

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

Interim
Hawaii Administrative Rules

February 14, 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 Replaces rules effective 08/21/2016 (file no. 3193) which amended section 3-122-14; and repealed section 3-122-66.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. §3-122-9, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-9 Use of [facsimile machines, electronic mail, or electronic procurement systems] electronic communication. (a) Copies of documents transmitted by vendors via [~~facsimile machine, electronic mail, or an electronic procurement system~~] electronic communication may include the notice of intent to offer; the offer with required documentation for evaluation purposes; and modifications or withdrawal of offers and contract documents, pursuant to subsections (b) and (c).

(b) Notices of intent to submit an offer and modifications or withdrawal of an offer may be submitted [~~by facsimile machine, electronic mail, or an electronic procurement system~~] electronically pursuant to sections 3-122-111 and 3-122-16.07, respectively.

(c) An offer transmitted [~~via facsimile machine, electronic mail, or through an electronic procurement system~~] electronically shall be acceptable only when specifically allowed in the [~~invitation for bids or request for proposals~~] solicitation, provided:

- (1) The [~~facsimile or the~~] electronically submitted offer is received at the designated office by the time and date set for receipt of offers; and
- (2) The [~~facsimile or the~~] electronically submitted offer contains:
 - (A) The identification number of the [~~invitation for bids or request for proposals~~] solicitation;
 - (B) The item;
 - (C) The quantity;
 - (D) The price for the offer;
 - (E) All pages of the offer, including pages requiring [~~an original~~] a signature;
 - (F) The bid bond, if required; [~~and~~]
 - (G) A signed statement that the offeror agrees to all the terms, conditions, and provisions of the [~~invitation for bids or request for proposals~~] solicitation; and
 - (H) Any other requirement in the solicitation.

(d) Unless otherwise specified in the solicitation, if the [~~facsimile or~~] electronically submitted offer is the lowest responsive bid, or is the proposal determined in writing to provide the best value to the State, the offeror must submit the [~~complete original offer, with the~~] original bid bond, if required, so that it is received within five working days from the notification of intent to award. If the offeror fails to comply with this requirement, the procurement officer has the option to reject the [~~facsimile or~~] electronically submitted offer." [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp 03/21/08; am and comp]
(Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-310)
(Imp: HRS §§103D-302, 103D-303, 103D-310)

2. §3-122-9.01, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-9.01 Disclosure of information. (a) A purchasing agency is not required to disclose information identifying the number or the names of organizations or persons that obtained a solicitation, attended a pre-offeror's conference, or submitted a notice of intent to offer; or an offer until:

- (1) [~~The purchase order is issued or the purchasing card order is placed~~] After the time and date set for receipt for quotes, in the case of a small purchase request for quotations pursuant to subchapter 8;
- (2) After the time and date set for receipt of priced bids, in the case of invitation for bids pursuant to subchapters 5 and 6.5; and
- (3) The posting of the award in the case of a request for proposals pursuant to subchapter 6.

(b) A purchasing agency shall not disclose the [~~name~~]names of [~~members of an~~]the evaluation committee members established by section 3-122-45.01 prior to the [~~posting of the award pursuant to section 3-122-57(a)~~]contract execution for multi-step bids and competitive sealed proposals.

(c) In the case of procurement of professional services, a purchasing agency is not required to disclose the information specified in section 3-122-63(b) until after the contract is awarded." [Eff and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

3. §3-122-16, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16 Methods of source selection. Unless authorized by law, all contracts shall be awarded by [~~competitive sealed bidding pursuant to subchapters 5 and 6.5, except as provided in~~] the following methods:

- (1) Subchapter 4.5 - Source selection for

- federal grants;
- (2) Subchapter 5 - Competitive Sealed Bidding;
- ~~[(2)]~~ (3) Subchapter 6 - Competitive sealed proposals;
- (4) Subchapter 6.5 - Multi-step Competitive Sealed Bidding;
- ~~[(3)]~~ (5) Subchapter 7 - Professional services procurement;
- ~~[(4)]~~ (6) Subchapter 8 - Small purchases;
- ~~[(5)]~~ (7) Subchapter 9 - Sole source procurements; and
- ~~[(6)]~~ (8) Subchapter 10 - Emergency procurements." [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-301)

4. §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~~] may be made available [~~for public inspection and pick-up~~] electronically and may be picked up at the respective issuing office [~~of the procurement officer issuing the solicitation~~].

