

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

Interim
Hawaii Administrative Rules

December 2, 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 Replaces rules effective 08/21/2016 (file no. 3193) which amended section 3-122-14; and repealed section 3-122-66.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. §3-122-21, 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 and time 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, time, and location of the pre-bid conference~~[-]~~; and

- (E) ~~[The bid opening shall be held at the time, date]~~The date, time, [date,]and location of the ~~[receipt of bids]~~opening of bids;
- (2) The purchase description, [or] plans, if applicable, 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;
 - (E) Statement that bid samples 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;
 - (C) Information on applicable preferences;
- (5) ~~[.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);~~ The bid form shall be signed by an authorized agent of the bidder and may be submitted with a digital or original signature;

- (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)

2. §3-122-45.01, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-45.01 Evaluation committee. (a) Prior to the preparation of the request for proposals, a determination shall be made by the procurement officer that the procurement officer or an evaluation committee selected in writing by the procurement officer shall evaluate the proposals. ~~[A copy of the document identifying any committee members and any subsequent changes thereto shall be placed in the contract file]~~ The document identifying all committee members, approved by the procurement officer, shall be placed in the contract file. Subsequent changes, approved by the procurement officer, shall also be filed.

(b) If an evaluation committee is selected,

(1) The evaluation committee shall consist of at least three governmental employees with sufficient qualifications in the area of the goods, services, or construction to be procured;

(2) Private consultants may also serve on the committee and shall:

(A) Have sufficient knowledge to serve on the committee; and

(B) Serve without compensation, unless justified and determined in writing by the head of the purchasing agency that compensation is justified; ~~[and~~

~~(C) Sign an affidavit.]~~

(3) All evaluation committee members shall sign an attestation:

~~[(i)]~~ (A) Attesting to having no personal, business, or any other relationship that will influence their decision in the evaluation process;

~~[(ii)]~~ (B) Agreeing not to disclose any information on the evaluation process to other than an employee

- of a governmental body; and
- ~~[(iii)]~~ (C) Agreeing that their names will become public information upon award of the contract;
- (D) The procurement officer may require participants to sign a non-disclosure agreement prior to reviewing any information;
- (4) All evaluation committee members shall not engage in conduct that:
 - ~~[(i)]~~ (A) Favors one offeror over another;
 - ~~[(ii)]~~ (B) Reveals an offeror's technical solution, include unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror; or
 - ~~[(iii)]~~ (C) Reveals the names of individuals providing reference information about an offeror's past performance.
- ~~[(3)]~~ (5) The contract administrator shall serve as a member of the committee;
- ~~[(4)]~~ (6) The contract administrator or a designee shall serve as chairperson, and the procurement officer or a designee shall serve as advisor." [Eff and comp 03/21/08; am and comp]
 (Auth: HRS §§103D-202, 103D-303) (Imp: HRS §103D-303)

3. §3-122-46, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-46 Preparing a request for proposals.
 The request for proposals ~~[is used to initiate a competitive sealed proposal procurement and]~~ shall include:

- (1) The specifications for the goods, services,

- or construction items to be procured,
including a description of the performance
or benefit required;
- (2) All contractual terms and conditions
applicable to the procurement;
- (3) ~~[A statement as to when and in what manner
prices are to be submitted;]~~
- ~~[(4)]~~ (4) A statement ~~[concerning]~~ whether the
proposal shall be accompanied by a proposal
security pursuant to subchapter 24 or other
evidence of financial responsibility;
- ~~[(5)]~~ (4) The term of the contract and conditions of
renewal or extension, if any;
- ~~[(6)]~~ (5) Instructions and information to offerors,
including pre-proposal conferences, the
location ~~[where proposals are to be
received]~~, ~~[and the]~~ date, and time ~~[, and
place]~~ ~~[where]~~ proposals and pricing are to
be received ~~[and reviewed]~~;
- ~~[(7)]~~ (6) ~~[The relative importance of price and other
evaluation criteria; and]~~ The specific
evaluation criteria to be used, including
past performance pursuant to subchapter
13.5 and relative importance of price, in
evaluation of proposals which may include
but is not limited to:
 - (A) Technical capability and approach for
meeting performance requirements;
 - (B) ~~[Competitiveness]~~ Price competitiveness
and reasonableness ~~[of price]~~;
 - (C) Managerial capabilities; and
 - (D) Best value factors;
- ~~[(8)]~~ (7) A statement that discussions may be
conducted with "priority-listed offerors"
pursuant to section 3-122-53, but that
proposals may be accepted without
discussions; ~~[and]~~
- ~~[(9)]~~ (8) A statement that offerors shall
designate in writing those portions of the
unpriced proposal that contain trade secrets
or other proprietary data that are to remain
confidential, subject to section 3-122-58;

