

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-122
Hawaii Administrative Rules

April 20, 2023

SUMMARY

1. §3-122-1 is amended.
2. §3-122-3 is amended.
3. §§3-122-9 and 3-122-9.01 are amended.
4. §§3-122-12 and 3-122-13 are amended.
5. §3-122-14 is amended.
6. §3-122-16 is amended.
7. §3-122-16.03 is amended.
8. §§3-122-16.05 to 3-122-16.08 are amended.
9. §§3-122-16.30 and 3-122-16.31 are amended.
10. §3-122-21 is amended.
11. §3-122-33 is amended.
12. §3-122-35 is amended.
13. §§3-122-43 is amended.
14. §3-122-45 is repealed.
15. §3-122-45.01 is amended.
16. §3-122-46 is amended.

17. §§3-122-51 to 3-122-52 are amended.
18. A new §3-122-52.5 is added.
19. §3-122-53 is amended.
20. §3-122-60 is amended.
21. §§3-122-61.05 to 3-122-61.08 are amended.
22. §3-122-63 is amended.
23. §3-122-66 is repealed.
24. §3-122-67 is amended.
25. §§3-122-69 and 3-122-70 are amended.
26. §§3-122-74 and 3-122-75 are amended.
27. §§3-122-77 and 3-122-78 are amended.
28. §3-122-81 is amended.
29. §§3-122-95 and 3-122-96 are amended.
30. §3-122-109 is amended.
31. §3-122-111 is repealed.
32. §3-122-112 is amended.
33. New Subchapter 13.5 is added.
34. New §3-122-115.01 is added.
35. §3-122-121 is amended.
36. §§3-122-123 to 3-122-127 are amended.
37. §§3-122-129 and 3-122-130 are amended.

38. §§3-122-135 to 3-122-137 are amended.
39. §3-122-140 is amended.
40. §§3-122-145 to 3-122-147 are amended.
41. §3-122-149 is amended.
42. §3-122-168 is amended.
43. §3-122-176 is amended.
44. §3-122-179 is amended.
45. §3-122-194 is amended.
46. §3-122-221 is amended.
47. §§3-122-223 and 3-122-224 are amended.
48. Chapter 3-122 is compiled.

HAWAII ADMINISTRATIVE RULES

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DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 122

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Historical Note: This chapter 122, effective April 20, 2023, subtitle 11 of title 3, Hawaii Administrative Rules:

1. Replaces interim rules effective 03/21/08 (file no. 2802) which compiled Chapter 122.
2. Replaces interim rules effective 08/21/2016

(file no. 3193) which amended section 3-122-14; and repealed section 3-122-66.

SUBCHAPTER 1

DEFINITIONS

§3-122-1 Definitions. Definitions for terms used in this chapter are in section 103D-104, HRS. The following definitions are also applicable to terms used in this chapter:

"Alternative procurement method" means a procurement method used due to a waiver from the competitive sealed bids or proposals process when one or no responsive, responsible offer is received.

"Award" means the written notification of the State's acceptance of a bid or proposal, or the presentation of a contract to the selected offeror.

"Best value" means the most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves the State is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the vendor, quality of goods, services, or construction, delivery, and proposed technical performance.

"Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

"Brand name or equal specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers, commonly referred to as a restrictive specification.

"Capability" means capability at the time of award of contract.

"Chief financial officer" means, depending upon the purchasing agency, either the comptroller, a county's director of finance, or the respective chief financial officers of the University of Hawaii, the department of education, the judiciary, or the legislative branches of the State or county.

"Contract administrator" means the person designated to manage the various facets of contracts to ensure the contractor's total performance is in accordance with the contractual commitments and obligations to the purchasing agency are fulfilled.

"Contract price" means the amount designated on the face of the contract for the performance of the work including allowances for extras, if any.

"Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item which enables the State to consider whether the item meets its needs.

"Design specifications" means the dimensional and other physical requirements of the item being purchased, how a product is to be fabricated or constructed.

