

Hawaii Administrative Rules
Chapters 3-141 to 3-143 and 3-146, 148 and 3-149
Amendments and Compilation

December 18, 2012

Attached are copies of the proposed rules in Ramseyer format. The proposed changes to be made and the reasons for the changes are:

1. **Chapter 3-141, General Provisions**

- a. *Section 3-141-407 Public Notice*. The section is amended to replace posting of the public notice to the proposal submittal deadline from “*twenty-eight*” to “*thirty*” days to be consistent with the required public notice posting for HRS Chapter 103D competitive sealed proposals.

2. **Chapter 3-142, Planning**

- a. *Section 3-142-201 Planning*. This section is amended to delete a comma from the last sentence of (a)(1).
- b. *Section 3-142-202 Requests for information*. This section has been amended:
- Subsection (a), first sentence. The words “*prior to*” are replaced by “*during*.” The request for information should be prepared “during” the development of a request for proposals.
 - Subsection (f), first sentence. Reference to Section 3-143-614, *Applications for federal funding*, is added.
- c. *Section 3-142-203 Collaboration of providers*. This section is renamed “*Participation of providers*” and amended as a result of ACT 004, SLH 2012.

3. **Chapter 3-143, Competitive Purchase of Service**

- a. *Section 3-143-201 Preparing a request for proposals*. This section is amended:
- Subsection (a)(2) and (a)(3) are moved for appropriate placement and clarity purposes from section 3-143-302(b)(10) and (b)(11).
 - Subsection (a)(12) is moved to section 3-143-302 where it is more appropriate and for clarity purposes
 - Subsection (b) is added to reflect amendments resulting from ACT 004, SLH 2012.
- b. *Section 3-143-202.1 Proposal submittal deadline*. This section is amended to change the request for proposals submittal deadline from “*twenty-eight*” to “*thirty*” days to be consistent with the required public notice posting for HRS Chapter 103D competitive sealed proposals.

- c. Section 3-143-203 Orientation for requests for proposals. This section is amended:
- Subsections (a) and (c) are reworded for clarity purposes.
 - Subsection (d) is amended to include other technological means to conduct an orientation meeting.
 - Subsection (f)(1) is reworded for clarity purposes.
- d. Section 3-143-204 Submission and receipt of proposals. This section is amended:
- Subsection (a) is changed to state that proposals shall be actually received by the purchasing agency by the proposal submittal deadline. Submittal of the proposal by the postmark date is deleted because providers are now able to print mailing labels; therefore, there is an unfair advantage if providers print the mailing label on the date of the proposal submittal deadline, but complete and mail the proposal the next day.
 - Unnecessary wording is deleted from subsection (b).
- e. Section 3-143-205 Evaluaton of proposals and notice of award. This section is amended by rewording for clarity purposes and correcting the subsection order.
- f. Section 3-143-301 Addenda to requests for proposals. This section is amended by rewording for clarity purposes.
- g. Section 3-143-302 Service specifications for requests for proposals. This section is amended:
- Unnecessary language in subsection (b) has been deleted.
 - Subsections (b)(10) and (b)(11) are moved to section 3-143-201 where it is more appropriate.
 - Renumbered subsection (a)(11) is moved from section 3-143-201 for appropriate placement.
- h. Section 3-143-303 Notice of award. Subsection (b) is amended by deleting unnecessary language The postmark date is a requirement pursuant to HRS §103F-501; therefore, the notice of award is required to be mailed by the U.S. Postal Service.
- i. Section 3-143-401 Discussions with applicants allowed before submittal deadline. Subsection (d) title is amended by deleting “for material change” because the subsection covers both material and nonmaterial changes.
- j. Section 3-143-502 Use of electronic submission for competitive purchase of service. This section is amended by deleting unnecessary language. The section is also reworded for clarity purposes.
- k. Section 3-143-505 Selection of substitute provider after early termination of contract. This section is moved to where it is more appropriate under section 3-149-205 of the *Contracting* chapter.
- l. Section 3-143-609 Inadequate response to request for proposals. This section is amended by rewording for clarity purposes.

- m. *Section 3-143-614 Applications for federal funding*. Subsection (b) is amended by rewording for clarity purposes.

4. Chapter 3-146, Small Purchase of Service

- a. *Section 3-146-205 Quotations received*. This section is amended and appropriately placed from section 3-146-601.
- b. *Section 3-146-601 Procurement file*. This section is moved to section 3-146-205 where it is more appropriate.

5. Chapter 3-148, Protest and Request for Reconsideration

- a. *Section 3-148-202 Resolution of protest by mutual agreement*. This section is amended by deleting subsection (b). Resolution of a protest by mutual agreement should not require it to be in writing. Subsection (c) is renumbered "(b)" and unnecessary language is deleted.
- b. *Section 3-148-301 Notice of protest*. This section is amended:
- Unnecessary language is deleted from subsection (a)
 - Subsection (f) is reworded to state that the notice of protest is considered submitted when actually received by the purchasing agency and that it can be submitted by the protestor by various means, not by just U.S. mail or hand delivery.
- c. *Section 3-148-302 Settlement and scheduling conference*. This section is amended:
- The section title is changed to "Protest settlement conference and schedule" for clarity purposes.
 - Subsections (a) to (d) are reworded for clarity purposes.
- d. *Section 3-148-303 Written protest*. This section is amended:
- The section title is changed from "*Written protest*" to "*Formal protest*" for clarity purposes.
 - Subsection (b) is reworded for clarity purposes.
 - Subsection (c) is reworded to state that the formal protest is considered submitted when actually received by the purchasing agency and that it can be submitted by various means, not by just U.S. mail or hand delivery.
- e. *Section 3-148-304 Response to protest*. This section is amended:
- The word "*formal*" is added to the section title for clarity purposes.
 - Subsection (b) is reworded for clarity purposes and to allow the purchasing agency to send the response to the formal protest by various means, not by just U.S. mail or hand delivery.
- f. *Section 3-148-305 Reply by provider*. This section is amended:

- The section title is changed to “*Reply by protestor*” for clarity purposes.
 - Subsections (a) and (b) are reworded for clarity purposes.
 - Subsection (c) is reworded to state that the formal protest is considered submitted when actually received by the purchasing agency and that it can be submitted by various means, not by just U.S. mail or hand delivery.
- g. *Section 3-148-306 Decision by the head of the purchasing agency*. This section is amended:
- Subsections (b) to (d) are reworded for clarity purposes.
 - Subsection (e) has been amended to allow the decision of the head of the purchasing agency to transmit a extension notification or the protest decision by any means, not by just U.S. mail or hand delivery.
- h. *Section 3-148-401 Request for reconsideration*. This section is amended:
- Subsection (c) is reworded for clarity purposes.
 - Subsection (d) is reworded to allow the request for reconsideration to be submitted by various means, but shall be considered submitted when received by the chief procurement officer.
 - Subsection (e) title is changed to “*Purchasing agency’s response to request*” and the subsection is reworded for clarity purposes.
- i. *Section 3-148-402 Decision by the chief procurement officer*. This section is amended:
- Subsections (a) to (d) is reworded for clarity purposes.
 - Subsection (e) is reworded for clarity purposes and allows the chief procurement officer to transmit the decision by any means, not by just U.S. mail or hand delivery.
- j. *Section 3-148-501 Suspension of Award*. This section is amended:
- Subsections (a) and (b) are reworded for clarity purposes.
- k. *Section 3-148-502 Requests for clarification*. Subsection (a) is reworded for clarity purposes.
- l. *Section 3-148-503 Form of evidence submitted during a protest or reconsideration*. This section is amended by rewording subsection (b) for clarity purposes.
- m. *Section 3-148-504 Conduct of the head of the purchasing agency during protests*. This section is amended by deleting subsection (b) because it is illogical to prohibit a purchasing agency from discussing the protest with the head of the purchasing agency who receives the notice of protest and formal protest.

6. **Chapter 3-149, Contracting**

- a. Section 3-149-205, Selection of substitute provider after early termination of contract, is added and moved for appropriate placement from section 3-143-505.
- b. Section 3-149-301, Extension of existing contract during procurement process. Subsection (c)(2) is amending by changing “*one hundred and eighty days*” to “*six months*” to be consistent with language in subsection (b)(2).
- c. Section 3-149-302, Multi-term contract use, requirements and procedures. Subsection (f) is reworded for clarity purposes.

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-141
Hawaii Administrative Rules

2012

1. Chapter 3-141, Hawaii Administrative Rules, entitled "General Provisions" 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 141

GENERAL PROVISIONS

Subchapter 1 Purpose and Scope

§3-141-101	Purpose
§3-141-102	Scope
§3-141-103	Construction

Subchapter 2 General Grounds for Rejection

§3-141-201	Rejection for failure to cooperate or deal in good faith
§3-141-202	Rejection for inadequate accounting system

Subchapter 3 Record-Keeping

- §3-141-301 Retention of procurement records
- §3-141-302 Retention of books and records
- §3-141-303 Confidentiality

Subchapter 4 General Operating Procedures

- §3-141-401 Lists of providers
- §3-141-402 Cost principles
- §3-141-403 No exemption from laws governing the treatment of persons with disabilities
- §3-141-404 No exemption from anti-competitive practices
- §3-141-405 Selection of procurement method
- §3-141-406 Availability of forms
- §3-141-407 Public notice

Subchapter 5 Waivers and Exemptions

- §3-141-501 Waiver of compliance with administrative rules
- §3-141-502 Repealed
- §3-141-503 Exemptions from procurement procedures

Subchapter 6 Procurement Violations

- §3-141-601 Purpose of procurement violations procedures
- §3-141-602 Core Procedures
- §3-141-603 Content of report of findings and corrective action
- §3-141-604 Types of corrective action
- §3-141-605 Penalties

SUBCHAPTER 1

PURPOSE AND SCOPE

§3-141-101 Purpose. The purpose of these rules is to promote economy, efficiency, and effectiveness in the procurement of health and human services for the state, by:

- (1) Simplifying, clarifying, and modernizing the law governing procurement;
 - (2) Encouraging the continued development of procurement policies and practices to accommodate changing needs and circumstances;
 - (3) Making the procurement laws and practices as consistent as practicable;
 - (4) Ensuring the fair and equitable treatment of all providers who deal with the procurement system of the state;
 - (5) Providing increased economy in procurement activities and maximizing to the fullest extent practicable the purchasing value of public funds;
 - (6) Fostering effective, broad-based competition within the free enterprise system;
 - (7) Providing safeguards for the maintenance of a procurement system that has quality and integrity; and
 - (8) Increasing public confidence in the procedures followed in public procurement.
- [Eff 6/19/99; comp 1/23/06; **comp**
] (Auth: HRS §103F-106) (Imp: HRS §§103F-101 to 103F-504)

§3-141-102 Scope. The provisions of this chapter are of a general character, and shall apply to all procedures, matters, and issues arising in connection with chapter 103F, HRS, or these rules.
[Eff 6/19/99; comp 1/23/06; **comp**]
(Auth: HRS §103F-106) (Imp: HRS §§103F-101 to 103F-504)

§3-141-103 Construction. These rules shall be liberally interpreted to accomplish the purposes

stated in section 3-141-101. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-106)

SUBCHAPTER 2

GENERAL GROUNDS FOR REJECTION

§3-141-201 Rejection for failure to cooperate or deal in good faith. (a) A purchasing agency may reject any proposal, statement of qualifications, or quotation submitted to it if, in light of all the circumstances, the purchasing agency deems that the applicant has failed to cooperate with the purchasing agency, or to deal with the purchasing agency in good faith.

(b) Actions constituting a failure to cooperate or deal in good faith. Actions constituting a failure to cooperate or deal in good faith include but are not limited to:

- (1) The knowing withholding, omission, or misrepresentation of information that is material to an applicant's proposal; or
- (2) The refusal to provide any information reasonably requested or required by the purchasing agency.

(c) Procedure for rejection. Any rejection made under this section shall be made in writing, and shall include a concise statement of the actions justifying the rejection. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §§103F-106, 103F-407) (Imp: HRS §103F-407)

§3-141-202 Rejection for inadequate accounting system. (a) A purchasing agency may reject any proposal or quotation submitted to it if, in light of all the circumstances, the purchasing agency deems that the applicant's accounting system is inadequate for keeping the procurement and financial records

required by the purchasing agency or the state procurement office.

(b) Requirements for accounting systems. The requirements for an adequate accounting system may include, but are not limited to:

- (1) The ability to keep accurately all the procurement and financial records required by law, the purchasing agency, or the state procurement office;
- (2) The ability to permit timely development of all necessary cost data in the form required by the specific contract type contemplated; or
- (3) Compliance with generally accepted accounting principles.

(c) Procedure for rejection. Any rejection made under this section shall be made in writing, and shall include a concise statement of the reasons justifying the rejection. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §§103F-106, 103F-407) (Imp: HRS §103F-407)

SUBCHAPTER 3

RECORD-KEEPING

§3-141-301 Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with chapter 94, HRS, and retention guidelines and schedules for records approved by the comptroller. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

§3-141-302 Retention of books and records. Any provider or sub-provider who receives a contract or contract amendment or modification for which programmatic, fiscal or expenditure data are required shall maintain appropriate programmatic and financial

§3-141-302

records for three years from the date of final payment under contract. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

§3-141-303 Confidentiality. Except as provided in chapter 3-143, procurement documents shall be available for public review in accordance with existing law governing information practices. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-504)

SUBCHAPTER 4

GENERAL OPERATING PROCEDURES

§3-141-401 Lists of providers. (a) In order to facilitate the efficiency of the health and human services procurement system, purchasing agencies may compile lists of providers that may be interested in competing for various types of contracts.

(b) No right to notice given. Inclusion on any list compiled under this section does not give a provider any right to notice of requests for proposals or other solicitations by a purchasing agency. Lists of providers are compiled solely for the convenience of purchasing agencies, and shall not be construed to confer any right or privilege on any provider included on such a list.

(c) Procedure for compilation. Lists of providers may be compiled based on any procedure reasonably calculated to include as many potential providers as practicable. Such procedures may include but are not limited to listing the providers that currently hold contracts with the purchasing agency, listing providers who have responded to the purchasing agency's recent requests for proposals, or other solicitation made by the purchasing agency.

(d) Updating lists. Purchasing agencies may update lists of providers compiled under this section as frequently as they deem necessary or advisable.

(e) Public inspection of lists. Any list of providers compiled under this section shall be available for public inspection at the purchasing agency or office of the procurement officer.

[Eff 6/19/99; comp 1/23/06; comp]

(Auth: HRS §103F-106) (Imp: HRS §103F-301)

§3-141-402 Cost principles. (a) In order to promote uniform purchasing practices among purchasing agencies that require health and human services, the administrator may, in conjunction with the purchasing agencies, establish cost principles for use in contracts for health and human services.

(b) Coordination with federal law. Nothing in this section shall be construed to create an exemption from any cost principle or pricing requirements arising under federal law. Purchasing agencies receiving federal funding shall comply with applicable federal cost principle and pricing requirements, unless the state cost principles are more restrictive, in which case the purchasing agency shall comply with the state cost principles.

(c) Waiver for good cause. The head of a purchasing agency may, for good cause, waive compliance with any cost principles established under this section. Such waiver shall be made in writing by the head of the purchasing agency, and shall include an explanation of the circumstances that justify the waiver. The written waiver shall be placed in the contract file, and appropriate notice of the waiver shall be included in the request for proposals, statements of qualifications, or any other solicitation, as applicable. [Eff 6/19/99; comp 1/23/06, comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-105, 103F-301)

§3-141-403 No exemption from laws governing the treatment of persons with disabilities. Nothing in these rules or in chapter 103F, HRS, shall be construed as an exemption from the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), the Rehabilitation Act (29 U.S.C. 701, et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1401, et seq.), or any other federal, state, or county law governing the treatment of persons with disabilities. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-105, 103F-301)

§3-141-404 No exemption from anti-competitive practices. Nothing in these rules, or in chapter 103F, HRS, shall be construed as an exemption from federal, state, or county laws forbidding anti-competitive practices. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-203, 103F-301, 103F-401 to 103F-406)

§3-141-405 Selection of procurement method. A particular planned purchase of health and human services may fall within the scope of multiple methods of procurement established by chapter 103F, HRS. Whenever multiple methods of procurement apply to a single planned purchase, the head of the purchasing agency shall select the applicable method of procurement that is in the best interests of the state. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

§3-141-406 Availability of forms. Forms and instructions for submittal of proposals, statements of qualifications, or other requests for funding may be prescribed by the administrator. Purchasing agencies shall make available to applicants all necessary forms for each respective procurement method. [Eff and comp

1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

§3-141-407 Public Notice. (a) Public notice shall be made to encourage competition and obtain information for planning or other collaborative purposes. Public notice shall be given in accordance with this section.

