

**HRS Chapter 103F
Purchases of Health and Human Services**

**Hawaii Administrative Rules
Chapters 3-141 to 3-143 and 3-146,
3-148 and 3-149**

Draft of Proposed Amendments

State Procurement Office
Informational Briefing
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1

Chapter 3-141, General Provisions

Section 3-141-407 Public Notice. Subsection (c)(1).

Public notices for requests for proposals shall be posted until the proposal submittal deadline, but not less than ~~twenty-eight~~ thirty days.

The section is amended to replace posting of the public notice to the proposal submittal deadline from "twenty-eight" to "thirty" days to be consistent with the required public notice posting for HRS Chapter 103D competitive sealed proposals.

2

Chapter 3-142, Planning

Section 3-142-201 Planning. Subsection (a)(1):

...The scope of a purchasing agency's planning[;] may be defined by its statutory language;...

This section is amended to delete a comma from the last sentence of (a)(1).

3

Chapter 3-142, Planning

Section 3-142-202 Requests for information.

Subsection (a), first sentence.

At a minimum, a purchasing agency shall prepare a request for information [~~prior to~~ **during**] the development of a request for proposals to obtain community input and facilitate community planning activities.

The words "prior to" are replaced by "during." The request for information should be prepared "during" the development of a request for proposals.

4

Chapter 3-142, Planning

Section 3-142-202 Requests for information.

Subsection (f), first sentence:

Federal grant applications. When utilizing a request for information, pursuant to section 3-143- 614, to select a provider for inclusion in a federal grant application, the request for information shall include, but not be limited to:...

Reference to Section 3-143-614, Applications for federal funding, is added.

5

Chapter 3-142, Planning

Section 3-142-203 Collaboration of providers.

§3-142-203 [~~Collaboration~~] Participation of providers. (a) Purchasing agencies may ask Providers to participate in purchasing agency planning activities, prior to release of a request for proposals, [~~in order~~] to create greater efficiency, responsiveness, and organization in meeting the health, social and economic needs of the various communities.

(b) Areas for [~~collaboration~~] participation. Specific areas for [~~collaboration with~~] participation of providers may include, but are not limited to:

This section is renamed "Participation of providers" and amended as a result of ACT 004, SLH 2012 (HRS §103F-401.5).

6

Section 3-142-203 Collaboration of providers. (continued)

- (1) Sharing of information on community needs;
- (2) Determination of best practices;
- (3) Inventory of available resources;
- (4) Budgetary or cost factors;
- (5) Configuration of services; ~~and~~
- (6) Recommendations for service specifications and requirements~~[-]~~;
- (7) Evaluating efficiencies in delivering existing services and recommending strategies for eliminating gaps in service delivery; and
- (8) Recommending cost-efficient and effective service alternatives.

7

Section 3-142-203 Collaboration of providers. (continued)

(c) As part of the contract conditions, purchasing agencies may require a provider to participate in planning activities pursuant to subsection (b), providing that the requirement is addressed in the request for proposals.

~~[(c)]~~ (d) No disqualification from procurement. ~~[Uncompensated provider]~~ Provider participation ~~[is encouraged, and such involvement]~~ in planning pursuant to subsection (a) shall not disqualify any responsible provider from responding to any subsequent procurement actions a purchasing agency may take.

~~[(d)]~~ (e) No exemption from anti-competitive practices. The collaborative practices permitted under this section shall not be construed to create an exemption to allow anti-competitive practices otherwise prohibited by federal, state or county law.

8

Chapter 3-143, Competitive Purchase of Service

Section 3-143-201 Preparing a request for proposals.

(a) The request for proposals is used to initiate a competitive purchase of service procurement and shall include:

- (1) The service specifications prepared in accordance with section 3-143-302 for the services to be procured;
- (2) Specifying whether single or multiple contracts are to be awarded and defining the criteria for the multiple award, if applicable;
- (3) Specifying whether single- or multi-term contracts are to be awarded and defining the terms, including but not limited to initial contract term and conditions for extension; multi-term contracts shall be in accordance with section 3-149-302;

Subsection (a)(2) and (a)(3) moved for appropriate placement and clarity purposes from section 3-143-302(b)(10) and (b)(11), Service specifications for requests for proposals.

9

Section 3-143-201 Preparing a request for proposals. (continued)

~~[(10)]~~ (12) A statement that provider participation in a purchasing agency's efforts to plan for or to purchase health and human services, prior to the purchasing agency's release of a request for proposals including the sharing of information on community needs, best practices, and providers' resources, shall not disqualify providers from submitting proposals if conducted in accordance with sections 3-142-203 ~~[or 3-143-618];~~

~~[(12)] Any specific requirements or qualifications that an applicant must meet in order to submit a proposal including, but not limited to, licensure or accreditation;~~

Subsection (a)(10) deletes reference to section 3-143-618 which was repealed in 2006.

