

## **Chapter 3-143 Competitive Purchase of Service Summary of Proposed Changes**

### **Public Notice**

- Increases public notice from 21 days to 28 days to allow for maximum competition and additional time to submit proposals; amends public notice requirement from newspaper to posting on the Internet (see amendments to 3-141, HAR).

### **Availability of Requests for Proposals**

- Adds the administrator may require that RFPs be made available on a central website to increase public access. This will also result in savings in time and expense to applicants and the state.

### **Evaluation of Proposals**

- Adds language to clarify that, when utilizing numerical scoring, written explanation of scores given shall be included.

### **Addenda to RFPs**

- Amends language to clarify that addenda may be issued prior to request for final revised proposals for the purposes of clarification of the RFP.

### **Electronic Submission of proposals**

- Amends language to allow electronic submission via website in addition to e-mail.
- Amends time of receipt from transmission to actual receipt for clarity as the accuracy of time of transmission may vary depending on the device used for transmission.

### **Secondary Purchase**

- Amends maximum allowed amount for After-the-Fact Secondary Purchases from 30%, to a maximum of 30% not to exceed \$75,000 to set reasonable limits for the maximum amount of a contract.

### **Joint Requests for Proposals**

- Adds procedure for joint request for proposals issued by two or more purchasing agencies to coordinate and improve the efficiency of the purchase of health and human services.

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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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.

§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.

## SUBCHAPTER 2

### CORE PROCEDURES

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

(a) 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 will be subject to the availability of appropriated funds;
- (4) Instructions and information for applicants including but not limited to the time and place for the orientation for the request for proposals, the submittal deadline, and the place where proposals must 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.

§3-143-202 Public notice of requests for proposals. (a) 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 3-141-406.

~~{(b) Required contents of public notice. Public notice of requests for proposals shall include the following information:~~

- ~~(1) A brief description of the service desired;~~
- ~~(2) When and where copies of the request for proposals will be available;~~
- ~~(3) The submittal deadline for proposals in response to the request for proposals; and~~
- ~~(4) The time and place for the orientation, [if any,] for the request for proposals.]~~

(c) Additional contents of public notice. In addition to the items required [~~under subsection (b)~~], in accordance with section 3-141-406 public notice of requests for proposals may include any other information a purchasing agency deems appropriate, such as copying fees charged for copies of the request for proposals.

(d) Required [newspaper] publication. Public notice of the request for proposals shall be published [~~at least once in a newspaper of general circulation within the state, and, to the extent practicable, at least once in a newspaper of local circulation within the island in which the requested health and human services are to be provided.]~~ in accordance with section 3-141-406. The date [~~of the last newspaper publication]~~ the notice is first published shall be at least [~~twenty-one calendar]~~ twenty-eight days before the submittal deadline for proposals responding to the

request for proposals. The notice shall remain on the website until the proposal submittal deadline.

(e) Additional media for publication authorized. In addition to the required [~~newspaper~~] internet publication, copies of the public notice may be given in any manner deemed reasonably likely to promote competition among providers, [~~including but not limited to the following~~] as provided in section 3-141-406(d):

- ~~{(1) Further publication of notice in newspapers of general or local publication;~~
- ~~(2) Telephone calls, United States mail, telefacsimile transmission, or electronic mail to potential applicants on a provider list compiled in accordance with section 3-141-401; or~~
- ~~(3) Publication by any public or private telecommunication information network.}~~

(f) Shortening of time for [~~newspaper~~] internet publication. The chief procurement officer or head of the purchasing agency may shorten the [~~twenty-one~~] twenty-eight day period required between [~~newspaper~~] the first internet publication and submittal deadline imposed in subsection (c) above upon a written determination 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.

(g) Public inspection of request for proposals. A copy of the request for proposals shall be made available for public inspection 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.

§3-143-203 Orientation for requests for proposals. (a) In order 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. Regardless of whether an addendum is issued or not, a summary of any substantive matters raised at the orientation shall be supplied to all those prospective applicants known to have received a request for proposals.

(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 \$50,000.00; or
- (3) Any other circumstance in which the costs of holding the orientation outweigh the benefits to be obtained from holding the orientation.

§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. Proposals submitted by hand-delivery shall be deemed to have been received when actually delivered, and proposals 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. 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.

§3-143-205 Evaluation of proposals. (a) After the submittal deadline, all proposals, modifications, and withdrawals shall be examined by the purchasing agencies 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.

(c) Appointment of committee. 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. 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.

(d) 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.

(e) 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. After the award and execution of a contract or contracts in the case of multiple awards is awarded and executed, the written evaluations for all proposals received shall be made available for public inspection in the procurement file.

(f) 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.

(g) 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.

§3-143-206 Award of contract. (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 contract as provided in this section.

(b) Multiple award contract defined. A multiple award contract 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 contract in request for proposals. If a multiple award is anticipated prior to issuing a request for proposals or solicitation, 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.

(d) Conditions for multiple award contract. A multiple award contract may be made whenever the purchasing agency deems that it is in the best interests of the state. Only the providers whose proposals that were evaluated as the most advantageous over-all, by geographical area, or by other criterion explained in the request for proposals, shall be considered for multiple award contracts. If, for example, a multiple award contract 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.

(f) Modifications before execution. Before the 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.

(g) Notice of award. Notice of the award of a contract or contracts under this section shall be given to all applicants by United States mail.

### 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 section 3-143-301(f).

(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. Addenda shall be issued 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
- (4) Providing any other information or clarification to the request for proposals that will promote fair competition among applicants.

(d) Time for distribution. Addenda shall be distributed 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 telefacsimile or electronic ~~mail~~ submission of proposals.

(e) Method for distribution. Purchasing agencies shall distribute addenda to prospective applicants via

telefacsimile or hand-delivery to the extent practicable, or by United States mail.

(f) Addenda issued after the submittal deadline and prior to request for final revised proposal. Addenda may be issued after the submittal deadline and prior to the submittal deadline for final revised proposals for the purposes of clarification, correction and to make modifications that do not constitute a material change to the request for proposals as defined in section 3-143-403(e). Addenda shall be distributed to all applicants who submitted a proposal. The time for distribution shall be at least five working days or within a sufficient time before the submittal deadline for final revised proposals to allow prospective applicants to consider them in preparing their final revised proposals. The methods of distribution shall be in accordance with section 3-143-301(e).

§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 each of the following items with either an explanation or a statement that the item is not applicable to the request for proposals:

- (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;
- (11) Specify whether single- or multi-term contracts are to be awarded;
- (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; and
- (15) Specify pricing or pricing methodology to be used, as applicable.

(c) Contracts data base. In order to enhance efficiency and planning in the field of health and human services procurement, the administrator may compile service specifications generated under this section for inclusion in the contracts data base.

§3-143-303 Notice of award. (a) Each notice of award issued pursuant to section 3-143-206 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) If applicable, a brief statement of the reasons supporting the decision for the non-award to the applicant; and

(5) A copy of the applicant's proposal evaluation worksheet to whom the notice is being sent.

(b) Distribution of notice. A copy of the notice shall be provided to each applicant by the purchasing agency upon completion of the evaluation of competitive purchase of service proposals in accordance with this section.

#### 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 agencies 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 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.

§3-143-402 Submission of questions before submittal deadline. (a) Before the submittal deadline, an applicant may submit questions to a purchasing agency in order to request a written clarification or explanation of any point in a request for proposals.

(b) Procedure for submitting questions. Questions must be submitted to the purchasing agency in writing, and should identify the questioner and clearly reference the request for proposals at issue. To the extent possible, questions should be transmitted to the purchasing agency in a reasonable time before the submittal deadline so that the purchasing agency will have time to consider the questions and distribute answers.

(c) Purchasing agency response. Purchasing agencies shall promptly respond to questions posed under this section either by a written clarification, or by issuing an addendum to the request for proposals as provided under section 3-143-301. Copies of the purchasing agency's responses shall be sent by hand-delivery or telefacsimile, to the extent practicable, or United States mail to the providers who raised the questions. All written clarifications shall be made

available on a website identified in the request for proposals or at the same location or locations where proposals may be submitted.

§3-143-403 Discussions with applicants after submittal deadline. (a) After 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) 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 agencies 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~~-(f)~~(f), 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.

§3-143-404 Discussions with applicants after award and before contract execution. (a) After the award of a contract to an applicant, 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 adversely affect how advantageously the proposal was rated during the evaluation process.

(d) Procedure for conducting discussions. The purchasing agencies shall establish procedures and

schedules for conducting discussions under this section.

## SUBCHAPTER 5

### EXPEDITING PROCEDURES

§3-143-501 Pre-registration of licensing and business status for providers. (a) In order to reduce the duplication of efforts that purchasing agencies may face in screening providers to verify that they are in good corporate, partnership, or other business standing, the administrator shall develop a system to allow providers to pre-register the status of their business standing prior to the announcement of requests for proposals.

(b) No preference granted. The establishment of a system for pre-registration shall not be construed as the establishment of a group of preferred providers. Any system for pre-registration established by the administrator shall be used solely to minimize the time necessary to verify the status of providers' standing. No provider that participates in a system for pre-registration shall be granted any preference for participation, including but not limited to the following:

- (1) Distribution of the request for proposals shall not be limited to pre-registered providers;
- (2) Failure to pre-register shall not constitute a basis for the denial of a contract award under this chapter;
- (3) Pre-registration shall not be construed as a determination that a provider is a responsible provider;
- (4) Pre-registration shall not be construed to represent service capability; and
- (5) Pre-registration shall not be construed as acceptability of service delivery.

(c) Coordination of pre-registration by administrator. The administrator shall coordinate any system of pre-registration to reduce duplication of effort among purchasing agencies and applicants, so that an applicant may submit one complete set of the qualifying information to be utilized by all branches, divisions, offices, or other entities.

(d) Duty to update pre-registration information. Whenever there is a change in a pre-registered applicant or provider's status, it is the duty of the applicant or provider to update documents submitted for pre-registration within fifteen calendar days and submit updated information to the administrator.

