

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

Interim
Hawaii Administrative Rules

February 28, 2025

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

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 Replaces rules effective 08/21/2016 (file no. 3193) which amended section 3-122-14; and repealed section 3-122-66.

1. §3-122-9, 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) 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 be made available [~~for public inspection and pick up~~] electronically and or 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 invite persons to submit statements of qualifications that may include but not be limited to:

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 Material, except source notes, to be repealed is bracketed.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

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

7. 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 28, 2025, by the Procurement Policy Board and filed with the Office of the Lieutenant Governor.

LISA MARUYAMA
Chairperson
Procurement Policy Board

KEITH REGAN
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General