(b) Required contents of public notice. Public notices shall include the following information:

- (1) A brief description of the service;
- (2) When and where additional information will be available, such as a request for proposals or the details of a request for information;
- (3) The submittal deadline for any responses to the notice;
- (4) The date, time and place of any orientation or meeting to be held;
- (5) The name, phone number, address and e-mail address of the purchasing agency contact person to whom inquiries may be addressed; and
- (6) Any other information a purchasing agency deems appropriate.

(c) Required internet publication. All public notices shall be posted on the internet website in a location or locations designated by the administrator. Notices shall remain posted until the submittal deadline for responses, if any.

- (1) Public notices for requests for proposals shall be posted until the proposal submittal deadline, but not less than [~~twenty-eight~~] **thirty** days.
- (2) All other public notices shall be posted for a minimum of seven days unless specified elsewhere in these administrative rules.

(d) Additional media for publication authorized. In addition to the required internet publication, other means of public notice may be utilized to

promote competition among providers, including but not limited to:

- (1) Publication in newspapers of general or local circulation;
 - (2) Telephone calls, United States mail, telefacsimile transmission, or electronic mail to potential applicants on a provider list compiled in accordance with section 3-141-401;
 - (3) Publication in trade or community publications related to the service; or
 - (4) Publication by any public or private telecommunications information network.
- [Eff and comp 1/23/06; am and comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

SUBCHAPTER 5

WAIVERS AND EXEMPTIONS

§3-141-501 Waiver of compliance with administrative rules. The administrator may, for good cause, upon his or her own initiative or upon application by the head of a purchasing agency, waive a purchasing agency's compliance with these rules. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-101, 103F-106)

§3-141-502 Repealed. [R 1/23/06]

§3-141-503 Exemptions from procurement procedures. (a) In addition to the exemptions specifically enumerated in section 103F-101, HRS, the following are also exempted from chapter 103F, HRS:

- (1) Subawards and subgrants to organizations directed by the funding source;

- (2) Grants and subsidies as those terms are defined in chapter 42F, HRS;
- (3) Affiliation agreements with hospitals and other health care providers required for University of Hawaii clinical programs; and
- (4) Services of psychiatrists and psychologists in criminal and civil proceedings when required by court order or by the rules of court.

(b) Certain federally funded contracts.

Contracts for health and human services that are wholly or partly funded from federal sources shall be exempt from chapter 103F, HRS, when:

- (1) The source of the federal funds imposes conditions on the receipt of the federal funds that conflict with the procedures and requirements established by chapter 103F, HRS, and its implementing rules; or
- (2) The contract is to provide health and human services to implement a federal program that
 - (A) Identifies a target class of beneficiaries;
 - (B) Defines the requirements for a provider to be qualified to participate in the federal program; and
 - (C) Has the price of the provided health and human services dictated by federal law.

(c) Further exemptions by the chief procurement officers. Chief procurement officers may for good cause, upon their own initiative, or upon application by the head of a purchasing agency, exempt additional transactions. The head of the purchasing agency shall submit a request for exemption and a notice of exemption from chapter 103F, HRS, to the chief procurement officer. The following procedures shall be followed when requesting an exemption from procurement:

- (1) The request shall contain:
 - (A) The services to be purchased;
 - (B) The name of the provider;
 - (C) The total contract funds

- (D) The term of the contract;
 - (E) An explanation describing how procurement by competitive means is not practicable or not advantageous to the State;
 - (F) A description of procedures followed to ensure maximum fair and open competition in selecting the provider; and
 - (G) A list of state agency personnel who will be involved in the approval process and administration of the contract.
- (2) The notice shall contain:
- (A) A statement that the state intends to exempt a purchase from procurement for good cause;
 - (B) A brief description of the services;
 - (C) The name of the provider;
 - (D) The term of the contract;
 - (E) The funding amount of the contract;
 - (F) A statement that any inquiries shall be directed to the designated contact person of the purchasing agency;
 - (G) The name, phone number and e-mail address of the designated contact person;
 - (H) A statement that any concerns to the exemption must be in writing and received by the chief procurement officer within seven days of the date the notice was first posted; and
 - (I) The name and address of the chief procurement officer.
- (3) The administrator may prescribe the format of the request and notice.
- (4) The chief procurement officer shall post the request and notice on a internet website widely accessible to the public for seven days prior to any approval action.

- (5) Before granting an exemption under this subsection, the chief procurement officer shall consult with the administrator.
- (6) The chief procurement officer shall forward a copy of the request for exemption from chapter 103F, HRS, to the administrator upon approval or disapproval. [Eff 6/19/99; am and comp 1/23/06; **comp**]
(Auth: HRS §103F-106) (Imp: HRS §103F-101)

SUBCHAPTER 6

PROCUREMENT VIOLATIONS

§3-141-601 Purpose of procurement violation procedures. The procurement violation procedures shall implement:

- (1) A reporting and corrective action procedure for failures to follow procurement procedures for health and human services pursuant to chapter 103F, HRS, and chapters 3-140 to 3-149 of the administrative rules; and
- (2) A procedure for requesting after-the-fact payment to a provider. [Eff and comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

§3-141-602 Core Procedures. For each occurrence of a procurement violation, the procedure shall be as follows:

- (1) The procurement officer shall prepare and submit a report of the procurement violation to the head of the purchasing agency;
- (2) The head of the purchasing agency or a designated reviewing officer shall review the report to determine whether corrective

action is necessary to remedy the situation or prevent any reoccurrence, and shall submit the report of findings and corrective action to the chief procurement officer, in accordance with sections 3-141-603 and 3-141-604;

- (3) If payment to a provider is also required, the head of the purchasing agency shall include in the report of findings and corrective action, a request for approval from the chief financial officer for after-the-fact payment;
- (4) The chief procurement officer shall determine whether appropriate corrective action has been taken; and
- (5) Forward the request to the chief financial officer for after-the-fact payment approval, if one has been requested. [Eff and comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

§3-141-603 Content of report of findings and corrective action. (a) The report of findings and corrective action shall include at a minimum:

- (1) The circumstances leading up to the unauthorized procurement and an explanation why the established procedures were not followed;
 - (2) Whether there were any indications of intent to deliberately evade established purchasing procedures;
 - (3) Any lack of procurement information and training;
 - (4) Whether this is a first occurrence; and
 - (5) Whether appropriate written assurance and safeguards have been established to preclude a subsequent unauthorized procurement.
- (b) The administrator may prescribe the report format to be used by purchasing agencies. [Eff and

comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

§3-141-604 Types of corrective action.

Corrective actions may include, but are not limited to:

- (1) Training;
- (2) Changes in planning and procedures;
- (3) Modifying internal purchasing timetables;
and
- (4) A reduction of an employee's purchasing authority. [Eff and comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

§3-141-605 Penalties. (a) A person who contracts for services in a manner the person knows to be contrary to the requirements of chapter 103F, HRS, and its administrative rules shall be liable for all costs and damages to the State arising out of the violation.

(b) A person who knowingly or intentionally contracts for or purchases health and human services under a scheme or artifice to avoid the requirements of chapter 103F, HRS, shall be referred to the attorney general for possible criminal prosecution. The person shall be subject to removal from office and shall be liable for any sum paid by the State in connection with the violation, and that sum, together with interests and costs, shall be recoverable by the State." [Eff and comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-401 to 103F-406)

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

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

3. These amendments to and compilation of chapter 3-141, 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 are adopted on _____ and filed with the Office of the Lieutenant Governor.

Chairperson
Procurement Policy Board

State Comptroller

APPROVED AS TO FORM

Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-142
Hawaii Administrative Rules

2012

1. Chapter 3-142, Hawaii Administrative Rules, entitled "Planning" 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 142

PLANNING

Subchapter 1 Purpose and Scope

§3-142-101 Purpose
§3-142-102 Scope

Subchapter 2 Planning Activities and Methods

§3-142-201 Planning
§3-142-202 Requests for information
§3-142-203 **Participation** of providers

Subchapter 3 State Agency Planning

§3-142-301 State agency planning activities

§3-142-101

§3-142-302 State agency planning schedule

Subchapter 4 State Procurement Office Planning

§3-142-401 State procurement office planning activities

§3-142-402 State procurement office planning schedule

§3-142-403 Assistance in provider planning

SUBCHAPTER 1

PURPOSE AND SCOPE

§3-142-101 Purpose. The purpose of this chapter is to encourage purchasing agencies to adopt uniform planning practices in order to create greater efficiency and economy in the procurement and purchase of health and human services. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

§3-142-102 Scope. The provisions of this chapter shall apply to all purchasing agencies purchasing health and human services under chapter 103F, HRS, and these rules. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

SUBCHAPTER 2

PLANNING ACTIVITIES AND METHODS

§3-142-201 Planning. (a) Planning is a general term that encompasses different types of activities carried out by different agencies within government and organizations within the community. In order to define clearly the different subsets of planning

activities under chapter 103F, HRS, the following categories are established:

- (1) Planning to determine what service to purchase. Purchasing agencies carry out information gathering and analysis with input from funders, other state agencies, client advocacy organizations and providers on how to achieve better results in reaching goals established by statute or funder's conditions, or community planning processes. Purchasing agencies also review the program monitoring and evaluation reports for current contracts. This subset of planning activities is initiated by the purchasing agency. The scope of a purchasing agency's planning[7] may be defined by its statutory language;
- (2) Planning to establish procurement schedules and requirements. Chapter 103F, HRS, establishes two advisory groups to assist the administrator with development of procurement instructions to all purchasing agencies. The administrator weighs and considers these recommendations in conjunction with decisions by state policy-makers responsible for budget and expenditure instructions. These instructions guide all purchasing agencies on when and what annual and biennial planning and procurement activities may be carried out. The scope of the instructions is limited to common activities, schedules, or guidelines that affect all purchasing agencies; and
- (3) Planning with provider organizations. Purchasing agencies may seek planning information from providers. Purchasing agencies are encouraged to collaborate with providers through sharing of planning information and analysis that result[8] in improved service specifications for purchased services and progress towards

desired outcomes. [Eff 6/19/99; comp
1/23/06; am and comp]
(Auth: HRS §103F-106) (Imp: HRS §103F-
301)

§3-142-202 Requests for information. (a) At a minimum, a purchasing agency shall prepare a request for information [~~prior to~~] during the development of a request for proposals to obtain community input and facilitate community planning activities. A request for information may also be prepared at any other time to facilitate a purchasing agency's planning activities and may be sent to any knowledgeable person or entity that the purchasing agency deems advisable.

(b) Permissible subjects. A request for information may address any subject relevant to a purchasing agency's planning activities and in preparation for a solicitation, including but not limited to:

- (1) Long- and short-term goals and objectives, or the objective of a procurement;
- (2) The target population or clients to be served;
- (3) The services the purchasing agency anticipates may be necessary to achieve its goals and objectives;
- (4) Service specifications, feasibility, or cost; or
- (5) Request for expressions of interest to provide a service.

(c) Form of request. At a minimum, a request for information shall be in writing and shall include:

- (1) The name of the state agency issuing the request;
- (2) A description of the information being sought;
- (3) The procedure for responding;
- (4) A statement that participation is optional, and is not required to respond to any subsequent procurement action a purchasing agency may take;

- (5) A statement that neither the purchasing agency nor the interested party responding has any obligation under the request for information; and
- (6) If applicable, other means by which the request for information is being solicited, including but not limited to an oral presentation, meeting, telephone survey, electronic media, or any combination of these methods.

(d) Public notice. Public notice shall be given for all requests for information in accordance with section 3-141-407 and shall be posted for a minimum of seven days.

(e) Waiver for good cause. When the nature and circumstances of the service and the community need remain unchanged, the head of a purchasing agency may waive compliance with the issuance of a request for information. The waiver shall be in writing and shall include justification for the waiver. The waiver shall be placed in the procurement file and also included in the request for proposals. Waivers shall not be granted for requests for information issued pursuant to subsection (f).

(f) Federal grant applications. When utilizing a request for information, pursuant to section 3-143-614, to select a provider for inclusion in a federal grant application, the request for information shall include, but not be limited to:

- (1) The name of the state agency issuing the request;
- (2) A statement that the request is being issued for the purpose of including a provider or providers in a federal grant application which may result in a contract with the provider if the state is awarded;
- (3) A description of the service or services being sought;
- (4) The criteria by which applicants will be evaluated for selection;

- (5) The deadline by which responses to the request for information shall be submitted; and
- (6) Any other requirements that the purchasing agency deems relevant to the request.
[Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

§3-142-203 [~~Collaboration~~]Participation of providers. (a) Purchasing agencies may ask providers to participate in purchasing agency planning activities, prior to release of a request for proposals, [in order] to create greater efficiency, responsiveness, and organization in meeting the health, social and economic needs of the various communities.

(b) Areas for [~~collaboration-~~]participation. Specific areas for [~~collaboration with~~]participation of providers may include, but are not limited to:

- (1) Sharing of information on community needs;
- (2) Determination of best practices;
- (3) Inventory of available resources;
- (4) Budgetary or cost factors;
- (5) Configuration of services; [~~and~~]
- (6) Recommendations for service specifications and requirements[.];
- (7) Evaluating efficiencies in delivering existing services and recommending strategies for eliminating gaps in service delivery; and
- (8) Recommending cost-efficient and effective service alternatives.

(c) As part of the contract conditions, purchasing agencies may require a provider to participate in planning activities pursuant to subsection (b), providing that the requirement is addressed in the request for proposals.

[~~(c)~~](d) No disqualification from procurement. [~~Uncompensated provider~~]Provider participation [~~is encouraged, and such involvement~~]in planning pursuant

to subsection (a) shall not disqualify any responsible provider from responding to any subsequent procurement actions a purchasing agency may take.

~~[(d)]~~(e) No exemption from anti-competitive practices. The collaborative practices permitted under this section shall not be construed to create an exemption to allow anti-competitive practices otherwise prohibited by federal, state or county law.

[Eff 6/19/99; am and comp 1/23/06; **am and comp**

] (Auth: HRS §§103F-106, 103F-203) (Imp: HRS §103F-203)

SUBCHAPTER 3

STATE AGENCY PLANNING

§3-142-301 State agency planning activities.

(a) To make decisions on the type and amount of services to purchase, purchasing agencies shall carry out planning activities, including but not limited to:

- (1) Receiving information from funders, including the legislature, federal agencies, and private foundations on funding terms and conditions;
- (2) Asking for information from other state agencies on services to the same community, families, children, adults, or school, or on cooperative strategies to make progress towards achieving a shared goal;
- (3) Utilizing the contracts database issued by the administrator to analyze information on similar services and services to the same community or target groups;
- (4) Taking into account the views of service recipients and community advocacy organizations on conditions affecting the achievement of mandated goals;
- (5) Taking into account the views of provider organizations on how to improve service specifications to better achieve mandated

goals, a request for information may be utilized as provided in section 3-142-202;

- (6) Analyzing information from program monitoring and evaluation reports for current contacts; and
- (7) Analyzing socio-economic and health data for trends, and analyzing waiting lists and client satisfaction surveys to determine demand factors.

