

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-145
Hawaii Administrative Rules

2016

1. Chapter 3-145, Hawaii Administrative Rules, entitled "Treatment 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 145

TREATMENT PURCHASE OF SERVICE

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SUBCHAPTER 1

PURPOSE AND SCOPE

§3-145-101 Purpose. The purpose of this chapter is to implement section 103F-404, HRS, which establishes the treatment purchase of service method of procurement, by providing rules and procedures for the use of this method of procurement. [Eff 6/19/99; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-102 Scope. (a) The treatment purchase of service method of procurement may be used to procure treatment services when:

- (1) The proposed contract for treatment services is for consideration of \$100,000 or less;
- (2) The proposed contract for treatment services is for a term of one year or less; and
- (3) Either or both of the following circumstances is applicable:
 - (A) The need for the treatment services in the proposed contract may arise from time to time, but the need cannot be anticipated accurately on an annual or biennial basis; or
 - (B) Delaying treatment until a competitive purchase of services could be conducted would render the problem worse than at the time of diagnosis or assessment.

(b) Waiver for good cause. If a proposed contract for treatment services would otherwise satisfy subparagraph (a)(3) of this section, then the chief procurement officer may, for good cause, waive in writing the requirements of subparagraphs (a)(1) and (a)(2). Circumstances constituting good cause for a waiver include but are not limited to:

- (1) The proposed contract will be for a term of eighteen months or less, and the treatment will no longer be needed thereafter; or
- (2) The proposed contract will be for \$150,000 or less, and the treatment will no longer be needed after the expiration of the contract.
[Eff 6/19/99; am and comp]
(Auth: HRS §103F-106) (Imp: HRS §103f-403)

SUBCHAPTER 2

CORE PROCEDURES

§3-145-201 Planning requirements. (a) Before the beginning of each fiscal year, each purchasing agency shall determine the types of treatment services that it may need to procure under the provisions of this chapter.

(b) Treatment services required. Based on determinations made, purchasing agencies shall prepare a list of treatment services that may be required, the type or types of professionals that can provide the required services, and the minimum qualifying credentials required for each type of professional. The list shall be submitted in a form provided by the administrator by a date and time set by the administrator. (Eff 6/19/99; am and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-202 Public notice of solicitation for statements of qualifications. (a) Based on the lists submitted under section 3-145-201, the administrator shall publish a public notice of solicitation for statements of qualifications before the beginning of each fiscal year and more often as necessary in accordance with this section.

(b) Purpose of public notice. Public notice of solicitation for statements of qualifications shall be

made to encourage competition among providers so that the state obtains the most advantageous contracts for treatment services that the market can support.

(c) Contents of public notice. The public notice of solicitation for statements of qualifications shall be in accordance with section 3-141-407.

(d) Solicitations made at other times of the year. In addition to the annual notice required under this section, the administrator may solicit for treatment services whenever necessary or advisable. Such notice shall be given in accordance with the requirements of this section. [Eff 6/19/99; am and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-203 Submission and receipt of statements of qualifications. (a) Statements of qualifications shall be submitted to the administrator no later than the submittal deadline. Statements of qualifications may be submitted by hand-delivery or United States mail. Statements of qualifications submitted by hand-delivery shall be deemed to have been received when actually delivered, and statements of qualifications submitted and received by United States mail shall be deemed to have been received on the date they are post-marked rather than the date they are actually received.

(b) Procedure for receiving documents. Statements of qualifications, modifications to statements, and withdrawals of statements shall be received according to the procedure in this subsection:

- (1) Upon receipt at a designated location, statements of qualifications, modifications to statements, and withdrawals of statements shall be date-stamped and, when possible, time-stamped.
- (2) All documents so received shall be collected by the administrator, to be held in a secure place for evaluation after the submittal deadline. [Eff 6/19/99; comp

] (Auth: HRS §103F-106)
(Imp: HRS §103F-404)

§3-145-204 Evaluation of statements of qualifications and preparation of list of qualified providers. (a) After the submittal deadline, all statements of qualifications, modifications, and withdrawals shall be reviewed, and a list of qualified providers shall be prepared in accordance with this section.

(b) Appointment of committee. The administrator shall form an evaluation committee consisting of a minimum of three state employees with sufficient education and training, or credentials to evaluate the statements of qualifications. Non-state employees may serve as advisors to the evaluation committee in the evaluation of statements of qualifications but may not represent or act on behalf of the administrator in the preparation of a list of qualified providers. A copy of the document identifying the evaluation committee members and any subsequent changes thereto shall be placed in the procurement file.

(c) Preparation of evaluators. If the administrator 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 any issue relevant to the evaluation or the solicitation.