§3-143-502 Use of telefacsimile for competitive purchase of service. (a) Proposals and amendments may not be submitted to purchasing agencies by telefacsimile transmission 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 telefacsimile transmission bear the whole and exclusive responsibility for assuring the complete, legible, and timely transmission of their documents to purchasing agencies. By opting to submit documents by telefacsimile transmission, applicants assume all risk that a purchasing agency's telefacsimile receiver 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 to have met the submittal deadline when the last page of a complete, legible copy of the document has been received by the purchasing agency by the submittal deadline.

(d) Short-form telefacsimile proposal or amendment. Because of the difficulty of transmitting a complete proposal or amendment via telefacsimile, a short-form proposal or amendment may be authorized in the request for proposals that contains only:

- (1) Identification of the request for proposals to which the applicant is responding;
- (2) All pages of the submittal requiring a signature;
- (3) The quantities of service, and rates as applicable;
- (4) A budget summary; and
- (5) A signed statement that the applicant agrees to all the terms, conditions, and provisions of the request for proposals.

(e) Requirement of a complete original. A short-form telefacsimile proposal or amendment shall be considered valid only if a complete original copy of a full proposal or amendment consistent with the short-form document is received by the purchasing agency and post-marked by the second working day after the telefacsimile transmission.

§3-143-503 [Use of electronic] Electronic submission of proposals for competitive purchase of service. (a) Proposals and amendments may not be submitted to purchasing agencies by electronic ~~{mail}~~ means, except when such transmission is explicitly authorized in a request for proposals.

(b) Applicant bears responsibility for transmission. Applicants who submit proposals or amendments by electronic ~~{mail}~~ means bear the whole and exclusive responsibility for assuring the complete, correctly-formatted, and timely transmission of their documents to purchasing agencies. By opting to submit documents by electronic ~~{mail},~~ means, applicants assume all risk that a purchasing agency's computer system may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. For purposes of the submittal deadline, a proposal or amendment submitted via electronic mail shall be deemed to have been received upon ~~[transmission]~~ actual receipt of a

correctly-formatted copy of the document by the purchasing agency.

(d) Short-form electronic [mail] proposal or amendment. Because of the difficulty of transmitting a complete proposal or amendment via electronic mail, a short-form proposal or amendment may be authorized that contains only:

- (1) Identification of the request for proposals to which the applicant is responding;
- (2) All pages of the submittal requiring a signature;
- (3) The quantities of service, and rates as applicable;
- (4) A budget summary; and
- (5) A statement that the applicant agrees to all the terms, conditions, and provisions of the request for proposals.

(e) Requirement of a complete original. A short-form electronic [mail] proposal or amendment shall be considered valid only if a complete original copy of a full proposal or amendment consistent with the short-form document is received by the purchasing agency and post-marked by the second working day after the electronic mail transmission.

§3-143-504 Submission of proposals on computer diskette. (a) Proposals and amendments may not be submitted to purchasing agencies on computer diskette 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 computer diskette 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 computer diskette, applicants assume all risk that a purchasing agency's

computer system may be unable to read the applicant's diskette.

§3-143-505 Selection of substitute provider after early termination of contract. (a) In the event that a contract for health and human services that was awarded under this chapter is terminated before the expiration date established in the contract, the purchasing agency shall follow the procedures in this section in order to select a substitute provider.

(b) Initiation of new competitive purchase of service. In order 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 consider the unsuccessful proposals and negotiate with the providers who submitted them in order to select an advantageous substitute provider. In the event that none of the unsuccessful proposals and providers 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, which ever occurs sooner.

## SUBCHAPTER 6

### MISCELLANEOUS PROCEDURES

§3-143-601 Modification or withdrawal of proposals before submittal deadline. Before the submittal deadline, applicants may freely and at any time modify or withdraw their proposals by written

notice referencing the original proposal and either detailing the modification, or stating the intent to withdraw the proposal.

§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 calendar days. During this period, applicants may neither modify nor withdraw their proposals without written authorization or invitation from the purchasing agency.

§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 the purchasing agency shall discard the late proposal thirty calendar days after its receipt. Before its disposal, the applicant may retrieve the late proposal from the purchasing agency. [

§3-143-604 Access to documents and confidentiality. After submission to a purchasing agency, the confidentiality of proposals, modifications to proposals, and withdrawals of proposals shall be maintained in accordance with this subsection.

- (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 in order to avoid disclosure of contents to competing applicants.

- (3) Procurement files shall be open to public inspection as provided in section 3-143-616, after a contract has been awarded and executed by all parties.

§3-143-605 Multiple proposals and alternate proposals. (a) An applicant may not submit multiple proposals or alternate proposals unless a request for proposals specifically authorized multiple proposals or alternate proposals.

(b) Rejection of multiple proposals and alternate proposals. When no specific authorization for multiple proposals or alternate proposals has been given, all such proposals from a single applicant shall be rejected unless one of them has been 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.

(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.

§3-143-606 Correction of errors discovered after submittal deadline. (a) Applicants bear the responsibility of verifying that their proposals to purchasing agencies are accurate and free of errors before the submittal deadline. Before the submittal deadline, applicants may freely correct errors or inaccuracies they discover in their proposals in accordance with the procedure provided in section 3-143-601.

(b) Only patent errors correctable. After the submittal deadline only patent errors may be corrected as provided in this section.

(c) 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.

(d) Required showing for correction of patent error. In order to correct a patent error, an applicant must identify the error in the proposal, and establish the following to the purchasing agency's satisfaction:

- (1) That the error identified is a patent error;
- (2) 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
- (3) That the proposed correction is not contrary to the best interest of the purchasing agency or to the fair treatment of other applicants.

§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 applicants to respond to the matters raised at the discussions and make a best and final offer.

(b) Procedure for requesting final revised proposals. To request final revised proposals, a purchasing agency shall issue notice to all applicants that includes the following information:

- (1) A request for final revised proposals;

- (2) The deadline for submission of final revised proposals;
- (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 in the final revised proposal; and
- (5) A statement that if an applicant does not submit a final revised proposal, then the last proposal submitted by an applicant 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 purchasing agencies in the manner provided for the original proposals under section 3-143-204.

(d) Award after submission of final revised proposals. After revised final proposals are received, final evaluations will be conducted, and an award or awards made, 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.

§3-143-608 Secondary purchase of competitive purchase of service. (a) In order to increase the efficiency of health and human services procurements through better planning, purchasing agencies may coordinate purchases of similar health and human services by combining their requirements as primary and secondary purchases of health and human services 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 requirement as provided in subsection (a), the purchasing agency requiring the largest share of the services detailed in the request for proposals shall be deemed to be the primary purchaser, while the purchasing agency requiring the smaller share shall be deemed the secondary purchaser. A secondary purchaser's share of the total services to be provided in subsection (a)(1) above may 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), written approval to utilize the primary purchaser's procurement shall be requested by the head of the secondary purchaser or a procurement officer of the secondary purchaser from the chief procurement officer of the primary purchasing agency. The request shall address the following:

- (1) Title and description of the service;
- (2) General information on the contract of the primary purchaser to include name

- of purchasing agency, contact person, phone number, and contract number;
- (3) Primary purchaser's contract period and secondary purchaser's proposed contract period;
  - (4) Primary and secondary purchasers' contract amounts;
  - (5) A statement that the service or part of the service is the same or substantially the same; and
  - (6) A description of any differences between the primary and secondary purchase, if any.

§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 submitted is responsive to the request for proposals, and its terms are reasonable and satisfactory to the purchasing agency; and
  - (B) The required twenty-one day period from the initial notice 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 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.
- (5) Restrictive purchase of services. The purchasing agency may make a restrictive purchase of service by following the procedures established under chapter 3-144.

(d) No useful response to request for proposals.

If no proposals were received that were both responsive to the request for proposals and submitted by a responsible applicant, or if no proposals were received at all, then the purchasing agency may respond by taking any of the following actions:

- (1) Reissue. The purchasing agency may re-issue 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.
- (5) Restrictive purchase of services. The purchasing agency may make a restrictive purchase of services by following the procedures established under Chapter 3-144.

§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.

§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 that was deemed the most advantageous during the evaluation process in order to request modifications to the proposal 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. Once proposed modifications are approved by both the purchasing agency and the applicant, they shall be incorporated into the applicant's proposal in a manner mutually acceptable to both parties.

§3-143-612 Disposition of rejected proposals. Whenever a proposal is rejected pursuant to sections 3-141-201 or -202, or sections 3-143-610 or -613, the purchasing agency may discard the rejected proposal thirty calendar days after its rejection. Before disposal, the applicant may retrieve the proposal from the purchasing agency.

§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.

§3-143-614 No exception from applications for federal funding. (a) Applying for federal funds that may be used when obtained from the 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 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 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 provided the purchasing agency completed a request for

information to assess and consider interested or prospective applicants for inclusion in the state's application for federal funding.

(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.

(e) Construction of section. Nothing in this section shall be construed to disqualify a purchasing agency from receiving federal funds.

§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.

§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 after execution of a contract to the extent permitted under current law governing information practices.

(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 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.

§3-143-617 Requests for information for competitive purchase of service. ~~{(a) A purchasing agency may at any time prepare a request for information in order to facilitate the purchasing agency's planning and development of requests for proposals. A request for information may be written, oral, or issued through electronic media or any combination of these methods, and may be sent to any knowledgeable person or entity that the purchasing agency deems advisable.~~

~~(b) Permissible subjects. A request for information may address any subject relevant to a planned or proposed request for proposals, including but not limited to the following:~~

- ~~(1) The objective of the procurement;~~
- ~~(2) The target population or clients to be served;~~
- ~~(3) The services the purchasing agency anticipates may be necessary to achieve the outcome or objective; or~~
- ~~(4) Service specifications, feasibility, viability, or cost.~~

~~(c) Form of request. In addition to a description of the information being sought, and the procedure for responding, a request for information shall include:~~

- ~~(1) A statement that participation is optional and is not required to respond to a subsequent request for proposals;~~
- ~~(2) A statement that the purchasing agency reserves the right to incorporate or not incorporate any recommendations presented in the response to the request for information in a request for proposal; and~~
- ~~(3) A statement that neither the purchasing agency nor the interested party responding has any obligation under the request for information.]~~

Requests for information shall be made in accordance with sections 3-142-202 prior to the release of a request for proposals.