Subsection (a)(12) is moved to section 3-143-302, Service specification for requests for proposals, where is it is more appropriate and for clarity purposes

10

Section 3-143-201 Preparing a request for proposals. (continued)

(b) If a purchasing agency, at its option, makes it a requirement for a provider to participate in planning activities in accordance with section 3-142-203, the requirements shall be addressed in the requests for proposals and also made a provision of the awarded contract.

Subsection (b) is added to reflect amendments resulting from ACT 004, SLH 2012 (HRS §103F-401.5).

11

Section 3-143-202.1 Proposal submittal deadline.

§3-143-202.1 Proposal submittal deadline. (a) Unless waived in accordance with subsection (b), the submittal deadline shall be at least [~~twenty-eight~~] **thirty** days from the release date of the request for proposals.

(b) Shortened time for submittal deadline. The chief procurement officer or head of the purchasing agency may approve to shorten the [~~twenty-eight~~] **thirty** day period required in subsection (a), upon a written determination by the purchasing agency that:...

The request for proposals submittal deadline is changed from “twenty-eight” to “thirty” days to be consistent with the required public notice posting for HRS Chapter 103D competitive sealed proposals.

12

Section 3-143-203 Orientation for requests for proposals.

§3-143-203 Orientation for requests for proposals. (a)
To provide greater efficiency and uniformity in the planning and procurement of health and human services, ~~[orientations]~~ an orientation to explain the procurement requirements of the purchasing agency shall be conducted by the purchasing ~~[agencies]~~ agency for ~~[all]~~ requests for proposals issued.

Subsection (a) is reworded for clarity purposes.

13

Section 3-143-203 Orientation for requests for proposals. (continued)

(c) Time for orientation. The orientation shall be held between five and fifteen working days after the public notice has been issued ~~[, or long enough after the request for proposals has been issued in order to allow]~~. A longer period of time may be allowed for applicants to become familiar with the request for proposals prior to the orientation, ~~[but sufficiently]~~ however, the purchasing agency shall provide sufficient time before proposal deadline to allow applicants consideration of the orientation results in preparing their proposals.

Subsection (c) is reworded for clarity purposes.

14

Section 3-143-203 Orientation for requests for proposals. (continued)

(d) Place for orientation. An orientation shall be conducted on the island on which the requested service will be provided. If a request for proposals requests services to be provided on multiple islands, then the purchasing agency shall hold its orientation on the island that will receive the largest share of the requested services at the location or locations specified in the request for proposals[.], or, when applicable, the purchasing agency may use an interactive conference technology, audio or audio and visual, including teleconference, video conference, and voice over internet protocol to conduct an orientation for multiple locations.

Subsection (d) is amended to include other technological means to conduct an orientation meeting.

15

Section 3-143-203 Orientation for requests for proposals. (continued)

(f) Waiver from orientation....

- (1) A written [~~finding, certified~~] determination by the head of the purchasing agency, that the request for proposals issued is substantially similar to other requests for proposals for the same services issued by the purchasing agency in the past, and potential applicants are already familiar with the requirements of the request for proposals for that reason;

Subsection (f)(1) is reworded for clarity purposes.

16

Section 3-143-204 Submission and receipt of proposals.

§3-143-204 Submission and receipt of proposals. (a) Proposals shall be submitted to Purchasing agencies no later than the submittal deadline. Proposals may be submitted by hand-delivery or United States mail. Proposals shall be considered received when actually received by the purchasing agency. Proposals received after the deadline shall be rejected in accordance with section 3-143-603.

~~[(1) Proposals submitted by hand delivery shall be deemed received when actually received by the purchasing agency; and~~

~~(2) Proposals submitted by United States mail shall be deemed received on the post mark date, provided the proposal is actually received by the purchasing agency within ten days from the postmark date. Proposals received after the deadline shall be rejected in accordance with section 3-143-603.]~~

(b) Proposal submittals by electronic means. Proposals submitted by electronic means~~[, including telefacsimiles,]~~ shall be allowed only when expressly authorized in the request for proposals and shall be in accordance with section 3-143-502.

Subsection (a) is changed to state that proposals shall be actually received by the purchasing agency by the proposal submittal deadline. Submittal of the proposal by the postmark date is deleted because providers are now able to print mailing labels; therefore, there is an unfair advantage if providers print the mailing label on the date of the proposal submittal deadline, but complete and mail the proposal the next day.

Unnecessary wording is deleted from subsection (b).

Section 3-143-205 Evaluaton of proposals and notice of award.