"Discussion" means an exchange of information to promote understanding of a state agency's requirements and offeror's proposal and to facilitate arriving at a contract that will be the best value to the State. Discussions are not permissible in competitive sealed bidding, except to the extent permissible in the first phase of multi-step sealed bidding to determine the acceptability of technical offers.

"Non-disclosure agreement (NDA)" means legally enforceable agreements between parties to ensure that certain information will remain confidential.

"Opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

"Performance specifications" means the functional or performance requirements of the item, what a

product does and how well it performs.

"Practicable" and "Advantageous" shall be given ordinary dictionary meanings. "Practicable" means what may be accomplished or put into practical application. "Advantageous" means a judgmental assessment of what is in the State's best interest. The use of competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest.

"Qualified products list" means an approved list of goods, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirement.

"Quotation" means a statement of price, terms of sale, and description of goods, services, or construction offered by a prospective seller to a prospective purchaser, usually for purchases pursuant to section 103D-305, HRS.

"Recent" means performance information in which all or some of the performance has occurred within 5 years or as determined by the procurement officerⁱ that is closely connected and appropriate to consider for the type of requirement being solicited or evaluated.

"Relevant" means performance information that is similar in size, scope, and complexity to the requirement being solicited or evaluated.

"Request for information" means a request soliciting information to obtain recommendations from suppliers for a procurement that cannot be described in sufficient detail to prepare a solicitation.

"Standard commercial product" means a product or material, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor, or dealer for the marketing of the product. [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-104, 103D-202)

SUBCHAPTER 2

GENERAL PROVISIONS

§3-122-2 Extension of time for acceptance of offer received in response to a solicitation. After opening offers, the procurement officer may request offerors to extend the time during which the State may accept their offers, as stated in the terms and conditions of the solicitation, provided that, with regard to competitive sealed bids, no other change is permitted. The reasons for requesting the extension shall be documented. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-3 Extension of time on contracts. (a) If a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon approval of the chief procurement officer, provided:

- (1) The period of each extension is for one hundred eighty calendar days or less;
- (2) The procurement officer makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for reasons to include but not be limited to the following:
 - (A) A new contract cannot be executed by the time the contract expires; or
 - (B) The need for the good or service is short term;
- (3) All parties agree to the extension of time of performance; and
- (4) The price(s) or conditions of the contract remain the same as the original contract, or as amended per the contract; or if not the

same or as amended, they are fair and reasonable.

(b) If paragraph (2) of subsection (a) is met, but paragraph (3) or (4) of subsection (a) or both are not met and the procurement officer determines in writing that the need for the good or service continues, provided subchapters 8, 9, and 10 do not apply, the chief procurement officer, may upon request in writing, approve an alternative procurement method, including but not limited to direct negotiations with a party other than the contractor, subject to the maximum one hundred eighty calendar day contract period, and provided the prices are fair and reasonable.

(c) This section shall not apply to adjustments in performance time under chapter 3-125. [Eff 12/15/95; am and comp 11/17/97; comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-4 Multiple or alternate offers. (a) Unless specifically provided for in the solicitation, multiple or alternate offers shall not be accepted and all such offers shall be rejected.

(b) If multiple or alternate offers are allowed, the solicitation shall specify their treatment. [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-5 REPEALED. [R 03/21/08]

§3-122-6 Conditioning offers upon other contracts not acceptable. Any offer which is conditioned upon receiving a contract other than as provided for in the solicitation shall be deemed nonresponsive and not acceptable. [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-7 Determination of contractual terms and conditions. The chief procurement officer or the head of a purchasing agency is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts, provided the provisions, terms, and conditions are not contrary to statutory or chapter 91 administrative rule requirements governing the procurement. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-8 Purchase of items separately from construction contract. The chief procurement officer or the head of a purchasing agency is authorized to determine whether a good item or group of good items shall be included as part of, or procured separately from, any contract for construction. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-122-9 Use of electronic communication. (a) Copies of documents transmitted by vendors via 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 electronically pursuant to sections 3-122-111 and 3-122-16.07, respectively.