§3-143-618 Collaboration of providers. (a) Purchasing agencies may ask providers to participate in agency planning activities in order to create greater efficiency, responsiveness, and organization in meeting the health and human service needs of various communities.

(b) Areas for collaboration. Specific areas for collaboration with providers include, but are not limited to:

- (1) Sharing of information on community needs;
- (2) Determination of best practices;
- (3) Inventory of available resources;
- (4) Budgetary or cost factors;
- (5) Configuration of services; and
- (6) Recommendations for service specifications and requirements.

(c) No disqualification from procurement. Provider participation is encouraged, and such involvement shall not disqualify any responsible provider from subsequent or simultaneous participation in purchasing agency procurement of health and human services.

(d) No exemption from anti-competitive practices. The collaborative practices permitted under this section shall not be construed to create an exemption to allow anti-competitive practices otherwise prohibited by federal, state, or county law.

§3-143-619 Joint requests for proposals 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. (a) A joint request for proposals may be issued when two or more purchasing agencies purchase services that:

- (1) 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 and the name of the purchasing agencies;
- (2) The purpose and goals of issuing the joint request for proposals;
- (3) The role each state agency will play in evaluating proposals;
- (4) The manner in which contracts will be awarded and executed.

~~§3-143-619~~ §3-143-620 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) Annual reports of competitive purchase procurements. By the fifteenth day of August of each year, the heads of purchasing agencies shall make reports to the administrator of all competitive

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 reports. By the first day of October of each year, 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.

## **Chapter 3-144 Restrictive Purchase of Service Summary of Changes**

### **Posting of Notice of Restrictive Purchase of Service**

- Adds required posting of the request and notice to the Internet prior to review by the chief procurement officer. Removes required public notice in newspaper.

### **Review by chief procurement officer**

- Amends procedure to require posting of the request and notice to the Internet prior to review by the chief procurement officer.

### **Amendment to a Restrictive Purchase**

- Establishes procedure allowing amendments to a restrictive purchase of service in certain circumstances including but not limited to: 1) a change in the scope that could not have been foreseen; 2) extension up to six months if the service will not be needed beyond that; or 3) funding increase up to 10% or \$50,00 whichever is less if the service will not be needed after that.

### **Contents of Request**

- Amends 'approximate' amount of funds to 'maximum' amount of funds budgeted for the service for purposes of clarity and to place restrictions on maximum funding.

### **Contents of Notice**

- Adds the requirement of the following in the public notice for purposes of clarity: 1) Name of procurement officer and the head of the purchasing agency; 2) Statement that protests must be filed within ten working days of the date of first posting of the notice; and 3) Contact person to whom inquiries may be addressed.

### **Contents of Request for Amendment.**

- Adds contents of request for amendment.

### **Request for Information (RFI)**

- Amends public notice requirement for RFIs to be in accordance with section 3-142-202 for purposes of clarity.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 144

RESTRICTIVE PURCHASE OF SERVICE

Subchapter 1 Purpose and Scope

- §3-144-101 Purpose
- §3-144-102 Scope

Subchapter 2 Core Procedures

- §3-144-201 Procedure for requesting restrictive purchase of services
- §3-144-202 ~~{Review of request and proposed notice by chief procurement officer}~~ Posting of notice of restrictive purchase of service
- §3-144-203 ~~{Posting of notice of restrictive purchase}~~ Review of request by chief procurement officer
- §3-144-204 Protest to restrictive purchase
- §3-144-205 Negotiation of contract
- §3-144-206 Amendment to restrictive purchase of service contract

Subchapter 3 Content Requirements

- §3-144-301 Contents of request
- §3-144-302 Basis for restrictive purchase

§3-144-303	Contents of notice
<u>§3-144-304</u>	<u>Contents of request for amendment to restrictive purchase of service contract</u>

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
§3-144-602	Restrictive purchase of service record of procurement actions

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.

§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 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.

## SUBCHAPTER 2

## CORE PROCEDURES

§3-144-201 Procedure for requesting restrictive purchase of services. (a) In order 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.

(b) Rush review. If a rush review of a request is needed, a separate memorandum explaining and justifying the reason for the rush review shall be submitted with the request and proposed notice.

(c) The administrator may prescribe the format for the request and notice.

~~§3-144-202 [Review of request and proposed notice by chief procurement officer. (a) After the purchasing agency submits its request for restrictive purchase and notice of restrictive purchase, the chief procurement officer shall promptly review both to verify that the request and notice comply with the requirements of section 103F 403, HRS, and this chapter. Upon verifying compliance, the chief procurement officer shall approve the request and the notice in writing, and return the approval, the request, and the notice to the purchasing agency.~~

~~(b) Disapproval of request and notice. If the chief procurement officer finds that either the~~

~~request or the notice fails to comply with the requirements of section 103F-403, HRS, or this chapter, then the request and notice 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 and notice, the purchasing agency may attempt to address the disapproval and resubmit the request and notice. Alternately, the purchasing agency may abandon the intended purchase altogether, or pursue another more appropriate method of procurement. [Eff \_\_\_\_\_] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)~~

Posting of notice of restrictive purchase. (a) The notice of restrictive purchase shall be posted to the state procurement office 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.

§3-144-203 ~~{Posting of notice of restrictive purchase. (a) After the chief procurement officer approves the request for restrictive purchase and notice of restrictive purchase, the purchasing agency shall post a copy of the notice for five working days in an area accessible to the public, at least ten working days prior to any action to finalize the award of the contract.~~

§3-144-203

~~(b) Required newspaper publication. A copy of the notice of restrictive purchase shall be published by the purchasing agency at least once in a newspaper of general circulation on the island or in the locality in which the health and human services are to be provided. The date of the last newspaper publication shall be at least ten working days prior to any action to finalize the award of a contract. [Eff \_\_\_\_\_] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)~~

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 the notice has been posted ten days from the date of first posting. 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 abandon the intended purchase altogether, or pursue another more appropriate method of procurement.

§3-144-204 Protest of restrictive purchase. Protests to a restrictive purchase shall be made under the procedures established under chapter 3-148. Any protest received by the deadline set in the notice of restrictive purchase shall be addressed under the procedures established under chapter 3-148. 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.

§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.

§3-144-206 Amendment to a restrictive purchase of service. Under certain circumstances an amendment to an approved restrictive purchase may be made upon approval by the chief procurement officer.

(a) Procedure for requesting an amendment.

(a) The chief procurement officer may, for good cause, approve an amendment to a restrictive purchase of service upon application by the head of the purchasing agency. 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 meets the conditions in section 3-144-302;
- (2) Extending the contract up to six months provided the service will not be needed after that; or
- (3) Increasing the funding up to \$50,000 or ten per cent, whichever is less, to provide enhanced or more services as in (a) (1) or extending the contract as in (a) (2).

(b) Procedure for requesting an amendment. The head of the purchasing agency shall submit a request for an amendment to the restrictive purchase of service to the chief procurement officer. The chief procurement officer shall review the request, return the approved/disapproved request to the purchasing agency. If the amendment is disapproved, an explanation for the disapproval shall accompany the

request. A copy of the request for amendment and status shall be posted to the state procurement office website.

### 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 ~~[approximate]~~ 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.

§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 within a county;
- (2) Only one provider can provide services with a unique cultural approach designed for a limited target group;
- (3) Only one provider satisfies limitations imposed by the source of funds for the procurement, such as in the case when a particular provider is specified by federal law; or
- (4) Only one provider has responded to a request for proposals issued in compliance with the procedures established in section 3-143-609.

(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.

§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 person or purchasing agency~~] the procurement officer for the procurement and the head of the purchasing agency with whom the protests are to be filed; and
- (6) ~~[The date by which the protests are to be filed.]~~ A statement that all protests must be filed within ten working days of the date of first posting of the notice.
- (7) The name , phone number and e-mail address of a contact person to whom questions regarding the request may be addressed.

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 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.

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 in order to facilitate the purchasing agency's planning and to determine the appropriateness of making a restrictive purchase of services. ~~Requests for information [may be written, oral, or issued through electronic media or any combination of these methods, and may be sent to any knowledgeable person or entity the purchasing agency deems advisable.~~

~~(b) Permissible subjects. Requests for information may address any subject relevant to a planned or proposed restrictive purchase of service, including but not limited to the following:~~

- ~~(1) The objective of the procurement;~~
- ~~(2) The target population or clients to be served;~~
- ~~(3) The services the purchasing agency anticipates may be necessary to achieve the outcome or objective; or~~

~~(4) Service specifications, feasibility, viability, or cost.~~

~~(c) Form of request. In addition to a description of the information being sought, and the procedure for responding, a request for information shall include:~~

~~(1) A statement that participation is optional and is not required to respond to a subsequent procurement;~~

~~(2) A statement that the purchasing agency reserves the right to adopt or not adopt any recommendations presented in the response to the request for information; and~~

~~(4) A statement that neither the purchasing agency nor the party responding has any obligation under the request for information.]~~

shall be conducted in accordance with section 3-142-202.

§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.

§3-144-602 (b) Annual reports of restrictive purchase s. By the fifteenth day of August of each year heads of purchasing agencies shall make reports to the administrator of 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. By the first day of October of each year, 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.

**Chapter 3-145 Treatment Purchase of Service  
Summary of Changes**

**Required posting of awards**

- Adds requirement of posting of contract awards on the Internet.