(c) Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 shall include the requested professional class or category and 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)

5. §3-122-16.05, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.05 Pre-bid or pre-proposal conference. (a) The purpose of a pre-bid or pre-proposal conference is to explain the procurement requirements and allow potential offerors to ask questions.

- (1) An agency may hold a pre-bid or pre-proposal

~~conference [and require or not require attendance by all prospective bidders as a condition for submitting an offer for solicitations that have special or unusual requirements, e.g., requiring physical inspection].~~

- (2) For construction, including design-build projects, pursuant to section 103D-303.5, HRS, an agency ~~[shall]~~ may hold a pre-bid or pre-proposal conference and invite all interested parties to attend.

~~[(b) If conference attendance is mandatory for submission of an offer, the requirement:~~

- ~~—— (1) Shall be stated in the public notice issued pursuant to section 3-122-16.03; and~~
~~—— (2) Prominently in the solicitation or if the decision to hold a mandatory pre-bid or pre-proposal conference is made after the issuance of the solicitation, the mandatory requirement shall be announced in an addendum.]~~

~~[(e)]~~ (b) A pre-bid or pre-proposal conference shall be announced ~~[to all prospective offerors]~~ in the public notice issued pursuant to section 3-122-16.03 and in the solicitation, or if the decision to hold a pre-bid or pre-proposal conference is made after the issuance of the solicitation, the conference shall be announced in an addendum.

~~[(d)]~~ (c) The conference should be held long enough after the solicitation has been issued to allow offerors to become familiar with the solicitation, but sufficiently before the deadline for receipt of offers to allow consideration of the conference results in preparing their offers.

~~[(e)]~~ (d) Unless a change is made by written addendum as provided in section 3-122-16.06, nothing stated at the pre-bid or pre-proposal conference shall change the solicitation.

~~[(f)]~~ (e) A summary of the conference, including questions and answers, in addition to any changes to the solicitation, ~~[shall]~~ may be issued by addendum ~~[and shall be supplied sufficiently]~~ before the

deadline for receipt of offers [~~to allow consideration of the summary results and changes to all those prospective offerors known to have received a solicitation~~].” [Eff and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-303.5) (Imp: HRS §§103D-302, 103D-303.5)

6. §3-122-16.06, Hawaii Administrative Rules, is amended to read as follows:

“§3-122-16.06 Amendment and clarification to solicitation. (a) An addendum shall be issued for amendments and clarifications to a solicitation prior to submission of offers, except as provided in subsection ~~[(f)]~~ (d).

- (1) Amendments include any material changes to the solicitation as in quantity, purchase descriptions, delivery schedules, scope of work, and opening dates. The addendum shall reference the portions of the solicitation it amends and detail the amendments;
- (2) Clarifications include pre-bid or pre-proposal communications other than amendments.
- (b) Addenda shall be used to:
 - (1) Correct minor defects or ambiguities;
 - (2) Furnish to other offerors information given to one offeror if the information will assist the other offerors in submitting offers or if the lack of the information would prejudice the other offerors; and
 - (3) Provide any other information or clarification to the solicitation that will result in fair competition.

~~[(c) Addenda may require that offerors acknowledge receipt of the addendum issued.~~

~~—(d) Addenda shall be issued to all prospective offerors known to have received a solicitation, or if issued after the deadline for submission of notice of intention to offer, to those persons who have submitted such notice.]~~

~~[-e-]~~ (c) Addenda for:

- (1) Amendments shall be ~~[distributed]~~ published within a reasonable time to allow prospective offerors to consider them in preparing their offers; however, if the time and date set for receipt of bids will not permit adequate time for preparation, the time shall be increased to the extent possible in the addendum or, if necessary, by facsimile or telephone or electronic means and confirmed in the addendum;
- (2) Clarifications may be issued any time up to the scheduled deadline for receipt of offers.