(c) Agencies determine planning activities. Purchasing agencies shall determine which types of planning activities they will carry out, and at which time intervals, based on the type of service being purchased, the availability of staff and resources; and the scope of purchasing agency discretion to adjust the type or amount of services being purchased. When a competitive procurement is subsequently conducted, planning activities utilized shall be listed in the request for proposals.

(d) Planning information part of budgeting. Planning information shall be considered in the purchasing agency's biennium budgeting process, but does not solely determine budget recommendations. Purchasing agency budget recommendations are subject to decision-making at the departmental and executive levels in order to ensure accordance with statewide program and fiscal priorities.

(e) Public inspection of planning information activities. A brief reference to the planning activities utilized by a purchasing agency for consideration in the budgeting and purchasing decisions for services shall be included in the request for proposals. The referenced documents shall be made available for public inspection. [Eff 6/19/99; am and comp 1/23/06; comp]
(Auth: HRS §103F-106) (Imp: HRS §103F-301)

§3-142-302 State agency planning schedule.

(a) The planning activities schedule for a particular service shall be determined by the length of the service contract, for example, every two years for two

year contracts, every four years for four year contracts, and so on.

(b) Waiver of planning activities for good cause. The head of a purchasing agency may waive planning activities for procurement upon a written determination it is in the best interest of the State. The waiver shall be in writing and shall include an explanation of the circumstances justifying the waiver. The written waiver shall be placed in the procurement file and included in the request for proposals. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

SUBCHAPTER 4

STATE PROCUREMENT OFFICE PLANNING

§3-142-401 State procurement office planning activities. (a) The administrator may carry out the planning activities provided in this subchapter prior to establishing procurement instructions to all purchasing agencies. The administrator shall weigh and consider the advice of the interagency committee and the community council as provided in this section.

(b) The interagency committee on purchase of health and human services. The interagency committee, which is composed of heads of purchasing agencies or their designated representatives, shall assist the administrator on matters including, but not limited to:

- (1) How, when, and on what issues, to secure input from providers to facilitate purchasing agency decision-making;
- (2) Schedules for planning and purchasing health and human services;
- (3) Criteria to evaluate proposals for competitive and restrictive purchase of services; and

- (4) Education and training needs of purchasing agencies and providers.

(c) The community council. The community council, which is composed of nine appointed members and one ex-officio member of the interagency committee, shall assist the administrator with advice on matters including, but not limited to:

- (1) When, and on what issues, to secure input from providers to facilitate purchasing agency decision-making and how to facilitate provider participation in purchasing agency planning and purchasing;
- (2) Schedules for planning and purchasing health and human services;
- (3) Criteria to evaluate proposals for competitive and restrictive purchase of services;
- (4) Education and training needs of purchasing agencies and providers; and
- (5) Market or business concerns facing providers that may affect the availability of services and the scope of competition.

(d) No conflicts with other authorized policies. The administrator shall issue instructions that incorporate, and do not conflict with, current Governor's executive orders, state comptroller's administrative directives, and attorney general's opinions that may, by statute, establish guidelines or instructions to purchasing agencies which restrict or direct the budgeting, contracting and expenditure of public funds. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-201, 103F-202, 103F-301)

§3-142-402 State procurement office planning schedule. Instructions from the administrator that cover topics including but not limited to, issues listed in section 3-142-401 will normally be issued to purchasing agencies in coordination with budgeting and expenditure instructions that are issued on an annual or biennial basis. Information to assist the

administrator from the interagency committee and the community council may be provided on an annual or biennial basis, as appropriate. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

§3-142-403 Assistance in provider planning.

(a) In order to assist providers to plan their organizations' budgets and staff levels on a predictable and timely basis, the administrator shall make information on anticipated purchases public annually.

(b) Planned purchases. Purchasing agencies shall submit a list of services, which they anticipate purchasing in the coming years and the anticipated method of procurement. The purchasing agencies shall transmit their lists to the administrator at the time and in the manner prescribed by the administrator.

(c) Consolidated report of planned purchases. The administrator shall prepare a consolidated report of the services that purchasing agencies anticipate purchasing in the coming years. The administrator shall make the report available in a manner reasonably calculated to provide fair and equal access to all providers that might be interested in competing to provide the anticipated services.

(d) Changes allowed. The lists and consolidated report shall not obligate purchasing agencies to solicit proposals for any service included, because purchasing agencies may experience changes to planned expenditures after the report is made available to interested providers." [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-301)

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 3-142, 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 are adopted on _____ and filed with the Office of the Lieutenant Governor.

Chairperson
Procurement Policy Board

State Comptroller

APPROVED AS TO FORM

Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-143
Hawaii Administrative Rules

2012

1. Chapter 3-143, Hawaii Administrative Rules, entitled "Competitive Purchase of Service" 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 143

COMPETITIVE PURCHASE OF SERVICE

Subchapter 1 Purpose and Scope

§3-143-101 Purpose
§3-143-102 Scope

Subchapter 2 Core Procedures

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§3-143-202 Public notice of requests for proposals
§3-143-202.1 Proposal submittal deadline
§3-143-202.2 Access to request for proposals
§3-143-203 Orientation for requests for proposals
§3-143-204 Submission and receipt of proposals

- §3-143-205 Evaluation of proposals and notice of award
- §3-143-206 Single or multiple awards
- §3-143-207 Modifications before contract execution

Subchapter 3 Content Requirements

- §3-143-301 Addenda to requests for proposals
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- §3-143-303 Notice of award

Subchapter 4 Allowable Communications

- §3-143-401 Discussions with applicants allowed before submittal deadline
- §3-143-402 Submission of questions before submittal deadline
- §3-143-403 Discussions with applicants after submittal deadline
- §3-143-404 Discussions with applicants after notice of award and before contract execution

Subchapter 5 Expediting Procedures

- §3-143-501 Repealed
- §3-143-502 Use of electronic submission for competitive purchase of service
- §3-143-503 Repealed
- §3-143-504 Submission of proposals on electronic media
- §3-143-505 **Repealed**

Subchapter 6 Miscellaneous Procedures

- §3-143-601 Modification, correction, or withdrawal of proposals before submittal deadline

- §3-143-602 Proposals deemed firm offers after
submittal deadline
- §3-143-603 Late proposals rejected
- §3-143-604 Confidentiality and public access to
documents
- §3-143-605 Multiple proposals and alternate
proposals
- §3-143-606 Correction of errors after submittal
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- §3-143-607 Final revised proposals
- §3-143-608 Secondary purchase of competitive
purchase of service
- §3-143-608.1 Joint request for proposals
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proposals
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- §3-143-614 Applications for federal funding
- §3-143-615 Register of proposals
- §3-143-616 Public inspection of competitive
purchase of service records
- §3-143-617 Repealed
- §3-143-618 Repealed
- §3-143-619 Competitive purchase of service record
of procurement actions

SUBCHAPTER 1

PURPOSE AND SCOPE

§3-143-101 Purpose. The purpose of this chapter is to implement section 103F-402, HRS, which establishes the competitive purchase of service method of procurement, by providing rules and procedures for the use of this method of procurement. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-102 Scope. The competitive purchase of service method of procurement may be used for any purchase of health and human services governed by chapter 103F, HRS. [Eff 6/19/99; comp 1/23/06; ~~comp~~] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

SUBCHAPTER 2

CORE PROCEDURES

§3-143-201 Preparing a request for proposals.
(a) The request for proposals is used to initiate a competitive purchase of service procurement and shall include:

- (1) The service specifications prepared in accordance with section 3-143-302 for the services to be procured;
- (2) Specifying whether single or multiple contracts are to be awarded and defining the criteria for the multiple award, if applicable;
- (3) Specifying whether single- or multi-term contracts are to be awarded and defining the terms, including but not limited to initial contract term and conditions for extension; multi-term contracts shall be in accordance with section 3-149-302;
- ~~[(2)]~~ (4) All applicable general and special conditions and tax clearance requirements that will be imposed on the successful applicant by contract;
- ~~[(3)]~~ (5) A statement indicating that the award of a contract and any allowed renewal or extension shall be subject to the availability of appropriated funds;
- ~~[(4)]~~ (6) Instructions and information for applicants including but not limited to the date, time and place for the orientation for the request for proposals, the submittal

deadline, and the place where proposals shall be submitted;

- ~~[(5)]~~ (7) Planning activities utilized in accordance with section 3-142-301;
- ~~[(6)]~~ (8) Specific criteria to be used in evaluation of proposals that shall include the following:
 - (A) Technical capability and approach for meeting performance requirements;
 - (B) Competitiveness and reasonableness of unit of service;
 - (C) Managerial capabilities;
 - (D) Cost, or, if applicable, cost per unit of service; and
 - (E) Any additional criteria determined to be useful by the purchasing agency;
- ~~[(7)]~~ (9) A statement of the relative priority of the various evaluation criteria;
- ~~[(8)]~~ (10) A statement regarding any secondary purchasers participating in the request for proposals as provided in section 3-143-608;
- ~~[(9)]~~ (11) A statement regarding the allowability of multiple or alternate proposals as provided in section 3-143-605;
- ~~[(10)]~~ (12) A statement that provider participation in a purchasing agency's efforts to plan for or to purchase health and human services, prior to the purchasing agency's release of a request for proposals including the sharing of information on community needs, best practices, and providers' resources, shall not disqualify providers from submitting proposals if conducted in accordance with sections 3-142-203 ~~[or 3-143-618]~~;
- ~~[(11)]~~ (13) The criteria by which the performance under the contract will be monitored and evaluated;
- ~~[(12)]~~ ~~Any specific requirements or qualifications that an applicant must meet in order to submit a proposal including, but not limited~~

~~to, licensure or accreditation;]~~ (moved to 3-143-302)

~~[(13)]~~ (14) A statement that upon request from the purchasing agency, each applicant shall submit any additional materials and documentation reasonably required by the purchasing agency in its evaluation of the proposals; and

~~[(14)]~~ (15) Any other statement, disclaimer, or waiver required by law.

(b) If a purchasing agency, at its option, makes it a requirement for a provider to participate in planning activities in accordance with section 3-142-203, the requirements shall be addressed in the requests for proposals and also made a provision of the awarded contract. [Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §§103F-106, 103F-203) (Imp: HRS §§103F-203, 103F-402)

§3-143-202 Public notice of requests for proposals. Public notice of requests for proposals shall be made to encourage competition among providers so that the state obtains the most advantageous proposal or proposals that the market can support. Public notice shall be made in accordance with section 3-141-407. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §§103F-106, 103F-402) (Imp: HRS §103F-402)

§3-143-202.1 Proposal submittal deadline. (a) Unless waived in accordance with subsection (b), the submittal deadline shall be at least ~~[twenty-eight]~~ thirty days from the release date of the request for proposals.

(b) Shortened time for submittal deadline. The chief procurement officer or head of the purchasing agency may approve to shorten the ~~[twenty-eight]~~ thirty day period required in subsection (a), upon a written determination by the purchasing agency that:

- (1) Adequate competition will be possible in spite of the shorter time period; and
- (2) The shorter time period will allow potential applicants a reasonable time to prepare their proposals. [Eff and comp 1/23/06; am and comp] (Auth: HRS §§103F-106, 103F-402) (Imp: 103F-402)

§3-143-202.2 Access to request for proposals.
 The request for proposals shall be available to the public at the offices of the head of the purchasing agency or procurement officer issuing the request for proposals. The administrator may require that requests for proposals be made available on a central website. [Eff and comp 1/23/06; comp]
 (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-203 Orientation for requests for proposals. (a) To provide greater efficiency and uniformity in the planning and procurement of health and human services, [~~orientations~~] an orientation to explain the procurement requirements of the purchasing agency shall be conducted by the purchasing [~~agencies~~] agency for [~~all~~] requests for proposals issued.

(b) Notice of orientation. An orientation for a request for proposals shall be conducted after the request for proposals is issued. The notice of the orientation shall be given in the request for proposals.

(c) Time for orientation. The orientation shall be held between five and fifteen working days after the public notice has been issued [~~, or long enough after the request for proposals has been issued in order to allow~~]. A longer period of time may be allowed for applicants to become familiar with the request for proposals prior to the orientation, [~~but sufficiently~~] however, the purchasing agency shall provide sufficient time before proposal deadline to allow applicants consideration of the orientation results in preparing their proposals.

(d) Place for orientation. An orientation shall be conducted on the island on which the requested service will be provided. If a request for proposals requests services to be provided on multiple islands, then the purchasing agency shall hold its orientation on the island that will receive the largest share of the requested services at the location or locations specified in the request for proposals[.], or, when applicable, the purchasing agency may use an interactive conference technology, audio or audio and visual, including teleconference, video conference, and voice over internet protocol to conduct an orientation for multiple locations.

(e) No implied amendment of request for proposals. No statement or clarification made by the purchasing agency at the orientation shall be construed as an amendment to the request for proposals unless a written addendum is published in accordance with section 3-143-301. Substantive matters raised at the orientation shall be made available to all prospective applicants by addendum.

(f) Waiver from orientation. The chief procurement officer may waive the requirements of this section for good cause. Any waiver issued under this subsection shall be in writing, and shall state the circumstances that justify good cause for the waiver. Circumstances constituting good cause include, but are not limited to the following:

- (1) A written [~~finding, certified~~] determination by the head of the purchasing agency, that the request for proposals issued is substantially similar to other requests for proposals for the same services issued by the purchasing agency in the past, and potential applicants are already familiar with the requirements of the request for proposals for that reason;
- (2) The total value of the services being procured is less than \$50,000; or
- (3) Any other circumstance in which the costs of holding the orientation outweigh the benefits to be obtained from holding the

orientation. [Eff 6/19/99; am and comp
1/23/06; am and comp]
Auth: HRS §103F-106) (Imp: HRS §§103F-301,
103F-402)

§3-143-204 Submission and receipt of proposals.

(a) Proposals shall be submitted to purchasing agencies no later than the submittal deadline. Proposals may be submitted by hand-delivery or United States mail. Proposals shall be considered received when actually received by the purchasing agency. Proposals received after the deadline shall be rejected in accordance with section 3-143-603.

- ~~[(1) Proposals submitted by hand-delivery shall be deemed received when actually received by the purchasing agency; and
(2) Proposals submitted by United States mail shall be deemed received on the post mark date, provided the proposal is actually received by the purchasing agency within ten days from the postmark date. Proposals received after the deadline shall be rejected in accordance with section 3-143-603.]~~

(b) Proposal submittals by electronic means. Proposals submitted by electronic means~~[, including telefaesimiles,]~~ shall be allowed only when expressly authorized in the request for proposals and shall be in accordance with section 3-143-502.

(c) Procedure for receiving documents. Unless an alternate procedure is proposed by a purchasing agency and approved by its chief procurement officer, proposals, modifications to proposals, and withdrawals of proposals shall be received according to the procedure in this subsection. Upon receipt of proposals by a purchasing agency at a designated location, proposals, modifications to proposals, and withdrawals of proposals shall be date-stamped and, when possible, time-stamped. In addition to such time- and date-stamping, purchasing agencies may issue receipts to applicants. All documents so received

shall be held in a secure place by the purchasing agency and not examined for evaluation purposes until the submittal deadline.

(d) The purchasing agency shall keep a register of all proposals received in accordance with section 3-143-615. [Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §103F-106)
(Imp: HRS §103F-402)

§3-143-205 Evaluation of proposals and notice of award. (a) ~~[After the submittal deadline, all proposals, modifications, and withdrawals]~~ All responsive proposals received by the proposal submittal deadline shall be [examined] reviewed and evaluated by the purchasing agency in accordance with this section.

(b) Evaluators. The procurement officer~~[,]~~ or an evaluation committee of designated reviewers selected by the head of the purchasing agency or procurement officer shall review and evaluate proposals. ~~[A copy of the document identifying any review]~~ Identification of evaluation committee members and any subsequent changes thereto shall be placed in the procurement file.

