

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to Chapter 3-122 (Interim)  
Hawaii Administrative Rules

June 21, 2007

SUMMARY

§§3-122-13 and 3-122-112 are amended.

S3-122-13 Development of specifications. (a) A specification should provide for the following:

- (1) Identify minimum requirements;
- (2) Allow for competition;
- (3) List reproducible test methods to be used in testing for compliance with specifications; and
- (4) Provide for an equitable award at the best value.

(b) Types of specifications include the following, and may be used in combination when developing the specification:

- (1) Design specification sets the requirements for the product, detailing the characteristics that the item must possess, how the item is to be manufactured;
- (2) Performance specifications describes the capabilities that the product must meet, use of test or criteria are developed to measure the item's ability to perform as required;
- (3) Brand name specification commonly referred to as restrictive specifications, may be used upon approval of the chief procurement officer after the purchasing agency makes a written determination that only the identified brand name item will satisfy the State's needs, and it is not practicable to use a less restrictive specification, provided that procurements pursuant to section 103D-305, HRS, do not require approval;
- (4) Brand name or equal specification cites one or more brand names, model numbers, or other designations that identify the specific products as having the characteristics of the item desired; and
- (5) Qualified or pre-approved products list is a list of goods, services, or construction items, which, prior to the opening of the competitive solicitation, are examined, tested, and determined to meet the applicable specification requirements.

(c) To the extent practicable, the State may procure standard commercial products using accepted commercial specifications. Specifications shall emphasize functional or performance criteria. Design or other detailed physical descriptions may be used when necessary to meet the needs of the State. Specifications shall not discriminate against the use of recycled materials; and when purchasing or leasing motor vehicles; specifications shall be developed in compliance with section 103D-412, HRS, as follows:

- (1) Agencies are directed to the acquisition of motor vehicle guidelines established by the department of business, economic development and tourism. When acquiring new vehicles, agencies shall determine its motor vehicle fleet as defined by these guidelines.
- (2) Motor vehicle fleets determined to be outside of the "covered fleet" definition, shall obtain energy-efficient vehicles in order to increase energy efficiency and use of renewable energy resources pursuant to section 103D-412 (b), HRS, and further defined in the guidelines established by the department of business, economic development and tourism.

(d) The using agency shall submit advice and assistance in the development of specifications or plans pursuant to a request from the purchasing officer.

(e) A contractor paid for services to develop or prepare specifications or work statements shall be precluded from submitting an offer or receiving a contract for that particular solicitation.

(f) Specifications prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the State's needs and shall not be unduly restrictive. [Eff 12/15/95; am and comp 11/17/97; comp 4/18/05; am and comp 10/9/06; am **SEP 04 2007** ]  
(Auth: HRS §§103D-202, 103D-401; 103D-412) (Imp: HRS

\$3-122-13

\$\$103D-401, 103D-404, 103D-405, 103D-406, 103D-412,  
103D-405)

§3-122-112 Responsibility of offerors. (a) The offeror, as proof of compliance with the requirements of section 103D-310(c), HRS, upon award of a contract made pursuant to section 103D-302, 103D-303, 103D-304, or 103D-306, HRS, shall provide:

- (1) A tax clearance certificate from the department of taxation and the Internal Revenue Service, subject to section 103D-328, HRS, current within six months of issuance date;
- (2) A certificate of compliance for chapters 383, 386, 392, and 393, HRS, from the department of labor and industrial relations, current within six months of issuance date; and
- (3) A certificate of good standing from the business registration division of the department of commerce and consumer affairs, current within six months of issuance date.

(b) In lieu of the above certificates, offeror may make available proof of compliance through a State Procurement Office designated certification process.

(c) Except for any contract of less than \$25,000 or any contract entered into pursuant to section 103D-307, HRS, all state and county procurement officers or agents shall withhold final payment of a contract made pursuant to sections 103D-302, 103D-303, 103D-304, or 103D-306, HRS, until receipt of:

- (1) A tax clearance certificate from the director of taxation and the Internal Revenue Service, subject to section 103D-328, HRS, current within two months of issuance date; and a certification from the contractor affirming that the contractor has, as applicable, remained in compliance with all laws as required by this section. A contractor making a false affirmation shall be suspended and may be debarred pursuant to section 103D-702, HRS; or
- (2) Proof of compliance as provided in subsection (b).

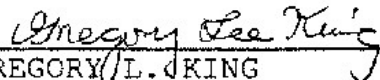
\$3-122-112

(d) This section shall not apply to any contract to the extent it jeopardizes federal funding. [Eff 11/15/03; am 2/27/06; am and comp 10/9/06; am **SEP 04 2007** ] (Auth: HRS §§103D-202, 103D-310) (Imp: HRS §103D-310)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

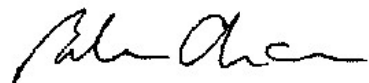
Amendments to chapter 3-122, Hawaii Administrative Rules, on the Summary page dated June 21, 2007, were adopted as interim rules at the Procurement Policy Board meeting on June 21, 2007. Pursuant to section 103D-202, HRS, this section shall be issued by Procurement Directive, and be effective for not more than eighteen months from effective date.

These interim rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
GREGORY L. KING  
Chairperson  
Procurement Policy Board

  
RUSS K. SAITO  
State Comptroller

APPROVED AS TO FORM:

  
Deputy Attorney General

BENJAMIN J. GAYETANO  
GOVERNOR



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ADMINISTRATION DIVISION  
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April 26, 2002

Dawn Matsumura  
Office of the Lieutenant Governor  
State Capitol, Fifth Floor  
Honolulu, Hawaii 96813

Dear Ms. Matsumura:

Re: Hawaii Revised Statutes § 103D-202

The State Procurement Office is authorized by Hawaii Revised Statutes ("HRS") § 103D-202 to issue interim rules.

All rules shall be adopted in accordance with chapter 91; provided that the policy board shall have the power to issue interim rules by procurement directives, which shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91.

However, any interim rule issued pursuant to this section is of a limited duration.

The interim rules shall be effective for not more than eighteen months.

We believe that HRS § 103D-202 is very clear and that the policy board still has the continuing authority to issue interim rules that are exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. There is no limitation of this authority and so it is still in effect. We have issued prior advice on this subject with the same conclusion.

Accordingly, any interim rule does require your office to follow the same procedures as you would for regular administrative rules, including stamping and filing. Please do not hesitate to contact me should have any further concerns or questions about this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Patricia Ohara".

Patricia Ohara  
Deputy Attorney General