**Electronic Submission of Statements of Qualifications**

- Amends language to allow submission by any electronic submission rather than just via e-mail.
- Amends time of receipt from transmission to actual receipt for purposes of as the accuracy of time of transmission may vary depending on the device used for transmission.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 145

TREATMENT PURCHASE OF SERVICE

Subchapter 1 Purpose and Scope

- §3-145-101 Purpose
- §3-145-102 Scope

Subchapter 2 Core Procedures

- §3-145-201 Planning for solicitations for statements of qualifications and submission to administrator
- §3-145-202 Public notice for solicitations for statements of qualifications
- §3-145-203 Submission and receipt of statements of qualifications
- §3-145-204 Evaluation of statements of qualifications and preparation of list of qualified providers
- §3-145-205 Procedure for procurement of treatment services

Subchapter 3 Content Requirements

- §3-145-301 Contents of statements of qualifications

Subchapter 4 Allowable Communications

§§3-145-401 to 3-145-500 (Reserved)

Subchapter 5 Expediting Procedures

- §3-145-501 Use of telefacsimile for treatment purchase of service
- §3-145-502 ~~Use of electronic mail for treatment purchase of service~~ **Electronic submission of statements of qualifications**

Subchapter 6 Miscellaneous Procedures

- §3-145-601 Modification or withdrawal of statements of qualifications before submittal deadline
- §3-145-602 Late statements of qualifications rejected
- §3-145-603 Disposition of rejected statements of qualifications
- §3-145-604 Register of statements of qualifications
- §3-145-605 Updating of statements of qualifications
- §3-145-606 Inadequate response to solicitation for statements of qualifications
- §3-145-607 Public inspection of statements of qualifications
- §3-145-608 Treatment purchase of service record of procurement actions

## 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.

§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 can not 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.

## SUBCHAPTER 2

### CORE PROCEDURES

§3-145-201 Planning for solicitations for statements of qualifications and submission to administrator. (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) Submission to administrator for publication of notice. Based on their determinations, the purchasing agencies shall prepare reports that state the 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. Reports shall be prepared in a form provided by the administrator and shall be submitted to the administrator by a date and time set by the administrator so that notice of the solicitations can be given as required under section 3-145-202.

§3-145-202 Public notice for solicitations for statements of qualifications. (a) Based on the reports submitted under section 4-145-201, the administrator shall publish a public notice of solicitations of 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 solicitations 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. Public notice of solicitations for statements of qualifications shall include the following information:

- (1) A summary of the information in the reports submitted by the purchasing agencies under section 3-145-201;
- (2) The submittal deadline for statements of qualifications, and the locations where statements of qualifications may be submitted; and
- (3) Any other appropriate material information, including but not limited to, any required format for statements of qualifications.

(d) Required newspaper publication. A copy of the public notice of the solicitation for statements of qualifications shall be published at least once in a newspaper of general circulation within the state, and, to the extent practicable, at least once in a newspaper of local circulation within the island in which the treatment services may be provided. The date of the last newspaper publication shall be at least fourteen calendar days before the submittal deadline for statements of qualifications.

(e) Additional media for publication authorized. In addition to the required newspaper publication, copies of the public notice may be given in any manner deemed reasonably likely to promote competition among providers, including but not limited to the following:

- (1) Further publication of notice in newspapers of general or local publication;
- (2) Telephone calls, United States mail, telefacsimile transmission, or electronic mail to potential applicants on a provider list compiled in accordance with section 3-141-401; or

(3) Publication by any public or private telecommunication information network.

(f) Solicitations made at other times of the year.

In addition to the annual notice required under this section, the administrator may give notice of solicitations prepared by the purchasing agency whenever necessary or advisable. Such notice shall be given in accordance with the requirements of this section.

§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.

§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 employees from a state agency or agencies with sufficient education and training to evaluate the statements of qualifications that the administrator receives in response to the solicitation. 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 by the purchasing agencies in their reports to the administrator. Based on the minimum qualifying credentials, the applicants shall be rated "qualified" or "unqualified" based on their statements of qualifications.

(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, the committee shall prepare a list of all providers that received 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.

(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.

(i) Required Posting of Contract Awards. All contract awards made under the treatment method of procurement shall be posted to the internet no later than the seventh day after execution of a contract. The administrator may prescribe the format of the posting and the website to which it will be posted. Information posted shall include:

- (1) The name of the awardee;
- (2) The service title and list from which the provider was selected;
- (3) The amount awarded;
- (4) The start and end dates of the contract; and
- (5) The names of any other providers on the list that were contacted in conjunction with the procurement.

§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 select the provider from the appropriate list of qualified providers that is most advantageous based on the following factors:

- (1) Demonstrated competence for the type of treatment service required;
- (2) Qualification for the type of service required; and

(3) Fairness and reasonability of price, or other applicable cost factor.

(b) Negotiation of contract. The head of the purchasing agency, or a designee, shall negotiate a contract, 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 fail, then upon written notice of an impasse to the provider selected under section (a), the head of the purchasing agency may choose another provider from the list of qualified providers and conduct further negotiations.

### 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 clients or referral sources who may be contacted, including at least two for whom services were rendered

during the preceding year, as applicable;

- (5) Reports or descriptive materials which the applicant desires to submit;
- (6) Descriptive materials on organizational and service capability; and
- (7) Any additional information or materials deemed by the purchasing agency or 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) of this section.

#### SUBCHAPTER 4

#### ALLOWABLE COMMUNICATIONS

§§3-145-401 to 3-145-410 (Reserved).

#### SUBCHAPTER 5

#### EXPEDITING PROCEDURES

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

(b) Applicant bears responsibility for transmission. Applicants who submit statements of qualifications or amendments by telefacsimile transmission bear the whole and exclusive responsibility for assuring the complete, legible, and timely transmission of their documents to the

administrator. By opting to submit documents by telefacsimile transmission, applicants assume all risk that the administrator's telefacsimile receiver may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. For purposes of the submittal deadline, a statement of qualifications or amendment submitted via telefacsimile transmission shall be deemed to have been received when the last page of a complete, legible copy of the document has been received by the administrator.

(d) Requirement of a complete original. A statement of qualifications or amendment transmitted by telefacsimile shall be considered valid only if a complete original copy of the statement of qualifications is received by the administrator, and is post-marked by the second working day after the telefacsimile transmission.

§3-145-502 ~~Use of electronic mail for treatment purchase of service.~~ Electronic submission of statements of qualifications. (a) Statements of qualifications and amendments thereto may not be submitted to the administrator by electronic ~~mail means~~ except when such transmission is explicitly authorized in a solicitation for statements of qualifications.

(b) Applicant bears responsibility for transmission. Applicants who submit statements of qualification or amendments by electronic mail bear the whole and exclusive responsibility for assuring the complete, correctly-formatted, and timely transmission of their documents to the administrator. By opting to submit documents by electronic ~~mail means~~, applicants assume all risk that the administrator's computer system may be inoperative or otherwise unavailable at the time transmission is attempted.

(c) Time of receipt. For purposes of the submittal deadline, a statement of qualifications or amendment submitted via electronic ~~mail means~~ shall be

deemed to have been received upon [~~transmission~~]  
actual receipt of a correctly-formatted copy of the  
document by the administrator.

(d) Requirement of a complete original. A  
statement of qualifications or amendment transmitted  
by electronic ~~mail~~ means shall be considered valid  
only if a complete original copy of the statement of  
qualifications is received by the administrator, and  
is post-marked by the second working day after the  
electronic ~~mail~~ transmission.

## 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  
referencing the original statement of qualifications  
and either detailing the modification, or stating the  
intent to withdraw the statement. The applicant shall  
submit the notice in the same manner as provided in  
the public notice of solicitation.

§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. Notice of the rejection for late  
submission shall be given to the applicant, and the  
administrator shall discard the late submission thirty  
calendar days after its receipt. Before its disposal,  
the applicant may retrieve the late submission from  
the administrator.

§3-145-603 Disposition of rejected statements of

qualifications. Whenever a statement of qualifications is rejected under section 3-145-602, or section 3-141-201, or -202, the administrator may discard the rejected statement of qualifications thirty calendar days after its rejection. Before disposal, the applicant may retrieve the rejected statement of qualifications.

§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.

§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.

§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.
- (4) Restrictive Purchase of Services. The purchasing agency may make a restrictive purchase of services by following the procedures established under chapter 3-144.

§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.

§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) Annual reports of treatment purchase procurements. By the fifteenth day of August of each year, 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 for the immediately preceding fiscal year. The report shall be made in the format prescribed by the administrator.

(c) Annual consolidated report. By the first day of October of each year, the administrator shall make a 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.

STAND. COM. REP. NO.

3196

Honolulu, Hawaii

April 8, 2004

RE: H.B. No. 2136  
H.D. 1  
S.D. 1

Honorable Robert Bunda  
President of the Senate  
Twenty-Second State Legislature  
Regular Session of 2004  
State of Hawaii

Sir:

Your Committee on Transportation, Military Affairs, and Government Operations, to which was referred H.B. No. 2136, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this measure is to require that debarment or suspension of contractors from public procurement occur only after the effective date of adoption of administrative rules by the policy board, and to provide statutory guidelines for the decision by the chief procurement officer to consider when debarring a contractor.

Prior to holding a hearing on this measure, a proposed S.D. 1 was prepared and made available for public review. In that form, it added:

- (1) A procurement exemption for incorporation or registration of law firms offering legal services to the Attorney General when contracting for specialized legal services; and
- (2) Repeal of statutory exemptions from chapter 103D, Hawaii Revised Statutes (HRS).

Testimony in support of the amended measure was received from the Department of Accounting and General Services, Coalition of

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Hawaii Engineering & Architectural Professionals, General Contractors Association of Hawaii, American Institute of Architects - Hawaii State Council, American Public Works Association Hawaii Chapter, Pacific Structural Consultants, Inc., American Council of Engineering Companies of Hawaii, and Paul Louie & Associates, Inc. Testimony in opposition was received from the University of Hawaii, Hawaii Tourism Authority, and Research Corporation of the University of Hawaii. Comments were received from the State Procurement Office.

Your Committee agrees with the Attorney General that out-of-state law firms have difficulty under current procurement law to contract with the Attorney General to handle cases requiring specialized expertise. The difficulty is the general requirement that all offerors be incorporated or organized under Hawaii law or be registered to do business in Hawaii. The amended measure addresses this problem by carving a narrow exemption for the Attorney General to allow the hiring of legal services for which no comparable services are available in the State.

Your Committee finds that the amended measure, along with clarifications in the debarment process, and repeal of exemptions to chapter 103D, HRS, relating to the Hawaii Procurement Code, by state agencies, will result in advantages in procurement of goods, services, and construction by the citizens of this State. Equally as important, the basis for improving trust in government will be enhanced.