- (1) When an evaluation committee is utilized to evaluate proposals received in response to a request for proposals, the head of the purchasing agency or procurement officer shall select ~~[for each request for proposals,]~~ a minimum of two employees from a state agency or agencies with sufficient education and training to evaluate the proposals ~~[received in response to the request for proposals]~~.
- (2) Non-state employees may serve as advisors to a purchasing [agencies] agency in the evaluation of proposals but shall not represent or act on behalf of a purchasing agency in any selection or award. A non-state employee shall not be permitted to serve as an advisor if such service would

pose an actual or potential conflict of interest.

(c) Preparation of evaluators. If the purchasing agency deems it necessary or advisable, the evaluators may meet with other state agency personnel in advance of the formal evaluation process in order to discuss a request for proposals, the evaluation process, the evaluation criteria and their relative priorities, or other issues relevant to the evaluation or the request for proposals.

(d) Procedure for evaluation. The evaluation of proposals shall be based solely upon the evaluation criteria and their relative priorities as established in the request for proposals. A written evaluation shall be made for each proposal based on either written comments or a numerical rating system. Numerical evaluations shall include a written explanation of scores given in accordance with criteria stated in the request for proposals. The written evaluations for all proposals received shall be made a part of the procurement file and made available for public inspection after award and execution of the contract, or contracts in the case of a multiple award.

(e) If applicable, during the evaluation process, discussions with applicants shall be in accordance with section 3-143-403.

~~(d)~~ (f) If applicable, the purchasing agency shall request applicants to submit final revised proposals in accordance with section 3-143-607.

~~(e)~~ (g) Ranking of proposals. After all of the proposals have been evaluated, the proposals shall be ranked from most advantageous to least advantageous, based on the evaluations each proposal received.

~~(f)~~ (h) Forbidden criteria for evaluation. Evaluations shall not be based on race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, physical or mental disability, political affiliation of the applicant, or any other criterion prohibited by law, unless such criterion is permitted by law.

~~(g)~~ (i) Notice of award. After evaluation completion, a notice of award shall be sent in accordance with section 3-143-303 to each responsive and responsible applicant. [Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-206 Single or multiple awards. (a) Under a competitive purchase of services, the purchasing agency may either award a single contract to the applicant that submitted the proposal ranked most advantageous under the evaluation process, or make a multiple award as provided in this section.

(b) Multiple award defined. A multiple award is an award of multiple contracts to a number of providers that will, as an aggregate, provide the services required in the request for proposals.

(c) Reference to multiple award in request for proposals. If a multiple award is anticipated prior to issuing a request for proposals, the purchasing agency shall reserve the right to make the award, and the criteria for multiple awards shall be stated in the request for proposals. Criteria may include, but is not limited to geographic areas, target population, or services.

(d) Conditions for multiple award. A multiple award may be made whenever the purchasing agency deems that it is in the best interests of the state. Only the providers whose proposals are evaluated as the most advantageous over-all, by geographical area, or by other criterion explained in the request for proposals, shall be considered for a multiple award. If, for example, a multiple award is to be made to two providers, then only the providers with the two highest-ranked proposals may be considered, and so on.

(e) Forbidden justifications for multiple award contracts. Multiple award contracts shall not be made for any of the following reasons:

- (1) When a single award will meet the purchasing agency's needs without sacrifice of economy or service; or

- (2) Any reason in frustration of these rules, or chapter 103F, HRS. [Eff 6/19/99; am and comp 1/23/06; **comp**]
 (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-207 Modifications before contract execution. After the notice of award is issued and before execution of a contract, the purchasing agency may seek to make final modifications to a proposal through discussion, as provided under section 3-143-404, or through a partial rejection, as provided under section 3-143-611. [Eff and comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

SUBCHAPTER 3

CONTENT REQUIREMENTS

§3-143-301 Addenda to requests for proposals.

(a) Amendments, corrections, and clarifications to requests for proposals shall be made by addendum, and may be made at any time prior to the submittal deadline. Addenda may also be made prior to final revised proposals pursuant to subsection (e).

(b) Form of addenda and procedure for distribution. Every addendum shall reference the portions of the original request for proposals that it amends, and shall set forth in full all amendments, corrections, and clarifications to the request for proposals. In accordance with paragraph (d) or (e), the purchasing agency shall notify, and distribute or make the addendum available to all prospective applicants known to have received a request for proposals, and may require that prospective applicants acknowledge receipt of the addendum issued.

(c) Permitted uses of addenda. Addenda may be used for any reasonable purpose in furtherance of the procurement process, including but not limited to:

- (1) Making changes in the terms of the request for proposals, including but not limited to changes in quantity, service description, timeline, scope of service, or proposal deadline;
- (2) Correcting mistakes or resolving ambiguities;
- (3) Insuring that all applicants receive material information that may have arisen during the course of discussions of the request for proposals; and

~~[(1)]~~ (4) Providing any other information or clarification to the request for proposals that will promote fair competition among applicants.

(d) Addenda issued prior to proposal submittal deadline. Addenda shall be distributed or made available ~~[at least ten working days before the submittal deadline, or]~~ prior to the proposal submittal deadline allowing ~~[within a]~~ sufficient time ~~[before the submittal deadline to allow]~~ for prospective ~~[applicants to consider them in preparing their proposals.]~~ applicants' consideration and proposal completion. If the proposal submittal deadline ~~[for the request for proposals]~~ will not permit such adequate time, the purchasing agency shall include in the addendum an amendment to extend the submittal deadline accordingly. ~~[In order to]~~ To allow adequate time, the purchasing agency may ~~[also]~~ include in the addendum ~~[amendments]~~ an amendment to allow electronic submission of proposals in accordance with section 3-143-502.

(e) Addenda issued after submittal deadline. Addenda may be issued after the submittal deadline for the purposes of clarification, correction, ~~[to make]~~ or modifications that do not constitute a material change to the request for proposals, as defined in section 3-143-403(e), or for best and final revised proposals. Addenda shall be distributed to all responsive and responsible applicants who submitted a proposal. If the purchasing agency is requesting for final revised proposals, the time for distribution shall be at least five working days or a sufficient

time prior to the submittal deadline to allow applicants time to consider the addenda in preparing their final revised proposals. Addenda for best and final revised proposals shall be done in accordance with section 3-143-607. [Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §§103F-106, 103F-407) (Imp: HRS §§103F-402, 103F-407)

§3-143-302 Service specifications for requests for proposals. (a) In order to promote uniformity in the field of health and human service procurement, service specifications contained in requests for proposals shall be written in accordance with this section.

(b) Contents of service specifications. Service specifications shall address in detail each of the following items and if an item is not applicable to the request for proposals, it shall be so stated:

- (1) [~~Identify minimum~~] Minimum or mandatory activities;
- (2) [~~Specify probable~~] Probable funding amounts, source, and period of availability;
- (3) [~~Describe the need~~] Need or problem the service addresses;
- (4) [~~Describe goals~~] Goals of the service;
- (5) [~~Describe in detail the target~~] Target population to be served;
- (6) [~~Specify the geographical~~] Geographical coverage of service;
- (e) [~~Specify expected~~] Expected outcome measurements;
- (8) [~~Specify the units~~] Units of service and unit rate, as applicable;
- (9) [~~Specify quality~~] Quality assurance and evaluation specifications, as applicable;
- ~~(10) Specify whether single or multiple contracts are to be awarded and define the criteria for the multiple award, if applicable;~~
- ~~(11) Specify whether single or multi-term contracts are to be awarded and define the~~

~~terms, including but not limited to initial contract term and conditions for extension; multi-term contracts shall be in accordance with section 3-149-302;~~

- [~~(12)~~] (10) [~~Specify reporting~~] Reporting requirements for program and fiscal data, and provide sample forms and instructions, as available or appropriate;
- (11) Any specific requirements or qualifications that an applicant must meet in order to submit a proposal including, but not limited to, licensure or accreditation;
- [~~(13)~~] (12) [~~Identify minimum~~] Minimum or mandatory administrative requirements;
- [~~(14)~~] (13) [~~Identify minimum~~] Minimum or mandatory personnel requirements;
- [~~(15)~~] (14) [~~Specify pricing~~] Pricing or pricing methodology to be used, as applicable; and
- [~~(16)~~] (15) [~~Specify the method~~] Method or procedure for compensation or payment. [Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §§103F-106, 103F-301) (Imp: HRS §§103F-301, 103F-402)

§3-143-303 Notice of award. (a) Each notice of award issued pursuant to section 3-143-205(i) or section 3-143-607(d) shall contain a statement of findings and decision that includes the following information:

- (1) Identification of the purchasing agency;
- (2) Identification of the request for proposals;
- (3) Identification of the applicant or applicants that were selected;
- (4) Comments for the evaluation or scores received in support of the decision for the award or non-award to the applicant to whom the notice is being sent; and
- (5) A copy of the proposal evaluation worksheet of the applicant to whom the notice is being sent.

(b) Distribution of notice. The notice of award to each responsive and responsible applicant shall be sent by United States mail and may also be sent electronically [~~, including but not limited to facsimile transmission,~~] upon completion of the evaluation process. [Eff 6/19/99; am and comp 1/23/06; **am and comp**] (Auth: HRS §103F-106)
(Imp: HRS §103F-402)

SUBCHAPTER 4

ALLOWABLE COMMUNICATIONS

§3-143-401 Discussions with applicants allowed before submittal deadline. (a) Before the submittal deadline, a purchasing agency may engage in discussions with applicants as provided in this section as often as the purchasing agency deems necessary or convenient.

(b) Purpose of discussions. Discussions may be conducted under this section in order to promote understanding of a purchasing agency's requirements.

(c) Procedure for conducting discussions. The purchasing agency shall establish procedures and schedules for conducting material discussions under this section that will insure the reasonably fair and equal treatment of all prospective applicants.

(d) Modification or cancellation of request for proposals [~~for material change~~]. In response to matters raised during discussions conducted under this section, a purchasing agency may modify or cancel its request for proposals as provided herein.

- (1) If a proposed modification does not constitute a material change in the nature of the request for proposals, then the purchasing agency may issue a written addendum in accordance with section 3-143-301.

(2) If a proposed modification does constitute a material change in the nature of the request for proposals, then the purchasing agency may cancel the request for proposals in accordance with section 3-143-613, and a new request for proposals may be issued.

(e) Material change defined. For purposes of this section, a material change in the nature of a request for proposals is one that would alter a reasonable potential applicant's decision not to submit a proposal.

(f) Confidentiality of proposed proposal contents. To prevent disclosure of proposed proposal contents to competing applicants, any information disclosed by the prospective applicant about their proposed proposal shall be confidential in accordance with section 3-143-604 during the course of any discussions conducted under this section. [Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §§103F-106, 103F-402) (Imp: HRS §103F-402)

§3-143-402 Submission of questions before submittal deadline. (a) Before the submittal deadline, an applicant may submit questions to the purchasing agency for clarification or explanation of any point in a request for proposals.

(b) Procedure for submitting questions. Questions shall be submitted to the purchasing agency in writing, identifying the questioner and clearly referencing the request for proposals. To the extent possible, questions shall be transmitted to the purchasing agency within a reasonable time before the submittal deadline to allow the purchasing agency time to consider the questions and distribute answers.

(c) Purchasing agency response. The purchasing agency shall promptly respond to written questions posed under this section by an addendum to the request for proposals, as provided under section 3-143-301. All prospective applicants who submitted questions and prospective applicants who are known to have obtained

(d) a copy of the request for proposals, shall be notified of the addendum's availability, and to the extent practicable, a copy of the addendum may also be mailed or sent electronically. All written clarifications shall be made available on a website identified in the request for proposals and at the same location or locations where proposals may be submitted. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-403 Discussions with applicants after submittal deadline. (a) After the submittal deadline, the purchasing agency may engage in discussions with applicants as provided in this section as often as the purchasing agency deems necessary or convenient.

(b) Allowed purposes for discussion. Discussions may be held under this section for the purposes of:

- (1) Clarifying elements of the request for proposals or the proposal;
- (2) Facilitating the refinement of proposals to produce the contract that will be most advantageous to the state in light of the evaluation criteria set forth in the request for proposals; or
- (3) Negotiation with providers to arrive at a more advantageous set of proposals for the state to consider.

(c) Procedure for conducting discussions. The purchasing agency shall establish procedures and schedules for conducting discussions under this section that will insure the reasonably fair and equal treatment of all applicants.

(d) Modification or cancellation of request for proposals for material change. In response to matters raised during discussions conducted under this section, a purchasing agency may modify or cancel its request for proposals as provided herein.

- (1) If a proposed modification does not constitute a material change in the nature

of the request for proposals, then the purchasing agency may issue a written addendum in accordance with section 3-143-301.

- (2) If a proposed modification does constitute a material change in the nature of the request for proposals, then the purchasing agency may cancel the request for proposals in accordance with section 3-143-613, and a new request for proposals may be issued.

(e) Material change defined. For purposes of this section, a material change in the nature of a request for proposals is one that would alter a reasonable applicant's decision not to have submitted a proposal.

(f) Confidentiality of proposal contents during discussions. The confidentiality of the contents of individual proposals shall be maintained in accordance with section 3-143-604 during the course of any discussions conducted under this section in order to prevent the disclosure of such contents to competing applicants. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §§103F-106, 103F-402) (Imp: HRS §103F-402)

§3-143-404 Discussions with applicants after notice of award and before contract execution. (a) After the notice of award is issued, the purchasing agency or a secondary purchaser may have further discussions in accordance with this section in order to negotiate a more advantageous contract for the state.

(b) Scope of discussions. Discussions conducted under this section shall be limited in scope to the following:

- (1) Contractual terms and conditions not specifically addressed in the request for proposals that would not constitute a material change to the proposals; and
- (2) Contractual terms and conditions which are substantially the same or that do not

constitute a material change to the proposal.

(c) Material change defined. For purposes of this section a material change to a proposal is one that would have adversely affected the proposal's rating during the evaluation process.

(d) Procedure for conducting discussions. The purchasing agencies shall establish procedures and schedules for conducting discussions under this section. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

CHAPTER 5

EXPEDITING PROCEDURES

§3-143-501 Repealed. [R 1/23/06]

§3-143-502 Use of electronic submission for competitive purchase of service. (a) Proposals and amendments may not be submitted to purchasing agencies by any electronic means [~~, including but not limited to facsimile transmission, via email or a website, except when~~] unless such transmission is expressly authorized in [~~a~~] the request for proposals.

(b) Applicant [~~bears~~] responsibility [~~for transmission~~]. Applicants [~~who submit~~] submitting proposals or amendments by electronic means, bear the whole and exclusive responsibility for assuring that the documents are received by the purchasing agency and for assuring the complete, correctly formatted, legible, and timely transmission of their documents. [~~By opting to submit documents by electronic means, applicants~~] Applicants assume all [~~risk~~] risks that a purchasing agency's receiving equipment and system may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. A proposal or amendment submitted via telefacsimile transmission shall be

deemed received when the last page of a complete, legible copy of the document has been received by the purchasing agency. For other electronic submittals, the purchasing agency shall establish a system, which includes but is not limited to an email account or website that will either document time of receipt, or close and not accept any submittals after the proposal or amendment submittal deadline. [Eff 6/19/99; am and comp 1/23/06; am and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-503 Repealed. [R 1/23/06]

§3-143-504 Submission of proposals on electronic media. (a) Proposals and amendments may not be submitted to purchasing agencies on electronic media except when such submission is explicitly authorized in a request for proposals.

