

Suggested HAR changes for
Communication During Source Selection by
Amending HAR §3-122

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to Chapter 3-122

Interim

Hawaii Administrative Rules

October 30, 2014

SUMMARY

1. §3-122-1 is amended.
2. §§3-122-16.10 and 3-122-52.1 are added
3. §3-122-108 is amended

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 122

SOURCE SELECTION AND CONTRACT FORMATION

1. Section 3-122-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Clarification Communication" means a limited written exchange of limited clarifying information between a procurement officer and offerors without entering into discussions, providing offerors an opportunity to clarify specific apparent mistakes in a proposal for responsibility or responsiveness determination (i.e. to resolve minor or clerical errors)."

2. Chapter 3-122, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§3-122-16.10 Clarification Communication with offerors. Clarification Communications may be initiated by the procurement officer directly to offerors, giving an opportunity to clarify specific apparent mistakes in a proposal for responsibility or responsiveness determinations. Clarification communication shall be written and be limited to specific exchanges to resolve apparent mistakes of minor or clerical errors."

3. Chapter 3-122, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§3-122-52.1 Clarification Communications during Evaluation. (a) During the initial evaluation of proposals or bids, a procurement officer may engage in limited exchanges of direct clarification communications with an offeror when the procurement officer believes there is an apparent mistake in a proposal that would have otherwise prevented an offeror from being included on the "priority list;"

(b) The communications shall be documented and be limited to written exchanges to resolve specific apparent minor or clerical errors, to provide an opportunity to clarify specific aspects of the offer for responsibility or responsiveness determinations."

4. Section 3-122-108, Hawaii Administrative Rules, is amended to read as follows:

§3-122-108 Qualification of offeror or prospective offeror. (a) Pursuant to section 103D-310, HRS, a determination of responsibility or nonresponsibility of an offeror or prospective offeror to perform the work called for in the solicitation shall be made by the procurement officer on the basis of available information.

(b) If the procurement officer requires additional information, the offeror or prospective offeror may be required to answer questions contained in the sample questionnaire provided by the policy board.

(c) The requested information shall be furnished upon request within two working days or longer at the discretion of the procurement officer. Failure to furnish the requested information within the time allowed may be grounds for a determination of nonresponsibility.

"(d) If the procurement officer requires clarification on any information provided, the procurement officer may contact the offeror directly in clarification communications as defined in 3-122-1. All communications shall be documented."

[(d)] "(e)" "Upon "a" determination of nonresponsibility, the offeror or prospective offeror shall be notified in writing. The decision shall be final unless the offeror or prospective offeror applies for administrative hearing pursuant to section 3-126-42. [Eff 12/15/95; am and comp 11/17/97; am and comp] (Auth: HRS §§103D-202, 103D-310) (Imp: HRS §103D-310)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-122, Hawaii Administrative Rules, on the Summary Page dated October 30, 2014 were adopted at the Procurement Policy Board meeting on October 30, 2014, pursuant to interim rules authorized by §103D-202, Hawaii Revised Statutes.

The rules replace rules previously adopted and effective on 03/21/2008. The rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

DEAN H. SEKI
State Comptroller

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General