(d) Procedure for evaluation. The evaluation committee shall review and evaluate the submissions and other pertinent information, including references and reports. The evaluation of the statements of qualifications shall be based solely upon the minimum qualifying credentials as stated in the solicitation. Based on the minimum qualifying credentials, the applicants shall be rated "qualified" or "unqualified".

(e) Forbidden criteria for evaluation. Evaluations shall not be based on race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, mental or physical disability,

political affiliation of the applicant, or any other criterion prohibited by applicable federal, state, or county law, unless such criterion is permitted by law.

(f) Preparation of list of qualified providers. After all of the statements of qualifications have been evaluated, a list shall be prepared of all providers that receive a rating of "qualified."

(g) Distribution of list of qualified providers. The administrator shall distribute copies of any list of qualified providers prepared under this section to the heads of the purchasing agencies. In addition, a copy of any such list shall be made available for public inspection at the state procurement office and the state procurement office website.

(h) Notice to applicants. After any list of qualified providers has been prepared under this section, the administrator shall promptly notify all applicants of their ratings under the evaluation process. [Eff 6/19/99; am and comp]
(Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-205 Procedure for procurement of treatment services. (a) When the need to purchase treatment services arises, the head of a purchasing agency shall, when applicable, contact a minimum of three providers from the appropriate list of qualified providers and select the provider that is most advantageous based on the following criteria:

- (1) Demonstrated competence for the type of treatment service required;
- (2) Qualification for the type of service required;
- (3) Fairness and reasonability of price, or other applicable cost factor; and
- (4) Any additional criteria that the purchasing agency deems relevant to the selection.

(b) Negotiation of contract. The head of the purchasing agency, or a designee, shall negotiate a contract with the most advantageous provider, including a rate of compensation which is fair and reasonable, established in writing, and based upon the

estimated value, scope, nature, and complexity of the treatment services to be rendered, or use the rate established by the administrator, if any.

Negotiations shall be conducted confidentially.

(c) Failure of negotiations. If negotiations with the most advantageous provider fail, then upon written notice of an impasse to the provider, the head of the purchasing agency shall enter into negotiations with the second, then third most advantageous provider, respectively. If negotiations fail with all three providers, the head of the purchasing agency shall, if applicable, contact additional providers from the list and negotiations shall continue in accordance with this subsection.

(d) Required posting of contract awards by purchasing agencies. All contract awards made utilizing the treatment method of procurement shall be posted to the internet no later than the seventh day after award. The administrator may prescribe the format of the posting and the website to which it shall be posted. Posted information shall include:

- (1) Name of the awardee;
- (2) Service title and list from which the provider was selected;
- (3) Amount awarded;
- (4) Contract start and end dates; and
- (5) Names of any other providers on the list that were contacted in conjunction with the procurement. [Eff 6/19/99; am and comp
] (Auth: HRS §103F-106)
(Imp: HRS §103F-404)

SUBCHAPTER 3

CONTENT REQUIREMENT

§3-145-301 Contents of statements of qualifications. (a) Every statement of qualifications shall, at a minimum, include the following information:

- (1) The name of the applicant, the applicant's principal place of business, and any branch offices;
- (2) The number of years the applicant has been established in business and its average number of employees over the past three years, as applicable;
- (3) The education, training, and qualifications of key members of the applicant;
- (4) The names and phone numbers of up to five referral sources who may be contacted, including at least two for whom services were rendered during the preceding year, as applicable; and
- (5) Any additional information, reports or descriptive materials on organizational and service capability deemed by the applicant to be necessary or advisable for the evaluation process.

(b) Preparation of uniform format. The administrator shall prepare a uniform format for all statements of qualifications[, provided that such format includes all the information required under subsection(a)]. [Eff 6/19/99; am and comp
] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

SUBCHAPTER 4

ALLOWABLE COMMUNICATIONS

§§3-145-401 to 3-145-410 (Reserved).

SUBCHAPTER 5

EXPEDITING PROCEDURES

§3-145-501 Use of electronic submission for treatment purchase of service. (a) Statements of qualifications and amendments may not be submitted to the administrator by electronic means, including telefacsimiles, except when such transmission is expressly authorized in the public notice for statements of qualifications.

(b) Applicant bears responsibility for transmission. Applicants who submit statements of qualifications 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 to the administrator. By opting to submit documents by electronic means, applicants assume all risk that the administrator's telefacsimile receiver, computer system, or network may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. A statement of qualifications 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 administrator. The administrator may establish other electronic systems and submission requirements to receive submittals.