(b) Applicant bears responsibility for submission. Applicants who submit proposals or amendments on electronic media bear the whole and exclusive responsibility for assuring the complete, correctly-formatted, and timely submission of their proposals and amendments to purchasing agencies. By opting to submit documents on electronic media, applicants assume all risk that a purchasing agency's equipment system may be unable to read the applicant's electronic media. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

~~†§3-143-505 Selection of substitute provider after early termination of contract. (a) In the event that a contract for health and human services awarded under this chapter is terminated before the contract expiration date, the purchasing agency shall follow the procedures in this section to select a substitute provider.~~

~~(b) Initiation of new competitive purchase of service. To select a substitute provider, a purchasing agency may initiate a new competitive~~

~~(c) purchase of service procurement by issuing a new request for proposals.~~

~~(d) Expedited procedure for selection of substitute provider. If the selection of a substitute provider through the initiation of a new competitive purchase of service procurement is not practicable, then the purchasing agency may, if applicable, negotiate a contract with the next highest evaluated ranked applicant. If the purchasing agency and applicant are unable to negotiate a contract, the purchasing agency may negotiate with the next highest ranking applicant, and so on. In the event that there are no other proposals, or none of the proposals and applicants are sufficiently advantageous, the purchasing agency may select any provider that will be an advantageous substitute. Any contract awarded to a substitute provider selected under this subsection shall terminate either at the same time that the original contract would have, or at the close of the following fiscal year, whichever occurs sooner. [Eff 6/19/99; am and comp 1/23/06] (Auth: HRS §103F-106) (Imp: HRS §103F-402)] [R]~~

SUBCHAPTER 6

MISCELLANEOUS PROCEDURES

§3-143-601 Modification, correction, or withdrawal of proposals before submittal deadline. Applicants bear the responsibility of verifying that the proposal, submitted to the purchasing agency in response to a request for proposal, is accurate and free of errors. Before the submittal deadline, applicants may freely and at any time modify, correct, or withdraw their submitted proposals by written notice to the purchasing agency, referencing the original proposal and either detailing the

modification, correction, or stating the intent to withdraw the proposal. [Eff 6/19/99; am and comp 1/23/06; **comp**] (Auth: HRS §103-106) (Imp: HRS §103F-402)

§3-143-602 Proposals deemed firm offers after submittal deadline. After the submittal deadline, all proposals timely received shall be deemed to be firm offers that are binding on the applicants for a period of ninety days. During this period, applicants may neither modify nor withdraw their proposals without written authorization or invitation from the purchasing agency. [Eff 6/19/99; am and comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-603 Late proposals rejected. Any proposal, withdrawal, or modification submitted after the submittal deadline is late and shall be rejected on that basis. Notice of the rejection for late submission shall be given to the applicant, and disposal of the rejected proposal shall be in accordance with section 3-143-612. [Eff 6/19/99; am and comp 1/23/06; **comp**] (Auth: §§103F-106, 103F-407) (Imp: HRS §§103F-402, 103F-407)

§3-143-604 Confidentiality and public access to documents. Prior to and after submission to a purchasing agency, the confidentiality of proposals, modifications to proposals, and withdrawals of proposals shall be maintained in accordance with this section.

- (1) Prior to the submittal deadline, proposals, modifications to proposals, or withdrawals of proposals shall be kept in confidence, in a secure place, and may not be inspected for purposes of evaluation.
- (2) After the submittal deadline, proposals, modifications, and withdrawals may be opened

and inspected only by state personnel involved with the procurement process and designated evaluation committee members. After the submittal deadline and before the award and execution of a contract, such documents shall be kept confidential to avoid disclosure of contents to competing applicants.

- (3) Procurement files shall be maintained and open to public inspection as provided in section 3-143-616. [Eff 6/19/99; am and comp 1/23/06; comp]
(Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-605 Multiple proposals and alternate proposals. (a) An applicant may not submit multiple proposals or alternate proposals unless the request for proposals specifically authorizes multiple proposals or alternate proposals.

(b) Rejection of multiple proposals and alternate proposals. When no specific authorization for multiple proposals or alternate proposals is given, all such proposals from a single applicant shall be rejected unless one of the proposals is clearly designated as the primary proposal. In such a case, the designated primary proposal shall be retained and evaluated, and all others shall be rejected and disposed of in accordance with section 3-143-612.

(c) Treatment of authorized multiple proposals and alternate proposals. Whenever a request for proposals authorizes multiple proposals or alternate proposals, the request for proposals shall also detail the treatment of such proposals for purposes of evaluation and contract award. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-402, 103F-407)

§3-143-606 Correction of errors after submittal deadline. After the submittal deadline, only patent errors may be corrected as provided in this section.

- (1) Patent error defined. A patent error is an error that would be readily ascertainable by a reasonably knowledgeable person in the field of health and human services. Depending on the circumstances, patent errors may include, but are not limited to arithmetical errors, typographical errors, transposition errors, and omitted signatures.
- (2) Correction of patent error. To correct a patent error, an applicant must identify the error in the proposal, and establish the following to the purchasing agency's satisfaction:
 - (A) That the error identified is a patent error;
 - (B) That the proposed correction constitutes the information intended at the time the proposal was submitted, and not a modification of the proposal based on information received after the submittal deadline; and
 - (C) That the proposed correction is not contrary to the best interest of the purchasing agency or to the fair treatment of other applicants. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-607 Final revised proposals. a) A purchasing agency may request applicants to submit final revised proposals in order to allow fair and equal opportunity to all responsive and responsible applicants to make a best and final offer or to respond to matters such as those raised at the discussions.

(b) Procedure for requesting final revised proposals. The purchasing agency shall issue to all responsive and responsible applicants an addendum that includes the following information:

- (1) The addendum is a request for final revised proposals;
- (2) The deadline for submission;
- (3) The procedure for submitting final revised proposals if that procedure is different from submitting the original proposals; Instructions that only the section or sections of each applicant's last proposal that are amended should be submitted; and
- (4) A statement that if an applicant does not submit a final revised proposal, then the applicant's last proposal shall be deemed to be the applicant's final revised proposal.

(c) Procedure for submission. Unless a different method is specified, final revised proposals shall be submitted to the purchasing agency in the manner provided for the original proposals under section 3-143-204.

(d) Notice of award after submission of final revised proposals. After revised final proposals are received, final evaluations shall be conducted, and a notice of award issued to each responsive and responsible applicant, in accordance with section 3-143-303, unless the purchasing agency makes a written determination that it is in the state's best interest to conduct additional discussions or issue a further addendum to the request for proposals. [Eff 6/19/99; am and comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-608 Secondary purchase of competitive purchase of service. (a) To increase the efficiency of procurements through better planning, purchasing agencies may coordinate and combine purchases of similar health and human services through primary and secondary purchases as provided herein:

- (1) After-the-fact secondary purchase. A purchasing agency may utilize the service or part of the service that has already been procured under a competitive purchase of service by another purchasing agency; or
- (2) Planned secondary purchase. When two or more purchasing agencies require the procurement of substantially the same health and human services, they may combine their requirements and issue a single request for proposals.

(b) Primary purchaser and secondary purchaser defined. When two or more purchasing agencies combine their service requirements as provided in subsection (a), the purchasing agency requiring the largest share of the services detailed in the request for proposals shall be the primary purchaser, while the purchasing agency requiring the smaller share shall be the secondary purchaser. A secondary purchaser's share of the total services to be provided in subsection (a)(1) shall not exceed thirty percent or \$75,000, whichever is lesser, unless the head of the secondary purchaser determines in writing that good cause exists for a greater share.

(c) Duties of primary and secondary purchasers. The primary purchaser shall have the responsibility of complying with the procedures and requirements of a competitive purchase of services, and the secondary purchaser shall have a duty to cooperate with the reasonable requests of the primary purchaser. Both the primary purchaser and the secondary purchaser shall execute separate contracts.

(d) Approval to utilize after-the-fact secondary purchase. When a purchasing agency decides to make a secondary purchase as provided in subsection (a)(1), the head or the procurement officer of the secondary purchaser shall obtain written approval from the primary purchaser's chief procurement officer to utilize the primary purchaser's procurement. The request shall address the following:

- (1) Title and description of the service;
- (2) General contract information of the primary

purchaser to include name of purchasing agency, contact person, phone number, and contract number;

- (3) Identification of the provider;
- (4) Primary purchaser's contract period and secondary purchaser's proposed contract period;
- (5) Primary and secondary purchasers' contract amounts; A statement that the service or part of the service is the same or substantially the same; and
- (6) A description of differences between the primary and secondary purchase, if any. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-301, 103F-402)

§3-143-608.1 Joint request for proposals. (a)

Two or more purchasing agencies may issue a joint request for proposals for the purposes of coordinating and improving the efficiency of purchasing health and human services when:

- (1) The services are substantially the same; or
- (2) Purchasing a continuum of services for clients from the same provider or collaboration of providers is essential for the continuity of service.

(b) In addition to the information required by sections 3-143-201 and 3-143-302, the joint request for proposals shall include:

- (1) A statement that the request for proposals is being issued jointly;
- (2) The names of the purchasing agencies and which will be the lead agency;
- (3) The purpose and goals of issuing the joint request for proposals;
- (4) The role each state agency will play in evaluating proposals;
- (5) The manner in which contracts will be awarded and executed. [Eff and comp 1/23/06; comp] (Auth:

HRS §§103F-106) (Imp: HRS §§103F-301,
103F-402)

§3-143-609 Inadequate response to request for proposals. (a) Whenever a request for proposals generates an inadequate response, the purchasing agency that issued the request for proposals may use the simplified procedures in this section to complete the procurement.

(b) Inadequate response defined. An inadequate response to a request for proposals exists when:

- (1) There is only one proposal that is both responsive to the request for proposals and submitted by a responsible provider;
- (2) All proposals that were received are either not responsive to the request for proposals, or were not submitted by responsible providers; or
- (3) There are no responses at all to the request for proposals.

(c) Treatment of a single proposal. When there is only one proposal that is both responsive to the request for proposals and submitted by a responsible provider, the purchasing agency may respond by taking any of the following actions:

- (1) Cost analysis. The purchasing agency may require a cost analysis to validate the proposal's cost factors including cost or pricing data.
- (2) Award. The purchasing agency may make an award to the single applicant if it is determined that:
 - (A) The proposal's terms are reasonable and satisfactory to the purchasing agency; and
 - (B) The required time period from the release date of the request for proposals to the submittal deadline provided other prospective applicants with a reasonable opportunity to respond.

- (3) Rejection. The purchasing agency may reject the proposal if the conditions of paragraph (2) are not met, and either issue a new request for proposals, or cancel the procurement altogether.
- (4) Direct negotiations. The purchasing agency may negotiate directly with the applicant upon a written determination by the purchasing agency that:
 - (A) The need for the service continues;
 - (B) The single proposal is not satisfactory and reasonable; and
 - (C) There is no time to issue a new request for proposals or re-solicitation would likely be futile.

(d) No useful response to request for proposals. If ~~no~~all proposals ~~are~~ received ~~that~~ are ~~both~~ not responsive to the request for proposals ~~and~~ or submitted by a responsible applicant, or if no proposals are received at all, then the purchasing agency may respond by taking any of the following actions:

- (1) Reissue. The purchasing agency may reissue the request for proposals.
- (2) Alternate service delivery. The purchasing agency may select an alternate method of service delivery and issue a new request for proposals.
- (3) Cancellation. The purchasing agency may cancel the procurement altogether.
- (4) Selection without competition. The purchasing agency may select a provider without further solicitation upon making a written determination that it is neither practicable nor advantageous to issue a new request for proposals based on a consideration of the following factors:
 - (A) Lack of ~~Competition~~ competition in the marketplace;
 - (B) ~~Whether the~~ The additional potential cost of preparing, soliciting, and evaluating competitive purchase of

service proposals is expected to exceed the benefits normally associated with the solicitation; and

- (C) Any other factors that the purchasing agency deems relevant to this determination. [Eff 6/19/99; am and comp 1/23/06; am and comp]
(Auth: HRS §§103F-106, 103F-407)
(Imp: HRS §§103F-402, 103F-407)

§3-143-610 Rejection of proposals. (a) In addition to any other basis for mandatory rejection established elsewhere in this chapter, proposals shall be rejected for reasons including, but not limited to:

- (1) Proposal not responsive. Any proposal that is not responsive to the request for proposals because of its failure to conform in all material respects to the request for proposals including, but not limited to, the service specifications or other evaluation criteria shall be rejected; or
- (2) Applicant not responsible. Any proposal submitted by an applicant that is found not to be a responsible provider shall be rejected.

(b) Notice of rejection. Whenever an applicant's proposal has been rejected under these rules, notice of the rejection shall be sent to the applicant by United States mail that states the reasons for rejection. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §§103F-106, 103F-407) (Imp: HRS §§103F-402, 103F-407)

§3-143-611 Modification of proposal by partial rejection. (a) A purchasing agency may, in accordance with this section, partially reject any proposal or combination of proposals and request proposal modifications to be done that are in the best interests of the state.

(b) Conditions for partial rejection. A purchasing agency may only partially reject any proposal or combination of proposals if the following conditions are met:

- (1) The proposal or combination of proposals has been determined under the evaluation process to be the most advantageous; and
- (2) The modifications proposed by the purchasing agency will not render the proposal or proposals less advantageous.

(c) Procedure and notice for partial rejection. Upon the determination that a proposal is eligible for partial rejection, the purchasing agency shall give the applicant that submitted the proposal notice of partial rejection. The notice of partial rejection shall contain the following information:

- (1) Identification of the proposal; and
- (2) A statement of the proposed modifications to the proposal.

(d) Partial rejection not binding unless approved. A notice of partial rejection shall not be construed to bind an applicant unless the applicant approves in writing the modifications proposed in the notice. If the modifications as proposed in the notice are not acceptable to the applicant, then the applicant may make a counter-proposal to the purchasing agency and negotiate a set of modifications mutually acceptable to both parties.

(e) Incorporation in proposal. Upon approval by both the purchasing agency and the applicant, the proposed modifications shall be incorporated into the applicant's proposal in a manner mutually acceptable to both parties. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §§103F-106, 103F-407) (Imp: HRS §§103F-402, 103F-407)

§3-143-612 Disposition of rejected proposals. Whenever a proposal is rejected pursuant to sections 3-141-201, 3-141-202, 3-143-603, 3-143-605, 3-143-610, or 3-143-613, the purchasing agency may discard the rejected proposal thirty days after its rejection.

Before disposal, the applicant may retrieve the proposal from the purchasing agency. (Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-613 Cancellation of request for proposals.

- (a) A request for proposals may be canceled at any time for any of the following reasons:
- (1) The purchasing agency no longer requires the service; The purchasing agency no longer can reasonably expect to fund the service;
 - (2) Proposed amendments to the request for proposals would be of a magnitude that a new request for proposals is desirable;
 - (3) A determination by the chief procurement officer that a cancellation of the request for proposals is in the public interest; or
 - (4) Any other reason determined by the purchasing agency to constitute good cause for the cancellation.
- (b) Cancellation between submittal deadline and award. A request for proposals may be canceled after the submittal deadline but before the award of a contract for any of the following reasons:
- (1) Ambiguous or otherwise inadequate service specifications were part of the request for proposals;
 - (2) The request for proposals did not provide for consideration of all factors of significance to the purchasing agency;
 - (3) No adequately responsive proposals were received;
 - (4) There is reason to believe that the proposals submitted to the purchasing agency:
 - (A) May not have been independently arrived at by open competition;
 - (B) May have been collusive; or
 - (C) May have been submitted in bad faith.

- (5) A determination by the chief procurement officer that a cancellation of the request for proposals is in the public interest; or
- (6) Any other reason determined by the purchasing agency to constitute good cause for the cancellation.

(c) Notice of cancellation. A notice of cancellation shall be sent to all applicants or prospective applicants, and shall include the following information:

- (1) Identification of the particular request for proposals; A brief explanation of the reason or reasons for cancellation;
- (2) Where appropriate, a statement that an opportunity will be given to compete on any resolicitation or any future procurements of similar services; and
- (3) Any other information deemed necessary or advisable by the purchasing agency.

(d) Record of cancellation. A written statement of the reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection.

(e) Proposals deemed rejected upon cancellation. Upon cancellation of a request for proposals, all proposals received from applicants shall be deemed rejected without further action from the purchasing agency and shall be disposed of in accordance with section 3-143-612. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §§103F-106, 103F-407) (Imp: HRS §§103F-402, 103F-407)

§3-143-614 Applications for federal funding.

