DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-121
Hawaii Administrative Rules

April 17, 2008

SUMMARY

1. §3-121-1 is amended.

2. §3-121-1.01 is amended.

3. §3-121-6 is amended.

4. Chapter 121 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 121

PROCUREMENT ORGANIZATION

Subchapter 1 Procurement Policy Board

§3-121-1 Duties and advisor
§3-121-1.01 Meetings
§3-121-2 Procurement directives
§3-121-3 Exceptions
§3-121-4 Interim rules

Subchapter 2 Chief Procurement Officers

§3-121-5 Chief procurement officers identified
§3-121-6 Authority and duties
§3-121-7 Additional duties of the administrator of the state procurement office
§3-121-8 Centralization of procurement authority
§3-121-9 Interim rules
§§3-121-10 to 3-121-15 (Reserved)

Subchapter 3 Delegation of Chief Procurement Officers' Authority and Duties

§3-121-16 Delegation of authority
§3-121-17 Limits to delegation of authority
§3-121-18 Interim rules
§§3-121-19 to 3-121-24 (Reserved)

Subchapter 4 Procurement Advisory Council and Other Advisory Groups

§3-121-25 Procurement advisory council
§3-121-26 Other advisory groups
§3-121-27 Reimbursement of expenses
§3-121-28 Interim rules
§3-121-29 to 3-121-30 Reserved.

Subchapter 5 Rulemaking Proceeding and Declaratory Rulings

§3-121-31 Adoption, amendment, or repeal of rules
§3-121-32 Declaratory ruling

Historical Note: This chapter 121, effective ,subtitle 11 of title 3, Hawaii Administrative Rules:

1. Replaces interim rules effective 12/26/06 (file no. 2737) which added new sections 3-121-1.01, 3-121-31, and 3-121-32; amended sections 3-121-4, 3-121-9, 3-121-18, and 3-121-28; and compiled the chapter.

SUBCHAPTER 1

PROCUREMENT POLICY BOARD

§3-121-1 Duties and advisor. (a) The duties of the procurement policy board shall be in accordance with sections 103D-202, 103D-211, and 103D-401, HRS. The board:

(1) Shall audit and monitor the implementation of its rules and the requirements of HRS chapters 103D and 103F;

(2) May annually audit any entity subject to HRS chapters 103D and 103F, to be randomly

selected, to ensure compliance with HRS chapters 103D and 103F; and

(3) May select any entity subject to HRS chapters 103D and 103F, for compliance audits based upon:

(A) A pattern of non-compliance; or

(B) Any justification determined by the procurement policy board to warrant an audit.

(b) The administrator of the state procurement office shall serve as a nonvoting advisor to the policy board. [Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; am and comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-121-1.01 Meetings. (a) The procurement policy board may meet and exercise its duties in the State of Hawaii. Except as otherwise provided by law, all of the procurement policy board meetings are open to the public. The parliamentary procedures to be utilized by the procurement policy board in the conduct of its meetings shall be based on the current edition of Robert's Rules of Order, to the extent it does not conflict with chapters 91 and 92, HRS, or these rules.

(b) The procurement policy board:

(1) Shall allow all interested persons an opportunity to submit data, views, arguments, or present oral testimony on any agenda item in an open meeting;

(2) May provide for the recordation of all presented oral testimony; or

(3) May impose limitations on the submission of data, views, arguments, or oral testimony in the interest of preserving fairness within the constraints of an open meeting. [Eff 12/26/06; am and comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-121-2 Procurement directives. (a) The policy board shall issue procurement directives to:

(1) Cover the policies and procedures for conducting its business;
(2) Issue interim rules;
(3) Provide general procurement policy guidance; and
(4) Issue forms, lists, or other information as required.

(b) A copy of each directive shall be provided to the chief procurement officers. [Eff 12/15/95; am and comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; comp MAY 03 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-121-3 Exceptions. The procurement policy board shall not exercise authority over:

(1) The award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto; and
(2) The specifications for goods, services, or construction items, provided that the specifications are prepared in accordance with chapter 103D, HRS, and the rules of the policy board. [Eff 12/15/95; comp 11/17/97; comp 6/9/01; comp 11/8/02; comp MAY 03 2008] (Auth: HRS §§103D-202, 103D-403) (Imp: HRS §§103D-202, 103D-207, 103D-403)

§3-121-4 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361). [Eff and comp 11/8/02; am and comp MAY 03 2008]

SUBCHAPTER 2

CHIEF PROCUREMENT OFFICERS

§3-121-5 Chief procurement officers identified. The chief procurement officers for each of the state entities shall be in accordance with section 103D-203, HRS. [Eff 12/15/95; am and comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-203)

§3-121-6 Authority and duties. (a) Each chief procurement officer shall serve as the central procurement officer for its respective jurisdiction in accordance with sections 103D-205, 103D-207, and 103D-402, HRS.

(b) A chief procurement officer may issue price or vendor lists for goods and services pursuant to section 3-122-143.

(1) When price or vendor lists are issued, it is mandatory that all departments and agencies procure goods and services from the price or vendor lists, unless otherwise determined by the chief procurement officer and stated in the solicitation.

