

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-144
Hawaii Administrative Rules

2017

1. Chapter 3-144, Hawaii Administrative Rules, entitled "Restrictive 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 144

RESTRICTIVE PURCHASE OF SERVICE

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SUBCHAPTER 1

PURPOSE AND SCOPE

§3-144-101 Purpose. The purpose of this chapter is to implement section 103F-403, HRS, which establishes the restrictive 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-403)

§3-144-102 Scope. (a) The restrictive purchase of service method of procurement may be used when:

- (1) The head of a purchasing agency makes a written determination that there is a basis, as provided in section 3-144-302, for restricting the purchase to a purchase from one provider;
- (2) The chief procurement officer approves the restrictive purchase determination in writing; and
- (3) The term of the proposed contract does not exceed two years, or, upon a written finding of good cause by the chief procurement officer, three years. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106)
(Imp: HRS §103F-403)

SUBCHAPTER 2

CORE PROCEDURES

§3-144-201 Procedure for requesting restrictive purchase of services. (a) To initiate a restrictive purchase of services procurement, the head of the purchasing agency shall submit a written request for restrictive purchase of service to the chief procurement officer together with a notice of restrictive purchase in accordance with subchapter 3.

(b) The administrator may prescribe the format for the request and notice. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-403)

§3-144-202 Repealed. [R 1/23/06]

§3-144-203 Posting of notice of restrictive purchase. Upon receipt of the request by the chief procurement officer, the notice of restrictive

purchase shall be posted on a central website for a minimum of seven days before any approval action is taken. A copy of the request shall be made available for public inspection and shall be posted with the notice. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-403)

§3-144-203.1 Review of request by chief procurement officer. (a) After the notice has been posted for seven days, the chief procurement officer shall review the request. If approved, no action to award the contract shall take place until two days after the protest submittal deadline, in accordance with section 3-144-204. The status of the request shall be posted to the website where the request and notice are posted.

(b) Disapproval of request. If the chief procurement officer finds that the request fails to comply with the requirements of section 103F-403, HRS, or this chapter, then the request shall be disapproved. Upon disapproval, the chief procurement officer shall return the request and notice to the purchasing agency together with a written explanation for the disapproval.

(c) Resubmission after disapproval. When the chief procurement officer disapproves a request, the purchasing agency may attempt to address the disapproval and resubmit the request and notice. Alternately, the purchasing agency may cancel the intended purchase altogether, or pursue another more appropriate method of procurement. [Eff and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-403)

Historical note: §3-144-203.1 is based substantially upon §3-144-202. [Eff 6/19/99; R 1/23/06]

§3-144-204 Protest of restrictive purchase. Protests to a restrictive purchase shall be made under

the procedures established under chapter 3-148. The deadline for protests shall be the seventh day after the notice is first posted. Submission of the notice of protest shall be in accordance with section 3-148-301. All documents relating to the protest, including a written summary of the disposition of the protest, shall be maintained with the restrictive purchase of service file and included in the contract data base by the purchasing agency. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103-106) (Imp: HRS §103F-403)

§3-144-205 Negotiation of contract. After the deadline for protests has passed and either no protest was filed or any protest that was filed was resolved in the purchasing agency's favor, the purchasing agency may conduct negotiations as to any contract details that were not disclosed in the notice of restrictive purchase or in the request for restrictive purchase. Details that were disclosed in either the notice or the request should not be significantly changed in the negotiation of the contract for the restrictive purchase of services. [Eff 6/19/99; comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-403)

§3-144-206 Amendment to a restrictive purchase of service. (a) The chief procurement officer may, for good cause, approve an amendment to a restrictive purchase of service. Circumstances for approval of an amendment include, but are not limited to:

- (1) Changing the scope of the contract to enlarge or enhance the contracted service due to unforeseeable circumstances and which continues to meet the conditions in section 3-144-302; and
- (2) Extending the contract up to six months provided the service will not be needed thereafter.