(c) An offer transmitted electronically shall be acceptable only when specifically allowed in the solicitation, provided:

- (1) The electronically submitted offer is received at the designated office by the time and date set for receipt of offers; and
- (2) The electronically submitted offer contains:
 - (A) The identification number of the solicitation;

- (B) The item;
- (C) The quantity;
- (D) The price for the offer;
- (E) All pages of the offer requiring an original signature;
- (F) The bid bond, if required;
- (G) A signed statement that the offeror agrees to all the terms, conditions, and provisions of the solicitation; and
- (H) Any other requirement in the solicitation.

(d) Unless otherwise specified in the solicitation, if the 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 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 electronically submitted offer. [Eff 12/15/95; am and comp 11/17/97; 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)

§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) After the time and date set for receipt of 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 names of evaluation committee members established by section 3-122-45.01 prior to the posting of the award pursuant to section 3-122-57(a) 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)

§3-122-9.02 Request for information. When it is considered impractical to initially prepare a definitive purchase description or when discussions with vendors are not productive, the procurement officer may, prior to issuing a competitive sealed bid or proposal, issue a request for information which shall include but not be limited to:

- (1) The objective of the procurement;
- (2) That the response is to provide the purchasing agency with recommendations that will serve to accomplish the work required by the procurement;
- (3) That the purchasing agency reserves the right to incorporate in a solicitation, if issued, any recommendations presented in the response to the request for information; and
- (4) That neither the purchasing agency nor the supplier responding has any obligation under the request for information. Eff and comp 11/17/97; am and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

SUBCHAPTER 3

SPECIFICATIONS

§3-122-10 Purpose. A specification is the basis for procuring a good, service, or construction item adequate and suitable for the State's needs in a cost effective manner. Purchasing agencies shall seek to procure standard commercial products, if practicable, and obtain the most advantageous prices. All specifications shall seek to promote overall competition, shall not be unduly restrictive, and provide a fair and equal opportunity for every supplier that is able to meet the State's needs. In developing specifications, unique requirements should be avoided. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §§103D-202, 103D-401) (Imp: HRS §§103D-401, 103D-405)

§3-122-11 Authority to prepare specifications.

(a) The chief procurement officer, with the assistance of the using agency, shall prepare and approve specifications, and may delegate, in writing, to purchasing or using agencies the authority to prepare and use its own specifications, provided the delegation may be revoked by the chief procurement officer.

- (1) The written delegation shall include a determination made by the chief procurement officer that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State.
- (2) Using agencies delegated the authority to prepare specifications may use any of the specifications defined herein.

(b) If a specification for general or common use item or a qualified products list exists for an item to be procured under subchapter 8, for small purchases, it shall be used. If no specification exists, purchasing agencies are hereby granted the authority to prepare specifications for use in such purchases.

(c) In an emergency under subchapter 10, any necessary specifications may be utilized by the purchasing agency without regard to the provisions of

this subchapter. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; comp] (Auth: HRS §§103D-202, 103D-401) (Imp: HRS §§103D-401, 103D-402)

§3-122-12 Duties of the administrator. (a) The administrator of the state procurement office shall serve as the central procurement officer to coordinate, guide, and distribute specifications used by purchasing agencies, including specifications on recycled products and the guidelines for purchasing energy-efficient vehicles. This effort will allow for the use of standard specifications by purchasing agencies on purchases for common or general use items or standard commercial products or energy-efficient vehicles.

(b) The administrator of the state procurement office shall review and establish purchase specifications to guide state and county purchasing agencies in the procurement of recycled products.