that the material designated as confidential shall be readily separable from the proposal [~~in order~~] to facilitate inspection of the nonconfidential portion of the proposal[~~-~~]; and

- (9) The proposal shall be signed by an authorized agent of the offeror and may be submitted with a digital or original signature."

[Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp]
(Auth: HRS §103D-202) (Imp: HRS §103D-303)

4. §3-122-52, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-52 Evaluation of proposals. (a) Evaluation factors shall be set out in the request for proposals and the evaluation shall be based only on the evaluation factors. Evaluation factors not specified in the request for proposals may not be considered.

(b) A numerical rating system shall be used. The relative priority to be applied to each evaluation factor shall also be set out in the request for proposals.

- (c) The points to be applied to each evaluation factor shall be set out in the request for proposals.

- (1) The procurement officer, or each member of the evaluation committee, as applicable, shall explain his or her ranking determination in writing which shall be placed in the procurement file;

- (2) The written ranking evaluations or explanations shall be available for public inspection after the award of the contract is posted.

(d) When applicable, [~~cost~~]price shall be an evaluation factor.

- (1) The proposal with the lowest [~~cost factor~~

~~must~~ price shall receive the highest available rating [allocated to cost] for the price factor. Each proposal that has a higher [cost] price factor than the lowest must have a lower rating for [cost] price;

- (2) The points allocated to higher-priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.

(e) Past performance shall be an evaluation factor.

~~[(e)]~~ (f) An evaluation factor must be included which takes into consideration whether an offeror qualifies for any procurement preferences pursuant to chapter 3-124.

~~[(f)]~~ (g) Evaluations may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap, or political affiliation of the offeror." [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-303)

5. NEW §3-122-52.5, Hawaii Administrative Rules, is added to read as follows:

"§3-122-52.5 Clarifications with offerors after receipt of proposals. (a) Clarifications are limited exchanges, between the purchasing agency and offerors prior to priority listing. Clarifications may occur with or without further discussions as defined in 3-122-53. All written clarifications shall be documented in the procurement file.

(b) Agencies may give offerors the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information) or to resolve minor or clerical errors which shall not affect price, quantity, quality, delivery, or contractual conditions. Such clarifications may be

considered in rating proposals for the purpose of establishing the priority list. All clarifications shall be documented by the procurement officer or evaluation committee and validated in writing by the offeror.

(c) Clarifications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or price/cost elements of the proposal, and/or otherwise revise the proposal. [Eff and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

6. §3-122-53, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-53 Discussions with offerors. (a) Before conducting discussions, a "priority list" shall be generated by the procurement officer or evaluation committee.

- (1) In order to generate a priority list, proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable based on the criteria outlined in the solicitation;
- (2) All responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list;
- (3) If numerous acceptable and potentially acceptable proposals have been submitted, the procurement officer or the evaluation committee may rank the proposals and limit the priority list to at least three responsible offerors who submitted the highest-ranked proposals;
- (4) Those responsible offerors who are selected for the priority list are referred to as the "priority-listed offerors".

(b) Discussions will be limited to only "priority-listed offerors" and are held to:

- (1) Promote understanding of a state agency's

requirements and priority-listed offerors' proposals; and

- (2) Facilitate arriving at a contract that will provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals. The procurement officer shall establish procedures and schedules for conducting discussions and keep a record of the discussions, date, time, place, purpose of meetings, and [those attending] attendees.

(c) Proposals may be accepted on evaluation without discussion.

(d) Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

~~[(1) Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror;]~~

~~[(2)]~~ If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended by an addendum to incorporate the clarification or change.

(e) Addenda to the request for proposals shall be distributed only to priority-listed offerors.

(1) The priority-listed offerors shall be permitted to submit new proposals or to amend those submitted;

(2) If in the opinion of the procurement officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the request for proposals shall be canceled and a new request for proposals issued.