§3-143-205 Evaluation of proposals and notice of award. (a) ~~[After the submittal deadline, all proposals, modifications, and withdrawals]~~ All responsive proposals received by the proposal submittal deadline shall be ~~[examined]~~ reviewed and evaluated by the purchasing agency in accordance with this section.

This section is reworded for clarity purposes and correcting the subsection order.

Section 3-143-205 Evaluation of proposals and notice of award. (continued)

(b) Evaluators. The procurement officer~~[-]~~ or an evaluation committee of designated reviewers selected by the head of the purchasing agency or procurement officer shall review and evaluate proposals. ~~[A copy of the document identifying any review]~~ Identification of evaluation committee members and any subsequent changes thereto shall be placed in the procurement file.

- (1) When an evaluation committee is utilized to evaluate proposals received in response to a request for proposals, the head of the purchasing agency or procurement officer shall select ~~[for each request for proposals,]~~ a minimum of two employees from a state agency or agencies with sufficient education and training to evaluate the proposals ~~[received in response to the request for proposals].~~

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Section 3-143-205 Evaluation of proposals and notice of award. (continued)

- (2) Non-state employees may serve as advisors to a purchasing ~~[agencies]~~ agency in the evaluation of proposals but shall not represent or act on behalf of a purchasing agency in any selection or award...

20

Section 3-143-301 Addenda to requests for proposals.

(d) Addenda issued prior to proposal submittal deadline. Addenda shall be distributed or made available ~~[at least ten working days before the submittal deadline, or]~~ **prior to the proposal submittal deadline allowing** ~~[within a]~~ sufficient time ~~[before the submittal deadline to allow]~~ **for** prospective ~~[applicants to consider them in preparing their proposals.]~~ **applicants' consideration and proposal completion.** If the **proposal** submittal deadline ~~[for the request for proposals]~~ will not permit such adequate time, the purchasing agency shall include in the addendum an amendment to extend the submittal deadline accordingly. ~~[In order to]~~ **To** allow adequate time, the purchasing agency may ~~[also]~~ include in the addendum ~~[amendments]~~ **an amendment** to allow electronic submission of proposals in accordance with section 3-143-502.

Section (d) is reworded for clarity purposes.

21

Section 3-143-301 Addenda to requests for proposals. (continued)

(e) Addenda issued after submittal deadline. Addenda may be issued after the submittal deadline for the purposes of clarification, correction, ~~[to make]~~ **or** modifications that do not constitute a material change to the request for proposals, as defined in section 3-143-403(e), or for best and final revised proposals.

Section (e) is amended for clarity purposes.

22

Section 3-143-302 Service specifications for requests for proposals.

(b) Contents of service specifications. Service specifications shall address in detail each of the following items and if an item is not applicable to the request for proposals, it shall be so stated:

- (1) [~~Identify minimum~~] **Minimum** or mandatory activities;
- (2) [~~Specify probable~~] **Probable** funding amounts, source, and period of availability;
- (3) [~~Describe the need~~] **Need** or problem the service addresses;
- (4) [~~Describe goals~~] **Goals** of the service;
- (5) [~~Describe in detail the target~~] **Target** population to be served;

Unnecessary language in subsection (b) has been deleted.

23

Section 3-143-302 Service specifications for requests for proposals. (continued)

- (6) [~~Specify the geographical~~] **Geographical** coverage of service;
- (7) [~~Specify expected~~] **Expected** outcome measurements;
- (8) [~~Specify the units~~] **Units** of service and unit rate, as applicable;
- (9) [~~Specify quality~~] **Quality** assurance and evaluation specifications, as applicable;
- ~~[(10) Specify whether single or multiple contracts are to be awarded and define the criteria for the multiple award, if applicable;~~
- ~~[(11) Specify whether single or multi term contracts are to be awarded and define the terms, including but not limited to initial contract term and conditions for extension; multi term contracts shall be in accordance with section 3-149-302;]~~
- [(12)] **(10)** [~~Specify reporting~~] **Reporting** requirements for program and fiscal data, and provide sample forms and instructions, as available or appropriate;

Subsections (b)(10) and (b)(11) are moved to section 3-143-201, Preparing a request for proposals, where it is more appropriate.

24

Section 3-143-302 Service specifications for requests for proposals. (continued)

(11) Any specific requirements or qualifications that an applicant must meet in order to submit a proposal including, but not limited to, licensure or accreditation;

~~[(13)]~~ (12) [Identify minimum] Minimum or mandatory administrative requirements;

~~[(14)]~~ (13) [Identify minimum] Minimum or mandatory personnel requirements;

~~[(15)]~~ (14) [Specify pricing] Pricing or pricing methodology to be used, as applicable; and

~~[(16)]~~ (15) [Specify the method] Method or procedure for compensation or payment.