- (1) The specifications shall:
 - (A) Be consistent with applicable current federal specification standards on recycled products ;
 - (B) Include minimum standards of recovered material and post-consumer content; and
 - (C) Ensure, to the maximum extent economically feasible, the purchase of materials which may be recycled or reused when discarded and avoid the purchase of products deemed environmentally harmful.
- (2) The administrator may periodically review its specifications to determine whether discrimination against procured goods with recycled content exists and may revise these specifications to eliminate any discrimination.
- (3) Purchase specifications may include, but not be limited to, office paper, printed material, paper products, paper, glass-by-products, plastic products, mulch and soil

amendments, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials. Paving materials to be considered may include, but are not limited to, asphalt, tires, crushed concrete for base, subbase, and paving materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for any product or construction.

(c) Pursuant to section 103D-412, HRS, the procurement policy for all agencies purchasing or leasing motor vehicles shall be to obtain energy-efficient vehicles in accordance with the guidelines established by the department of business, economic development and tourism. [Eff 12/15/95; comp 11/17/97; am and comp 03/21/08; am and comp] Auth: HRS §§103D-202, 103D-401) (Imp: HRS §§103D-401, 103D-412)

§3-122-13 Development of specifications. (a) A specification should provide for the following:

- (1) Identify minimum requirements;
- (2) Allow for competition;
- (3) List reproducible test methods to be used in testing for compliance with specifications; and
- (4) Provide for an equitable award at the best value.

(b) Types of specifications include the following, and may be used in combination when developing the specification:

- (1) Design specification sets the requirements for the product, detailing the characteristics that the item must possess, how the item is to be manufactured;
- (2) Performance specifications describes the capabilities that the product must meet, use of test or criteria are developed to measure the item's ability to perform as required;
- (3) Brand name specification commonly referred

to as restrictive specifications, may be used upon approval of the chief procurement officer after the purchasing agency makes a written determination that only the identified brand name item will satisfy the State's needs, and it is not practicable to use a less restrictive specification, provided that procurements pursuant to section 103D-305, HRS, requires approval by the procurement officer and shall be placed in the procurement file;

- (4) Brand name or equal specification cites one or more brand names, model numbers, or other designations that identify the specific products as having the characteristics of the item desired; and
- (5) Qualified or pre-approved products list is a list of goods, services, or construction items, which, prior to the opening of the competitive solicitation, are examined, tested, and determined to meet the applicable specification requirements.

(c) To the extent practicable, the State may procure standard commercial products using accepted commercial specifications. Specifications shall emphasize functional or performance criteria. Design or other detailed physical descriptions may be used when necessary to meet the needs of the State. Specifications shall not discriminate against the use of recycled materials; and when purchasing or leasing motor vehicles; specifications shall be developed in compliance with section 103D-412, HRS, as follows:

- (1) Agencies are directed to the acquisition of motor vehicle guidelines established by the department of business, economic development and tourism. When acquiring new vehicles, agencies shall determine its motor vehicle fleet as defined by these guidelines; and
- (2) Motor vehicle fleets determined to be outside of the "covered fleet" definition, shall obtain energy-efficient vehicles in order to increase energy efficiency and use

of renewable energy resources pursuant to section 103D-412(b), HRS, and further defined in the guidelines established by the department of business, economic development and tourism.

(d) A contractor paid for services to develop or prepare specifications or work statements shall be precluded from submitting an offer or receiving a contract for that particular solicitation.

(e) Specifications prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the State's needs and shall not be unduly restrictive. [Eff 12/15/95; am and comp 11/17/97; am and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-401, 103D-402) (Imp: HRS §§103D-401, 103D-404, 103D-405, 103D-406, 103D-412)

§3-122-14 Exempted items. Purchasing agencies are granted the authority to prepare specifications for goods, services, and construction procured under sections 103D-102 and 103D-304, HRS. However, all public employees are responsible for adhering to remaining ethical considerations in public procurement, as guided by section 103D-101, HRS, and section 3-131-1.02, HAR. [Eff 12/15/95; comp 11/17/97; comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-403) (Imp: HRS §§103D-102, 103D-304, 103D-403)

§3-122-15 (Reserved).