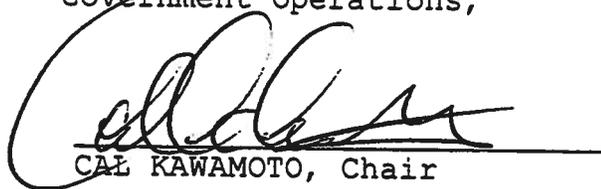
Your Committee has amended this measure by adopting the changes in the proposed S.D 1, and clarifying that the procuring officer verify compliance in certain instances with the requirement that the offeror be incorporated or organized under Hawaii law or be registered to do business in Hawaii.

As affirmed by the record of votes of the members of your Committee on Transportation, Military Affairs, and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2136, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2136, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.



3196

Respectfully submitted on  
behalf of the members of the  
Committee on Transportation,  
Military Affairs, and  
Government Operations,

  
CAL KAWAMOTO, Chair



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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

PART I

SECTION 1. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of the summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause."

SECTION 2. Section 103D-702, Hawaii Revised Statutes, is amended to read as follows:

"§103D-702 **Authority to debar or suspend.** (a) After reasonable notice to the person involved and reasonable



1 opportunity for that person to be heard, the chief procurement  
2 officer, after consultation with the using agency and the  
3 attorney general or corporation counsel, may debar a person for  
4 cause from consideration for award of all public contracts and  
5 from performance on any public contract. The serious nature of  
6 debarment and suspension requires that these sanctions be  
7 imposed only in the public interest for a governmental body's  
8 protection and not for the purpose of punishment. An agency  
9 shall impose debarment or suspension to protect a governmental  
10 body's interests and only for causes and in accordance with this  
11 section. The debarment period shall not exceed three years.  
12 The same officer, after consultation with the using agency and  
13 the attorney general or corporation counsel, may suspend a  
14 person from consideration for award of all public contracts and  
15 from performance on any public contract if there is probable  
16 cause for debarment. The suspension period shall not exceed  
17 three months. The authority to debar or suspend shall be  
18 exercised in accordance with the procedures prescribed by rules  
19 adopted by the policy board[-] and shall be applied only to  
20 causes, convictions, and violations under subsection (b) after  
21 the effective date of the rules adopted by the policy board.





1 (B) A recent record of failure to perform or of  
2 unsatisfactory performance in accordance with the  
3 terms of one or more contracts; provided that  
4 failure to perform or unsatisfactory performance  
5 caused by acts beyond the control of the  
6 contractor shall not be considered to be a basis  
7 for debarment;

8 (5) Any other cause the chief procurement officer  
9 determines to be so serious and compelling as to  
10 affect responsibility as a contractor, including  
11 debarment by another governmental entity for any cause  
12 listed in the rules of the policy board; and

13 (6) Violation of the ethical standards set forth in  
14 chapter 84 and its implementing rules, or the charters  
15 and ordinances of the several counties and their  
16 implementing rules.

17 (c) The existence of a cause for debarment, however, does  
18 not necessarily require that the contractor be debarred. The  
19 seriousness of the contractor's acts or omissions and any  
20 remedial measure or mitigating factors shall be considered in  
21 making any debarment decision. Before arriving at any debarment

1 decision, the chief procurement officer shall consider factors  
2 such as the following:

3 (1) Whether the contractor had effective standards of  
4 conduct and internal control systems in place at the  
5 time of the activity constituting cause for debarment  
6 or had adopted those procedures prior to any  
7 government investigation of the activity cited as the  
8 cause of debarment;

9 (2) Whether the contractor brought the activity cited as  
10 the cause for debarment to the attention of the  
11 appropriate government agency in a timely manner;

12 (3) Whether the contractor fully investigated the  
13 circumstances surrounding the cause of debarment and  
14 made the result of the investigation available to the  
15 chief procurement officer;

16 (4) Whether the contractor cooperated fully with  
17 government agencies during the investigation and any  
18 court or administrative action;

19 (5) Whether the contractor has paid or has agreed to pay  
20 all criminal, civil, and administrative liability for  
21 improper activity, including any investigative or  
22 administrative costs incurred by the governmental



1 shall not necessarily be determinative of a contractor's present  
2 responsibility. If a cause for debarment exists, the contractor  
3 has the burden of demonstrating, to the satisfaction of the  
4 chief procurement officer, the contractor's present  
5 responsibility and that debarment is not necessary.

6 [~~e~~] (d) The chief procurement officer shall issue a  
7 written decision to debar or suspend. The decision shall:

- 8 (1) State the reasons for the action taken; and  
9 (2) Inform the debarred or suspended person involved of  
10 the person's rights to review as provided in this  
11 part.

12 [~~d~~] (e) A copy of the decision under subsection [~~e~~]  
13 (d) shall be mailed or otherwise furnished immediately to the  
14 debarred or suspended person and any other party intervening.

15 [~~e~~] (f) The chief procurement officer shall transmit a  
16 copy of the decision to debar or suspend a contractor to the  
17 state procurement office, which shall distribute a list to all  
18 governmental bodies containing the names of persons or firms  
19 debarred or suspended from consideration for award of all public  
20 contracts and from performance on any public contract.

21 [~~f~~] (g) Upon written notification under subsection  
22 [~~e~~], (f), the chief procurement officer shall make a written

1 determination whether to allow the debarred or suspended person  
2 or firm to continue performance on any contract awarded prior to  
3 the effective date of the debarment or suspension.

4 ~~[(e)]~~ (h) A decision under subsection ~~[(e)]~~ (d) shall be  
5 final and conclusive, unless the debarred or suspended person  
6 commences an administrative proceeding under section 103D-709."

7 PART II

8 SECTION 3. In 2003, section 103D-310, Hawaii Revised  
9 Statutes, entitled "responsibility of offerors," was amended to  
10 require state contractors to be incorporated or organized under  
11 the laws of the State or registered to do business in the State  
12 as a separate branch or division, and to comply with all of the  
13 laws governing entities doing business in Hawaii.

14 While the amendments were made to put all who seek public  
15 contracts for goods, services, and construction on equal  
16 footing, they have had the unanticipated effect of preventing  
17 the State from retaining out-of-state lawyers with expertise  
18 the State needs to protect its interests. Law firms and  
19 attorneys from outside the State who are not presently  
20 registered or interested in registering to do business in  
21 Hawaii will not set up and staff a branch office in Hawaii to  
22 presently satisfy the requirements of the State's unemployment



1 insurance, workers compensation, temporary disability, and  
2 prepaid health laws. Thus, recently, when legal expertise  
3 necessary to protect the interests of the State was not  
4 available in the department of the attorney general or from the  
5 local private bar, the attorney general was able to contract  
6 for those legal services from an out-of-state attorney with the  
7 needed expertise only after the chief procurement officer  
8 granted the attorney general's request to exempt the contract  
9 from the procurement code altogether.

10 The purpose of this part is to authorized the attorney  
11 general to waive the requirements of section 103D-310(c),  
12 Hawaii Revised Statutes, to protect the legal interests of the  
13 State, officials, or its agencies. This part would ensure that  
14 the State's intent to place all who are interested in  
15 contracting with the State and counties on an equal footing  
16 does not deprived the State of any legal expertise it may need.

17 SECTION 4. Section 103D-310, Hawaii Revised Statutes, is  
18 amended by amending subsection (c) to read as follows:

19 "(c) All offerors, upon award of contract, shall comply  
20 with all laws governing entities doing business in the State,  
21 including chapters 237, 383, 386, 392, and 393, and shall:



1 case-by-case basis, an exemption when it has been determined  
2 that procurement by competitive means is either not practicable  
3 or not advantageous to the State. Requirements for exemptions  
4 should be addressed within the provisions of the procurement  
5 code by the procurement policy board. Accordingly, this part  
6 repeals statutory exemptions from chapter 103D.

7 SECTION 6. Section 36-35, Hawaii Revised Statutes, is  
8 amended by amending subsection (e) to read as follows:

9 "(e) The expenditure of funds for any project with an  
10 estimated total cost of less than \$100,000 shall be exempt from  
11 [~~chapter 103D and~~] section 464-4; provided that:

12 (1) The comptroller shall develop internal policies and  
13 procedures for the procurement of goods, services, and  
14 construction, consistent with the goals of public  
15 accountability and public procurement practices[, ~~but~~  
16 ~~not subject to chapter 103D. However, where possible,~~  
17 ~~the comptroller is encouraged to use the provisions of~~  
18 ~~chapter 103D; provided that the use of one or more~~  
19 ~~provisions of chapter 103D shall not constitute a~~  
20 ~~waiver of the exemption of chapter 103D and shall not~~  
21 ~~subject the comptroller to any other provision of~~  
22 ~~chapter 103D];~~





1 SECTION 7. Section 39A-32, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§39A-32 Department powers as to health care facilities.**

4 In addition to powers which it may now have, the department  
5 shall have all powers necessary or convenient to accomplish the  
6 purposes of this part. The powers of the department include,  
7 but are not limited to, the following:

8 (1) Notwithstanding and without compliance with section  
9 103-7 [~~and chapter 103D~~], but with the approval of the  
10 governor, to enter into and carry out a project  
11 agreement, or an amendment or supplement to an  
12 existing project agreement, with a project party, and  
13 to enter into and carry out any agreement whereby the  
14 obligation of a project party under a project  
15 agreement will be unconditionally guaranteed by a  
16 person other than a project party.

17 (2) To issue special purpose revenue bonds pursuant to and  
18 in accordance with this part.

19 (3) To lend the proceeds of the special purpose revenue  
20 bonds issued for a project to the project party for  
21 use and application by the project party for the  
22 acquisition, purchase, construction, reconstruction,





1 a project agreement or related agreement theretofore  
2 approved by the governor.

3 (6) To do any and all things necessary or convenient to  
4 carry out its purposes and exercise the powers given  
5 and granted in this part.

6 When the department finances or refinances a project by the  
7 issuance of special purpose revenue bonds as contemplated by  
8 this part, the State shall not exercise the power of eminent  
9 domain to acquire a project or any part thereof for lease or  
10 transfer to a project party, nor shall the State operate a  
11 project on behalf of a project party."