(2) Exceptions to purchase outside of the price or vendor lists are allowed upon approval of the chief procurement officer. The burden of proof that the price or vendor list good or service is not suited to the agency's needs shall be the responsibility of the expending agency.

(3) Use of price or vendor lists between chief procurement officers may be authorized upon mutual agreement and commitment to the terms of the price or vendor list pursuant to chapter 3-128. The State's commitment shall be stated in the bid document. [Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; am and comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §§103D-205, 103D-207, 103D-313, 103D-802)

§3-121-7 Additional duties of the administrator of the state procurement office. In addition to the duties in section 3-121-6, the administrator shall comply with section 103D-206, HRS. [Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-206)

§3-121-8 Centralization of procurement authority. Procurement authority shall be centralized pursuant to section 103D-207, HRS. [Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-207)

§3-121-9 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361). [Eff and comp 11/8/02; comp MAY 0 3 2008].

§§3-121-10 to 3-121-15 (Reserved).

SUBCHAPTER 3

DELEGATION OF CHIEF PROCUREMENT OFFICERS' AUTHORITY AND DUTIES

§3-121-16 Delegation of authority. (a) Each chief procurement officer may delegate any authority or duty or may revoke any authority or duty conferred upon the chief procurement officer by chapter 103D, HRS, and rules adopted by the policy board to any head of a purchasing agency within its respective jurisdiction. Factors to consider in making the decision to delegate include:

2811

(1) The expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;
(2) The past experience of the potential delegate in exercising similar authority;
(3) The degree of economy and efficiency to be achieved in meeting the State's requirements if authority is delegated;
(4) The available resources of the office of the chief procurement officer to exercise the authority if it is not delegated; and
(5) The consistency of delegation under similar circumstances.

(b) The delegation shall be made based on information provided by the head of a purchasing agency, which shall include, but not be limited to:
(1) The title of the head of the purchasing agency or a designee who will have overall authority for procurement within the agency;
(2) The categories of procurement, i.e., goods, services, or construction;
(3) The dollar level of goods, services, and construction procurement;
(4) The methods of source selection:
(A) Competitive sealed bidding: Authority to award or enter into contracts pursuant to section 103D-302, HRS;
(B) Competitive sealed proposals: Authority to approve, award, or enter into contracts pursuant to section 103D-303, HRS;
(C) Professional services procurement: Except that as otherwise provided, the authority to negotiate, award, or enter into contracts pursuant to section 103D-304, HRS, rests with the head of a purchasing agency, and does not require a delegation by the chief procurement officer;

(D) Small purchases: Authority to award purchase orders pursuant to section 103D-305, HRS;

(E) Sole source procurement: Authority to negotiate, award, or enter into contracts pursuant to section 103D-306, HRS. Approvals pursuant to section 103D-306, HRS, shall remain with the chief procurement officer;

(F) Emergency procurements: Authority to negotiate, award, or enter into contracts pursuant to section 103D-307, HRS. Approvals pursuant to section 103D-307, HRS, shall remain with the chief procurement officer; and

(5) Position titles of those individuals who will be designated procurement officers by the head of the purchasing agency or designee. Information required by paragraphs (2), (3), and (4) shall also be required for each procurement officer delegated such authority. A sample delegation format shall be provided by the chief procurement officer.

(c) Delegation of authority by the head of a purchasing agency to a procurement officer is limited by and subject to chapter 103D, HRS, and its implementing rules. Heads of purchasing agencies should familiarize themselves with those limitations.

(d) The delegation from the chief procurement officer shall be in writing and shall specify:

(1) The activity or function authorized;

(2) Any limits or restrictions on the exercise of the delegated authority;

(3) Whether the authority may be further delegated; and

(4) The duration of the delegation.

(e) The chief procurement officer shall retain in its files each delegation determination. [Eff 12/15/95; am and comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §§103D-202, 103D-208) (Imp: HRS §103D-208)

28 11

§3-121-17 Limits to delegation of authority. The chief procurement officer may delegate to a designee who will sign for the chief procurement officer final approval for the following:

(1) Exemptions to chapter 103D, HRS, pursuant to section 103D-102(b)(4), HRS[.];

(2) Purchases by sole source selection under the provisions of section 103D-306, HRS;

(3) Emergency procurements pursuant to section 103D-307, HRS;

(4) Waiver to competitive sealed bid process pursuant to section 3-122-35; and

(4) Waiver to competitive sealed proposal process pursuant to section 3-122-59. [Eff 12/15/95; am and comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §§103D-102, 103D-202, 103D-208) (Imp: HRS §§103D-102, 103D-208, 103D-302, 103D-303, 103D-306, 103D-307)

§3-121-18 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361). [Eff 11/8/02; comp MAY 0 3 2008].

§§3-121-19 to 3-121-24 (Reserved).

SUBCHAPTER 4

PROCUREMENT ADVISORY COUNCIL AND OTHER ADVISORY GROUPS

§3-121-25 Procurement advisory council. (a) The procurement policy board may establish a procurement advisory council for:

(1) The discussion of problems and recommendations for improvement of the procurement process; and

(2) Conducting studies, research, analyses, and making reports and recommendations with respect to subjects or matters within the jurisdiction of the policy board, when requested by the policy board.