(a) Applying for federal funds from a federal funding source to provide health and human services shall not exempt a purchasing agency from chapter 103F, HRS, procurement requirements. Use of competitive purchase of service. When federal funds awarded to the state do not specify any particular provider by federal law or in the federal grant award to the state, competitive purchase of service shall be used unless

an alternate method, as allowed by statute or rules, is determined to be more appropriate and advantageous to the state.

(b) Special procedures authorized. In certain circumstances, the usual sequence of the competitive purchase of service process may be modified. To apply for and receive federal funds, it is often required that the state submit an application to the federal funding source describing the use of such funds, and in some cases, identifying a specific provider or providers. To assess and consider interested or prospective applicants for inclusion in the state's application for federal funding and to fulfill the procurement requirements, purchasing agencies may, in lieu of the request for proposals process, utilize a request for information as established in section 3-142-202 prior to applying for ~~[or receiving]~~ the federal funding. The selected provider or providers may be included in the state's application to the federal funding source.

(c) Selection of provider for federal application. The selection of a provider or providers for inclusion in the purchasing agency's application for federal funding shall be based on the criteria and requirements established in the request for information, or the discretion of the head of the purchasing agency. Written justification for the provider(s) selected shall be included in the procurement file.

(d) Construction of section. Nothing in this section shall be construed to disqualify a purchasing agency from receiving federal funds. [Eff 6/19/99; am and comp 1/23/06; am and comp]
(Auth: HRS §103F-106) (Imp: HRS §§103F-101, 103F-402)

§3-143-615 Register of proposals. Ten working days, or a reasonable time after the submittal deadline, a register of proposals shall be prepared and made available to the public. The register shall include the following information from each proposal:

- (1) The name of each applicant; and
- (2) The request for proposal service title and identification number to identify the service. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-616 Public inspection of competitive purchase of service records. (a) The procurement file for every competitive purchase of service procurement shall be available for public inspection, to the extent permitted under current law governing information practices, after execution of a contract by all parties.

(b) Keeping of file and contents. Purchasing agencies shall maintain files for every competitive purchase of service procurement that they conduct. The file shall contain all records that the purchasing agency keeps that are connected to the procurement, award, or servicing of a contract. At a minimum, the records kept in the file shall include but not be limited to the following:

- (1) The register of proposals prepared pursuant to section 3-143-615;
- (2) A listing of all known service providers to whom copies of the request for proposals were distributed;
- (3) Names of successful applicants and dollar amounts requested, as applicable;
- (4) The basis on which the award or awards were made;
- (5) A copy of the request for proposals;
- (6) A copy of the successful proposal or proposals; and
- (7) A copy of the unsuccessful proposal or proposals. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

§3-143-617 Repealed. [R 1/23/06]

§3-143-618 Repealed. [R 1/23/06

§3-143-619 Competitive purchase of service record of procurement actions. (a) The procurement officer of the purchasing agency shall maintain records by fiscal year of all competitive purchase of service procurements made for a minimum of the past five fiscal years.

(b) Reporting of competitive purchase procurements. As determined by the administrator, the heads of purchasing agencies shall report to the administrator all competitive purchase of service procurements made by their respective agencies in the format prescribed by the administrator.

(c) Annual consolidated reports. The administrator shall make a consolidated report of all competitive purchase of service procurements made during the immediately preceding fiscal year. A copy of this report shall also be sent to the procurement policy board." [Eff 6/19/99; am and comp 1/23/06; **comp**] (Auth: HRS §103F-106)
(Imp: HRS §§103F-301, 103F-402)

(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 3-148, 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 are adopted on _____ and filed with the Office of the Lieutenant Governor.

Chairperson
Procurement Policy Board

State Comptroller

APPROVED AS TO FORM

Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-146
Hawaii Administrative Rules

2012

1. Chapter 3-146, Hawaii Administrative Rules, entitled "Small Purchase of Service" 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 146

SMALL PURCHASE OF SERVICE

Subchapter 1 Purpose and Scope

§3-146-101 Purpose
§3-146-102 Scope

Subchapter 2 Core Procedures

§3-146-201 Adoption of HRS 103D rules for small purchases
§3-146-202 Definitions
§3-146-203 Conditions for use
§3-146-204 Services
§3-146-205 Quotations received

§3-146-101

Subchapter 3 Content Requirements

§§3-146-301 to 3-146-400 (Reserved)

Subchapter 4 Allowable Communications

§§3-146-401 to 3-146-500 (Reserved)

Subchapter 5 Expediting Procedures

§§3-146-501 to 3-146-600 (Reserved)

Subchapter 6 Miscellaneous Procedures

§3-146-601 Repealed

§3-146-602 Small purchase of service record of
procurement actions

SUBCHAPTER 1

PURPOSE AND SCOPE

§3-146-101 Purpose. The purpose of this chapter is to implement section 103F-405, HRS, which establishes the small purchase of service method of procurement, by providing rules and procedures for the use of this method of procurement. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-405)

§3-146-102 Scope. The small purchase of service method of procurement may be used to procure health and human services when the proposed contract for services is for consideration of less than \$25,000. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §103F-405)

SUBCHAPTER 2

CORE PROCEDURES

§3-146-201 Adoption of HRS 103D rules for small purchases. In accordance with section 103F-405, HRS, the rules for small purchases under section 103D-305, HRS, are hereby adopted as modified herein for the procurement of health and human services. [Eff 6/19/99; comp 1/23/06; comp]
 (Auth: HRS §103F-106) (Imp: HRS §103F-405)

§3-146-202 Definitions. As used in this chapter, "adequate and reasonable competition" considers the numbers of providers solicited based upon the number of providers available and the value or price of the service. Because of variations in circumstances, it is not possible to define what is adequate and reasonable competition for every small procurement. However, in general, the more providers there are that can meet the needs of the purchasing agency, or the higher the price of the services, then a greater number of providers should be solicited. [Eff 6/19/99; am and comp 1/23/06; comp]
 (Auth: HRS §103F-106) (Imp: HRS §103F-405)

§3-146-203 Conditions for use. (a) Expenditures less than \$25,000 for services shall be made in accordance with this chapter. Small purchase of service expenditures made pursuant to this chapter does not require public notice.

(b) Parceling forbidden. Purchases shall not be parceled by dividing the purchase of same, like, or related items of services into several purchases of smaller quantities, so as to evade the statutory competitive purchase of service requirements. [Eff 6/19/99; am and comp 1/23/06; comp]
 (Auth: HRS §103F-106) (Imp: HRS §103F-405)

§3-146-204 Services. (a) Expenditure with an estimated total cost that is at least \$15,000 but less than \$25,000:

- (1) Insofar as it is practicable and based on the purchasing agency's specifications, no less than three written quotations shall be solicited; and
- (2) Considering all factors, including but not limited to quality and delivery, award shall be made to the provider with the most advantageous quotation.

(b) Expenditures of \$5,000 to \$15,000.

Expenditures with an estimated total cost that is at least \$5,000 but less than \$15,000:

- (1) Insofar as it is practicable and based on the purchasing agency's specifications, no less than three quotations shall be solicited; and
- (2) Considering all factors, including but not limited to quality and delivery, award shall be made to the provider with the most advantageous quotation.

(c) Expenditure under \$5,000. Expenditure with an estimated total cost that is less than \$5,000 shall be by procedures established by each chief procurement officer. [Eff 6/19/99; comp 1/23/06; comp

] (Auth: HRS §103F-106) (Imp: §103F-405)

§3-146-205 Quotations received. A record of all quotations received shall be made part of the procurement file, including written justification when fewer than the required number of quotations are obtained and when award is made to other than the provider submitting the lowest quotation. [Eff and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-405)

SUBCHAPTER 3

CONTENT REQUIREMENTS

§§3-146-301 to 3-146-400 (Reserved).

SUBCHAPTER 4

ALLOWABLE COMMUNICATIONS

§§3-146-401 to 3-146-500 (Reserved).

SUBCHAPTER 5

EXPEDITING PROCEDURES

§§3-146-501 to 3-146-600 (Reserved).

SUBCHAPTER 6

MISCELLANEOUS PROCEDURES

~~[§3-146-601 Procurement file. All quotations received shall be recorded and placed in a procurement file, including a justification for the use of fewer quotations than are required, such as insufficient sources, emergency or urgent circumstances. The reason shall be recorded and placed in the procurement file. The file shall also include a written justification when award is made to other than the provider submitting the lowest quotation. [Eff 6/19/99; comp] (Auth: HRS §103F 106) (Imp: HRS §103F 405)]~~ Repealed. (R)
(Moved to 3-146-205)

§3-146-602 Small purchase of service record of procurement actions. (a) The heads of purchasing agencies or procurement officers shall maintain records by fiscal year of all small purchase of service procurements made by their respective agencies for a minimum of the past five fiscal years. Such records shall be kept available for public inspection.

(b) Reports of small purchase procurements. As prescribed by the administrator, the heads of purchasing agencies or procurement officers shall make reports to the administrator of all small purchase of service procurements made by their respective agencies.

(c) Annual consolidated report. The administrator shall make a consolidated report of all small purchase of service procurements made during the immediately preceding fiscal year. A copy of this report shall also be sent to the procurement policy board." [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-301, 103F-405)

(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 3-146, 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 are adopted on _____ and filed with the Office of the Lieutenant Governor.

Chairperson
Procurement Policy Board

State Comptroller

APPROVED AS TO FORM

Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-148
Hawaii Administrative Rules

2012

1. Chapter 3-148, Hawaii Administrative Rules, entitled "Protest and Request for Reconsideration" 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 148

PROTEST AND REQUEST FOR RECONSIDERATION

Subchapter 1 Purpose and Scope

§3-148-101 Scope
§3-148-102 Purpose
§3-148-103 Allowable protests

Subchapter 2 Informal Resolution of Protests

§3-148-201 Informal request for explanation
§3-148-202 Informal resolution of protest by
mutual agreement

Subchapter 3 Procedure for Protests

- §3-148-301 Notice of protest
- §3-148-302 Protest settlement conference and schedule
- §3-148-303 Formal protest
- §3-148-304 Response to formal protest
- §3-148-305 Reply by protestor
- §3-148-306 Decision by the head of the purchasing agency

Subchapter 4 Procedure for Requests for Reconsideration

- §3-148-401 Request for reconsideration
- §3-148-402 Decision by the chief procurement officer

Subchapter 5 Miscellaneous Procedures

- §3-148-501 Suspension of award
- §3-148-502 Requests for clarification
- §3-148-503 Form of evidence submitted during a protest or reconsideration
- §3-148-504 Conduct of the head of purchasing agency during protests

SUBCHAPTER 1

PURPOSE & SCOPE

§3-148-101 Scope. The provisions of this chapter shall apply to all protests and grievances arising in connection with the award of a contract issued through competitive or restrictive purchases of services under chapter 103F, HRS and these rules. [Eff: 6/19/99; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-501 - 103F-504)

§3-148-102 Purpose. The purpose of this chapter is to implement sections 103F-501 - 103F-504, HRS, by

establishing a fair and efficient procedure for resolving protests that simultaneously allows and encourages the settlement of protests by mutual agreement. [Eff: 6/19/99; comp]
 (Auth: HRS §103F-106) (Imp: HRS §§103F-501 - 103F-504)

§3-148-103 Allowable protests. (a) Only awards of contracts made under the competitive or restrictive purchase of service methods of procurement may be protested. In connection with such awards, only the following matters may be protested:

- (1) A purchasing agency's failure to follow procedures established by chapter 103F, HRS;
- (2) A purchasing agency's failure to follow these rules; and
- (3) In the case of a competitive purchase of service, a purchasing agency's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the purchasing agency.

(b) All other awards and determinations final. Except as provided in subsection (a) above, all other awards and determinations made under chapter 103F, HRS, shall be final and conclusive when made, including, but not limited to:

- (1) Awards of contracts under the treatment purchase of service method of procurement, and related matters;
- (2) Awards of contracts under the small purchase of service method of procurement, and related matters;
- (3) Awards of contracts under the crisis purchase of service method of procurement, and related matters;
- (4) Amounts payable under a contract awarded under either the competitive or restrictive purchase of service method of procurement; or
- (5) Any other award or matter not specifically and expressly enumerated in subsection (a)

above.

(c) Procedures mandatory. All allowable protests shall be made in compliance with the procedures established under this chapter.

[Eff: 6/19/99; comp] (Auth: HRS §§103F-106, 103F-501) (Imp: HRS §§103F-501, 103F-504)

SUBCHAPTER 2

INFORMAL RESOLUTION OF PROTESTS

§3-148-201 Informal request for explanation.

(a) In order to promote more efficient dispute resolution, any applicant may informally request an explanation or justification for a purchasing agency's award of a contract or apparent failure to follow the procedures established for the award of a contract.

(b) Response by purchasing agencies. Purchasing agencies may respond as practicable to informal requests for explanations. The failure of a purchasing agency to respond to an informal request shall not be grounds for a formal protest or objection.

(c) No extension of protest period. An informal request made under this section shall not extend the running of the protest period established by section 103F-501, HRS, and sections 3-148-301 and 3-148-401.

(d) No expansion of rights and remedies. The sole purpose of this section is to provide a mechanism for informal explanations to be requested by applicants and given by purchasing agencies. This section shall not be construed to expand the scope of the protest rights and remedies established by chapter 103F, HRS. [Eff: 6/19/99; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-501 - 103F-504)

§3-148-202 Resolution of protest by mutual agreement. (a) A protest may, at any time, be

resolved by mutual agreement between the protestor and the purchasing agency.

~~[(b) Form of mutual agreement. Any resolution of a protest under this section shall be reduced to written form, and signed by both parties.~~

(e) (b) Remedies available. ~~[In order to]~~ To resolve a protest by mutual agreement, only the following remedies, singularly or in any combination may be used:

- (1) Amending or canceling a request for proposals;
- (2) Terminating the contract which was awarded;
- (3) Initiating a new process to award a contract by either re-opening the evaluation process or commencing a new procurement process;
- (4) Declaring the contract null and void from the time of its award;
- (5) Affirming the purchasing agency's contract award decision; and
- (6) Dismissing the protestor's protest.

[Eff: 6/19/99; am and comp]

(Auth: HRS §103F-106) (Imp: HRS §§103F-501 - 103F-504)

SUBCHAPTER 3

PROCEDURE FOR PROTESTS

§3-148-301 Notice of protest. (a) Protestors shall commence the protest procedure by submitting a notice of protest to the head of the purchasing agency ~~[that conducted the protested procurement,]~~ and to the procurement officer ~~[who handled]~~ of the protested procurement.

(b) Form of notice of protest. A notice of protest may be made by using a form provided by the administrator, or by any other document that conforms with the requirements of this subsection. A notice of protest shall include, at a minimum, the following information:

- (1) The name and address of the protestor;
- (2) The name of the procurement officer or other
- (3) personnel who oversaw the protested procurement;
- (4) The reference number of the protested procurement; and
- (5) A brief statement of the grounds for the protest.

(c) Protest period for competitive purchase of service awards. Protests regarding awards of contracts and related matters that arise in connection with a procurement made under a competitive purchase of service shall be submitted within five working days of the postmark of the notice of findings and decision, or notice of rejection sent to the protestor.

(d) Protest period for restrictive purchase of service awards. Protests regarding awards of contracts and related matters that arise in connection with a procurement made under a restrictive purchase of services shall be submitted by the deadline given in the notice of the restrictive purchase of service.

(e) Late notice of protests. Any notice of protest that is not submitted within the protest periods established in this section is late and shall be dismissed.

