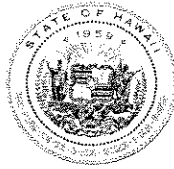


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September 11, 2009

PROCUREMENT CIRCULAR NO. 2009-12

TO: Office of the Governor
Office of the Lieutenant Governor
Executive Department Heads
State Librarian
Chief Procurement Officers

FROM: Aaron S. Fujioka 

SUBJECT: Hawaii Administrative Rules (HAR) Chapter 3-133
Procurement for the Expedient Use of American Recovery
and Reinvestment Act (ARRA) Funds

ACT 150, SLH 2009 required the State Procurement Office (SPO) to adopt rules to implement the Act. HAR Chapter 3-133 is effective 9/12/09 and sunsets on 12/31/2010. These rules are available on the SPO webpage at <http://hawaii.gov/spo/statutes-and-rules/admin-rules/>.

To assist procurement personnel, attached is a comparison chart summarizing the differences between the current procurement requirements of HRS Chapters 103D (goods, services, and construction), 103F (health and human services) along with the new ARRA provisions of HAR Chapter 3-133.

If your staff has any questions, the following SPO staff may be contacted:

HRS Chapter 103D	Bonnie Kahakui	587-4702	bonnie.a.kahakui@hawaii.gov
HRS Chapter 103D	Kevin Takaesu	586-0568	kevin.s.takaesu@hawaii.gov
HRS Chapter 103D	Donn Tsuruda-Kashiwabara	586-0565	donna.tsuruda-kashiwabara@hawaii.gov
Hawaii Electronic Procurement System (HePS)	Mara Smith	587-4704	mara.smith@hawaii.gov
HRS Chapter 103F	Corinne Higa	587-4706	corinne.y.higa@hawaii.gov

or please call me at 587-4700.

Attachment

ACT 150, SLH 2009
COMPARISON of PROCUREMENT REQUIREMENTS

	HRS Chapter 103D Goods, Services, and Construction	HRS Chapter 103F Health and Human Services	ACT 150, SLH 2009 ARRA funds, or matching state funds required to access the ARRA funds
ARRA funds	Available to use	Available to use	Optional procurement procedures
Electronic Procurement	HRS §103D-305, Small purchase <ul style="list-style-type: none"> Use electronic procurement system \$25,000 to less than \$100,000 for goods and services; and to less than \$250,000 for construction (Effective 7/1/09, Act 175, SLH 2009; repealed on July 1, 2012) Executive Branch use HePS for \$15,000+ 	Electronic submission allowed if stated in the solicitation.	HAR §3-133-3 <ul style="list-style-type: none"> Use of HePS or on an acceptable comparable eProcurement system Applicable to all dollar levels
Procurement Delegation	Chief procurement officer (CPO) may delegate procurement authority to Head of Purchasing Agency (HOPA)	Not addressed in HRS Chapter 103F	Procurement Officer (PO) written delegated authority to enter into and administer contracts and make written determinations
Procurement Methods	HAR Chap 3-122, Source Selection Methods: Subchapter 4.5 - Federal Grants Subchapter 5 - Competitive Sealed Bid Subchapter 6 - Competitive Sealed Proposal Subchapter 6.5 - Multi-step Competitive Sealed Bid Subchapter 7 - Professional Services Subchapter 8 - Small Purchase Subchapter 9 - Sole Source Subchapter 10 - Emergency	HAR Chapters - Purchase of Service 3-143 Competitive 3-144 Restrictive 3-145 Treatment 3-146 Small Purchase 3-147 Crisis	HAR Chapter 3-133 Subchapter 2, Competitive Price Quotations Subchapter 3, Competitive Best Value
Federal Grants	Subchapter 4.5 - Federal Grants <ul style="list-style-type: none"> RFI issued to select provider(s) for federal grant application 	HAR §3-143-614 Application for federal funds <ul style="list-style-type: none"> RFI issued to select provider(s) for federal grant application 	Procurement method not addressed in Act 150
IFB	Subchapter 5 - Competitive Sealed Bidding	Procurement method not in HRS Chapter 103F	Subchapter 2 - Competitive Price Quotations
Restrictive Specifications	Restrictive specs require CPO approval		Restrictive specifications determined by PO
Public Notice	Public Notice - 10 days between first date to due date (12 days).		Public Notice - 6 working days after release date.