Renumbered subsection (b)(11) is moved from section 3 143-201, Preparing a request for proposals, for appropriate placement.

Renumbered and reworded for clarity purposes.

25

Section 3-143-303 Notice of award.

(b) Distribution of notice. The notice of award to each responsive and responsible applicant shall be sent by United States mail and may also be sent electronically~~[including but not limited to facsimile transmission,]~~ upon completion of the evaluation-process.

Subsection (b) is amended by deleting unnecessary language The postmark date is a requirement pursuant to HRS §103F-501; therefore, the notice of award is required to be mailed by the U.S. Postal Service.

26

Section 3-143-401 Discussions with applicants allowed before submittal deadline.

(d) Modification or cancellation of request for proposals [~~for material change~~]. In response to matters raised during discussions conducted under this section, a purchasing agency may modify or cancel its request for proposals as provided herein.

Subsection (d) title is amended by deleting “for material change” because the subsection covers both material and nonmaterial changes.

27

Section 3-143-502 Use of electronic submission for competitive purchase of service.

(a) Proposals and amendments may not be submitted to purchasing agencies by any electronic means [~~, including but not limited to facsimile transmission, via email or a website, except when~~] unless such transmission is expressly authorized in [a] the request for proposals.

This section is amended by deleting unnecessary language. The section is also reworded for clarity purposes.

28

Section 3-143-505 Selection of substitute provider after early termination of contract.

~~§3-143-505 Selection of substitute provider after early termination of contract...~~

This section is moved to where it is more appropriate under section 3-149-205 of the Contracting chapter.

29

Section 3-143-609 Inadequate response to request for proposals.

(d) No useful response to request for proposals. If ~~no~~ **all** proposals ~~are~~ received ~~that~~ are ~~both~~ **not** responsive to the request for proposals ~~and~~ **or** submitted by a responsible applicant, or if no proposals are received at all, then the purchasing agency may respond by taking any of the following actions:...

This section is amended by rewording for clarity purposes.

30

Section 3-143-609 Inadequate response to request for proposals. (continued)

- (4) Selection without competition. The purchasing agency may select a provider without further solicitation upon making a written determination that it is neither practicable nor advantageous to issue a new request for proposals based on a consideration of the following factors:
- (A) Lack of [Competition] competition in the marketplace;
 - (B) ~~Whether the~~ The additional potential cost of preparing, soliciting, and evaluating competitive purchase of service proposals is expected to exceed the benefits normally associated with the solicitation; and...

31

Section 3-143-614 Applications for federal funding.

(b) Special procedures authorized... To assess and consider interested or prospective applicants for inclusion in the state's application for federal funding and to fulfill the procurement requirements, purchasing agencies may, in lieu of the request for proposals process, utilize a request for information as established in section 3- 142-202 prior to applying for ~~or receiving~~ the federal funding. The selected provider or providers may be included in the state's application to the federal funding source.

Subsection (b) is amended by rewording for clarity purposes.

32

Chapter 3-146, Small Purchase of Service

Section 3-146-205 Quotations received.

§3-146-205 Quotations received. A record of all quotations received shall be made part of the procurement file, including written justification when fewer than the required number of quotations are obtained and when award is made to other than the provider submitting the lowest quotation.

This section is added, amended and appropriately placed from section 3-146-601, Procurement file.

33

Section 3-146-601 Procurement file.

~~[§3-146-601 Procurement file. All quotations received shall be recorded and placed in a procurement file, including a justification for the use of fewer quotations than are required, such as insufficient sources, emergency or urgent circumstances. The reason shall be recorded and placed in the procurement file. The file shall also include a written justification when award is made to other than the provider submitting the lowest quotation.]~~

This section is moved to section 3-146-205, Quotations received, where it is more appropriate.

34

Chapter 3-148, Protest and Request for Reconsideration

Section 3-148-202 Resolution of protest by mutual agreement.

~~[(b) Form of mutual agreement. Any resolution of a protest under this section shall be reduced to written form, and signed by both parties.]~~

~~(c)~~ **(b)** Remedies available. ~~[In order to]~~ **To** resolve a protest by mutual agreement, only the following remedies, singularly or in any combination may be used:...

This section is amended by deleting subsection (b). Resolution of a protest by mutual agreement should not require it to be in writing. Subsection (c) is renumbered "(b)" and unnecessary language is deleted.

35

Section 3-148-301 Notice of protest.

§3-148-301 Notice of protest. (a) Protestors shall commence the protest procedure by submitting a notice of protest to the head of the purchasing agency ~~[that conducted the protested procurement,]~~ and to the procurement officer ~~[who handled]~~ **of** the protested procurement.