(f) The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion process."

[Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; am and comp]

(Auth: HRS §103D-202) (Imp: HRS §103D-303)

7. §3-122-61.05, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-61.05 Purpose. The purpose of this subchapter is to provide rules for the use of the multi-step competitive sealed bidding method of source selection ~~[when it is determined that award to the lowest responsive, responsible bidder is desired, but it is not practical to initially prepare a definitive purchase description which will be suitable to permit an award based on price, and is desirable, prior to soliciting priced bids, to:]~~. This method is a two-step process which:

- (1) ~~[Invite and evaluate]~~ Evaluates technical proposals to determine their acceptability to fulfill the purpose of the procurement; and
- (2) ~~[Conduct]~~ Allows for discussions pursuant to section 3-122-53. " [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-302)

8. §3-122-61.06, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-61.06 Preparing a multi-step invitation for bids. (a) The multi-step sealed bidding process ~~[uses an invitation for bids consisting]~~ consists of two phases~~[, and combines the receipt of technical proposals of the competitive sealed proposals process and the low priced bid award of the competitive sealed bidding process]~~.

- (1) Phase one is composed of one or more steps in which bidders submit unpriced technical proposals to be evaluated based on criteria set forth in the invitation for bids; and
- (2) Phase two is to consider the priced bids

- acceptable unpriced technical proposal. If no proposals are submitted, the procurement officer may make a determination pursuant to section 3-122-59(b);
- (2) The procurement officer shall notify the bidder in writing when oral or written discussions are not conducted and the bid has been determined to be not acceptable, and upon written request from the bidder, the bidder shall be given the opportunity to review the evaluation of its offer and meet with the evaluator(s) to discuss the evaluation at least five working days prior to the deadline for receipt and opening of the priced offers." [Eff and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-302) (Imp: HRS §103D-302)

10. §3-122-61.08, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-61.08 Phase two. (a) Upon completion of phase one, the procurement officer shall:

- (1) ~~[If priced bids were required to be submitted in phase one, open]~~ Open the priced bids from bidders whose unpriced technical proposals were found to be acceptable;
- (2) If priced bids have not been submitted, invite each acceptable bidder to submit a priced bid; or
- (3) If technical discussions have been held, or if material modifications to the procurement item, project, or procedure have been made after the original submission of priced bids, [return the sealed priced bids to the bidders] and provide [them] bidders reasonable opportunity to submit a modified priced bid that is clearly identified as amended.

~~[(3) If priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.]~~

(b) Phase two shall be conducted as any other competitive sealed bid procurement except as specifically set forth in this section and no public notice need be given to phase two, submission of priced bids, because the notice was previously given." [Eff and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-302) (Imp: HRS §103D-302)

11. §3-122-63, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-63 General provisions. (a) Procurement of [Professional] professional services shall be in accordance with section 103D-304, HRS. The use of this method is limited to professions as defined in section 103D-104, HRS.

(b) After the contract is awarded, the following information shall be open to public inspection, including but not limited to the contract, the list of qualified persons, the ~~[screening]~~ selection committee's criteria for selection established under section 103D-304(d), HRS, and the statements of qualifications and related information submitted by the qualified persons, except those portions for which a written request for confidentiality has been made subject to section 3-122-58.

(c) Amendment to a professional services contract shall require prior approval of the head of the purchasing agency when the increase is at least \$25,000 and ten per cent or more of the initial contract price." [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

12. §3-122-67, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-67 Small purchases of professional services. ~~[Small purchases]~~ Purchases of professional services that are within the small purchase dollar threshold, except ~~[small purchase of]~~ design professional services furnished by licensees under chapter 464, HRS, may be conducted pursuant to section 103D-304~~[(j)]~~ (k), HRS, or subchapter 8, Small purchases." [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §§103D-304, 103D-305)

13. §3-122-69, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-69 Review and selection committees. (a) Persons who serve on the review or selection committee~~[who are not employees of a governmental body]~~ shall:

- (1) Have sufficient knowledge to serve on the review or selection committee;
- (2) Serve without compensation, unless justified and determined in writing by the head of the purchasing agency that compensation is justified; and
- (3) Sign an ~~[affidavit]~~ attestation:
 - (A) Attesting to having no personal, business, or any other relationship that will influence their decision in the review or selection process;
 - (B) Agreeing not to disclose any information on the review or selection process; ~~[and]~~
 - (C) Agreeing that their names will become public information upon award of the contract~~[-]~~; and
 - (D) The procurement officer may require participants to sign a non-disclosure

agreement (NDA) prior to reviewing any information.