SUBCHAPTER 4

METHODS OF SOURCE SELECTION AND GENERAL GUIDANCE

§3-122-16 Methods of source selection. Unless

authorized by law, all contracts shall be awarded pursuant to the following sections:

- (1) Subchapter 4.5 - Source selection for federal grants;
- (2) Subchapter 5 - Competitive Sealed Bidding
- (3) Subchapter 6 - Competitive sealed proposals;
- (4) Subchapter 6.5 -Multi-Step Competitive Sealed Bidding;
- (5) Subchapter 7 - Professional services procurement;
- (6) Subchapter 8 - Small purchases;
- (7) Subchapter 9 - Sole source procurements; and
- (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)

§3-122-16.01 Procurement dollar thresholds.

Procurements exceeding the threshold of section 103D-305, HRS, shall be made pursuant to subchapters 5, 6, 6.5, 7, 9, and 10. [Eff and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-305)

§3-122-16.02 Preparation time for offer. (a)

The minimum time period between the first date of the public notice of the solicitation and the date set for receipt of offers, except as provided by subsection (b) for construction, including design-build projects, shall be as follows:

- (1) For a single-step invitation for bids pursuant to subchapter 5, ten calendar days;
- (2) For competitive sealed proposals pursuant to subchapter 6, thirty calendar days, unless the procurement officer makes a written determination that a shorter time will provide for adequate competition; and
- (3) For multi-step invitation for bids pursuant to subchapter 6.5, fifteen calendar days for the phase one unpriced technical proposal,

unless the procurement officer makes a written determination that a shorter time will provided for adequate competition; and ten calendar days for the phase two priced bid.

(b) For construction, including design-build projects, a minimum of fifteen calendar days shall be provided between the date of the pre-bid conference pursuant to section 3-122-16.05(b) and the date set for receipt of offers. [Eff and comp 03/21/08; comp] (Auth: HRS §§103D-202, 103D-302, 103D-303) (Imp: HRS §§103D-302, 103D-303)

§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;
- (3) The deadline for the responses to the solicitation;
- (4) Other appropriate information, e.g., contact information, the time, date, and location of the pre-bid or pre-proposal conference;
- (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.

A copy of the solicitation may be made available electronically, and 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 include the requested professional class or category and shall invite persons to submit statements of qualifications that includes:

- (1) The name of the firm or person, the principal place of business, and location of all 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 an 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 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)

§3-122-16.04 List of potential offerors. (a) A list may be compiled to provide the procurement officer with the names of businesses that may be interested in competing for various types of contracts.

(b) Unless otherwise provided, inclusion of the name of a business is discretionary and does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a contract; nor does it guarantee notification of each solicitation.

(c) Businesses that fail to respond to solicitations or notices of availability may be removed from the list.

(d) Names and addresses on the list shall be available for public inspection. [Eff and comp 03/21/08; comp] (Auth: HRS §§103D-202, 103D-302, 103D-303, 103D-304) (Imp: HRS §§103D-302, 103D-303, 103D-304)

§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.

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

(b) A pre-bid or pre-proposal conference shall be announced 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.

(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) 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) A summary of the conference, including questions and answers, in addition to any changes to the solicitation, may be issued by addendum before the deadline for receipt of offers. [Eff and comp 03/21/08; am and comp] (Auth: HRS §§103D-202, 103D-303.5) (Imp: HRS §§103D-302, 103D-303.5)

§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 (d) (f).

- (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 for:
 - (1) Amendments shall be 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 and confirmed in the addendum;
 - (2) Clarifications may be issued any time up to the scheduled deadline for receipt of offers.

(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)

§3-122-16.07 Pre-opening modification or withdrawal of offer. (a) 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:

- (1) For modification of the offer:
 - (A) A written notice accompanying the

- offeror's modification received in the office designated in the solicitation, stating that a modification to the offer is submitted; or
- (B) An electronic notice accompanying the offeror's modification submitted 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 submitted electronically pursuant to section 3-122-9.