Unnecessary language is deleted from subsection (a)

36

Section 3-148-301 Notice of protest. (continued)

(f) Submission of notice of protest. [~~Notices of protests may be submitted only by United States mail, or by hand delivery. Notices of protests submitted by hand delivery shall be deemed to have been submitted when actually received, and protests submitted and received by United States mail shall be deemed to have been submitted on the date they are post marked rather than the date they are actually received.~~] Notice of protests shall be considered submitted when it is actually received by the purchasing agency. Notice of protests may be submitted by any means, i.e., electronically, hand delivered, United States mail, courier service.

Subsection (f) is reworded to state that the notice of protest is considered submitted when actually received by the purchasing agency and that it can be submitted by the protestor by various means, not by just U.S. mail or hand delivery.

37

Section 3-148-302 Settlement and scheduling conference.

§3-148-302 [~~Settlement and scheduling conference.~~] Protest settlement conference and schedule. (a) Within three working days of receiving a notice of protest, the [~~head of the purchasing agency~~] procurement officer or designee shall organize and conduct a protest settlement [~~and scheduling~~] conference with the protestor [~~and the procurement officer in charge of the protested award and issue a scheduling order in accordance with this section~~].

The section title is changed to "Protest settlement conference and schedule" for clarity purposes.

Subsection (a) is reworded for clarity purposes.

38

Section 3-148-302 Settlement and scheduling conference.

(b) Procedure [for settlement and scheduling conference]. The protest settlement [and scheduling conference] conference may be conducted face to face, by telephone [conference], or other electronic communications medium. [At a minimum, the conference will address the following topics:

- ~~[(1) Whether the protest can be resolved by mutual agreement without submitting the matter to the head of the purchasing agency for decision; and~~
- ~~(2) Whether there will be any requests for clarification under section 3-148-502, and how much time the parties will need to make and respond to such requests.]~~

Subsection (b) is reworded and rewritten for clarity purposes.

39

Section 3-148-302 Settlement and scheduling conference. (continued)

(1) At a minimum, the settlement conference shall address:

- (A) The protestor's grounds for protest; and
- (B) Whether the protest can be informally resolved by mutual agreement.

(2) If the protest cannot be resolved informally by mutual agreement, a protest schedule shall be established by the purchasing agency in accordance with (c) and (d) and provided to the protestor within two days of the settlement conference.

40

Section 3-148-302 Settlement and scheduling conference. (continued)

(c) Contents of [~~scheduling order.~~] protest schedule. The [~~scheduling order.~~] protest schedule shall set the deadlines for the following:

- (1) Requests for clarification and responses if any;
- (2) Submission of formal protest; ...

(d) Standard times allowed. Every protest shall be resolved as speedily as possible.

- (1) [~~To the extent practicable, the submission of protests, responses, requests for clarification, and replies~~] Items (c)(1) to (c)(3) shall be completed within ten working days.

Subsections (c) and (d) are reworded for clarity purposes.

41

Section 3-148-302 Settlement and scheduling conference. (continued)

- (2) [~~To the extent practicable, written decisions~~] The written decision by the head of the purchasing agency shall be issued within five working days [-] from receipt of the protestor's reply to the purchasing agency's response, item (c)(4).
- (3) More or less time may be provided in the [~~scheduling order.~~] protest schedule at the discretion of the head of the purchasing agency.

42

Section 3-148-303 Written protest.

§3-148-303 [~~Written~~] **Formal** protest. (a) A protestor shall file a [~~written~~] **formal** protest in accordance with this section[.] **and the established protest schedule.**

(b) **Form and contents of protests.** [~~Protests~~] **Formal protests** shall be made in writing and shall [~~contain~~] **include**, at a minimum, the following [~~information and materials~~]:

(1)...(5)

(6) A declaration by the protestor that all [~~facts alleged~~] **the information provided** in the protest are true and correct to the best of the protestor's knowledge.

The section title is changed from "Written protest" to "Formal protest" for clarity purposes.

Subsection (b) is reworded for clarity purposes.

43

Section 3-148-303 Written protest. (continued)

(c) Submission of [~~written~~] **formal** protest. A [~~written~~] **formal** protest shall be submitted to the head of the purchasing agency, and the procurement officer in charge of the contested procurement. [~~Replies may be submitted by hand-delivery or by United States mail. Replies submitted by hand-delivery shall be deemed to have been submitted when actually received and replies submitted and received by United States mail shall be deemed to have been submitted on the date they are post-marked rather than the date they are actually received.~~] **Formal protests shall be considered submitted when it is actually received by the purchasing agency. Formal protests may be submitted by any means, i.e., electronically, hand delivered, United States mail, courier service.**

Subsection (c) is reworded to state that the formal protest is considered submitted when actually received by the purchasing agency and that it can be submitted by various means, not by just U.S. mail or hand delivery.