	HRS Chapter 103D Goods, Services, and Construction	HRS Chapter 103F Health and Human Services	ACT 150, SLH 2009 ARRA funds, or matching state funds required to access the ARRA funds
Pre-Bid Conference	Mandatory for construction \$500,000 or more		HAR §3-133-7 Solicitation Conference <ul style="list-style-type: none"> • Optional • Not addressed in Act 150
RFP	Subchapter 6 - Competitive Sealed Proposals <ul style="list-style-type: none"> • HOPA approval required to use this procurement method 	Chap 3-143 Competitive Purchase of Service	Subchapter 3 - Competitive Best Value <ul style="list-style-type: none"> • PO determination to use this procurement method
RFI (Request for Information)	RFI optional.	RFI mandatory prior to all RFPs	Not addressed in Act 150
Public Notice	Public Notice - 30 days between first date to due date (32 days); unless shorter period approved by PO.	Public Notice- not less than 28 days, unless shorter period approved by CPO or HOPA.	Public Notice-15 working days after release date; unless shorter period approved by PO.
Pre-Proposal Conference	Mandatory for construction \$100,000 or more	Orientation - mandatory for all dollar amounts	HAR §3-133-7 Solicitation Conference <ul style="list-style-type: none"> • Optional • Not addressed in Act 150
Restrictive Specifications	Requires CPO approval	Not addressed in HRS Chapter 103F	Determined by PO
Permissible Evaluators	<ul style="list-style-type: none"> • Procurement Officer; or • Evaluation committee 	<ul style="list-style-type: none"> • Procurement Officer; or • Evaluation committee 	<ul style="list-style-type: none"> • Evaluation committee • Directors, Deputy Directors, or appointed equivalent or comparable level positions shall not serve on EC; unless prior approval obtained from CPO
Evaluation criteria-Cost	When applicable, cost shall be an evaluation factor	Not addressed in HRS Chapter 103F	Price shall be an evaluation criteria
Discussions and priority list	Before discussions, a "Priority list" shall be generated.	Discussions allowable, priority list not addressed.	HAR §3-133-30, Discussion with offerors <ul style="list-style-type: none"> • Before discussions, a "Priority list" may be generated • Not addressed in Act 150
Best and final offers	Best and Final Offers may be conducted with priority list.	Request for Final Revised Proposals may be conducted with all offerors.	<ul style="list-style-type: none"> • Final Offers may be conducted with priority list. • Not addressed in Act 150
Multi-Step	Subchapter 6.5	Procurement method not addressed in HRS	Procurement method not addressed in Act 150

	HRS Chapter 103D Goods, Services, and Construction	HRS Chapter 103F Health and Human Services	ACT 150, SLH 2009 ARRA funds, or matching state funds required to access the ARRA funds
Competitive Sealed Bid	Multi-Step Competitive Sealed Bid <ul style="list-style-type: none"> Optional two-step IFB 	Chapter 103F	
Professional Services	Subchapter 7 - Professional Services	Procurement method not addressed in HRS Chapter 103F	Procurement method not addressed in Act 150
Small Purchase	Subchapter 8 - Small Purchase	Chap 3-146 Small Purchase of Service	Procurement method not addressed in Act 150
Sole Source	Subchapter 9 - Sole Source	Chap 3-144 Restrictive Purchase of Service	Procurement method not addressed in Act 150
Emergency	Subchapter 10 - Emergency	Chap 3-147 Crisis Purchase of Service	Procurement method not addressed in Act 150
Treatment	None specified in HRS Chapter 103D	Chap 3-145 Treatment Purchase of Service	Procurement method not addressed in Act 150
Addenda	Addenda may be issued.	Addenda required to be issued at least 10 working days or sufficient time before submittal due date, for applicants to consider in proposal preparation.	Addenda may be issued
Alternate Procurement	May be conducted when single or no offer under certain conditions.	Alternate procurement limited to 'no offer' received under certain conditions.	May be conducted when single or no offer under certain conditions
Certification of Funds	Subchapter 12, Contract Not Binding Unless Funds Available <ul style="list-style-type: none"> Certification of funds by Comptroller, or Chief Financial Officer 	HAR §3-149-201, Contracts subject to appropriation of state funds <ul style="list-style-type: none"> Contract, at all times, subject to appropriation of state funds 	HAR §3-133-15, Fiscal responsibility; contract not binding unless funds available <ul style="list-style-type: none"> PO determination funds available
Compliance Documents	Subchapter 13, Responsibility of Bidders and Offerors <ul style="list-style-type: none"> Compliance documents (i.e. tax clearance, LIR#27, DCCA COG) upon award; or Registered on HCE, obtain <i>Certificate of Vendor Compliance</i>. Verify compliance for final payment 	<ul style="list-style-type: none"> Procurement Cir 2005-04, Amendment 3, Requires compliance with Hawaii Compliance Express procedures. 	HAR §3-133-12, Responsibility of offerors <ul style="list-style-type: none"> Registered on Hawaii Compliance Express upon submittal of offer PO to verify compliance prior to award