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, 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 procurement file. [Eff and comp 03/21/08; am and comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303)

§3-122-16.08 Late offer, late withdrawal, and late modification. (a) Any offer, withdrawal and modification submitted manually or digitally 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, supported by a written determination by the head of the purchasing agency, within the procuring agency.

(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 procuring 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)

§3-122-16.09 Cancellation of solicitation and rejection of offer. Cancellation of solicitations and rejection of bids or proposals shall be pursuant to subchapter 11 and section 103D-308, HRS. [Eff and comp 03/21/08; comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-302, 103D-303, 103D-308)

SUBCHAPTER 4.5

SOURCE SELECTION FOR FEDERAL GRANTS

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

(b) The selection of 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)

§3-122-16.31 Exception; request for interest.

(a) "Request for federal grants" as used in this subchapter means all documents utilized for soliciting 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 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 to be served;
- (3) A description of the good, service, or construction;
- (4) The evaluation criteria and their relative weights for selecting a 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 contractor has any obligation under the request.

(e) The selection of a contractor(s) shall be based on the criteria established in the request for interest.

(f) A notice of the selected contractor(s) shall be posted to a state governmental website 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)

SUBCHAPTER 13.5

Contractor Past Performance Assessment Form

§ 3-122-115.01 Contractor past performance assessment.ⁱⁱ (a) Except for any contract entered into pursuant to sections 103D-307 or 103D-305, HRS or as directed by the Chief Procurement Officer, all state and county procurement officers or agents shall complete a contractor past performance assessment form approved by the procurement policy board.

(b) The contractor past performance assessment shall include information contained in Act 188, SLH 2021.

(c) The contractor past performance assessment process shall include the following:

(1) Procurement officers shall prepare the contractor past performance assessment format the end of the contract, or more frequently as designated by the CPO or designee:

(A) Procurement officer shall begin preparing the Contractor past performance assessment form prior to contract completion and shall enter information into an electronic past performance database system;

(B) Procurement officer who rates a vendor an unsatisfactory performance assessment is required to document the action (i.e., notice to cure) used to notify the vendor of the contractual deficiencies;

- (C) Agency assessments of contractor past performance shall be provided to the contractor as soon as practicable after completion of the assessment. The contractor shall receive a notification when an assessment is ready for comment;
 - (D) Contractor shall review the Contractor past performance assessment form within 10 working days from the date of notification of the contractor past performance assessment and submit comments, rebutting statements, or additional information, or the Contractor past performance assessment form shall be considered accepted by the contractor;
 - (E) Procurement officer shall submit a copy of the final Contractor past performance assessment form in the agency's contract file and electronically in the past performance database system within five working days of receipt;
 - (F) The final contractor past performance assessment form is required prior to making a final payment.
- (2) Contractor's past performance assessment form dispute process:
- (A) Contractor shall submit a request with substantial evidence to the procurement officer for reconsideration within 10 working days from the date of notification of the past performance assessment;
 - (B) The procurement officer shall update the past performance database system taking into consideration any contractor comments;
 - (C) The final determination on the contractor's past performance assessment shall be the decision of the

head of the purchasing agency or
 designee. [Eff and comp]
 (Auth: HRS §§103D-202, 103D-329) (Imp:
 HRS §§103D-104, 103D-202)

ⁱ“Recent” time periods for consideration may be different according to the type of requirement, however the Contractor Past Performance Assessment Report shall only be available on the database for three years. If the procurement officer determines that the requisition justifies seeking past performance information that is older than three years (i.e., by request of the offeror or the chief procurement officer), then they may seek specific contract files from the contracting agency which would contain the assessment report information.

ⁱⁱ Although it is not required, it is recommended that a new clause of consent to assessment and evaluation process should be included in the solicitation and the contract’s general conditions, identifying the process by which the contractor specifically consents to the process of performance assessment, review, finalization, and posting of final Contractor Past Performance Assessment to be accessible for the following three years for future solicitation evaluations as a condition of award for applicable methods of procurement.