44

Section 3-148-304 Response to protest.

§3-148-304 Response to formal protest. (a) A purchasing agency shall respond in writing to the formal protest in accordance with this section.

(b) Form and contents of response. Every response to a protest shall be made in writing and shall contain at a minimum the following [~~information and materials~~]:

(1) ... (3)

(4) Any additional relevant information [~~that would help the head of the purchasing agency reach a decision~~].

The word "formal" is added to the section title for clarity purposes.

Subsection (b) is reworded for clarity purposes.

45

Section 3-148-304 Response to protest. (continued)

(c) [~~Submission~~] Transmittal of response. The response from the purchasing agency shall be submitted to the protestor [~~The head of the purchasing agency, and the chief procurement officer. Responses may be submitted only by United States mail, or by hand-delivery. Responses submitted by hand-delivery shall be deemed to have been submitted when actually received, and responses submitted and received by United States mail shall be deemed to have been submitted on the date they are post-marked, rather than the date they are actually received.~~] within the time frame established by the protest schedule and may be submitted by various means, i.e., electronically, hand delivered, United States mail, courier service.

Subsection (c) is amended to allow the protest to be submitted by various means and not only through the U.S. Postal Service.

46

Section 3-148-305 Reply by provider.

§3-148-305 Reply by [~~provider.~~] protestor. (a) [~~A provider~~] The protestor may make a reply to a purchasing agency's response under section 3-148-304 in accordance with this section.

(b) Form and contents of reply. A reply may contain the following [~~information and materials~~]:

- (1) Additional reasons or arguments supporting the position of the [~~applicant;~~] protestor;
- (2) Additional evidence or materials supporting the position of the [~~applicant~~] protestor; or
- (3) ...

The section title is changed to "Reply by protestor" for clarity purposes. Subsections (a) and (b) are reworded for clarity purposes.

47

Section 3-148-305 Reply by provider. (continued)

(c) Submission of reply. [A] Protestor's reply shall be submitted to the head of the purchasing agency[;] and the procurement officer [~~in charge~~] of the [~~contested procurement.~~] solicitation. [~~Replies may be submitted by hand-delivery or by United States mail. Replies submitted by hand-delivery shall be deemed to have been submitted when actually received and replies submitted and received by United States mail shall be deemed to have been submitted on the date they are post-marked rather than the date they are actually received.~~] Protestor's reply shall be considered submitted when it is actually received by the purchasing agency. Protestor's reply may be submitted by various means, i.e., electronically, hand delivered, United States mail, courier service.

Subsection (c) is reworded to state that the formal protest is considered submitted when actually received by the purchasing agency and that it can be submitted by various means, not by just U.S. mail or hand delivery.

48

Section 3-148-306 Decision by the head of the purchasing agency.

(b) Time for issuance of decision. The written decision shall be issued within the time frame established by the [~~scheduling order,~~] protest schedule unless the head of the purchasing agency determines that an extension [~~to a certain date~~] is necessary, and gives written notice of the extended deadline to the parties.

Subsection (b) is reworded for clarity purposes.

49

Section 3-148-306 Decision by the head of the purchasing agency. (continued)

(c) Form and contents of decision. Every decision issued in resolution of a protest shall [~~contain~~] include the following:

- (1) [~~A statement of the~~] The action to be taken or resolution to the protest;
- (2) [~~A detailed statement of the~~] The reason for the resolution, including factual findings;
- (3)...(4)...

Subsection (c) is reworded for clarity purposes.

50

Section 3-148-306 Decision by the head of the purchasing agency. (continued)

(d) Allowed ~~[methods for resolving protests.]~~ protest resolutions.
The head of the purchasing agency may use only the following methods, singularly or in any combination, to settle and resolve A protest:

- (1) ~~[Amending or canceling a]~~ Amend or cancel the request for proposals;
- (2) ~~[Terminating]~~ Terminate the awarded contract ~~[that was awarded];~~
- (3) ~~[Initiating]~~ Initiate a new process to award a contract by either re-opening the evaluation process or commencing a new procurement process;
- (4) ~~[Declaring]~~ Declare the contract null and void from the time of its award;
- (5) ~~[Affirming]~~ Affirm the purchasing agency's contract award decision; and
- (6) ~~[Dismissing]~~ Dismiss the protestor's protest.

Subsection (d) is reworded for clarity purposes.

51

Section 3-148-306 Decision by the head of the purchasing agency. (continued)

(e) ~~[Submission]~~ Transmittal of decision. ~~[Copies of the]~~ The head of the purchasing agency's decision shall be ~~[submitted]~~ sent to the protestor~~[,]~~ and procurement officer ~~[in charge of the protested procurement, and the the chief procurement officer by~~

- ~~(1) Hand delivery; or~~
- ~~(2) By United States mail and, to the extent practicable, by telefacsimile transmission.]~~

within the time frame established by the protest schedule. If the head of the purchasing agency requires additional time to issue the decision, the protestor shall be notified in writing of the extension. The decision may be transmitted by various means, i.e., electronically, hand delivered, United States mail, courier service.