	HRS Chapter 103D Goods, Services, and Construction	HRS Chapter 103F Health and Human Services	ACT 150, SLH 2009 ARRA funds, or matching state funds required to access the ARRA funds
Cost/Pricing Data	Subchapter 15, Cost/Pricing Data <ul style="list-style-type: none"> • Required for RFP, sole source, or contract price increase of \$100K+ • When applicable, Certification of Cost Pricing Data • When applicable, written determination by HOPA to waive requirement 	None specified in HRS Chapter 103F	HAR §3-133-32 Substantiation of offered prices <ul style="list-style-type: none"> • PO may request data to substantiate price offered is reasonable
Types of Contracts	Subchapter 16, Types of Contracts <ul style="list-style-type: none"> • Fixed-price • Cost-reimbursement • Cost-incentive • Performance incentive • Time and materials • Labor hour • Definite quantity • Indefinite quantity • Incremental award • Multiple award • Geographic award • Lease • Multi-term 	HRS §103F-409 Any contract that will promote the State's best interests may be used. HAR §3-143-206, Single or multiple awards HAR Chapter 3-149, Contracting <ul style="list-style-type: none"> • Multi-term 	HAR §3-133-10, Fixed-price contract <ul style="list-style-type: none"> • Limited to fixed-price contract • “Fixed-price contract” means a contract providing for a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract price under stated circumstances included in the solicitation
Bid Deposit, Performance Bond	Subchapter 24, Bid Security, Contract Performance and Payment Bond <ul style="list-style-type: none"> • Construction contracts required for \$50,000+; • CPO approval for goods/services contracts 	None specified in HRS Chapter 103F	HAR §3-133-13 Solicitation and contract security <ul style="list-style-type: none"> • Construction contracts \$50K or more • Optional goods/services \$50K or more as determined by PO
Cost Principles	HAR Chapter 3-123, Cost Principles <ul style="list-style-type: none"> • Applicability • Allowable costs • Appropriate costs 	HAR §3-141-402, Cost Principles <ul style="list-style-type: none"> • Allows for cost principles 	Not addressed in Act 150