12 SECTION 8. Section 39A-72, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§39A-72 Department powers as to manufacturing**  
15 **enterprises.** In addition to powers which it may now have, the  
16 department shall have all powers necessary or convenient to  
17 accomplish the purposes of this part. The powers of the  
18 department include, but are not limited to, the following:

19 (1) Notwithstanding and without compliance with section  
20 103-7 [~~and chapter 103D~~], but with the approval of the  
21 governor, to enter into and carry out a project  
22 agreement, or an amendment or supplement to an

1 existing project agreement, with a project party, and  
2 to enter into and carry out any agreement whereby the  
3 obligation of a project party under a project  
4 agreement will be unconditionally guaranteed by a  
5 person other than a project party.

6 (2) To issue special purpose revenue bonds pursuant to and  
7 in accordance with this part.

8 (3) To lend the proceeds of the special purpose revenue  
9 bonds issued for a project to the project party for  
10 use and application by the project party for the  
11 acquisition, purchase, construction, reconstruction,  
12 improvement, betterment, extension, or maintenance of  
13 a project.

14 (4) As security for the payment of the principal of,  
15 premium, if any, and interest of the special purpose  
16 revenue bonds issued for a project, to pledge, assign,  
17 hypothecate, or otherwise encumber all or any part of  
18 the revenues and receipts derived or to be derived by  
19 the department under the project agreement for the  
20 project for which such bonds are issued; to pledge and  
21 assign the interest and rights of the department under  
22 the project agreement or other agreement with respect



- 1           (1) Notwithstanding and without compliance with section  
2           103-7[~~and chapter 103D~~], but with the approval of the  
3           governor, to enter into and carry out a project  
4           agreement, or an amendment or supplement to an  
5           existing project agreement, with a project party, and  
6           to enter into and carry out any agreement whereby the  
7           obligation of a project party under a project  
8           agreement will be unconditionally guaranteed by a  
9           person other than a project party.
  
- 10          (2) To issue special purpose revenue bonds pursuant to and  
11          in accordance with this part.
  
- 12          (3) To lend the proceeds of the special purpose revenue  
13          bonds issued for a project to the project party for  
14          use and application by the project party for the  
15          acquisition, purchase, construction, reconstruction,  
16          improvement, betterment, extension, or maintenance of  
17          a project.
  
- 18          (4) As security for the payment of the principal of,  
19          premium, if any, and interest of the special purpose  
20          revenue bonds issued for a project, to pledge, assign,  
21          hypothecate, or otherwise encumber all or any part of  
22          the revenues and receipts derived or to be derived by

1           (2) With the approval of the governor, issue special  
2           facility revenue bonds in principal amounts that may  
3           be necessary to yield the amount of the cost of any  
4           acquisition, construction, improvement, installation,  
5           equipping, and development of any special facility,  
6           including, subject to paragraph (6) the costs of  
7           acquisition of the site thereof; provided that the  
8           total principal amount of the special facility revenue  
9           bonds which may be issued pursuant to the  
10          authorization of this section shall not exceed  
11          \$100,000,000;

12          (3) With the approval of the governor, issue refunding  
13          special facility revenue bonds with which to provide  
14          for the payment of outstanding special facility  
15          revenue bonds (including any special facility revenue  
16          bonds theretofore issued for this refunding purpose)  
17          or any part thereof; provided any issuance of  
18          refunding special facility revenue bonds shall not  
19          reduce the principal amount of the bonds that may be  
20          issued as provided in paragraph (2);

21          (4) Perform and carry out the terms and provisions of any  
22          special facility lease;



- 1        [~~+3~~] (2) With the approval of the governor, issue
- 2                refunding special facility revenue bonds with which to
- 3                provide for the payment of outstanding special
- 4                facility revenue bonds (including any special facility
- 5                revenue bonds theretofore issued for this purpose) or
- 6                any part thereof; provided any issuance of refunding
- 7                special facility revenue bonds shall not reduce the
- 8                principal amount of the bonds which may be issued as
- 9                provided in paragraph (2);
  
- 10       [~~+4~~] (3) Perform and carry out the terms and provisions of
- 11                any special facility lease;
  
- 12       [~~+5~~] (4) Notwithstanding section 103-7 or any other law to
- 13                the contrary, acquire, construct, or remodel and
- 14                furnish or equip any special facility, or accept the
- 15                assignment of any contract therefor entered into by
- 16                the other person to the special facility lease;
  
- 17       [~~+6~~] (5) Construct any special facility on land owned by
- 18                the State; provided that no funds derived herein will
- 19                be expended for land acquisition; and
  
- 20       [~~+7~~] (6) Agree with the other person to the special
- 21                facility lease whereby any acquisition, construction,
- 22                remodeling, furnishing, or equipping of the special



1 shall not exceed the amount of funds available for the project;  
2 provided further that if the agreement is with a nonbidder, the  
3 scope of the project under agreement shall remain the same as  
4 that for which bids were originally requested."

5 SECTION 24. Section 201G-114, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§201G-114[+] **Additional powers; development.**

8 Notwithstanding and without compliance with section 103-7[~~and~~  
9 ~~chapter 103D~~] but with the approval of the governor, the  
10 corporation may enter into and carry out agreements and  
11 undertake projects or participate in projects authorized by this  
12 chapter. The powers conferred upon the corporation by this  
13 subpart shall be in addition and supplemental to the powers  
14 conferred upon it by part I and any other law, and nothing  
15 herein shall be construed as limiting any powers, rights,  
16 privileges, or immunities so conferred upon it."

17 SECTION 25. Section 201G-455, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[+]§201G-455[+] **Program administration.** To the extent  
20 that appropriations are made available, the corporation may  
21 contract with a provider agency to administer homeless  
22 facilities, or any other program for the homeless created by

1 a qualified person or other user of a project or a project  
2 agreement or other agreements related to a project shall not be  
3 exempt from taxation to a greater extent than it would be if the  
4 costs of the project were directly financed by the qualified  
5 person or user.

6 ~~[(b) The authority shall not be subject to chapter 103D  
7 and any and all other requirements of law for competitive  
8 bidding for project agreements, construction contracts, lease  
9 and sublease agreements, or other contracts unless a project  
10 agreement with respect to a project otherwise shall require.]~~"

11 SECTION 23. Section 201G-13, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§201G-13 Development of property; additional powers.**

14 Notwithstanding any provision to the contrary, whenever the bids  
15 submitted for any development or rehabilitation project  
16 authorized pursuant to subparts A, B, G, and H of part II exceed  
17 the amount of funds available for that project, the corporation,  
18 with the approval of the governor, may disregard the bids and  
19 enter into an agreement to carry out the project, or undertake  
20 the project or participate in the project under the agreement,  
21 ~~[without regard to chapter 103D,]~~ provided that the total cost  
22 of the agreement and the corporation's participation, if any,



1 also appoint such other employees exempt from chapter 76 as may  
2 be necessary to administer the affairs of its out-of-state  
3 offices. The initial appointment shall not exceed three years,  
4 during which time the department shall submit to the legislature  
5 a request for approval prior to continuation of the position.

6 The department shall set the duties, responsibilities, salaries,  
7 holidays, vacations, leaves, hours of work, and working  
8 conditions for these employees. Subject to the approval of the  
9 director of budget and finance, the department may be exempted  
10 from the following state laws only to the extent necessary for  
11 the conduct of its business in operating out-of-state offices:

12 (1) Sections 36-27 and 36-30, relating to special fund  
13 transfers and reimbursements to the general fund;

14 [~~(2) Chapter 103D, relating to advertising for bids and~~  
15 ~~purchases to be made in Hawaii whenever public moneys~~  
16 ~~are expended;~~]

17 [~~(3)~~] (2) Chapter 36, relating to management of state  
18 funds;

19 [~~(4)~~] (3) Chapter 38, relating to deposits of public funds;

20 [~~(5)~~] (4) Chapter 40, relating to audit and accounting,  
21 except that the department shall comply with section  
22 40-81;

1 of the comptroller and the director of finance. Notwithstanding  
 2 section 196-21 or section 36-41, the comptroller or the senior  
 3 agency official of the department of accounting and general  
 4 services, along with the director of finance, may exempt a state  
 5 energy project from the advertising and competitive bidding  
 6 requirements of section 196-21 or section 36-41 and chapter[s]  
 7 103[~~and 103D~~], if the comptroller deems exemption appropriate  
 8 for energy projects with proprietary technology or necessary to  
 9 meet the goals of the legislature. In addition, this section  
 10 shall be construed to provide the greatest possible flexibility  
 11 to agencies in structuring agreements entered into so that  
 12 economic benefits and existing energy incentives may be used and  
 13 maximized and financing and other costs to agencies may be  
 14 minimized. The specific terms of energy performance contracting  
 15 under section 36-41 may be altered if deemed advantageous to the  
 16 agency and approved by the director of finance and the senior  
 17 agency official."

18 SECTION 21. Section 201-85, Hawaii Revised Statutes, is  
 19 amended to read as follows:

20 "§201-85 Exemptions. The department is authorized to hire  
 21 employees necessary to staff its out-of-state offices subject to  
 22 chapter 76 and legislative appropriations. The department may

1 (4) No investment, loan, or use of funds by the  
2 corporation or a subsidiary corporation vested with  
3 the assets shall be subject to chapter 42D, 42F, or  
4 103[~~, or 103D~~]; and

5 (5) Neither the corporation nor a subsidiary corporation  
6 vested with the assets shall constitute a public  
7 utility or be subject to the jurisdiction of the  
8 public utilities commission under chapter 269."

9 SECTION 18. Section 163D-15.5, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11 "(b) No expenditure, use, or transfer of funds from the  
12 Waiahole water system revolving fund by the corporation shall be  
13 subject to chapter 42D, 42F, or 103[~~, or 103D~~]."

14 SECTION 19. Section 163D-17, Hawaii Revised Statutes, is  
15 amended by amending subsection (f) to read as follows:

16 "(f) No investment, loan, grant, or use of corporate funds  
17 for the purposes of this chapter shall be subject to chapter  
18 42F[~~, or 103D~~]."

