

 HAWAII HEALTH SYSTEMS C O R P O R A T I O N <i>"Touching Lives Everyday"</i>	Department: Finance	Policy No.: PUR 0021
	Policies and Procedures	Revision No.: 1
Subject: RELEASE OF CONTRACT AND PROCUREMENT INFORMATION	Issued by: Kelley Roberson COO/CFO	Effective Date: October 1, 2007
	Approved by: Thomas M. Driskill, Jr. President & CEO	Supersedes Policy: November 2006
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- I. **PURPOSE:** To provide guidelines for disclosure of HHSC contracting and procurement file information that conforms to the applicable laws and regulations.
- II. **POLICY:** It is the policy of HHSC to provide public access to contracting and procurement files in order to further the goal of openness in government. At the same time, it is recognized that the privacy and proprietary interests of contractors and the interests of HHSC in maintaining confidentiality in time sensitive or certain other matters may compete with this objective. These interests must all be considered and balanced before allowing public access to contracting records. Compliance with applicable law shall govern the disclosure.
- III. **PROCEDURE:**
- A. **Informal Requests.** An informal request for disclosure of a HHSC record occurs when there is a verbal or emailed request, or written request that does not contain all the required information required to be considered a formal request (see below). When an informal request is received for procurement information, the procurement office employee shall respond, as follows:
1. Unless otherwise precluded from release as detailed in this policy, purchasing information including bid results shall be made available for inspection and copying or other disclosure promptly but no more than 10 days from receipt of the request. The records shall be made available to the requester during regular business hours. Procurement personnel who maintain the files in question may copy the documents for the requester or make available a copier for the requester to make a copy, or transmit an electronic copy, as requested.
 2. Alternatively, the procurement employee shall deny access to part or all of the requested records because the records are confidential as stated more fully herein. The requester must be advised that a formal request may be submitted.
 3. If HHSC does not maintain the record requested, advise the requester of that fact.
- B. **Formal Requests.** Any person may submit a formal request during regular business hours. A formal request is in writing and contains contact information, a reasonable description of the requested record, including the subject matter and location of the

record, if known. The formal request should include a request to either inspect or obtain a copy and how they wish to receive the copy (via mail, will pick up, email, etc.).

1. Where the document requested is not confidential as described herein and can be disclosed in its entirety, it shall be disclosed within 10 days (unless circumstances require incremental disclosure or other extenuating circumstances justify delay as indicated below).
2. Where the document contains information that needs to be segregated or redacted because it is confidential, the employee shall
 - a. send a notice to the Requester, as outlined below, within 10 business days, and
 - b. disclose the requested record within 5 business days after providing notice or after receiving any required prepayment.
3. Incremental disclosure may occur where extenuating circumstances require more time to determine if the record is exempt from disclosure, or it will take a longer time to search, review, and copy the record, or it will interfere with an ongoing bid process to disclose at this time, or other extenuating circumstances as discussed with legal counsel. The requester must be informed of the incremental disclosure in the notice (see paragraph E).

C. Public Inspection of Request for Proposal (RFP) Contract Documents. The RFP contract file, except those portions the offeror designates in writing as trade secrets or other proprietary data to be held confidential, shall be available for public inspection after posting of the award. The file that must be disclosed upon request includes, in addition to the contract:

1. The register of proposals
2. A list of the vendors to whom copies of the RFP were sent
3. Name of the successful offeror and dollar amount of offer
4. The basis on which the award was made
5. A copy of the RFP
6. A copy of all proposals
7. The names of the evaluation committee members
8. Where there is a dispute as to the confidentiality of a portion of the successful proposal, Legal Counsel shall review it and determine if it should be disclosed. The offeror whose proposal is going to be disclosed as a result of this determination can appeal that denial in accordance with procedures set forth in the Freedom Of Information Act, Chapter 92F-42.

D. Public Inspection of Professional Services Contract Documents. The contract, the list of qualified persons, the screening committee's criteria for selection established under section 103D-304(d), HRS, if applicable, and the statements of qualifications and related information submitted by the qualified persons are open to public inspection after the contract has been awarded. Where there is a written request for confidentiality by a person submitting a statement of qualifications, the process outlined in paragraph Para. C-8 above shall be followed.

E. Vendor Lists. Lists of businesses and individuals and their addresses of potential offerors of all the types of contracts shall be available to the public.

