

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
Amendments to Chapter 3-122

Interim
Hawaii Administrative Rules

March 28, 2025

Historical Note: This amendment of Chapter 3-122, Hawaii Administrative Rules:

1. Replaces rules effective 03/21/2008 (file no. 2802) which compiled Chapter 122.
2. Replaces rules effective 08/21/2016 (file no. 3193) which amended section 3-122-14; and repealed section 3-122-66.

1. §3-122-16.03, Hawaii Administrative Rules, is amended to read as follows:

“§3-122-16.03 Public notice. (a) Public notice of the solicitation pursuant to subchapter 4.5, 5, 6, 6.5, or 7 shall be made for the purpose of securing competition.

(b) The public notice of the solicitation pursuant to subchapters 4.5, 5, 6, and 6.5 shall include the following information:

- (1) A brief description of the good, service, or construction desired; or for solicitations seeking providers for federal grant contracts, the title of the grant application or funding source and a brief description of the services being sought;
- (2) Where and when the solicitation will be available~~[and a phone number or e-mail address where interested parties may request a copy];~~
- (3) ~~[How long the solicitation will be available, i.e., the]~~The deadline for the responses to the solicitation;

- (4) Other appropriate information, e.g., [~~a notice of intention to offer pursuant to section 3-122-111 or~~] contact information, the time, date, and location of the pre-bid or pre-proposal conference, if any;
- (5) For request for interest pursuant to section 3-122-16.31, a statement that the purpose of the request is to select a provider or providers for federal grants; and
- (6) For a multi-step invitation for bids pursuant to subchapter 6.5, a general statement that the bid is multi-step and the due date(s) of the unpriced technical offer and priced offer.
- (7) A copy of the solicitation shall be made available [~~for public inspection and pick up at the office of the procurement officer issuing the solicitation~~] electronically and/or may be picked up at the respective issuing office.

(c) Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 shall invite persons to submit statements of qualifications that [~~may include but not be limited to:~~] includes:

- (1) The name of the firm or person, the principal place of business, and location of all of its offices;
- (2) The age of the firm and its average number of employees over the past years;
- (3) The education, training, and qualifications of key members of the firm;
- (4) The names and phone numbers of up to five clients who may be contacted, including at least two for whom services were rendered during the preceding year; and
- (5) Any promotional or descriptive literature which the firm desires to submit.

Firms or persons may amend statements of qualifications at any time by filing a new statement and shall immediately inform the head of the

purchasing agency of any change in their submission that would disqualify the firm or person from being considered for a contract award.

(d) The public notice under subsections (b) and (c) shall be publicized as follows:

- (1) At a minimum, statewide and countywide public notices shall be publicized on a purchasing agency [~~or provider~~] internet site;
- (2) Optionally, and in addition to paragraph (1), the following may be used:
 - (A) Newspaper publication:
 - (i) For statewide publication, a daily or weekly publication of statewide circulation; or separate daily or weekly publications whose combined circulation is statewide;
 - (ii) For countywide publication, a daily or weekly publication in the pertinent county;
 - (B) Notice by mail [~~, electronic mail, or facsimile transmission~~] or electronically to persons on any applicable bidders mailing list, if any; and
 - (C) Any other method the procurement officer deems effective for publicizing the solicitation." [Eff and comp 03/21/08; am and comp]
(Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-304) (Imp: HRS §§103D-302, 103D-303, 103D-304)

2. §3-122-16.30, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.30 Purpose. (a) The purpose of this subchapter is to provide rules for the selection of [~~providers~~]contractors for federal grants.

(b) The selection of [~~providers~~]contractors for federal grants shall be in accordance with [~~the~~

~~appropriate source selection methods in] section 3-122-16."~~ [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-301)

SUBCHAPTER 5

COMPETITIVE SEALED BIDDING

3. §3-122-21, Hawaii Administrative Rules, is amended to read as follows:

§3-122-21 Preparing a competitive sealed bid. The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include:

- (1) Instructions and information to bidders concerning the bid submission requirements, including:
 - (A) The time and date set for receipt of bids;
 - (B) The address of the office to which bids are to be delivered or if bid submittal is required through an electronic procurement system;
 - (C) The maximum time for bid acceptance by the procurement officer issuing the bid; ~~[and]~~
 - (D) Any other special information, such as any requirement of intention to bid, if required, or the time, date, and location of the pre-bid conference~~[-]~~; and
 - (E) ~~[The bid opening shall be held at the]~~The date, time, [date,-]and [location-]location of the [receipt of bids] opening of bids;
- (2) The purchase description, ~~[or]~~ specifications, evaluation factors, delivery and/or performance schedule, and inspection and acceptance requirements~~[as are not included in the purchase description];~~

