

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-143
Hawaii Administrative Rules

December 29, 2005

SUMMARY

1. §§3-143-201 and 3-143-202 are amended.
2. §§3-143-202.1 and 3-143-202.2 are added.
3. §§3-143-203 to 3-143-206 are amended.
4. §3-143-207 is added.
5. §§3-143-301 to 3-143-404 are amended.
6. §3-143-501 is repealed.
7. §3-143-502 is amended.
8. §3-143-503 is repealed.
9. §§3-143-504 to 3-143-608 are amended.
10. §3-143-608.1 is added.
11. §3-143-609 is amended.
12. §§3-143-611 to 3-143-614 are amended.
13. §§3-143-616 is amended.
14. §§3-143-617 and 3-143-618 are repealed.
15. §3-143-619 is amended.
16. Chapter 143 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 143

COMPETITIVE PURCHASE OF SERVICE

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- §3-143-618 Repealed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 **JAN 23 2006**] (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 (Auth: HRS §103F-106) (Imp: HRS §103F-102) JAN 23 2006]

SUBCHAPTER 2

CORE PROCEDURES

§3-143-201 Preparing a request for proposals.

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) All applicable general and special conditions and tax clearance requirements that will be imposed on the successful applicant by contract;
- (3) 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) 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) Planning activities utilized in accordance with section 3-142-301;
- (6) 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) A statement of the relative priority of the various evaluation criteria;
- (8) A statement regarding any secondary purchasers participating in the request for proposals as provided in section 3-143-608;
- (9) A statement regarding the allowability of multiple or alternate proposals as provided in section 3-143-605;
- (10) 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) 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;
- (13) 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) Any other statement, disclaimer, or waiver required by law. [Eff 6/19/99; am and comp
JAN 23 2006] (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 **JAN 23 2006**] (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 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 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

JAN 23 2006] (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 **JAN 23 2006**] (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 to explain the procurement requirements of the purchasing agency shall be conducted by the purchasing agencies 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 applicants to become familiar with the request for proposals, but sufficiently before proposal deadline to allow 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.

(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 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

JAN 23 2006] 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.

- (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 telefacsimiles, 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]
 (Auth: HRS §103F-106) (Imp: HRS §109F-402) JAN 23 2006

§3-143-205 Evaluation of proposals and notice of award. (a) After the submittal deadline, all proposals, modifications, and withdrawals shall be examined 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 committee members and any subsequent changes thereto shall be placed in the procurement file.

- (1) When an evaluation committee is utilized, 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 purchasing agencies 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) If applicable, the purchasing agency shall request applicants to submit final revised proposals in accordance with section 3-143-607.

(e) 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) 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) 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
 JAN 23 2006] (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 **JAN 23 2006**] (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 **JAN 23 2006**] (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) 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 within a sufficient time before the submittal deadline to allow prospective applicants to consider them in preparing their proposals. If the 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 allow adequate time, the purchasing agency may also include in the addendum amendments 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 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]
(Auth: HRS §§103F-106, 103F-407) (Imp: HRS §§103F-402, 103F-407)

JAN 23 2006

§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 or mandatory activities;
- (2) Specify probable funding amounts, source, and period of availability;
- (3) Describe the need or problem the service addresses;
- (4) Describe goals of the service;
- (5) Describe in detail the target population to be served;
- (6) Specify the geographical coverage of service;
- (7) Specify expected outcome measurements;
- (8) Specify the units of service and unit rate, as applicable;
- (9) Specify 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) Specify reporting requirements for program and fiscal data, and provide sample forms and instructions, as available or appropriate;
- (13) Identify minimum or mandatory administrative requirements;
- (14) Identify minimum or mandatory personnel requirements;
- (15) Specify pricing or pricing methodology to be used, as applicable; and
- (16) Specify the method or procedure for compensation or payment. [Eff 6/19/99; am and comp **JAN 23 2006**] (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 **JAN 23 2006**] (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 **JAN 23 2006**] (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 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 **JAN 23 2006**] (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]
 (Auth: HRS §§103F-106, 103F-402) (Imp: HRS §103F-402) **JAN 23 2006**

§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 **JAN 23 2006**]
(Auth: HRS §103F-106) (Imp: HRS §103F-402)

CHAPTER 5

EXPEDITING PROCEDURES

§3-143-501 Repealed. [R **JAN 23 2006**]

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

(b) Applicant bears responsibility for transmission. Applicants who submit 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 assume all risk 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 **JAN 23 2006**] (Auth: HRS §103F-106) (Imp:
HRS §103F-402)

§3-143-503 Repealed. [R **JAN 23 2006**]

§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

JAN 23 2006] (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 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 6/19/99; am and comp **JAN 23 2006**] (Auth: HRS §103F-106) (Imp: HRS §103F-402)

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 **JAN 23 2006**] (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
JAN 23 2006] (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
JAN 23 2006] (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 **JAN 23 2006**] (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 **JAN 23 2006**] (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 **JAN 23 2006**]
(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;

- (4) Instructions that only the section or sections of each applicant's last proposal that are amended should be submitted; and
- (5) 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 **JAN 23 2006**] (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;

- (6) A statement that the service or part of the service is the same or substantially the same; and
- (7) A description of differences between the primary and secondary purchase, if any.
[Eff 6/19/99; am and comp **JAN 23 2006**]
(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 **JAN 23 2006**] (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 proposals are received that are both responsive to the request for proposals and 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) Competition in the marketplace;
 - (B) Whether 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 **JAN 23 2006**] (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
JAN 23 2006] (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

JAN 23 2006] (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 **JAN 23 2006**] (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;

- (2) The purchasing agency no longer can reasonably expect to fund the service;
- (3) Proposed amendments to the request for proposals would be of a magnitude that a new request for proposals is desirable;
- (4) A determination by the chief procurement officer that a cancellation of the request for proposals is in the public interest; or
- (5) 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;

- (2) A brief explanation of the reason or reasons for cancellation;
 - (3) Where appropriate, a statement that an opportunity will be given to compete on any resolicitation or any future procurements of similar services; and
 - (4) 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
JAN 23 2006] (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.
- (b) 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.
- (c) 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 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.

(d) 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.

(e) 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 **JAN 23 2006**] (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 **JAN 23 2006**] (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
JAN 23 2006] (Auth: HRS §103F-106)
(Imp: HRS §103F-402)

§3-143-617 Repealed. [R JAN 23 2006]

§3-143-618 Repealed. [R JAN 23 2006]

§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
JAN 23 2006] (Auth: HRS §103F-106) (Imp: HRS §§103F-301, 103F-402)

APPROVED AS TO FORM:



Deputy Attorney General