- F. Public Inspection of Invitation for Bid Documents.** Opened bids shall be available for public inspection at the time of opening except to the extent that the bidder designates trade secrets or other proprietary data to be confidential, which shall be handled as outlined in Para C-8 above. Bidders shall be informed that there will be a written determination as to the disputed information. Prices, makes and models or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary. After bid opening, the following information shall also be disclosed upon request: the contract, the number and names of organizations that obtained a solicitation, attended a pre-offeror's conference, submitted a notice of intent to offer, or submitted an offer. Names of members of an evaluation committee for multi-step bids shall not be released until after the contract has been awarded.
- G. Public Inspection of Small Purchase Information.** The names of organizations or persons solicited or who submitted an offer shall not be disclosed until after the contract, purchase order, or P-card order has been finalized.
- H. Where the request is in the form of a subpoena,** deposition notice, court order or administrative order, the request should be sent to the Legal Department for handling.
- I. The Director of Contract & Material Management** or the Legal Department should be informed as to the intended response to all formal requests before action is taken and may be consulted to assist in interpreting the rules on disclosure.
- J. Notice.**
1. When it is determined the record will be disclosed, the procurement employee shall send a notice to the requester stating when and where the record will be made available, which shall be done in accordance with the request, if reasonable. The notice shall also contain a good faith estimation of the fees that will be charged or if the fees will be waived, and the amount of any required prepayment, and a description of extenuating circumstances to justify incremental disclosure.
 2. When it is determined that part or all of the record request will be denied, the procurement employee shall send a notice to the requester indicating the parts that will not be disclosed and the authority for denying access. The requester must also be informed in the notice if the record cannot be disclosed because HHSC does not maintain the record, or if more information is needed to try to find the record, or the request is asking for a compilation or summary that is not ordinarily prepared and HHSC will not perform that work for the requester.
 3. Notice should be sent certified mail in order to keep a record of when it was sent.
- K. Payment.** The requester may be charged a fee for the cost of copying in accordance with policy and procedure ADM 001. If the cost will be more than \$15, the requester must be informed within 10 business days and before processing.

L. Requesters Responsibilities:

1. The requester is responsible for paying fees, making arrangements with the employee to inspect and copy the record if that is the decision of the employee, and providing needed clarification so the record can be identified.
2. The requester shall be presumed to have abandoned the request and no further action will be required on the part of HHSC if the requester does not make the arrangements to inspect, copy, or pick up a copy as outlined in the notice or pay the prepayment within 20 days after the mailing of the notice (postmark will be used).

M. Exceptions to Disclosure include:

1. Where disclosure would frustrate a legitimate government purpose or function, such as where disclosure of proposals received in a canceled RFP action to potential bidders to a new RFP action could result in higher prices;
2. Where disclosure would violate personal privacy interests, such as information relating to an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or credit worthiness, employment file information, or medical information;
3. Marketing strategies, strategic plans, evaluations, assessments, negotiations, or rates and charges, the disclosure of which would raise the costs of procurement or give a manifestly unfair advantage to any competitor or to any person or entity seeking to do business or proposing to enter into an agreement with HHSC or a facility;
4. Information relating to credentials or staff privileges, records from peer review proceedings and medical records (although not likely to be found in procurement files);
5. Records which are protected from disclosure pursuant to an order of court or by law;
6. Social security numbers shall not be disclosed and where they are included in the procurement file being disclosed, must be redacted before those pages are disclosed;
7. See the special rules pertaining to the timing of disclosure in the case of specific types of procurement actions (Paragraphs C, D, F, and G, above).

N. Process for Denying Access to Some or Part of the Record. In the event the employee is concerned that some or part of the record should be withheld, the employee should confer with the Director of Contract & Material Management. Legal counsel will also be consulted to ensure that the denial is in conformity with the laws and regulations.

O. Process Where the Vendor Claims Confidentiality in Part or All of Its Documents. Documents received from vendors that are part of the record that is requested should be examined to determine if there is a confidentiality statement as to any part. The vendor cannot prevent disclosure of public records by claiming confidentiality. However, the vendor claiming confidentiality should be notified of the request and informed as to the decision that has been made about disclosure or nondisclosure.

P. Disclosure to Other Agencies. Special rules govern these requests. The requests should be submitted to the Director of Contract & Material Management and Legal Counsel for instructions.

Q. Appeal. A requester denied access may bring a lawsuit in circuit court or can bring the issue to the Office of Information Practices. The burden of proof is on HHSC to establish justification for nondisclosure. If the requester prevails in court, HHSC must pay the attorneys fees of the requester.

R. Sanctions: Anyone participating in good faith in the disclosure or nondisclosure of HHSC records is immune from civil or criminal liability. However, intentional disclosure of a confidential record with knowledge it is confidential can result in prosecution for a misdemeanor.

IV. APPLICABILITY: All HHSC facilities and corporate office.

V. REFERENCES: HRS Ch. 92F and Hawaii Administrative Rules Chapter 2-71; HRS Ch. 323F (section 6); Some contract files are also subject to HRS Ch. 103D (sections 105, 303); Hawaii Administrative Rules (HAR) Chapter 3-122 (subsections 9, 53, 58 and 63). Reference to Chapter 103D and the corresponding administrative rules is not intended to waive any applicable exemption to the procurement code and the procurement rules.