Justification Sheet
for
Proposed Amendments to HRS Chapter 103F Administrative Rules
Chapters 3-141 to 3-144, and 3-146 to 3-149

2016

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

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

   a. *Section 3-141-407 Public Notice.*

   - *Subsection (c)(1).* Replaces posting of the public notice to the proposal submittal deadline from "*twenty-eight"* to "*thirty"* days to be uniform with the required public notice posting for HRS Chapter 103D competitive sealed proposals.
   - *Subsection (d)(2).* Deletes outdated *"telefacsimile transmission."*

   b. *Section 3-141-503 Exemptions from procurement procedures.*

   - Subsection (c)(1)(G) is amended to identify the personnel responsible for conducting and managing the procurement rather than personnel involved in the approval process and administration of the contract.
   - Subsection (c)4 "a" is corrected to "an."
   - Subsection (c)5 and (c)6. Deletes subsections for CPOs to consult with the administrator prior to approving an exemption and the requirement for the CPO to forward a copy of each exemption request to the administrator. Replaces with new subsection requiring CPOs to submit a report of exemption requests to the administrator within 60 days after the close of each fiscal year. The administrator may prescribe the reporting format.

   c. *Section 3-141-603 Content of report of findings and corrective action.*

   - Subsection (a) is amended to update what should be included in the report of findings and corrective action for a procurement violation.

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

   a. *Section 3-142-201 Planning.*

   - Subsection (a)(1). The comma from the last sentence of (a)(1) is deleted.
   - Subsection (a)(2) is amended for clarity purposes. Most services are not procured annually or biennially; contract terms are usually for longer periods --- up to 6 years.

   b. *Section 3-142-202 Requests for information.*

   - Subsection (a), first sentence. The word "during" is added. The request for information should be conducted prior to or during the development of a request for proposals.

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- Subsection (f), first sentence. Reference to Section 3-143-614, *Applications for federal funding*, is added for clarity purposes.

c. *Section 3-142-203* *Collaboration of providers*.

- This section is renamed "*Participation of providers*" and amended pursuant to amended HRS §103F-203 (ACT 004, SLH 2012).

d. *Section 3-142-301,* *State agency planning activities*.

- Subsection (a), (c) and (e) are reworded for clarity purposes.

e. *Section 3-142-403,* *Assistance in provider planning.*
The section is amended for clarity purposes. (Planned purchases report, currently available online at the SPO website, is updated as the purchases are anticipated.)

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 to this subsection from section 3-143-302(b)(10) and (b)(11) for appropriate placement and clarity purposes.
- Subsection (a)(10) [renumbered (12)] is amended to reflect changes from amended HRS §103F-203 (ACT 004, SLH 2012).
- Subsections (a)(11) and (a)(12) are moved to section 3-143-302 for appropriate placement and clarity purposes
- Subsection (a) is renumbered.

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), (b) 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). Proposals shall be considered submitted when actually received by the purchasing agency. The manner by which the proposal is submitted is deleted. Deadline for submittal of the proposal by the postmark date is no longer a viable option:

  (1) Providers are now able to print mailing labels. This may lead to 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;

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(2) An incident occurred when a postal agent postmarked the proposal package, handed the package back to the sender, and the package was mailed the next day; and

(3) it is anticipated that HRS 103F procurements will be procured on an electronic system in the near future.

- Subsection b. Unnecessary wording is deleted.

e. *Section 3-143-205* *Evaluaton of proposals and notice of award*.

- This section is reworded for clarity purposes and corrects the subsection order.

f. *Section 3-143-301* *Addenda to requests for proposals*.

- Subsection (a) is amended for clarity purposes.
- Subsection (b) sentence on distribution of an addendum is deleted because it is covered under (d) and (e).
- Subsection (c) numbering is corrected.
- Subsection (d) is reworded for clarity purposes; defines "sufficient time" to mean not less than five working days; and deletes the unnecessary last sentence.
- Subsection (e) deletes unnecessary wording.

g. *Section 3-143-302* *Service specifications for requests for proposals*.

- Unnecessary language in subsection (a) and (b) is deleted.
- Subsections (b)(10) and (b)(11) are moved to section 3-143-201 for appropriate placement and clarity purposes.
- Renumbered subsections (b)(11) and (b)(12) are moved from section 3-143-201 for appropriate placement and for clarity purposes.

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*.

- The title is changed to "*Discussions with prospective applicants allowed before proposal submittal deadline"* for clarity purposes.
- In subsection (a), the word "prospective" is added before "applicant" for clarity purposes.
- Subsection (d) title is amended by deleting "for material change" because the subsection covers both material and nonmaterial changes.

j. *Section 3-143-402* *Submission of questions before submittal deadline*. This section is amended.

- The title is amended for clarity purposes.

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- Subsection (b) is amended for clarity purposes.
- Subsection (c) deletes sentence that requires that a purchasing agency notify prospective applicants of an addendum's availability. Since RFPs are available for download online, agencies are not aware of all prospective applicants, Therefore, addenda are made available online, and it is the prospective applicants' responsibility to check the site for any addenda and to incorporate the changes into their proposal, as applicable.

k. *Section 3-143-403, Discussions with applicants after submittal deadline.*

- The title is amended for clarity purposes.
- Subsection (d) title is amended by deleting "for material change" because the subsection covers both material and nonmaterial changes, and numbering is corrected.

l. *Section 3-143-502, Use of electronic submission for competitive purchase of service*. This section is amended.

- Subsections (a) and (c) deletes reference to facsimile transmissions.
- Subsections (a), (b) and (c) are reworded for clarity purposes.

m. *Section 3-143-504, Submission of proposals on electronic media.*

- This section is repealed because it is a duplicate of section 3-143-502.

n. *Section 3-143-505, Selection of substitute provider after early termination of contract.*

- This section is moved for appropriate placement under section 3-149-205 of the *Contracting* chapter.

o. *Section 3-143-604 Confidentiality and public access to documents*.