19 SECTION 20. Section 196-22, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+]§196-22[+] **State energy projects.** State energy  
22 projects may be implemented under this chapter with the approval

1 (G) To make periodic, recurring payments for utility  
2 services;

3 (6) Rent for the use or occupation of the premises and  
4 facilities at Aloha Stadium, the convention center, or  
5 any other state or county large spectator events  
6 facility; and

7 (7) Contracts or agreements entered into pursuant to  
8 chapter 102[~~;~~ and

9 ~~(8) Requirements of chapter 103D]."~~

10 SECTION 17. Section 163D-6, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) If the corporation acquires the assets of a private  
13 or other corporation, then, notwithstanding any law to the  
14 contrary:

15 (1) Neither the corporation nor any subsidiary corporation  
16 vested with the assets shall be subject to chapter 91  
17 with respect to the assets;

18 (2) Employees retained to operate the assets shall not be  
19 subject to chapter 76;

20 (3) Assets constituting real property interest shall not  
21 be subject to chapter 171;



1       ~~[-8-]~~ (7)   Establish health benefits plan and long-term care  
2                   benefits plan rates that include administrative and  
3                   other expenses necessary to effectuate the purposes of  
4                   the fund; and

5       ~~[-9-]~~ (8)   Require any department, agency, or employee of  
6                   the State or counties to furnish information to the  
7                   board to carry out the purposes of this chapter."

8       SECTION 16.   Section 103-53, Hawaii Revised Statutes, is  
9   amended by amending subsection (e) to read as follows:

10       "(e)   This section shall not apply to:

11       (1)   Any procurement of less than \$25,000 or is considered  
12           a small purchase under section 103D-305 and any state  
13           or county department contract of less than \$25,000;

14       (2)   Emergency purchases for the procurement of goods,  
15           services, or construction under section 103D-307,  
16           disaster relief under chapter 127, or a civil defense  
17           emergency under chapter 128;

18       (3)   Grants and subsidies disbursed by a state agency  
19           pursuant to chapter 42D or in accordance with  
20           standards provided by law as required by article VII,  
21           section 4, of the State Constitution, or made by the





- 1 (2) Employee-beneficiary in-law parents and grandparents;
- 2 and
- 3 (3) Qualified-beneficiaries who enroll between the ages of
- 4 twenty and eighty-five,
- 5 who comply with the plan's age, enrollment, medical
- 6 underwriting, and contribution requirements.

7 ~~[(c) Without regard to chapter 103D, the board may~~  
 8 ~~contract with a carrier to provide fully insured benefits or~~  
 9 ~~with a third party administrator to administer self insured~~  
 10 ~~benefits.]"~~

11 SECTION 14. Section 87A-20, Hawaii Revised Statutes, is  
 12 repealed.

13 ~~"[§87A-20] Selection of benefits plan carriers or third-~~  
 14 ~~party administrators. Procurement of a carrier or third party~~  
 15 ~~administrator for any benefits plan shall be exempt from chapter~~  
 16 ~~103D."]~~

17 SECTION 15. Section 87A-24, Hawaii Revised Statutes, is  
 18 amended read as follows:

19 "[+]§87A-24[+] **Other powers.** In addition to the power to  
 20 administer the fund, the board may:

- 21 (1) Collect, receive, deposit, and withdraw money on
- 22 behalf of the fund;







1 renewal or extension shall be subject to the approval  
2 of the governor unless made in accordance with  
3 provisions for such extension or renewal contained in  
4 a project agreement or related agreement theretofore  
5 approved by the governor; and

6 (6) To do any and all things necessary or convenient to  
7 carry out its purposes and exercise the powers given  
8 and granted in this part.

9 When the department finances an energy project by the issuance  
10 of special purpose revenue bonds as contemplated by this part,  
11 the State shall not exercise the power of eminent domain to  
12 acquire an energy project or any part thereof for lease or  
13 transfer to a project party, nor shall the State operate a  
14 project on behalf of a project party."

15 SECTION 12. Section 41D-2, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§41D-2 Responsibilities of the comptroller.** (a) The  
18 comptroller, through the risk manager, shall:

19 (1) Have discretion to purchase casualty insurance for the  
20 State or state agencies, including those employees of  
21 the State who, in the comptroller's discretion, may be

- 1           (3) To lend the proceeds of the special purpose revenue  
2           bonds issued for an energy project to the project  
3           party for use and application by the project party for  
4           the acquisition, purchase, construction,  
5           reconstruction, improvement, betterment, or extension  
6           of an energy project;
  
- 7           (4) As security for the payment of the principal of and  
8           interest on the special purpose revenue bonds issued  
9           for an energy project, to pledge, assign, hypothecate,  
10          or otherwise encumber all or any part of the revenues  
11          and receipts derived or to be derived by the  
12          department under the project agreement for the energy  
13          project for which such bonds are issued; to pledge and  
14          assign the interest and rights of the department under  
15          the project agreement or other agreement with respect  
16          to such project or such special purpose revenue bonds;  
17          and to pledge and assign any bond, debenture, note, or  
18          other evidence of indebtedness received by the  
19          department with respect to such energy project; or any  
20          combination of the foregoing;
  
- 21          (5) To extend or renew any project agreement or any other  
22          agreement related thereto; provided that any such





- 1           (4) As security for the payment of the principal of,  
2           premium, if any, and interest of the special purpose  
3           revenue bonds issued for a project, to pledge, assign,  
4           hypothecate, or otherwise encumber all or any part of  
5           the revenues and receipts derived or to be derived by  
6           the department under the project agreement for the  
7           project for which such bonds are issued; to pledge and  
8           assign the interest and rights of the department under  
9           the project agreement or other agreement with respect  
10          to such project or such special purpose revenue bonds;  
11          and to pledge and assign any bond, debenture, note, or  
12          other evidence of indebtedness received by the  
13          department with respect to such project; or any  
14          combination of the foregoing.
- 15          (5) To extend or renew any project agreement or any other  
16          agreement related thereto; provided that any such  
17          renewal or extension shall be subject to the approval  
18          of the governor unless made in accordance with  
19          provisions for such extension or renewal contained in  
20          a project agreement or related agreement theretofore  
21          approved by the governor.

1           **"§39A-152 Department powers as to industrial enterprises.**

2   In addition to powers which it may now have, the department  
3   shall have all powers necessary or convenient to accomplish the  
4   purposes of this part. The powers of the department include, but  
5   are not limited to, the following:

- 6           (1) Notwithstanding and without compliance with section  
7           103-7 [~~and chapter 103D~~], but with the approval of the  
8           governor, to enter into and carry out a project  
9           agreement, or an amendment or supplement to an  
10          existing project agreement, with a project party, and  
11          to enter into and carry out any agreement whereby the  
12          obligation of a project party under a project  
13          agreement will be unconditionally guaranteed by a  
14          person other than a project party.
- 15          (2) To issue special purpose revenue bonds pursuant to and  
16          in accordance with this part.
- 17          (3) To lend the proceeds of the special purpose revenue  
18          bonds issued for a project to the project party for  
19          use and application by the project party for the  
20          acquisition, purchase, construction, reconstruction,  
21          improvement, betterment, extension, or maintenance of  
22          a project.



1 the department under the project agreement for the  
 2 project for which such bonds are issued; to pledge and  
 3 assign the interest and rights of the department under  
 4 the project agreement or other agreement with respect  
 5 to such project or such special purpose revenue bonds;  
 6 and to pledge and assign any bond, debenture, note, or  
 7 other evidence of indebtedness received by the  
 8 department with respect to such project; or any  
 9 combination of the foregoing.

10 (5) To extend or renew any project agreement or any other  
 11 agreement related thereto; provided that any such  
 12 renewal or extension shall be subject to the approval  
 13 of the governor unless made in accordance with  
 14 provisions for such extension or renewal contained in  
 15 a project agreement or related agreement theretofore  
 16 approved by the governor.

17 (6) To do any and all things necessary or convenient to  
 18 carry out its purposes and exercise the powers given  
 19 and granted in this part."

20 SECTION 10. Section 39A-152, Hawaii Revised Statutes, is  
 21 amended to read as follows:

1 (5) Notwithstanding section 103-7 or any other law to the  
2 contrary, acquire, construct, improve, install, equip  
3 or develop any special facility, or accept the  
4 assignment of any contract therefor entered into by  
5 the other party to the special facility lease; and

6 (6) Construct any special facility on land owned by the  
7 State; provided that no funds derived herein shall be  
8 expended for land acquisition[; ~~and~~

9 ~~(7) Agree with the other party to the special facility~~  
10 ~~lease whereby any acquisition, construction,~~  
11 ~~improvement, installation, equipping, or development~~  
12 ~~of the special facility and the expenditure of moneys~~  
13 ~~therefor shall be undertaken or supervised by another~~  
14 ~~person. Neither the undertaking by the other person~~  
15 ~~nor the acceptance by the development corporation of a~~  
16 ~~contract theretofore entered into by the other person~~  
17 ~~therefor, shall be subject to chapter 103D]."~~

18 SECTION 29. Section 227D-7, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20 "(b) The authority shall not be subject to any requirement  
21 of law for competitive bidding, including the requirements of  
22 [~~chapters] chapter 103 [~~and 103D] for project agreements,~~~~

1 construction contracts, retail concession or tour-related  
2 contracts, or other contracts unless a project agreement with  
3 respect to a project or research and technology park shall  
4 require otherwise."

5 SECTION 30. Section 245-23, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "~~[[~~§245-23~~]]~~ **Department to furnish stamps; designs,**  
8 **specifications, and denominations; procurement.** The department  
9 shall furnish stamps for sale to licensees. Stamps shall be of  
10 such designs, specifications, and denominations as may be  
11 prescribed by the department. ~~[Purchase by the department of~~  
12 ~~stamps from a vendor shall be exempt from the requirements of~~  
13 ~~chapter 103D.]"~~

14 SECTION 31. Section 255D-4, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "~~[[~~§255D-4~~]]~~ **Authority to enter agreement.** The  
17 department may enter into the streamlined sales and use tax  
18 agreement with one or more states to simplify and modernize  
19 sales and use tax administration to substantially reduce the  
20 burden of tax compliance for all sellers and for all types of  
21 commerce. In furtherance of the agreement, the department may  
22 act jointly with other states that are members of the agreement

1 to establish standards for certification of a certified service  
2 provider and certified automated system and establish  
3 performance standards for multistate sellers. The department  
4 may take other actions reasonably required to implement this  
5 section. Other actions authorized by this section include but  
6 are not limited to the adoption of rules not subject to chapter  
7 91[~~and the joint procurement not subject to chapter 103D~~], with  
8 other member states, of goods and services in furtherance of the  
9 cooperative agreement. The department, or the department's  
10 designee, may represent this State before the other states that  
11 are signatories to the agreement."

