

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-128
Hawaii Administrative Rules

July 16, 2009

1. Chapter 3-128 of Title 3, Hawaii Administrative Rules, entitled "Governmental Relations and Cooperative Purchasing" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 128

GOVERNMENTAL RELATIONS AND COOPERATIVE PURCHASING

§3-128-1	Definitions
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§3-128-8	Compliance with federal requirement
§3-128-9	Repealed

Historical Note: This chapter:

1. Replaces interim rules effective 12/7/06 (file no.

2732) that amended sections 3-128-2 and 3-128-4.

2. Replaces interim rules effective 5/30/08 (file no. 2814) that amended sections 3-128-2, 3-128-3, 3-128-7, and 3-128-8.

§3-128-1 Definitions. Section 103D-801, HRS, provides definitions applicable to terms used in this chapter. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; comp AUG 24 2009] (Auth: HRS §103D-202) (Imp: HRS §103D-801)

§3-128-2 Cooperative purchasing subject to chapter 103D, HRS. (a) Prior written approval of the chief procurement officer is required before entering into a cooperative purchasing agreement.

(b) Procurement by cooperative purchasing agreements shall be ~~[done]~~ conducted in compliance with the requirements of chapter 103D, HRS, and title 3, subtitle 11, ~~[HAR,]~~ except when the cooperative agreement is initiated by an external procurement unit; provided:

- (1) The public procurement unit complies with the public notice requirements of section 3-128-4; and
- (2) The external procurement unit complies with its respective public notice requirements and includes the public procurement unit in its notice and solicitation as a participating entity.

~~[(b)]~~ (c) Contracts described in section 3-122-143, [HAR,] are the principal contract types for cooperative purchasing agreements subject to any restrictions specified in this chapter.

(d) Agencies shall not enter into or "piggyback" on an existing cooperative purchasing agreement, including contracts issued by the federal government or other state or local government. The term "piggyback" is defined as procuring goods, services, or construction using another agency contract without prior public notice and intent to participate. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am and comp AUG 24 2009] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-804)

§3-128-3 Cooperative purchasing agreements between procurement units. All cooperative purchasing agreements shall provide that:

- (1) A procurement unit shall be designated as lead agency for the procurement;
- (2) An order for any good or service shall be placed on an as needed basis by the participating procurement

- units in accordance with the terms and conditions of the agreement;
- (3) Payment for any good or service shall be the exclusive responsibility of the procurement unit which placed the order;
 - (4) Inspection and acceptance of any good or service shall be the exclusive obligation of the procurement unit which placed the order;
 - (5) The lead agency for the procurement may terminate the cooperative agreement with a procurement unit for failure of that unit to comply with the terms of the contract;
 - (6) The exercise of any warranty rights attached to any good or service obtained through a purchase order shall be the exclusive right of the procurement unit which placed the order; and
 - (7) Failure of a procurement unit ~~[which]~~ that is procuring the good or service from a cooperative agreement contract to secure performance from the contractor pursuant to its terms and conditions, may not necessarily preclude the remaining procurement units from obtaining goods and services from the cooperative agreement contract.
 [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am and comp AUG 24 2009] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-803)

§3-128-4 Public notice of cooperative purchasing agreements between public procurement units and external procurement activities. ~~[The]~~ Any public procurement unit intending to participate in an external procurement unit's cooperative purchasing agreement, shall place a public notice ~~[of the solicitation]~~ within the State pursuant to section ~~[3-122-24.]~~ 3-122-16.03, of the external procurement unit's solicitation. The notice shall also include a statement of the public procurement unit's intent to participate in such cooperative purchasing agreement. [Eff 12/15/95; comp 11/17/97; comp 11/15/01; comp 11/25/02; am and comp AUG 24 2009] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-803)

§3-128-5 Cooperative purchasing agreements between chief procurement officers and nonprofit private procurement units. (a) A chief procurement officer may enter into a cooperative purchasing agreement with a nonprofit private procurement unit if:

- (1) The nonprofit private procurement unit is under a purchase of services contract with the State, pursuant to chapter 103F, HRS; and
- (2) The nonprofit private procurement unit submits an application to enter into a cooperative purchasing agreement and receives approval from the chief procurement officer. An agreement form shall be developed by the chief procurement officer for this purpose.

(b) The chief procurement officer may charge a nominal fee for participation by a nonprofit organization. [Eff 12/15/95; comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; comp **AUG 24 2009**] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-804)

§3-128-6 Supply of personnel, information, and technical services. Requests to one public procurement unit by another public procurement unit, or an external procurement activity to provide or make available personnel, services, information, or technical services pursuant to section 103D-806, HRS, shall be complied with only to the extent that the chief procurement officer determines that it is practicable to do so. [Eff 12/15/95; comp 11/17/97; comp 11/15/01; comp 11/25/02; comp **AUG 24 2009**] (Auth: HRS §103D-202) (Imp: HRS §103D-806)

§3-128-7 Procurement of goods produced or services performed by governmental institutions. Goods or services provided by [~~He'opono-workshop,~~] correctional industries [~~7~~] or other governmental institutions may be obtained by governmental agencies without public solicitation. [Eff 12/15/95; comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am and comp **AUG 24 2009**] (Auth: HRS §103D-202) (Imp: HRS §103D-803)

§3-128-8 Compliance with federal requirement. Any procurement which involves the expenditure of federal assistance or contract monies shall comply with this chapter and applicable federal law and regulations. [Eff 12/15/95; am and comp 11/17/97; comp 11/15/01; comp 11/25/02; am and comp **AUG 24 2009**] (Auth: HRS §103D-202) (Imp: HRS §103D-102)

~~§3-128-9 Interim rules. This chapter 128, subtitle 11~~

~~of title 3, Hawaii Administrative Rules, replaces rescinded interim rules previously adopted on 11/15/01 (file no. 2401).]~~ [Eff 11/25/02; R]
AUG 24 2009

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 3-128, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on July 16, 2009 by the Procurement Policy Board and filed with the Office of the Lieutenant Governor.


PAMELA A. TORRES
Chairperson
Procurement Policy Board


RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:



Deputy Attorney General