(b) The procurement advisory council, if created, shall consist of the chief procurement officers or their designated representatives, pursuant to section 3-121-5. If created:

(1) The chairperson for the council shall be elected bi-annually by a majority of its members from among all of its members;

(2) The council shall meet at least twice a year. [Eff 12/15/95; am and comp 11/17/97; comp 6/9/01; comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-202, 103D-205)

§3-121-26 Other advisory groups. The chief procurement officer may appoint advisory groups to assist with respect to specifications or procurement in specific areas, and with respect to any other matters within the authority of the chief procurement officer. [Eff 12/15/95; comp 11/17/97; comp 6/9/01; comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §103D-213)

§3-121-27 Reimbursement of expenses. Members of the procurement advisory council and other advisory groups may be reimbursed for expenses incurred in the performance of their duties, subject to such expenditure limitations as may be prescribed by the policy board and applicable law. [Eff 12/15/95; comp 11/17/97; comp 6/9/01; comp 11/8/02; comp MAY 0 3 2008] (Auth: HRS §103D-202) (Imp: HRS §§103D-202, 103D-205, 103D-213)

§3-121-28 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii

Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361). [Eff and comp 11/8/02; am and comp MAY 0 3 2008].

§§3-121-29 to 3-121-30 (Reserved).

SUBCHAPTER 5

RULEMAKING PROCEEDINGS AND DECLARATORY RULINGS

§3-121-31 Adoption, amendment, or repeal of rules. (a) The rules adopted, amended, or repealed by the procurement policy board shall be made in accordance with chapter 91, HRS, except for rules the Procurement Policy Board may approve as interim rules pursuant to Section 103D-202, HRS.

(b) Any interested person may petition the procurement policy board for the adoption, amendment, or repeal of any rule. The petition shall be submitted in duplicate and delivered to the administrator of the state procurement office.

(c) The petition need not be in any special form but it must contain:

(1) A statement of the nature of each petitioner's interest;
(2) A draft of the substance of the proposed rule or amendment and a designation of any existing rule affected by the petition;
(3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
(4) Any other information relevant to the petition;
(5) The name, address, and telephone number of each petitioner; and
(6) The signature of each petitioner.

(d) Upon receipt of the petition, the

administrator shall cause the petition to be dated to determine the date of submission, and shall forward the petition to the members of the procurement policy board.

(e) Within thirty days after the receipt of the petition, the procurement policy board, or as delegated to the administrator, shall either deny the petition in writing, stating the reasons for the denial, or initiate proceedings in accordance with chapter 91, HRS, for the adoption, amendment, or repeal of the rule. [Eff and comp 12/26/06; comp MAY 0 3 2008] (Auth: HRS §§91-2, 91-5, 91-6, 103D-202, 103D-211) (Imp: HRS §§91-2, 91-3, 91-5, 91-6, 103D-202, 103D-211)

§3-121-32 Declaratory ruling. (a) Any person may petition the procurement policy board for a declaratory ruling as to the applicability of any statutory provision enforced by the procurement policy board or of any rule or order of the procurement policy board.

(b) The petition shall be submitted in duplicate to the administrator of the state procurement office. The petition need not be in any special form but it shall contain:

(1) A statement of the nature of each petitioner's interest, including reasons for the submission of the petition;
(2) A designation of the specific statutory provision, rule, or order in question;
(3) A complete statement of the relevant facts;
(4) A statement of the interpretation given the statutory provision, rule, or order by the petitioner;
(5) A memorandum containing the reasons, including any legal authority in support of the interpretation of the petitioner;
(6) The name, address, and telephone number of each petitioner; and
(7) The signature of each petitioner, or petitioner's representative.

(c) Upon receipt of the petition, the administrator shall cause the petition to be dated to determine the date of submission, and shall forward the petition to the members of the procurement policy board.

(d) The procurement policy board, or as delegated to the administrator, shall with reasonable promptness either deny the petition, stating the reasons therefore in writing, or issue a declaratory ruling. Upon disposition of the petition, the procurement policy board shall promptly notify the petitioner.

(e) The declaratory ruling shall be applicable only to the fact situation as alleged in the petition or as set forth in the ruling. The declaratory ruling shall not be applicable to fact situations which involve additional facts not considered in the ruling." [Eff and comp 12/26/06; comp MAY 0 3 2008] (Auth: HRS §§91-8, 103D-202, 103D-211) (Imp: HRS §§91-8, 103D-202, 103D-211)

DEPARTMENT OF ACOUNTING AND GENERAL SERVICES

Amendments to and compilation of Chapter 3-121, Hawaii Administrative Rules, on the Summary Page dated April 17, 2008 were adopted as interim rules at the Procurement Policy Board meeting on April 17, 2008. Pursuant to section 103D-202, HRS, these rules shall be issued by Procurement Directive and be effective for not more than eighteen months.

These interim rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General

'08 APR 23 A8:30

LIEUTENANT GOVERNOR'S OFFICE

08 11