12 SECTION 32. Section 261-52, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§261-52 Powers.** In addition and supplemental to the  
15 powers granted to the department by law, the department may:

16 [~~(1) With the approval of the governor, and without public~~  
17 ~~bidding, enter into a special facility lease or an~~  
18 ~~amendment or supplement thereto whereby the department~~  
19 ~~agrees to construct, acquire, or remodel and furnish~~  
20 ~~or equip a special facility solely for the use by~~  
21 ~~another person to a special facility lease;~~







1 equipping of any special facility; provided that  
2 the total principal amount of the special  
3 facility revenue bonds which may be issued  
4 pursuant to the authorization of this  
5 subparagraph shall not exceed \$100,000,000; and

6 (B) Issue special facility revenue refunding bonds,  
7 without further authorization by the legislature,  
8 to refund outstanding special facility revenue  
9 bonds, including special facility revenue  
10 refunding bonds, or any part thereof, at or  
11 before the maturity or redemption date, issued  
12 pursuant to this part; provided that any issuance  
13 of the refunding bonds shall not reduce the  
14 amount authorized by the legislature as provided  
15 in paragraph (2) (A) ~~[+]~~;

16 (3) Perform and carry out the terms and provisions of any  
17 special facility lease ~~[+]~~;

18 (4) Notwithstanding section 103-7 or any other law to the  
19 contrary, acquire, construct, remodel, furnish, or  
20 equip any special facility, or accept the assignment  
21 of any contract therefor entered into by the other  
22 person to the special facility lease ~~[+]~~; and

1 (5) Construct any special facility on land owned by the  
2 State.

3 [~~6~~] ~~Agree with the other person to the special facility~~  
4 ~~lease whereby any acquisition, construction,~~  
5 ~~remodeling, furnishing, or equipping of the special~~  
6 ~~facility and the expenditure of moneys therefor shall~~  
7 ~~be undertaken or supervised by such other person.~~  
8 ~~Neither such undertaking by such other person nor the~~  
9 ~~acceptance by the department of a contract theretofore~~  
10 ~~entered into by such other person therefor, shall be~~  
11 ~~subject to chapter 103D.]"~~

12 SECTION 34. Section 302A-415 is amended to read as  
13 follows:

14 "~~[[~~§302A-415~~]]~~ **Motor vehicles for driving instruction;**  
15 **purchase and sale.** [~~Chapter 103D to the contrary~~  
16 ~~notwithstanding, the]~~ The department may enter into agreements  
17 with any dealer or company for the purchase of motor vehicles  
18 for driving instruction in the public schools if the agreements  
19 provide that the department pay \$1 for each motor vehicle, take  
20 title thereto in the name of the State, and agree to resell it  
21 to the seller for \$1 within sixty days following the last day of  
22 the school year. In the event of the seller's failure to

1 repurchase, the department may retain the motor vehicle or  
2 dispose of it in accordance with rules adopted under chapter  
3 91."

4 SECTION 35. Section 304-4, Hawaii Revised Statutes, is  
5 amended by amending subsection (d) to read as follows:

6 "(d) The board shall develop internal policies and  
7 procedures for the procurement of goods, services, and  
8 construction, consistent with the goals of public accountability  
9 and public procurement practices [~~but not subject to chapter~~  
10 ~~103D~~]. However, where possible, the board is encouraged to use  
11 the provisions of chapter 103D; provided that the use of one or  
12 more provisions of chapter 103D shall not constitute a waiver of  
13 the exemption of chapter 103D and shall not subject the board to  
14 any other provision of chapter 103D."

15 SECTION 36. Section 304-8.94, Hawaii Revised Statutes, is  
16 amended as follows:

17 "[+]§304-8.94[+] **Conference center revolving fund.** There  
18 is established a revolving fund for the conference center  
19 program in the college of continuing education and community  
20 service of the University of Hawaii, Manoa campus. All fees,  
21 charges, and other moneys collected in conjunction with the  
22 conference center program shall be deposited in the revolving



1       ~~[(2) Chapter 103D and section 103-42, relating to~~  
 2       ~~advertising for bids and purchases to be made in~~  
 3       ~~Hawaii whenever public moneys are expended;~~  
 4       ~~+(3)]~~ (2) Chapter 76, relating to civil service; and  
 5       ~~[(4)]~~ (3) Section 78-1, relating to public employment."

6       SECTION 38. Section 329-58, Hawaii Revised Statutes, is  
 7       amended to read as follows:

8       "**§329-58 Education and research.** ~~[(a)]~~ The department of  
 9       public safety shall carry out educational programs designed to  
 10      prevent and determine misuse and abuse of controlled substances.  
 11      In connection with these programs it may:

12      (1) Promote better recognition of the problems of misuse  
 13      and abuse of controlled substances within the  
 14      regulated industry and among interested groups and  
 15      organizations;

16      (2) Assist the regulated industry and interested groups  
 17      and organizations in contributing to the reduction of  
 18      misuse and abuse of controlled substances;

19      (3) Consult with interested groups and organizations to  
 20      aid them in solving administrative and organizational  
 21      problems;



1        [~~(d)~~] (c) The department of public safety may authorize  
2 the possession and distribution of controlled substances by  
3 persons engaged in research. Persons who obtain this  
4 authorization are exempt from state prosecution for possession  
5 and distribution of controlled substances to the extent of the  
6 authorization."

7        SECTION 39. Section 354D-4, Hawaii Revised Statutes, is  
8 amended to read as follows:

9        "**§354D-4 Powers and duties of the director.** Under the  
10 supervision of the director or the director's designee, the  
11 administrator of the correctional industries program shall:

- 12        (1) Develop programs generating revenue that best sustains  
13 their operation and allows for capital investment, and  
14 reimburses the general fund, when possible, for the  
15 expense of correctional services;
- 16        (2) Develop programs providing the maximum level of work  
17 and training opportunities for qualified, able-bodied  
18 inmates;
- 19        (3) Develop programs assuming responsibility for training  
20 qualified, able-bodied inmates in general work and  
21 specific training skills that increase their  
22 employment prospects after release;





1 disbursements shall be in accordance with chapters 103D and  
2 103F."

3 SECTION 42. Section 412:12-108, Hawaii Revised Statutes,  
4 is amended by amending subsection (d) to read as follows:

5 "(d) The commissioner may enter into contracts with any  
6 bank supervisory agency that has concurrent jurisdiction over a  
7 Hawaii state bank or an out-of-state state bank operating a  
8 branch in this State pursuant to this article to engage the  
9 services of the agency's examiners at a reasonable rate of  
10 compensation, or to provide the services of the commissioner's  
11 examiners to the agency at a reasonable rate of compensation.

12 ~~[Any contract executed under this section shall be exempt from~~  
13 ~~the requirements of chapter 103D.]"~~

14 SECTION 43. Section 412:13-224, Hawaii Revised Statutes,  
15 is amended by amending subsection (b) to read as follows:

16 "(b) In order to carry out the purposes under this  
17 article, the commissioner may:

- 18 (1) Enter into cooperative, coordinating, or information-  
19 sharing agreements with any other bank supervisory  
20 agency or any organization affiliated or representing  
21 one or more bank supervisory agencies;

1           (2) With respect to periodic examination or other  
2 supervision of a foreign bank that maintains a Hawaii  
3 state branch, Hawaii state agency, or Hawaii  
4 representative office, accept reports of examinations  
5 performed by, and reports submitted to, other bank  
6 supervisory agencies in lieu of conducting  
7 examinations, or of receiving reports, as might  
8 otherwise be required under this article;

9           (3) Enter into joint examinations or joint enforcement  
10 actions with any other bank supervisory agency having  
11 concurrent jurisdiction over any foreign bank;  
12 provided that the commissioner, at any time, may take  
13 any action independently if the commissioner  
14 determines that the action is necessary or appropriate  
15 to carry out the commissioner's responsibilities under  
16 this article and to ensure compliance with the laws of  
17 this State;

18       ~~(4) Enter into contracts, exempt from the requirements of~~  
19 ~~chapter 103D, with any bank supervisory agency having~~  
20 ~~concurrent regulatory or supervisory jurisdiction over~~  
21 ~~a foreign bank maintaining a Hawaii state branch,~~  
22 ~~Hawaii state agency, or Hawaii representative office,~~



1 other trust fund or account necessary to carry out the purposes  
2 of this chapter. Moneys deposited in the hurricane reserve trust  
3 fund and any accounts thereunder or any other trust fund or  
4 account shall be held by the fund, as trustee, in a depository  
5 as defined in section 38-1 or according to a similar arrangement  
6 at the discretion of the board, including, but not limited to,  
7 trust or custodial accounts created for the benefit of the  
8 fund's secured parties under contractual claims financing  
9 arrangements. These moneys may be invested and reinvested in  
10 accordance with the plan of operation. [~~Disbursements from the~~  
11 ~~trust funds shall not be subject to chapter 103D and shall be~~  
12 ~~made in accordance with procedures adopted by the board.~~]"

13

## PART IV

14 SECTION 46. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 47. This Act shall take effect on July 1, 2010.

**Report Title:**

Procurement Code; AG Waiver; Exemptions Repealed

**Description:**

Establishes that the recommendations of a procurement selection committee cannot be overturned without due cause. Establishes that debarment and suspension are to be reserved for egregious acts against governmental bodies and the procurement code; allows AG to waive requirements for offerors; repeals ch. 103D exemptions from procurement code. (SD1)