Subsection (e) has been amended to allow the decision of the head of The purchasing agency to transmit a extension notification or the protest decision by any means, not by just U.S. mail or hand delivery.

52

Section 3-148-401 Request for reconsideration.

(c) Form and contents of request. A request for reconsideration shall ~~[-contain]~~ include the following ~~[materials and information]~~:

- (1) ...
- (2) Copies of the ~~[scheduling order,]~~ protest schedule, formal protest, [answer,] purchasing agency's response, protestor's reply, head of the purchasing agency's decision and supporting materials submitted during the initial protest procedure.

Subsection (c) is reworded for clarity purposes.

53

Section 3-148-401 Request for reconsideration. (continued)

(d) Submission of request. The request for reconsideration shall be submitted to the chief procurement officer and the ~~[opposing party by hand-delivery or United States mail. Requests for reconsideration submitted by hand-delivery shall be deemed to have been submitted when actually received, and requests for reconsideration submitted and received by United States mail shall be deemed to have been submitted on the date they are post-marked, rather than the date they are actually received.]~~ purchasing agency's procurement officer. Protestor's request for reconsideration shall be considered submitted when it is actually received by the chief procurement officer. Protestor's request may be submitted by various means, i.e., electronically, hand delivered, United States mail, courier service.

Subsection (d) is reworded to allow the request for reconsideration to be submitted by various means, but shall be considered submitted when received by the chief procurement officer.

54

Section 3-148-401 Request for reconsideration. (continued)

(e) ~~[Reply]~~ Purchasing agency's response to request. Within five working days after the submittal of the request for reconsideration, the ~~[opposing party]~~ purchasing agency may submit a ~~[reply]~~ response to the chief procurement officer ~~[to the request]~~ based on the request and the materials submitted to the head of the purchasing agency during the initial protest procedure. The ~~[reply]~~ response shall be submitted in the same manner as the request for reconsideration.

Subsection (e) title is changed to "Purchasing agency's response to request" and the subsection is reworded for clarity purposes.

55

Section 3-148-402 Decision by the chief procurement officer. (continued)

§3-148-402 Decision by the chief procurement officer. (a) After a request for reconsideration and any ~~[reply]~~ purchasing agency response thereto have been received, the chief procurement officer shall issue a written decision in accordance with this section.

(b) Time for issuance of decision. The written decision shall be issued within fifteen calendar days of the receipt of the request for reconsideration, unless the chief procurement officer determines that an extension to a certain date is necessary, and gives written notice of the extended deadline to the ~~[parties.]~~ protestor.

Subsections (a) and (b) are reworded for clarity purposes.

56

Section 3-148-402 Decision by the chief procurement officer. (continued)

(c) Form and contents of decision. Every [~~decision issued in resolution of a protest~~] protest resolution decision shall be in writing, and [~~shall,~~] at a minimum, [~~contain~~] include the following:

- (1) The chief procurement officer's decision [~~of the chief procurement officer~~] to uphold the decision of the head of the purchasing agency, or to re-open the protest and award an appropriate remedy; and
- (2) [~~A detailed statement of the reason~~] Details for the decision, including factual findings.

Subsection (c) is reworded for clarity purposes.

57

Section 3-148-402 Decision by the chief procurement officer. (continued)

(d) Allowed remedies upon re-opening a protest. Upon re-opening a protest, the chief procurement officer may use only the following [~~methods,~~] remedies, singularly or in any combination, to settle and resolve a protest:

- (1) [~~Amending or canceling~~] Amend or cancel a request for proposals;
- (2) [~~Terminating~~] Terminate the awarded contract [~~which was awarded~~];
- (3) [~~Initiating~~] Initiate a new process to award a contract by either re-opening the evaluation process or commencing a new procurement process; and
- (4) [~~Declaring~~] Declare the contract null and void from the time of its award[;].

~~{(5) Affirming the purchasing agency's contract award decision; and~~

~~{(6) Dismissing the protestor's protest.}~~

Subsection (d) is reworded for clarity purposes.

(5) And (6) are deleted -- not applicable as remedies for re-opening a protest.

58

Section 3-148-402 Decision by the chief procurement officer. (continued)

(e) ~~[Submission]~~ Transmittal of decision. ~~[Copies of the]~~ The chief procurement officer's decision shall be ~~[submitted]~~ sent to the protestor, the procurement officer in charge of the Protested procurement, and the head of the purchasing agency ~~[by~~

~~(1) Hand delivery; or~~

~~(2) By United States mail and, to the extent practicable, by telefacsimile transmission].~~ The written decision may be transmitted by various means, i.e., electronically, hand delivered, United States mail, courier service.