- (3) The contract terms and conditions, including but not limited to the following, as applicable:
- (A) Requirements pursuant to section 103D-310(c), HRS;
 - (B) Warranty requirement;
 - (C) Bonding or other security requirements pursuant to subchapter 24;
 - (D) Contract extension provisions; and
 - (E) Statement that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the invitation for bids;
- (4) A bid form which shall include space for, but not limited to, the following:
- (A) Bid price;
 - (B) Brand name and model number and packaging for goods; and
 - (C) Information on applicable preferences;
- (5) The bid form shall be signed by an authorized agent of the vendor and may be submitted with a digital or original signature; [~~With the exception of bid offers submitted through an electronic procurement system, a requirement that the bidder shall sign the bid form in ink and submit the bid form with the original signature included in the offer. Unless otherwise specified in the solicitation, if facsimile or other electronically transmitted bid offer is allowed, then the bidder shall submit the signed original offer in accordance with section 3-122-9(d);~~]

- (6) Documents by reference, provided that the invitation for bids specifies where the documents can be obtained;
- (7) A statement that bidders shall designate those portions of their offer that contain trade secrets or other proprietary data that are to remain confidential, subject to section 3-122-30(c) and (d); and that the material designated as confidential shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid;
- (8) For construction projects, instructions to the bidder that the bidder shall include in its offer information on joint contractor or subcontractor pursuant to section 103D-302(b), HRS. Construction bids that do not comply with this requirement may be accepted pursuant to section 103D-302(b), HRS. The terms, requirements, and conditions of an invitation for bids, including the specifications appended or incorporated by reference therein, may be amended only by a written addendum issued by the procurement officer, pursuant to section 3-122-16.06. [Eff 12/15/95; am and comp 11/17/97; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-310)

4. §3-122-34, Hawaii Administrative Rules, is amended to read as follows:

§3-122-34 Low tie bids. (a) Low tie bids are bids from responsive, responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation for bids.

(b) At the discretion of the procurement officer, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

- (1) Award the contract to a business providing

goods produced or manufactured in this State or to a business that otherwise maintains a place of business in this State; and

- (2) Award the contract to the bidder offering a low tie bid who received the previous award, and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

(c) If no permissible method will be effective in resolving tie bids and a written determination is made so stating, award may be made by drawing lots.

(d) Records shall be made of all invitations for bids on which tie bids are received showing at least the following information and shall be made a part of the procurement file:

- (1) The identification number of the invitation for bids;
- (2) The good, service, or construction item; and
- (3) A listing of all the bidders and the prices submitted. [Eff 12/15/95; comp 11/17/97; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-302)

5. §3-122-35, Hawaii Administrative Rules, is amended to read as follows:

§3-122-35 Waiver to competitive sealed bid process. (a) If for a given invitation for bids, including multi-step bidding, there is only one responsive, responsible bidder:

- (1) An award may be made to the single bidder, provided:
 - (A) The procurement officer determines in writing that the price submitted is fair and reasonable, and that either:
 - (i) Other prospective bidders had reasonable opportunity to respond; or
 - (ii) There is not adequate time for resolicitation; or

- (B) The bid exceeds available funds as certified by the appropriate fiscal officer and the price is negotiated pursuant to section 103D-302(h), HRS;
 - (2) The bid may be rejected pursuant to subchapter 11 and new bids or offers may be solicited if the conditions in paragraph (1) are not met;
 - (3) The proposed procurement may be canceled; or
 - (4) An alternative procurement method may be conducted to include but not be limited to direct negotiations with the sole bidder first, and then with any contractor or vendor should negotiations with the sole bidder fail, provided the procurement officer determines in writing that the need for the good, service, or construction continues, but that the price of the one bid is not fair and reasonable and either that:
 - (A) There is no time for resolicitation; or
 - (B) Resolicitation would likely be futile.
- (b) If for a given invitation for bids, including multi-step bidding, there are no bids received or there are no responsive, responsible bidders, the procurement officer may determine that it is neither practicable, nor advantageous to the State to issue a new solicitation.
- (1) When making this determination, consideration shall be given to:
 - (A) Time constraints;
 - (B) Competition in the marketplace; and
 - (C) Whether the additional potential cost of preparing, soliciting, and evaluating competitive sealed bids is expected to exceed the benefits normally associated with the solicitations;
 - (2) In the event of this determination, an alternative procurement method may be selected to include, but not be limited to, direct negotiations.

(c) The procurement officer shall be responsible to ensure proper [D]documentation of the alternative procurement method selected in the contract file, and shall include:

- (1) ~~[State the r]~~Reasons for selection and length of contract period;
- (2) A determination that the price is fair and reasonable; and
- (~~2~~)3) [Receive p]Prior approval of the chief procurement officer or a designee. [r and
- ~~(3) Be made a part of the contract file upon award by the procurement officer.] [Eff 12/15/95; am and comp 11/17/97; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-302)~~

6. Material, except source notes, to be repealed is bracketed. New material is underscored.

7. Additions to update source notes to reflect these amendments and compilation are not underscored.

8. These amendments to and compilation of chapter 3-122, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the forgoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on March 28, 2025, by the Procurement Policy Board and filed with the Office of the Lieutenant Governor.

LISA MARUYAMA
Chairperson
Procurement Policy Board

KEITH REGAN
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General