(b) Procedure for requesting an amendment. The head of the purchasing agency shall submit a written request, in accordance with section 3-144-304, to the chief procurement officer for an amendment to the restrictive purchase of service. Upon approval or disapproval, the chief procurement officer shall return the request to the purchasing agency. If disapproved, an explanation for the disapproval shall accompany the request. [Eff and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-403)

SUBCHAPTER 3

CONTENT REQUIREMENTS

§3-144-301 Contents of request. A request for restrictive purchase of services shall be made in writing, and shall include all of the following:

- (1) The determination by the head of the purchasing agency that an adequate basis for a restrictive purchase of services exists;
- (2) A brief description of the circumstances that justify the restrictive purchase;
- (3) A brief description of the health and human services required, and the maximum amount of funds budgeted for the purchase of the services;
- (4) The proposed contract period;
- (5) The provider that the purchasing agency proposes to provide the required services and any other material information the purchasing agency deems advisable to include; and
- (6) A certification by the head of the purchasing agency that the information provided in the request is true and correct. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-403)

§3-144-302 Basis for restrictive purchase. (a)

An adequate basis for a restrictive purchase of service exists when the head of a purchasing agency determines that circumstances constituting good cause for the purchase exist, including but not limited to any of the following:

- (1) Only one provider can provide the services needed in a particular geographic area;
- (2) Only one provider can provide services with a unique cultural approach designed for a limited target group; or
- (3) Only one provider satisfies limitations imposed by the source of funds for the procurement.

(b) Inadequate justifications for restrictive purchase. None of the following circumstances alone shall constitute an adequate basis for a restrictive purchase of services:

- (1) The mere fact that a particular provider is or has been furnishing services to a purchasing agency does not constitute evidence that the provider is the only source for the type of service required;
- (2) The potential loss of funds at the end of a fiscal year shall not be a basis for restrictive purchase of service; or
- (3) A purchasing agency's failure to plan ahead sufficiently in order to issue a request for proposals and conduct a competitive purchase of services. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-403)

§3-144-303 Contents of notice. The notice of restrictive purchase shall include all of the following:

- (1) A statement that the purchasing agency intends to make a restrictive purchase of health and human services without issuing a request for proposals;

- (2) The nature of services to be provided, the name of the provider to be issued the contract, the maximum dollar amount of the contract, and any other material information the purchasing agency deems advisable to include;
- (3) The proposed date on which the contract is to be awarded;
- (4) A statement indicating that any person may file written protests under the procedures established under chapter 3-148 to the issuance of the proposed contract;
- (5) The name and address of the procurement officer for the procurement and the head of the purchasing agency with whom the protests are to be filed;
- (6) A statement that all protests must be filed within seven days from the date the notice is first posted; and
- (7) The name, phone number and e-mail address of a contact person to whom questions regarding the request may be addressed. [Eff 6/19/99; am and comp 1/23/06; comp]
(Auth: HRS §103F-106) (Imp: HRS §103F-403)

§3-144-304 Contents of request for amendment.

The request for amendment shall include:

- (1) The service title and log number of the original restrictive purchase;
- (2) The name of the provider;
- (3) A brief description of the circumstances justifying an amendment to the restrictive purchase of service; and
- (4) The proposed changes to the terms of the contract to be amended. [Eff and comp 1/23/06; comp] (Auth: §103F-106) (Imp: HRS §103F-403)

SUBCHAPTER 4

ALLOWABLE COMMUNICATIONS

§§3-144-401 to 3-144-500 (Reserved).

SUBCHAPTER 5

EXPEDITING PROCEDURES

§§3-144-501 to 3-144-600 (Reserved)

SUBCHAPTER 6

MISCELLANEOUS PROCEDURES

§3-144-601 Requests for information for restrictive purchase of service. (a) A purchasing agency may at any time prepare a request for information to facilitate the purchasing agency's planning and to determine the appropriateness of making a restrictive purchase of services. Requests for information shall be conducted in accordance with section 3-142-202. [Eff 6/19/99; am and comp 1/23/06; comp] (Auth: HRS §§103F-106, 103F-203) (Imp: HRS §§103F-203, 103F-403)

§3-144-602 Restrictive purchase of service record of procurement actions. (a) The procurement officer of the purchasing agency shall maintain records by fiscal year of all restrictive purchase of service procurements made for a minimum of the past five fiscal years.

(b) Reporting of restrictive purchase procurements. As [~~determined~~] prescribed by the administrator, the heads of purchasing agencies or

procurement officers shall [~~make reports to the administrator of~~] report all restrictive purchase of service procurements made by their respective agencies [~~for the immediately preceding fiscal year~~]. [~~The report shall be made in the format prescribed by the administrator.~~]

~~[(c) Annual consolidated report. The administrator shall make a consolidated report of all restrictive 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; am and comp _____](Auth: HRS §103F-106)
(Imp: HRS §§103F-301, 103F-403)

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 3-144, 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

Roderick Becker
State Comptroller

APPROVED AS TO FORM

Deputy Attorney General