~~[-f-]~~ (d) After submission of proposals, amendments may be made by addenda for solicitations pursuant to subchapters 6 and 6.5, subject to sections 3-122-53(d) and (e) and 3-122-54(b).” [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

7. §3-122-16.07, Hawaii Administrative Rules, is amended to read as follows:

“§3-122-16.07 Pre-opening modification or withdrawal of offer. (a) ~~[Bids or proposals]~~ Offers submitted pursuant to subchapters 5, 6, and 6.5 may be modified or withdrawn prior to the established due date by submitting the following ~~[documents]~~:

- (1) ~~[Modification]~~ For modification of ~~[bids or proposals]~~ the offer:
 - (A) A written notice accompanying the ~~[actual]~~ offeror’s modification received in the office designated in the solicitation, stating that a modification to the ~~[bid or proposal]~~ offer is submitted; or
 - (B) ~~[A facsimile or]~~ An electronic notice accompanying the ~~[actual]~~ offeror’s modification submitted ~~[either by facsimile machine, electronic mail, or~~

~~an electronic procurement system]~~
electronically pursuant to section 3-122-9 to the office designated in the solicitation; provided if other than through an electronic system, offeror submits the actual written notice and modification within two working days of receipt of the facsimile or the electronic transmittal.

- (2) Withdrawal of bids or proposals:
 - (A) A written notice received in the office designated in the solicitation; or
 - (B) A notice [~~by facsimile machine or other electronic~~] submitted [~~electronic~~] electronically [~~method~~] pursuant to section 3-122-9 [~~, to the office designated in the solicitation~~].

For the purposes of this section and section 3-122-16.08, the established due date for proposals pursuant to subchapter 6 or 6.5 is either the time and date announced for receipt of proposals or as amended [~~receipt of modifications to proposals~~], if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only priority listed offerors may submit best and final offers.

(b) The documents shall be made a part of the [~~appropriate~~] procurement file." [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

8. §3-122-16.08, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.08 Late offer, late withdrawal, and late modification. (a) Any [~~notice of withdrawal, notice of modification of a bid or proposal with the actual modification, or any bid or proposal is late when received at the place designated for receipt and opening of an offer after the established due date, additionally defined in section 3-122-16.06(a),~~]

offer, withdrawal and modification submitted by hand delivery, mail, or electronically after the established due date, shall not be accepted, except when received before contract award and would have been timely but for the action or inaction of personnel, and supported by a written determination by the head of the purchasing agency [~~within the procurement activity~~].

(b) A late bid or proposal or late modification will not be considered for award and shall be returned to the offeror unopened as soon as practicable, accompanied by a letter from the [~~procurement activity~~] purchasing agency stating the reason for its return.

(c) A late withdrawal request except as provided for in section 3-122-31, shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

(d) Records of each late offer, late modification, or late withdrawal and any related correspondence shall be made a part of the appropriate procurement file, except for the late offer or late modification itself which shall be disposed of in accordance with subsection (b).” [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

9. §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)

10. §3-122-16.31, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-16.31 Exception; request for interest for federal grants. (a) "Request for interest" as used in this subchapter means all documents utilized for soliciting interest in providing goods, services, or construction under a federal grant, when applying or after receipt of a grant.

(b) Where time or economic situations preclude the use of other source selection methods in section 3-122-16, purchasing agencies may, with the approval of the head of purchasing agency, issue a request for interest to select a [~~provider or providers~~] contractor(s) for a federal grant.

(c) A public notice shall be publicized pursuant to section 3-122-16.03(d) and shall include but not be limited to the information in section 3-122-16.03(b).

(d) The request for interest may include but not be limited to the following:

- (1) Identification and purpose of the federal funding;
- (2) The target population [~~or clients~~] to be served;
- (3) A description of the good, service, or construction;
- (4) The evaluation criteria and their relative weights for selecting a [~~provider or providers~~] contractor(s);
- (5) The format, if any, and procedure for submitting responses to the request;
- (6) The deadline for submittal of written responses to the request which shall be a minimum of five working days from the date of public notice;
- (7) A statement that the purchasing agency reserves the right to incorporate or not incorporate in the State's application for federal grants any recommendations presented in response to the request; and
- (8) A statement that neither the purchasing agency nor the interested [~~provider~~]

contractor has any obligation under the request.

(e) The selection of a [~~provider or providers~~] contractor(s) shall be based on the criteria established in the request for interest.

(f) A notice of the selected [~~provider or providers~~] contractor(s) shall be posted to a state governmental website [~~or~~] and all respondents shall be notified in writing.

(g) Nothing in this section shall be construed to disqualify a purchasing agency from receiving federal funds." [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

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

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

13. 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 February 14, 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