(b) [~~Deputy directors~~] Directors, deputy directors, or equivalent appointed positions shall not serve on review or selection committees." [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

14. §3-122-70, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-70 Debriefing. (a) The purpose of a debriefing is to inform providers of professional services of the basis for non-selection.

- (1) A written request for a debriefing shall be made within three working days after the posting of the award of the contract;
- (2) Debriefing shall be held by the procurement officer or designee, to the maximum extent practicable, within seven working days; provided the procurement officer or designee may determine whether or not to conduct individual or combined debriefings.

(b) A protest by the requestor [~~submitted~~] pursuant to section 103D-701, HRS, following a debriefing shall be [~~filed~~] submitted in writing within five working days, as specified in section 103D-304[~~(k)~~](1), HRS." [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-304)

15. §3-122-74, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-74 General provisions. (a) Small purchases shall be subject to section 103D-305, HRS, and do not require public notice or public bid openings.

(b) Small purchase contracts for professional services may be procured pursuant to this subchapter

or section 103D-304~~[(j)]~~ (k), HRS; provided that small purchase of design professional services furnished by licensees under chapter 464, HRS, shall be procured in accordance with section 103D-304, HRS.

(c) Unless otherwise exempt, purchasing agencies delegated small purchase authority shall comply with state procurement office price or vendor lists, price schedules, or other chief procurement officer lists and schedules, where applicable.

(d) Purchases shall not be parceled by dividing the purchase of same, like, or related items of goods, services, or construction into several purchases of smaller quantities, so as to evade the statutory competitive bidding requirements. For additional details, refer to chapter 3-131.

(e) Preferences pursuant to part X, chapter 103D, HRS, shall not apply to small purchases.

(f) Single Offeror purchases shall be analyzed for fair and reasonableness and documented in the procurement file. [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

16. §3-122-75, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-75 Goods, services, and construction.

(a) Based on specifications and with adequate and reasonable competition:

- (1) No less than three quotes shall be solicited for expenditures of \$5,000 to less than \$15,000; and
- (2) No less than three written quotes shall be obtained for expenditures of \$15,000 to less than ~~[\$25,000; and]~~ \$50,000.

~~[(3) For the period up to and including June 30, 2007, no less than three written quotes shall be obtained for expenditures of \$25,000 to less than \$50,000.]~~

- (b) Only vendors that supply the goods,

services, or construction required, shall be solicited and considered to meet the minimum quotation requirements.

(c) Considering the criteria, including but not limited to quality, warranty, and delivery; award shall be made to the ~~[lowest responsive]~~ responsible offeror with the lowest price and responsive, technically acceptable offer.

(d) When award to the lowest responsive, responsible offeror is not practicable, award shall be made to the offeror whose quotation provides the best value to the State. Best value is a cost benefit trade off as defined in section 3-122-1, HAR. Written determination for the selection shall be placed in the procurement file.

(e) Award shall be posted within seven days of notice of award.

~~[(e)]~~ (f) When the minimum quotations are not obtained, for reasons such as insufficient sources, written justification shall be placed in the procurement file.

~~[(f)]~~ (g) Expenditures with an estimated total cost that are less than \$5,000 shall be by procedures established by each chief procurement officer.

~~[(g)]~~ (h) Chief procurement officers may be more restrictive in their jurisdiction's small purchase procedures, e.g., requiring written quotes at lower dollar limits." [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp]
(Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

17. §3-122-77, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-77 Procurement file and disclosure of information. All quotations received shall be documented and placed in a procurement file. Pursuant to section 3-122-9.01, a purchasing agency is not required to publicly disclose quotation information received from vendors until the purchase order is

issued, ~~[or]~~ the purchasing card order is placed~~[or]~~,
or when contract award is made, whichever comes
sooner." [Eff 12/15/95; am and comp 11/17/97; am and
 comp 03/21/08; am and comp] (Auth:
 HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

18. §3-122-78, Hawaii Administrative Rules, is amended to read as follows:

- "§3-122-78 Electronic procurement. (a)
~~[Effective July 1, 2007, small]~~ Small purchase
 procurements of ~~[\$25,000]~~ \$50,000 to less than
~~[\$50,000]~~ the small purchase threshold shall be made
 through an electronic procurement system.
- (b) This section shall not apply to procurements
 subject to sections 103D-306 and 103D-307, HRS.
- (c) The electronic procurement system shall
 include at a minimum, the functionality of notifying
 registered vendors of the procurement opportunity and
 the electronic receipt of offers.
- (d) If no responsive, responsible quotes, or
 reasonable prices are received through an electronic
 procurement solicitation, the head of the purchasing
 agency or designee 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 whether the
 specifications can be revised, time
 constraints, and competition in the
 marketplace;
 - (2) In the event of this determination, an
 alternative procurement method may be
 selected to include, but not limited to,
 direct negotiations; and
 - (3) Documentation of the alternative procurement
 determination shall be made part of the
 procurement file.
- (e) Procurements of goods, services, or
 construction of ~~[\$25,000]~~ \$50,000 to less than
~~[\$50,000]~~ the small purchase threshold, which cannot

be purchased through an electronic procurement system may be conducted pursuant to sections 103D-302, 103D-303, and 103D-304, HRS.

(f) The chief procurement officer may determine what goods, services, or construction, less than \$25,000 will be made through an electronic procurement system." [Eff and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-305) (Imp: HRS §103D-305)

19. §3-122-81, Hawaii Administrative Rules, is amended to read as follows:

"§3-122-81 General provisions. (a) Sole source procurement shall be in accordance with section 103D-306, HRS, with the exception of sole source procurement subject to section 103D-305, HRS.

(b) A sole source purchase may be made when only one source is available [~~for a purchase~~], unless the expenditure is expressly exempt from public bidding by law or rule. (c) Justification for a sole source purchase must establish that the good, service, or construction has a unique feature, characteristic, or capability essential to the agency to accomplish its work and is available from only one supplier or source.

Examples are:

- (1) Proprietary item;
- (2) Compatibility to existing equipment; or
- (3) Public utility repair or construction that can only be provided by the utility company.

(d) The contract period for a sole source procurement shall not exceed one year, unless approval is granted for a multi-term contract pursuant to section 3-122-149.

(e) Approval for sole source procurement may be granted by the chief procurement officer when there is a requirement for a good or service in limited quantity for test or evaluation purpose.

(f) The following are not justifications for

sole source procurements:

- (1) An item is referred to by an exact brand, but there are other brands that qualify as "equals";
- (2) An item is unique, but is available from more than one supplier, is called a "restrictive" purchase subject to bidding;
- (3) The fact that a person or organization is or has been furnishing services to a purchasing agency does not, by itself, render the person or organization the only source for the type of service required;
- (4) The potential loss of funds at the end of a fiscal year.

(g) The procurement officer [~~should~~] shall conduct negotiations with the sole source vendor to determine the factors as cost, quality, terms, and delivery are found fair and reasonable in the market. Negotiations shall be documented in the procurement file.

(h) Cost or pricing data requirements shall be as specified in section 103D-312, HRS, and subchapter 15.

(i) [~~A purchase order shall be issued or a certification that funds are~~] Funds must be available for the amount of the purchase [~~shall be obtained for a sole source purchase,~~] pursuant to section 103D-309, HRS, and subchapter 12.

(j) Pursuant to section 103D-306(c), HRS, the procurement policy board shall maintain a list, entitled "Procurements Approved for Sole Source" that may be procured without obtaining a sole source approval, pursuant to section 3-122-82. The chief procurement officer may request reports from the heads of purchasing agencies on sole source procurements.

(k) The list of sole source procurements shall be reviewed by the procurement policy board biennially and issued by procurement directive. Purchasing agencies shall cite on the purchase order or on the contract the sole source authority as "Approved for

Sole Source Procurement pursuant to Section 3-122-81, (cite sole source number from attached list), Hawaii Administrative Rules." [Eff 12/15/95; am and comp 11/17/97; am 7/6/99; am and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-306, 103D-312) (Imp: HRS §§103D-306, 103D-309, 103D-312)

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

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

22. 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 December 2, 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