Subsection (e) is reworded for clarity purposes and allows the chief procurement officer to transmit the decision by any means, not by just U.S. mail or hand delivery

59

Section 3-148-501 Suspension of Award.

§3-148-501 Suspension of Award. (a) When a notice of protest has been submitted within the applicable protest period established in section 3-148-301, the award shall be suspended, and no further award action ~~[to make the protested award]~~ shall be taken until the protest is resolved, including but not limited to...

Subsection (a) is reworded for clarity purposes.

60

Section 3-148-501 Suspension of Award. (continued)

(b) Waiver of suspension....

- (3) A determination that the purchasing agency's lack of planning [~~has not caused the necessity of~~] **is not the cause** for the award delay;
- (4) A determination that the waiver [~~of the suspension has not been granted in order~~] **is not being granted** to frustrate the fair and speedy resolution of the protest; and
- (5) A certification[~~r~~] that all the information and determinations in the written waiver are true and correct to the best of the chief procurement officer's knowledge.

Subsection (b) is reworded for clarity purposes.

61

Section 3-148-502 Requests for clarification.

(d) Time for requests and responses. The deadlines for requests and responses under this section shall be as provided by the [~~scheduling order issued~~] **protest schedule established** in accordance with section 3-148-302.

Subsection (d) is reworded for clarity purposes.

62

Section 3-148-503 Form of evidence submitted during a protest or reconsideration.

(b) Documentary evidence. ~~[Either originals or photocopies]~~ Photocopies of documentary evidence may be submitted, ~~[but every photocopy shall be accompanied]~~ with an original signed declaration that the ~~[photocopy is]~~ each document is a true and correct copy of the original.

Subsection (b) is reworded for clarity purposes.

63

Section 3-148-504 Conduct of the head of the purchasing agency during protests.

~~[(b) Communications with the head. Neither the protestor nor the procurement officer in charge of the protested procurement shall communicate with the head of the purchasing agency in connection with the merits of a protest without first informing the other. The head of the purchasing agency shall not communicate singly with either the protestor or the procurement officer in charge of the protested procurement as to the merits of the protest without first informing the other.]~~

Subsection (b) is deleted because it is illogical to prohibit a purchasing agency from discussing the protest with the head of the purchasing agency who receives the notice of protest and formal protest.

64

Chapter 3-149, Contracting

Section 3-149-205, Selection of substitute provider after early termination of contract

§3-149-205 Selection of substitute provider after early termination of contract. (a) In the event that a contract for health and human services awarded under this chapter is terminated before the contract expiration date, the purchasing agency shall follow the procedures in this section to select a substitute provider.

(b) Initiation of new competitive purchase of service. To select a substitute provider, a purchasing agency may initiate a new competitive purchase of service procurement by issuing a new request for proposals.

This section is added and moved for appropriate placement from the competitive method of procurement section 3-143-505.

65

Section 3-149-205, Selection of substitute provider after early termination of contract (continued)

(c) Expedited procedure for selection of substitute provider. If the selection of a substitute provider through the initiation of a new competitive purchase of service procurement is not practicable, then the purchasing agency may, if applicable, negotiate a contract with the next highest evaluated ranked applicant. If the purchasing agency and applicant are unable to negotiate a contract, the purchasing agency may negotiate with the next highest ranking applicant, and so on. In the event that there are no other proposals, or none of the proposals and applicants are sufficiently advantageous, the purchasing agency may select any provider that will be an advantageous substitute. Any contract awarded to a substitute provider selected under this subsection shall terminate either at the same time that the original contract would have, or at the close of the following fiscal year, whichever occurs sooner.

66

Section 3-149-301, Extension of existing contract during procurement process.

- (c) Form and content of extension...
- (2) States that the extension will terminate in [~~one hundred and eighty days~~] **six months**, or when a replacement contract has been executed, whichever occurs first;

Subsection (c)(2) is amending by changing "one hundred and eighty days" to "six months" to be consistent with language in subsection (b)(2).

67

Section 3-149-302, Multi-term contract use, requirements and procedures.

(f) A multi-term contract may [~~extend~~] **be extended** for [~~any~~] **the** period of time [~~to which the provider and purchasing agency agree~~] **specified in the contract**, provided that for any proposed period of more than six years, the head of the purchasing agency [~~submits~~] **shall submit** a written request to and [~~receives~~] **receive** approval from the chief procurement officer....

Subsection (f) is reworded for clarity purposes.

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Thank you for attending today's informational briefing.

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