(f) Submission of notice of protest. ~~[Notices of protests may be submitted only by United States mail, or by hand delivery. Notices of protests submitted by hand delivery shall be deemed to have been submitted when actually received, and protests submitted and received by United States mail shall be deemed to have been submitted on the date they are post marked rather than the date they are actually received.]~~ Notice of protests shall be considered submitted when it is actually received by the purchasing agency. Notice of protests may be submitted by any means, i.e., electronically, hand delivered, United States mail, courier service. [Eff 6/19/99; am and comp] (Auth: HRS §§ 103F-106, 103F-501) (Imp: HRS § 103F-501)

§3-148-302 [~~Settlement and scheduling conference.~~] Protest settlement conference and schedule. (a) Within three working days of receiving a notice of protest, the [~~head of the purchasing agency~~] procurement officer or designee shall organize and conduct a protest settlement [~~and scheduling~~] conference with the protestor [~~and the procurement officer in charge of the protested award and issue a scheduling order in accordance with this section~~].

(b) Procedure [~~for settlement and scheduling conference~~]. The protest settlement [~~and scheduling conference~~] conference may be conducted face to face, by telephone [~~conference~~], or other electronic communications medium. [~~At a minimum, the conference will address the following topics:~~

~~[(1) Whether the protest can be resolved by mutual agreement without submitting the matter to the head of the purchasing agency for decision; and~~

~~(2) Whether there will be any requests for clarification under section 3-148-502, and how much time the parties will need to make and respond to such requests].~~

(1) At a minimum, the settlement conference shall address:

(A) The protestor's grounds for protest; and

(B) Whether the protest can be informally resolved by mutual agreement.

(2) If the protest cannot be resolved informally by mutual agreement, a protest schedule shall be established by the purchasing agency in accordance with (c) and (d) and provided to the protestor within two days of the settlement conference.

(c) Contents of [~~scheduling order.~~] protest schedule. The [~~scheduling order~~] protest schedule shall set the deadlines for the following:

(1) Requests for clarification and responses if any;

(2) Submission of formal protest;

(3) Submission of the purchasing agency's

- response to the protest
- (4) Submission of the protestor's reply to the purchasing agency's response; and
 - (5) Issuance of a written decision by the head of the purchasing agency.
- (d) Standard times allowed. Every protest shall be resolved as speedily as possible.
- (1) ~~[To the extent practicable, the submission of protests, responses, requests for clarification, and replies]~~ Items (c)(1) to (c)(3) shall be completed within ten working days.
 - (2) ~~[To the extent practicable, written decisions]~~ The written decision by the head of the purchasing agency shall be issued within five working days ~~[]~~ from receipt of the protestor's reply to the purchasing agency's response, item (c)(4).
 - (3) More or less time may be provided in the ~~[scheduling order]~~ protest schedule at the discretion of the head of the purchasing agency. [Eff 6/19/99; am and comp] (Auth: HRS § 103F-106) (Imp: HRS § 103F-501)

§3-148-303 ~~[Written]~~ Formal protest. (a) A protestor shall file a ~~[written]~~ formal protest in accordance with this section ~~[]~~ and the established protest schedule.

(b) Form and contents of protests. ~~[Protests]~~ Formal protests shall be made in writing and shall ~~[contain]~~ include, at a minimum, the following ~~[information and materials]~~:

- (1) The name and address of the protestor;
- (2) Appropriate identification of the procurement;
- (3) A statement of reasons for the protest;
- (4) Supporting exhibits, evidence, or documents to substantiate the protest;

- (5) Any additional relevant information that would help the purchasing agency reach a decision; and
 - (6) A declaration by the protestor that all ~~[facts alleged]~~ the information provided in the protest are true and correct to the best of the protestor's knowledge.
- (c) Submission of ~~[written]~~ formal protest. A ~~[written]~~ formal protest shall be submitted to the head of the purchasing agency, and the procurement officer in charge of the contested procurement. ~~[Replies may be submitted by hand-delivery or by United States mail. Replies submitted by hand-delivery shall be deemed to have been submitted when actually received and replies submitted and received by United States mail shall be deemed to have been submitted on the date they are post marked rather than the date they are actually received.]~~ Formal protests shall be considered submitted when it is actually received by the purchasing agency. Formal protests may be submitted by any means, i.e., electronically, hand delivered, United States mail, courier service. [Eff 6/19/99, am and comp] (Auth: HRS §§ 103F-106, 103F-501) (Imp: HRS §103F-501)

§3-148-304 Response to formal protest. (a) A purchasing agency shall respond in writing to the formal protest in accordance with this section.

(b) Form and contents of response. Every response to a protest shall be made in writing and shall contain at a minimum the following ~~[information and materials]~~:

- (1) The name and address of the procurement officer in charge of the protested award;
- (2) The purchasing agency's position with respect to the protest, and the reasons for the purchasing agency's position;
- (3) Supporting exhibits, evidence, or documents to substantiate the purchasing agency's position; and
- (4) Any additional relevant information ~~[that~~

~~would help the head of the purchasing agency reach a decision].~~

(c) ~~[Submission]~~ Transmittal of response. The response from the purchasing agency shall be submitted to the protestor~~[, the head of the purchasing agency, and the chief procurement officer. Responses may be submitted only by United States mail, or by hand-delivery. Responses submitted by hand-delivery shall be deemed to have been submitted when actually received, and responses submitted and received by United States mail shall be deemed to have been submitted on the date they are post-marked, rather than the date they are actually received.]~~ within the time frame established by the protest schedule and may be submitted by various means, i.e., electronically, hand delivered, United States mail, courier service. [Eff 6/19/99, am and comp] (Auth: HRS § 103F-106) (Imp: HRS § 103F-501)

§3-148-305 Reply by ~~[provider.]~~protestor. (a) ~~[A provider]~~ The protestor may make a reply to a purchasing agency's response under section 3-148-304 in accordance with this section.

(b) Form and contents of reply. A reply may contain the following ~~[information and materials]~~:

- (1) Additional reasons or arguments supporting the position of the ~~[applicant;]~~ protestor;
- (2) Additional evidence or materials supporting the position of the ~~[applicant]~~ protestor;
or
- (3) Any additional relevant information that would help the head of the purchasing agency reach a decision.

(c) Submission of reply. ~~[A]~~ Protestor's reply shall be submitted to the head of the purchasing agency~~[,]~~ and the procurement officer ~~[in charge]~~ of the ~~[contested procurement.]~~ solicitation. ~~[Replies may be submitted by hand-delivery or by United States mail. Replies submitted by hand-delivery shall be deemed to have been submitted when actually received and replies submitted and received by United States~~

~~mail shall be deemed to have been submitted on the date they are post marked rather than the date they are actually received.] Protestor's reply shall be considered submitted when it is actually received by the purchasing agency. Protestor's reply may be submitted by various means, i.e., electronically, hand delivered, United States mail, courier service.~~

[Eff 6/19/99, ~~am and comp~~] (Auth: HRS § 103F-106) (Imp: HRS § 103F-501)

§3-148-306 Decision by the head of the purchasing agency. (a) When a protest cannot be resolved by mutual agreement, the head of the purchasing agency shall resolve the protest by a written decision issued in accordance with this section.

(b) Time for issuance of decision. The written decision shall be issued within the time frame established by the ~~[scheduling order,]~~ protest schedule unless the head of the purchasing agency determines that an extension ~~[to a certain date]~~ is necessary, and gives written notice of the extended deadline to the parties.

(c) Form and contents of decision. Every decision issued in resolution of a protest shall ~~[contain]~~ include the following:

- (1) ~~[A statement of the]~~ The action to be taken or resolution to the protest;
- (2) ~~[A detailed statement of the]~~ The reason for the resolution, including factual findings;
- (3) A statement of the protestor's right to reconsideration; and
- (4) A statement that the decision is final and conclusive, unless a timely request for reconsideration is made.

(d) Allowed ~~[methods for resolving protests.]~~ protest resolutions. The head of the purchasing agency may use only the following methods, singularly or in any combination, to settle and resolve a protest:

- (1) ~~[Amending or canceling a]~~ Amend or cancel the request for proposals;
 - (2) ~~[Terminating]~~ Terminate the awarded contract ~~[that was awarded];~~
 - (3) ~~[Initiating]~~ Initiate a new process to award a contract by either re-opening the evaluation process or commencing a new procurement process;
 - (4) ~~[Declaring]~~ Declare the contract null and void from the time of its award;
 - (5) ~~[Affirming]~~ Affirm the purchasing agency's contract award decision; and
 - (6) ~~[Dismissing]~~ Dismiss the protestor's protest.
- (e) ~~[Submission]~~ Transmittal of decision.

~~[Copies of the]~~ The head of the purchasing agency's decision shall be ~~[submitted]~~ sent to the protestor~~[,]~~ and the procurement officer ~~[in charge of the protested procurement, and the chief procurement officer by~~

- ~~(1) Hand delivery; or~~
- ~~(2) By United States mail and, to the extent practicable, by telefacsimile transmission.]~~

within the time frame established by the protest schedule. If the head of the purchasing agency requires additional time to issue the decision, the protestor shall be notified in writing of the extension. The decision may be transmitted by various means, i.e., electronically, hand delivered, United States mail, courier service.

[Eff 6/19/99, am and comp] (Auth: HRS § 103F-106) (Imp: HRS § 103F-501)

SUBCHAPTER 4

PROCEDURE FOR REQUESTS FOR RECONSIDERATION

§3-148-401 Request for reconsideration. (a) A request to the chief procurement officer for the reconsideration of a decision of the head of a

purchasing agency may be made in accordance with this section.

(b) Time for request. A request for reconsideration shall be made within five working days after the receipt of the decision of the head of the purchasing agency.

(c) Form and contents of request. A request for reconsideration shall ~~[, contain]~~ include the following ~~[materials and information]~~:

- (1) A detailed statement of the factual and legal grounds for reconsideration based on the materials presented to the head of the purchasing agency during the initial protest procedure.
- (2) Copies of the ~~[scheduling order,]~~ protest schedule, formal protest, [answer,] purchasing agency's response, protestor's reply, head of the purchasing agency's decision and supporting materials submitted during the initial protest procedure.

(d) Submission of request. The request for reconsideration shall be submitted to the chief procurement officer and the ~~[opposing party by hand-delivery or United States mail. Requests for reconsideration submitted by hand delivery shall be deemed to have been submitted when actually received, and requests for reconsideration submitted and received by United States mail shall be deemed to have been submitted on the date they are post marked, rather than the date they are actually received.]~~ purchasing agency's procurement officer. Protestor's request for reconsideration shall be considered submitted when it is actually received by the chief procurement officer. Protestor's request may be submitted by various means, i.e., electronically, hand delivered, United States mail, courier service.

(e) ~~[Reply.]~~ Purchasing agency's response to request. Within five working days after the submittal of the request for reconsideration, the ~~[opposing party]~~ purchasing agency may submit a ~~[reply]~~ response to the chief procurement officer ~~[to the request]~~ based on the request and the materials submitted to

the head of the purchasing agency during the initial protest procedure. The ~~[reply]~~ response shall be submitted in the same manner as the request for reconsideration. [Eff 6/19/99, am and comp] (Auth: HRS § 103F-106) (Imp: HRS § 103F-502)

§3-148-402 Decision by the chief procurement officer. (a) After a request for reconsideration and any ~~[reply]~~ purchasing agency response thereto have been received, the chief procurement officer shall issue a written decision in accordance with this section.

(b) Time for issuance of decision. The written decision shall be issued within fifteen calendar days of the receipt of the request for reconsideration, unless the chief procurement officer determines that an extension to a certain date is necessary, and gives written notice of the extended deadline to the ~~[parties.]~~ protestor.

(c) Form and contents of decision. Every ~~[decision issued in resolution of a protest]~~ protest resolution decision shall be in writing, and ~~[shall,]~~ at a minimum, ~~[contain]~~ include the following:

- (1) The chief procurement officer's decision ~~[of the chief procurement officer]~~ to uphold the decision of the head of the purchasing agency, or to re-open the protest and award an appropriate remedy; and
- (2) ~~[A detailed statement of the reason]~~ Details for the decision, including factual findings.

(d) Allowed remedies upon re-opening a protest. Upon re-opening a protest, the chief procurement officer may use only the following ~~[methods,]~~ remedies, singularly or in any combination, to settle and resolve a protest:

- (1) ~~[Amending or canceling]~~ Amend or cancel a request for proposals;
- (2) ~~[Terminating]~~ Terminate the awarded contract ~~[which was awarded];~~

- (3) [~~Initiating~~] Initiate a new process to award a contract by either re-opening the evaluation process or commencing a new procurement process; and
- (4) [~~Declaring~~] Declare the contract null and void from the time of its award[;].
- ~~[(5) Affirming the purchasing agency's contract award decision; and~~
- ~~(6) Dismissing the protestor's protest.]~~
- (e) [~~Submission~~] Transmittal of decision.

[~~Copies of the~~] The chief procurement officer's decision shall be [~~submitted~~] sent to the protestor, the procurement officer in charge of the protested procurement, and the head of the purchasing agency [~~by~~

~~(1) Hand delivery; or~~

~~(2) By United States mail and, to the extent practicable, by telefacsimile transmission].~~ The written decision may be transmitted by various means, i.e., electronically, hand delivered, United States mail, courier service. [Eff 6/19/99, am and comp

] (Auth: HRS § 103F-106) (Imp:

HRS § 103F-502)

SUBCHAPTER 5

MISCELLANEOUS PROCEDURES

§3-148-501 Suspension of Award. (a) When a notice of protest has been submitted within the applicable protest period established in section 3-148-301, the award shall be suspended, and no further award action [~~to make the protested award~~] shall be taken until the protest is resolved, including but not limited to

- (1) Execution of a contract;
- (2) The delivery of services in anticipation of the award; or
- (3) Negotiations or discussions with a provider regarding an intended award or contract.

(b) Waiver of suspension. The chief procurement officer may waive the suspension of an award under this section upon making a written determination that includes the following:

- (1) A determination that the award of the contract without delay is necessary to protect the health, safety, or welfare of a person from an imminent and serious threat;
- (2) A brief factual description of the current situation, and how a delay would create an imminent and serious threat;
- (3) A determination that the purchasing agency's lack of planning [~~has not caused the necessity of~~] is not the cause for the award delay;
- (4) A determination that the waiver [~~of the suspension has not been granted in order~~] is not being granted to frustrate the fair and speedy resolution of the protest; and
- (5) A certification[~~7~~] that all the information and determinations in the written waiver are true and correct to the best of the chief procurement officer's knowledge. [Eff 6/19/99, am and comp]
(Auth: HRS § 103F-106) (Imp: HRS § 103F-106)

§3-148-502 Requests for clarification. (a) During a protest, the protestor and the purchasing agency may request relevant information from each other in accordance with this section.

(b) Purchasing agency procurement records. The protestor may make a written request for access to the purchasing agency's relevant procurement records, and the purchasing agency shall provide such access except to the extent that information is required or permitted to be withheld by law.

(c) Additional information. Both parties may make written requests for additional relevant information to each other. Parties from whom additional information is requested shall respond by

producing such additional information except to the extent that such information is required or permitted to be withheld by law.

(d) Time for requests and responses. The deadlines for requests and responses under this section shall be as provided by the [~~scheduling order issued~~] protest schedule established in accordance with section 3-148-302.

(e) Disputes. The parties shall make all requests and responses in good faith, and shall make good faith efforts to resolve any disputes as to requests and responses that arise. In the event that a dispute arises that the parties cannot resolve, then the head of the purchasing agency may resolve such dispute as fairly as possible in the light of all the circumstances. [Eff 6/19/99, **am and comp**]
(Auth: HRS § 103F-106) (Imp: HRS § 103F-501)

§3-148-503 Form of evidence submitted during a protest or reconsideration. (a) During a protest or reconsideration, all evidence shall be submitted in the form provided by this section.

(b) Documentary evidence. [~~Either originals or photocopies~~] **Photocopies** of documentary evidence may be submitted, [~~but every photocopy shall be accompanied~~] with an original signed declaration that the [~~photocopy is~~] each document is a true and correct copy of the original.

(c) Witness testimony. Testimony from a witness or other person with knowledge may be submitted in the form of an original, signed declaration made under penalty of perjury.