(d) Requirement of a complete original. A statement of qualifications or amendment transmitted by electronic means shall be considered valid only if the complete original signed statement of qualifications is received by the administrator, and is post-marked or hand-delivered by the second working day after the electronic transmission. [Eff 6/19/99; am and comp] (Auth: HRS §103F-106)
(Imp: HRS §103F-404)

§3-145-502 Repealed. [R]

SUBCHAPTER 6

MISCELLANEOUS PROCEDURES

§3-145-601 Modification or withdrawal of statements of qualifications before submittal deadline. Before the submittal deadline, applicants may freely and at any time modify or withdraw their statements of qualifications by written notice to the administrator, referencing the original statement of qualifications and either detailing the modification, or stating the intent to withdraw the statement. [Eff 6/19/99; am and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-602 Late statements of qualifications rejected. Any statement of qualifications, withdrawal, or modification submitted after the submittal deadline is late and shall be rejected on that basis. Written notice of the rejection for late submission shall be given to the applicant. [Eff 6/19/99; am and comp] (Auth: HRS §§103F-106, 103F-407) (Imp: HRS §§103F-404, 103F-407)

§3-145-603 Disposition of rejected statements of qualifications. Whenever a statement of qualifications is rejected under sections 3-145-602, 3-141-201, or 3-141-202, the administrator may return the rejected statement of qualifications with the written notice to the applicant, or discard it thirty days after its rejection. Before disposal, the applicant may retrieve the rejected statement of qualifications. [Eff 6/19/99; am and comp] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-604 Register of statements of qualifications. A register of statements of qualifications shall be prepared and made available to the public within ten working days after the submittal deadline, or a reasonable time. The register shall include the following information from each statement of qualifications:

- (1) The name of each applicant; and
- (2) The types of services for which the applicant is attempting to qualify. (Eff 6/19/99; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-605 Updating of statements of qualifications. (a) After an applicant has been included on the list of qualified providers under section 3-145-204, the applicant may amend its statement of qualifications whenever the applicant deems it necessary or appropriate.

(b) Duty to update upon inquiry. If a purchasing agency contacts a provider from a list of qualified providers in connection with the purchase of treatment services, that provider shall have a duty to update its statement of qualifications as to any material changes in the information in the statement.

(c) Material change defined. For purposes of this section, a material change to a statement of qualifications is one that a reasonable procurement officer would want to be informed of before deciding to award a contract, regardless of whether the materially changed information would actually alter the officer's decision to award or not award the contract.

(d) Failure to update. If at any time a purchasing agency discovers that a provider has failed to update information as required under this section, then the award of any contract by the purchasing agency to the provider may be revoked, and any contract with the provider terminated. [Eff 6/19/99; comp] (Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-606 Inadequate response to solicitation for statements of qualifications. If no provider submits a statement of qualifications that meets the minimum standard for qualification, then the administrator may respond by taking any of the following actions after consulting with the purchasing agency that requested the services in question:

- (1) Republish notice. The administrator may republish the solicitation for statements of qualification.
- (2) Alternate service delivery. The purchasing agency may select an alternate method of service delivery and the administrator may publish a new solicitation for statements of qualification.
- (3) Selection without competition. The administrator may authorize the purchasing agency to select a provider without further solicitation upon making a written determination that it is neither practicable nor advantageous to publish a new notice of solicitation for statements of qualifications based on a consideration of the following factors:
 - (A) Competition in the marketplace;
 - (B) Whether the additional potential cost of preparing, soliciting, and evaluating statements of qualifications 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]
(Auth: HRS §103F-106) (Imp: HRS §103F-404)

§3-145-607 Public inspection of statements of qualifications. (a) The procurement file for every solicitation for statements of qualifications shall be

available for public inspection to the extent permitted by law governing information practices.

(b) Keeping of procurement file and contents. The administrator shall maintain procurement files for every solicitation for statements of qualifications that he or she conducts. The procurement file shall contain all records that the administrator keeps that are connected to the solicitation for statements of qualifications. At a minimum, the records kept in the procurement file shall include but not be limited to the following:

- (1) The register of statements of qualifications prepared pursuant to section 3-145-604;
- (2) Names of qualified applicants;
- (3) The minimum qualifying standard established by the purchasing agencies;
- (4) A copy of the notice of solicitation for statements of qualifications; and
- (5) A copy of the submitted statements of qualifications. [Eff 6/19/99; comp
] (Auth: HRS §103F-106)
(Imp: HRS §103F-404)

§3-145-608 Treatment purchase of service record of procurement actions. (a) The heads of purchasing agencies or procurement officers shall maintain records by fiscal year of all treatment purchase of service contracts made by their respective agencies for a minimum of the past five fiscal years.

(b) Reports of treatment purchase procurements. The heads of purchasing agencies or procurement officers shall make reports to the administrator of all treatment purchase of service contracts made by their respective agencies at the time, in the manner, and in the format prescribed by the administrator.

(c) Annual consolidated report. The administrator shall make an annual consolidated report of all treatment 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

] (Auth: §103F-106) (Imp: HRS
§§103F-301, 103F-404)

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 3-145, 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 Genera