	HRS Chapter 103D Goods, Services, and Construction	HRS Chapter 103F Health and Human Services	ACT 150, SLH 2009 ARRA funds, or matching state funds required to access the ARRA funds
Preferences	HAR Chapter 3-124, Preferences <ul style="list-style-type: none"> Hawaii Products Printing Reciprocal Recycled Products Software Development Tax Preference Qualified Community Rehabilitation Program Small Business Set-Aside 	No preferences in HRS Chapter 103F	No preferences are in Act 150
Contract Provisions/Clauses	HAR Chapter 3-125, Modifications and Terminations of Contracts <ul style="list-style-type: none"> Change clauses Adjustments of price or time Modifications Stop work order Suspension of work Variations for definite quantities Variations for indefinite quantities Differing site conditions Novation or name change Claims Terminations Default Liquidated damages 	HAR Chapter 3-149, Contracting <ul style="list-style-type: none"> Contract conditions and procedures Termination 	HAR §3-133-6 Contractual terms and conditions <ul style="list-style-type: none"> PO to determine contractual provisions, terms, conditions stated in the solicitation
Protest	HAR Chapter 3-126 Legal and Contractual Remedies	HAR Chapter 3-148 Protest and Request for Reconsideration	HAR §3-133-18, Protest of an award
What may be protested	<ul style="list-style-type: none"> Protest on solicitation (specifications) Protest on award 	<ul style="list-style-type: none"> Protest on award 	<ul style="list-style-type: none"> Protest on PO failure to follow the requirements of Chapter 3-133
When due	<ul style="list-style-type: none"> Solicitation: prior to due date Award: within 5 working days of notice of award; 5 working days after debriefing 	<ul style="list-style-type: none"> Within 5 working days of notice of award 	<ul style="list-style-type: none"> Within 5 working days after issuance and posting of notice of award
Stay on procurement	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No; unless ordered by the CPO

	HRS Chapter 103D Goods, Services, and Construction	HRS Chapter 103F Health and Human Services	ACT 150, SLH 2009 ARRA funds, or matching state funds required to access the ARRA funds
Findings and Procedures	<ul style="list-style-type: none"> Notice to PO within 7-days if filing an appeal with Ofc of Administrative Hearings (OAH) 	<ul style="list-style-type: none"> Reconsideration to CPO within 5 working days after receipt of HOPA decision Written decision within 15 days, unless CPO determines an extension 	<ul style="list-style-type: none"> PO decision within 10 working days of receipt of protest
Administrative Review by OAH	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None
Judicial Review	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None
Notice of Award	<p>§3-122-33 Bid evaluation and award</p> <ul style="list-style-type: none"> Award to lowest responsive, responsible offeror Notice of award posted <p>§3-122-57 Award of contract</p> <ul style="list-style-type: none"> Award issued in writing 	<p>§3-143-303 Notice of award</p> <ul style="list-style-type: none"> Notice shall be sent to each responsive and responsible applicant by United States mail and may also be sent electronically, upon completion of the evaluation process. Award shall be posted on the contracts database reporting system within 7 days of execution of contract. 	<p>Notice of award, on the same day, shall be issued through HePS or an acceptable comparable eProcurement system to the awarded offeror; and posted on the website designated by the CPO.</p>
Cooperative Purchasing	<p>HAR Chapter 3-128, Governmental Relations and Cooperative Purchasing</p> <ul style="list-style-type: none"> Procedures for cooperative purchasing agreements 	<p>§3-143-608 Secondary purchase of competitive purchase of service</p> <p>§3-143-608.1 Joint request for proposals</p>	<p>Not addressed in Act 150</p>
Inventory Management	<p>HAR Chapter 3-130, Inventory Management</p> <ul style="list-style-type: none"> Procedures governing the management, control, disposal of State property; State property accounted for by the counties 		<p>HAR §3-133-20 Inventory management</p> <ul style="list-style-type: none"> Require compliance to HRS Chapter 103D, Part XII on inventory management Not addressed in Act 150
Compliance	<p>HAR Chapter 3-131, Compliance</p> <ul style="list-style-type: none"> Parceling prohibited Civil and criminal penalties Procurement violations; report of findings & corrective action Administrative fines 	<p>HAR Chapter 3-141, Subchapter 6, Procurement Violations</p> <ul style="list-style-type: none"> Procedures Penalties Parceling prohibited 	<p>HAR §3-133-19, Compliance</p> <ul style="list-style-type: none"> Debarment or suspension under HRS §103D-702 are applicable Applicable criminal penalties
Value Engineering	<p>HAR Chapter 3-132, Value Engineering</p> <ul style="list-style-type: none"> Construction contracts in excess of \$100,000 Contractor may develop value engineering 	<p>Not relevant to HRS Chapter 103F</p>	<p>Not addressed in Act 150</p>

	HRS Chapter 103D Goods, Services, and Construction	HRS Chapter 103F Health and Human Services	ACT 150, SLH 2009 ARRA funds, or matching state funds required to access the ARRA funds
	change proposals		