(d) Other forms of evidence. Other forms of evidence such as photographs, or video or audio tapes may be submitted, provided that they are accompanied by an original, signed declaration. [Eff 6/19/99, **am and comp**] (Auth: HRS § 103F-106)
(Imp: HRS § 103F-501)

§3-148-504 Conduct of the head of purchasing

agency during protests. [~~(a)~~] During the resolution of a protest proceeding under this chapter, the head of a purchasing agency shall conduct him or herself as a neutral and impartial party. If the head of a purchasing agency cannot meet this standard of conduct because of a conflict of interest arising from the head's involvement in the protested procurement, or other good cause, the head shall designate another state employee to act in his or her place.

~~(b) — Communications with the head. — Neither the protestor nor the procurement officer in charge of the protested procurement shall communicate with the head of the purchasing agency in connection with the merits of a protest without first informing the other. — The head of the purchasing agency shall not communicate singly with either the protestor or the procurement officer in charge of the protested procurement as to the merits of the protest without first informing the other.~~ [Eff 6/19/99, **am and comp**
] (Auth: HRS § 103F-106) (Imp: HRS § 103F-501)

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 3-148, 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 are adopted on _____ and filed with the Office of the Lieutenant Governor.

Chairperson
Procurement Policy Board

State Comptroller

APPROVED AS TO FORM

Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-149
Hawaii Administrative Rules

2012

1. Chapter 3-149, Hawaii Administrative Rules, entitled "Contracting" 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 149

CONTRACTING

Subchapter 1 Purpose and Scope

§3-149-101 Scope
§3-149-102 Purpose

Subchapter 2 Contract Forms and Conditions

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state funds
§3-149-202 Contracts subject to the availability
of federal funds
§3-149-203 Contract requirement
§3-149-204 Termination of contracts
§3-149-205 Selection of substitute provider after
early termination of contract

§3-149-101

Subchapter 3 Miscellaneous Contracting
Procedures

- §3-149-301 Extension of existing contract during
procurement process
- §3-149-302 Multi-term contract use, requirements
and procedures
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Subchapter 4 Monitoring of Contracts

- §3-149-401 Contract monitoring

Subchapter 5 Evaluation of Contracts

- §3-149-501 Contract evaluation

SUBCHAPTER 1

PURPOSE AND SCOPE

§3-149-101 Scope. The provisions of this chapter shall apply to all contracts awarded under chapter 103F, HRS, and these rules. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-408 to 103F-414)

§3-149-102 Purpose. The purpose of this chapter is to provide for uniform practices and procedures for drafting, monitoring, and evaluating contracts awarded under chapter 103F, HRS. [Eff 6/19/99; comp 1/23/06; **comp**] (Auth: HRS §103F-106) (Imp: HRS §§103F-408 to 103F-414)

SUBCHAPTER 2

CONTRACT FORMS AND CONDITIONS

§3-149-201 Contracts subject to appropriation of state funds. (a) Every contract awarded pursuant to chapter 103F, HRS, shall, at all times, be subject to the appropriation of state funds, and may be terminated without liability to either the purchasing agency or the provider in the event that funds are not appropriated or available.

(b) Clarification for multi-term contracts. A multi-term contract shall be subject to the availability and appropriation of funds for each and every fiscal year that it is in effect, and may be terminated without liability to either the purchasing agency or the provider in the event that funds are not appropriated or available for any fiscal year. [Eff 6/19/99; comp 1/23/06; comp]
(Auth: HRS §103F-106) (Imp: HRS §103F-414)

§3-149-202 Contracts subject to the availability of federal funds. (a) Every contract awarded pursuant to Chapter 103F, HRS, that is partially or wholly funded from federal funds shall be subject to the availability of federal funds as provided herein.

(b) Federally funded portion of contract severable. The portion of any contract awarded pursuant to chapter 103F, HRS, that is funded federally shall be severable from the contract as a whole, and such portion may be severed and terminated without liability to either the purchasing agency or the provider, in the event of the unavailability of federal funds.

(c) No obligation to expend state funds. No contract awarded pursuant to chapter 103F, HRS, that is partially or wholly funded from federal funds shall be construed to obligate a purchasing agency to expend state funds to cover any shortfall created by the unavailability of the anticipated federal funds.

(d) Clarification for contracts wholly funded from federal funds. Any contract awarded pursuant to chapter 103F, HRS, that is wholly funded from federal funds shall, at all times, be subject to the availability of the federal funds, and may be terminated without liability to either the purchasing agency or the provider in the event that the federal funds do not become available. Such a contract shall not be construed as an obligation to expend state funds to replace unavailable federal funds.

(e) Construction of section. This section shall be liberally construed so as not to hinder or impede the state in contracting for any service involving financial aid from the federal government, nor shall it be construed in a way that hinders or impedes a purchasing agency's application for or receipt of federal funds. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §§103F-105, 103F-414)

§3-149-203 Contract requirement. (a) Every contract awarded under chapter 103F, HRS, shall be made in writing as provided herein before any funds are disbursed by a purchasing agency, or any services are provided by a provider.

(b) Selection of contract form. A purchasing agency may use any of the following methods for preparing a written contract as required in subsection (a):

- (1) Standard forms. A purchasing agency may always use the standard form contracts prepared by the attorney general pursuant to subsection (c).
- (2) Purchase order. A purchasing agency may use a purchase order for procurements less than \$25,000 made under the treatment and small purchase of service methods if the purchasing agency determines, in its discretion, that the state's legal interests are adequately protected without the use of a formal written contract.

- (3) Form generated by the purchasing agency. A purchasing agency may generate its own forms of contract by following the procedures in subsection (e).

(c) Standard contract forms from attorney general. The attorney general shall provide standard forms of contract for each purchase of service method established under chapter 103F, HRS. Purchasing agencies may use the standard forms without seeking approval as to form from the attorney general, except where there has been a substantial change to the forms.

(d) Additional contractual conditions. In addition to the contractual conditions in the standard form contracts provided by the attorney general, the head of a purchasing agency may impose other such requirements on a provider as may be necessary to ensure compliance with statutes, these rules, and other such requirements for the receipt of state or federal funds.

(e) Procedure for submission of contract form to attorney general. Every form of contract generated by a purchasing agency other than provided for in subsections (b)(1) and (b)(2), shall be submitted to the attorney general along with a memorandum that explains how the purchasing agency's proposed form of contract addresses the following issues:

- (1) The uncertainties which may be involved in contract performance and how the purchasing agency's form of contract addresses these uncertainties;
- (2) The factors which made the standard forms provided by the attorney general inappropriate;
- (3) A summary of how the proposed form of contract addresses the following issues:
 - (A) Subcontracting;
 - (B) Termination;
 - (C) Defaults;
 - (D) Compliance with laws governing anti-discrimination, access and accommodations for persons with

- disabilities, and other highly-regulated areas;
 - (E) Indemnification; and
 - (F) Liability insurance; and
- (4) The urgency of the requirement. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-409)

§3-149-204 Termination of contracts. (a) Every contract awarded under chapter 103F, HRS, and these rules shall contain a clause providing for termination of the contract, either in whole or in part, for non-performance, reduction in funds available to pay the provider, or a change in the conditions upon which the need for the service was based. Such clause shall also require that the purchasing agency give advanced notice of ten working days to the provider, that includes a brief statement of the reason for the termination.

(b) Additional termination clauses authorized. In addition to the termination clause required under subsection (a), a contract awarded under chapter 103F, HRS, may include any additional termination clauses deemed necessary or advisable in order to protect the interests of the state.

(c) Election of termination clause. When a contract awarded under chapter 103F, HRS, contains more than one termination clause, a purchasing agency may, in its sole discretion, elect which termination clause to invoke in order to terminate the contract. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: §§103F-106, 103F-408) (Imp: HRS §103F-408)

§3-149-205 Selection of substitute provider after early termination of contract. (a) In the event that a contract for health and human services awarded under this chapter is terminated before the contract expiration date, the purchasing agency shall

follow the procedures in this section to select a substitute provider.

(b) Initiation of new competitive purchase of service. To select a substitute provider, a purchasing agency may initiate a new competitive purchase of service procurement by issuing a new request for proposals.

(c) Expedited procedure for selection of substitute provider. If the selection of a substitute provider through the initiation of a new competitive purchase of service procurement is not practicable, then the purchasing agency may, if applicable, negotiate a contract with the next highest evaluated ranked applicant. If the purchasing agency and applicant are unable to negotiate a contract, the purchasing agency may negotiate with the next highest ranking applicant, and so on. In the event that there are no other proposals, or none of the proposals and applicants are sufficiently advantageous, the purchasing agency may select any provider that will be an advantageous substitute. Any contract awarded to a substitute provider selected under this subsection shall terminate either at the same time that the original contract would have, or at the close of the following fiscal year, whichever occurs sooner. [Eff _____] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

Historical note: §3-149-205 is based substantially upon §3-143-505. [Eff 6/19/99; am and comp 1/23/06; R _____]

SUBCHAPTER 3

MISCELLANEOUS CONTRACTING PROCEDURES

§3-149-301 Extension of existing contract during procurement process. (a) In order to provide continuity of services during the procurement process, the term of a contract may be extended in accordance with this section until a new contract has been

awarded and executed under the procurement procedures established by chapter 103F, HRS, and these rules.

(b) Conditions for extension. A contract may be extended if all of the following conditions are met:

- (1) The extension will be made for the purpose of providing continuity of services during the period between:
 - (A) The termination of the contract to be extended; and
 - (B) The effective date of a contract to be awarded and executed through a pending procurement procedure;
- (2) The period of the extension will be for six months or less;
- (3) Funds to pay for the services during the extended term of the contract have been appropriated and are available; and
- (4) The terms and conditions of the contract to be extended:
 - (A) Will remain substantially the same as the original contract, or the original contract as amended; or
 - (B) Will be fair and reasonable.

(c) Form and content of extension. Any extension made under this section shall be in writing, and by a supplemental agreement that:

- (1) States that an extension is being allowed pursuant to this section;
- (2) States that the extension will terminate in ~~[one hundred and eighty days]~~ six months, or when a replacement contract has been executed, whichever occurs first;
- (3) States that the terms and conditions for the extension will be the same as for the contract before the extension; and
- (4) Is signed by the provider and the purchasing agency.

(d) Extension of contract available if not expired. An extension is available under this section provided the contract to be extended has not expired.

[Eff 6/19/99; am and comp 1/23/06; am and comp

] (Auth: HRS §103F-106) (Imp:

HRS §103F-413)

§3-149-302 Multi-term contract use, requirements and procedures. (a) Multi-term contracts may be awarded in accordance with the terms of this section in order to advance the interests of the state through greater economy or efficiency in the provision of health and human services.

(b) Multi-term contract defined. A multi-term contract is any contract that covers a term of more than two years, or that provides for extension beyond a two-year term.

(c) Required determination for the use of multi-term contracts. In order to use a multi-term contract, a purchasing agency must make a determination that funds are available for the first fiscal period of the contract, and that a multi-term contract is in the best interest of the purchasing agency such as the following:

- (1) Provision of the required services involves high start-up costs that only have to be paid once over the life of the contract;
- (2) Where a changeover of providers would involve both high phase-in and high phase-out costs during the transition period;
- (3) When stabilization of the provider's workforce over a longer period of time would promote economy and consistent quality;
- (4) Where there is a compelling clinical reason for continuity in services from a provider, as applicable; or
- (5) Where the benefit to be gained from normal competitive practices is substantially outweighed by the costs associated with repeated competitive purchases of services.

(d) Additional contract content requirements. Every multi-term contract awarded under chapter 103F, HRS, shall contain an express provision that the multi-term contract is subject to the appropriation and availability of funds for each and every fiscal year, and may be terminated without liability to

either the purchasing agency or the provider in the event that funds are not appropriated or available, as provided in sections 3-149-201 and 3-149-202.

(e) Construction of section. Nothing in this section shall be construed to limit the rights of the state or the provider under any termination clause of any contract awarded under chapter 103F, HRS.

(f) A multi-term contract may ~~[extend]~~ be extended for ~~[any]~~ the period of time ~~[to which the provider and purchasing agency agree]~~ specified in the contract, provided that for any proposed period of more than six years, the head of the purchasing agency ~~[submits]~~ shall submit a written request to and ~~[receives]~~ receive approval from the chief procurement officer. The written request shall include the following:

- (1) A determination that a period of more than six years is necessary in order to secure a substantial economic benefit for the state, or a substantial clinical benefit to a service recipient;
- (2) A brief factual description of the circumstances that justify a period of more than six years, including reference to economic or clinical studies that support the determination in paragraph (1);
- (3) A determination that there is no motive of frustrating the purposes of chapter 103F, HRS, underlying the proposed award of a contract for a period of more than six years; and
- (4) A statement that all the information and determinations in the request are true and correct to the best of the requestor's knowledge. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-410)

§3-149-303 Amendment of contracts. (a) Every amendment to a contract awarded under chapter 103F, HRS, shall be made in accordance with this section.

(b) Form of amendment. Every amendment shall be made in writing, and signed by both parties.

(c) Procedures for amendment. The head of a purchasing agency may negotiate to amend an existing contract at any time provided that the amendment does not constitute a fundamental change.

(d) Fundamental change. A fundamental change to a contract is one which is so great that a reasonable purchasing agency would in light of all the circumstances, re-procure the required services instead of amending an existing contract in order to assure that the state is receiving the most advantageous bargain. In the case of a contract awarded under chapter 3-144, 3-145, 3-146 or 3-147, a fundamental change is also any change that would result in an amendment that would exceed the scope of the chapter of these rules under which the contract was originally awarded. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §§103F-106, 103F-408) (Imp: HRS §103F-408)

§3-149-304 Parceling forbidden. (a) The practice of parceling a large single purchase of health and human services into multiple smaller purchases in order to avoid conducting a competitive purchase of services, or to otherwise frustrate the purposes of chapter 103F, HRS, and these rules is forbidden.

(b) Suspension of power to procure. In the event that it is determined that a purchasing agency is guilty of parceling, the administrator may, in his or her discretion, take any action permitted by law he or she deems appropriate in order to address the situation, including order that all or a part of the purchasing agency's procurement activities shall be conducted under the direct supervision of its chief procurement officer, or the administrator. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-408)

SUBCHAPTER 4

MONITORING OF CONTRACTS

§3-149-401 Contract monitoring. (a) Each purchasing agency shall formulate and implement a monitoring plan consisting of the following components:

- (1) A manual or other set of guidelines that includes the objectives, procedures, and requirements of the monitoring process;
- (2) Procedures for documentation of reporting problems or recommendations between the provider and the purchasing agency; and
- (3) A clear procedure for follow-up on recommendations, problems, and items requiring corrective action including deadlines for both reporting and responding to such items.

(b) Coordination among agencies. Purchasing agencies shall coordinate monitoring activities to eliminate duplication of monitoring of a provider who has more than one contract with a purchasing agency. The administrator may assist the purchasing agencies in this coordination as practicable. Such activities may include monitoring of administrative and fiscal requirements. Each departmental coordinator shall coordinate with other purchasing agencies in reducing duplication of monitoring activities among purchasing agencies, where feasible. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: §103F-408)

SUBCHAPTER 5

EVALUATION OF CONTRACTS

§3-149-501 Contract evaluation. (a) Each purchasing agency shall establish contract evaluation criteria and procedures. The administrator may coordinate with purchasing agencies to develop uniform

criteria and procedures.

(b) Minimum requirements for evaluation process. Each contract awarded under the competitive or restrictive purchase of service method shall be evaluated. A final written evaluation shall be completed within 120 days after the expiration or termination of the contract and shall include an analysis of the extent to which defined performance outcomes were met. As applicable, a discussion of any problems with or adjustments to, the performance outcomes shall also be addressed.

(2) Provider response to report. The provider shall be given an opportunity to respond in writing to all evaluation reports. The evaluation report and provider response shall be included in the contract file." [Eff 6/19/99; am and comp 1/23/06; comp
] (Auth: HRS §103F-106) (Imp:
HRS

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

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Deputy Attorney General