rodighiero explained that he thought the Commission could only report to the County Council. Administrator Ching responded that the Charter Review Commission will be sending a letter to the Commission to ask them if they have any recommended proposals for consideration of Charter Amendments and</p>	

SUBJECT	DISCUSSION	ACTION
	<p>the Commission will have to decide how to respond to that request as a body.</p> <p>Mr. Lister stated that he was trying to find out if the Commission had enough time to inquire with the Office of the County Attorney on how EULA reviews impact their time and cost. Mr. Lister stated that he was hoping to get information back from IT and the Office of the County Attorney, then further discuss what could be possible recommendations to the Charter or otherwise based on the information received from IT and the Office of the County Attorney.</p> <p>Chair Luck stated that the Commission would need to draft the language for the Charter Amendment proposal. Mr. Lister concurred. Mr. Lister stated that he understands that the schedule for the Commission Meetings has been laid out and wondered if this deviation from the schedule would cause any problems.</p> <p>Mr. Rodighiero thanked Mr. Sherman for bringing this to the attention of the Commission. Mr. Rodighiero stated that he feels the Commission could entertain this discussion while also looking at the other topics it had planned for future meetings. Mr. Lister stated that he just wanted to be respectful of the Commissions timeline. Administrator Ching stated that the most expedient way would be for her to send out emails after the meeting to request that the Office of the County Attorney and IT Division meet to discuss a way forward and to notify the Commission of what they would like to see be recommended for consideration, whether it be a Charter Amendment proposal or something else. The Office of the County Attorney and IT Division could then be present at the Commission's next meeting to present their recommendations.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Rodighiero stated that he would like to see some figures for time and money being spent on the EULA reviews by the Office of the County Attorney and how fast of a turnaround they have on each type of EULA. That turnaround time is lost productivity. Those stats could help push a possible proposal along.</p> <p>Administrator Ching reminded the Commission that Charter mandate for the Commission does speak to efficiency as well. Any software installation needs to be reviewed by the IT Division. Employees cannot just download items on their own. Then there will be a EULA as it is an entirely new software program introduced to the County. The County has over 1,000 employees, so there are thousands of EULAs in existence. The current Administration has tried to make strides on going paperless and moving towards technological efficiencies.</p> <p>Mr. Rodighiero asked if it would be possible to get the requested data from Office of the County Attorney for the last 5-year period as that will possibly show an escalation in the process. Chair Luck stated that the information would only be available if the attorneys tracked their time with that specificity. Mr. Rodighiero stated that he believes all attorneys do based on his experience of working with attorneys. Mr. Donahoe responded that the Office of the County Attorney does not do any billings, but they do enter some information on their time and work being done in their time management system. During the years, they also had various different time management systems in place. Administrator Ching stated that in the private sector, time is charged in increments of six minutes. Mr. Donahoe also noted that logging that information also takes a lot of time. Mr. Donahoe further noted that the liability and security concerns are</p>	



SUBJECT	DISCUSSION	ACTION
	<p>sometimes not seen or heard of because the County already has various processes in place that prevent anything bad from happening.</p> <p>Mr. Rodighiero asked Mr. Donahoe if he would be able to reach out to other jurisdictions to see if they handle EULAs in the same way as the County of Kaua'i. Mr. Sherman responded that he has unofficially done that research through chatting with his IT counterparts in other counties. Other than multi-million-dollar contracts for large enterprise class pieces of software, the other jurisdictions do not go through legal review of any other contract. The Kaua'i County Charter requires it for the County.</p> <p>Mr. Sherman stated that another piece of discussion that has not been brought up yet is that certain software has limited liability or indemnification provisions that require Council approval. Right now, there is no criteria by which an item needs to go to Council for a \$10 piece of software as it is required that Council approval be obtained for any item that includes liability or indemnification. From the Council's perspective, it might be more efficient for them to provide a blanket approval that states if it is this, this, or this, then the blanket approval applies. If it is outside of those parameters, then the Council wants to see it and approve it on a case-by-case basis. Defining those parameters would be better off coming from the Office of the County Attorney than from the IT Division because legal counsel is more tuned in to what the County would need to protect itself from. That could be both a cost and time savings effort.</p> <p>Mr. Rodighiero asked Mr. Sherman if he could possibly bring that type of information to the next meeting where the discussion can be had with the Office of the County Attorney. Mr. Rodighiero suggested possibly even</p>	

SUBJECT	DISCUSSION	ACTION
	<p>inquiring with other jurisdictions in California or the West Coast to see how they handle those types of situations.</p> <p>Mr. Rodighiero asked if the Office of the County Attorney and IT Division would have enough time in preparation for the Commission's next meeting. Mr. Sherman responded that the bulk of the requests are to the Office of the County Attorney, and he apologized for that being the case.</p> <p>Administrator Ching stated that the Office of Boards and Commissions ran into a contract review situation when they were trying to rent out the Kaua'i Community College Performing Arts Center. The agreement had to be taken to Council for approval even if it was a boilerplate agreement between two government organizations. Since there were indemnification clauses, the agreement had to get formally approved by the County Council.</p> <p>The Commission expressed their appreciation to Mr. Sherman for the information he shared which may lead to possible Commission action.</p> <p>Mr. Donahoe clarified that the Commission is looking for the following information from the Office of the County Attorney:</p> <ul style="list-style-type: none"><li>• 5-years of data relating to the amount of time spent by the Office of the County Attorney reviewing EULAs and what is the position of the Office if they should get exemption on low-risk EULAs.</li><li>• The turnaround time for reviews to be able to calculate the loss of productivity.</li><li>• What are the liability risks of the County Attorney not reviewing the terms and conditions.</li><li>• What is the actual cost for attorney's time reviewing EULAs.</li></ul>	

SUBJECT	DISCUSSION	ACTION
	<p>Administrator Ching stated that the Office of the County Attorney should also work with Mr. Sherman and the IT Division should they mutually agree to pursue a Charter Amendment proposal relating to the contract review or Council approval of indemnity provisions. The Charter Review Commission would very much appreciate any kind of proposal to be in form with recommended language changes needed to effectuate the changes being requested. Mr. Donahoe confirmed that he understood the requests.</p> <p>Administrator Ching stated that the EULA review is going to only become more prominent as everything moves towards electronic submission of things and less printing of paper documents. One of the Mayor's first initiatives was to have an electronic time and attendance program be implemented countywide.</p> <p>Chair Luck stated that it appears as if software updates are getting to be more frequent.</p> <p>Administrator Ching stated that she personally sees more and more forms becoming available only electronically as well. Chair Luck agreed that most places are trying to digitize their forms and make them fillable or available online.</p>	<p>No action was taken regarding this agenda item.</p>
<b>Executive Session</b>	<p>Under HRS§ 92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held under HRS § 92-4 and limited to those described in HRS §92-5(a).</p>	<p>There were no items for Executive Session.</p>

SUBJECT	DISCUSSION	ACTION
Adjournment		Mr. Lister moved to adjourn the meeting. Mr. Rodighiero seconded the motion. Motion carried 5:0.  There being no objections, the meeting was adjourned at 10:34 a.m.

Submitted by: \_\_\_\_\_  
Anelalani Davis, Administrative Specialist

Reviewed and Approved by: \_\_\_\_\_  
Alice Luck, Chair

**( X ) Approved as circulated on May 1, 2025.**  
( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.