- Subsection (2) is amended by rewording for clarity purposes, and making subsection numbering correction.

p. *Section 3-143-607, Final revised proposals.*

- Subsection (b) corrects subsection numbering
- Subsection (c) is amended for clarity purposes.

q. *Section 3-143-608, Secondary purchase of competitive purchase of service.*

- Subsection (d) is amended by adding wording for clarity purposes and correcting subsection numbering.

r. *Section 3-143-609 Inadequate response to request for proposals*.

- Subsection (d) is amended by rewording for clarity purposes.

s. *Section 3-143-610, Rejection of proposals.*

- Subsection (b) is amended to allow the purchasing agency to furnish to the applicant the notice of rejection by mail or other means.

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t. *Section 3-143-611, Modification of proposal by partial rejection.*

- This section is amended by changing all "partial rejection" references to "partial award."

u. *Section 3-143-613, Cancellation of request for proposals.*

- Subsection (c) regarding availability of the solicitation notice of cancellation is amended for clarity purposes.
- Subsection (d) is added for clarity purposes regarding publication of the notice of cancellation.
- Subsections (d) and (e) are renumbered.

v. *Section 3-143-614, Applications for federal funding.*

- Subsection (c) is amended by including wording for clarity purposes.

w. *Section 3-143-616, Public inspection of competitive purchase of service records.*

- Subsection (b)(2) is amended by including wording for clarity purposes.

x. *Section 3-143-619, Competitive purchase of service record of procurement actions.*

- Subsection (b) is amended for clarity purposes.
- Subsection (c) is deleted. The SPO online reporting database is available for all to see 24/7.

4. **Chapter 3-144, Restrictive Purchase of Service**

a. *Section 3-144-602, Restrictive purchase of service record of procurement actions.*

- Subsection (b) is amended because the Executive Branch, the Judiciary and the Department of Education report awards/contracts on the State Procurement Office awards/contracts website.
- Subsection (c) is deleted. The SPO online reporting database is available for all to see 24/7.

5. **Chapter 3-146, Small Purchase of Service**

a. *Section 3-146-202, Definitions.*

- This section is amended by deleting an unnecessary sentence.

b. *Section 3-146-204, Services.*

- This section is amended by deleting unnecessary headings in subsection (b) and (c).

c. *Section 3-146-205, Quotations received.*

- This section is amended and appropriately placed from section 3-146-601.

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d. *Section 3-146-60, Procurement file*.

- This section is repealed and moved to section 3-146-205 for appropriate placement.

e. *Section 3-146-602, Small purchase of service record of procurement actions.*

- Subsection (b) is amended because the Executive Branch, the Judiciary and the Department of Education report awards/contracts on the State Procurement Office awards/contracts website.
- Subsection (c) is deleted. The SPO online reporting database is available for all to see 24/7.

5. **Chapter 3-147, Crisis Purchase of Service**

a. *Section 3-157-601, Crisis purchase of service record of procurement actions.*

b. Subsection (b) is amended because the Executive Branch, the Judiciary and the Department of Education report awards/contracts on the State Procurement Office awards/contracts website.

c. Subsection (c) is deleted. The SPO online reporting database is available for all to see 24/7.

6. **Chapter 3-148, Protest and Request for Reconsideration**

a. *Section 3-148-202, Resolution of protest by mutual agreemen*t.

- ”Resolution of protest by mutual agreement” is changed to “Informal resolution of protest.” Language has been added to subsection (a) for the resolution be communicated in writing and included in the procurement file.
- Subsection (b) is deleted.
- Subsection (c) is renumbered and language is changed to match (a).

b. *Section 3-148-301, Notice of protest*.

- Unnecessary language is deleted from subsection (a).
- Subsection (c) is amended for clarity purposes.
- Subsection (f) is reworded to state that the notice of protest is considered submitted when actually received by the purchasing agency, and the protest can be submitted by various means, not by just U.S. mail or hand delivery. Language is also added that it is the protestor’s responsibility to ensure that the purchasing agency receives the notice of protest by the submittal deadline.

c. *Section 3-148-302, Settlement and scheduling conference.*

- The section title is changed to “Protest settlement conference and schedule” for clarity purposes.
- Subsections (a) to (d) are reworded for clarity purposes.

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d. *Section 3-148-303, Written protest.*

- The section title is changed from "*Written protest*" to "*Formal protest*" for clarity purposes.
- Subsection (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. Language is also added that it is the protestor's responsibility to ensure that the purchasing agency receives the notice of protest by the submittal deadline.

e. *Section 3-148-304, Response to protest*.

- The word "*formal*" is added to the section title for clarity purposes, and deletes unnecessary language.
- Subsection (b) is reworded for clarity purposes.
- Subsection (c) is reworded for clarity purposes and allows transmittal of the response by various means, not by just U.S. mail or hand delivery.

f. *Section 3-148-305, Reply by provider*.

- 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.*

- 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 an 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.*

- 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*.

- Subsections (a) to (d) are reworded for clarity purposes.

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- 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*.

- Subsections (a) and (b) are reworded for clarity purposes.

k. *Section 3-148-502, Requests for clarification*.

- Subsection (d) 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*.

- Subsection (a) is amended to add that any decision made by the head of the purchasing agency in regards to the protest shall be based on factual, documented evidence.
- Subsection (b) is deleted as a result of the added language to (a).

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

a. Section 3-149-205, *Selection of substitute provider after early termination of contract*.

- This section 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*.

- Subsections (b) and (f) are reworded for clarity purposes.

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