

Procurement Training  
for  
State and County Purchasing Personnel

**Procurements Exempt from  
HRS Chapter 103D**

**HRS Section 103D-102  
HAR Chapter 3-120**

NEIL ABERCROMBIE  
GOVERNOR



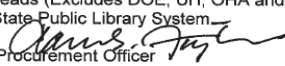
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December 6, 2010

**PROCUREMENT DELEGATION NO. 2010-01**

TO: Chief of Staff, Office of the Governor  
Chief of Staff, Office of the Lieutenant Governor  
Executive Department Heads (Excludes DOE, UH, OHA and HHSC)  
State Librarian, Hawaii State Public Library System

FROM: Aaron S. Fujioka, Chief Procurement Officer 

SUBJECT: Delegation of Procurement Authority

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5. Crisis Purchase of Service (HRS §103F-406);  
Requires CPO approval for ALL dollar amounts and approval may be obtained after-the-fact (Refer to Form-H600).

Exemptions to HRS chapter 103D (HRS §103D-102 & HAR chapter 3-120) and HRS chapter 103F (HRS §103F-101 & HAR chapter 3-141) may be used as appropriate. Except CPO exemptions pursuant to HRS §103D-102(b)(4)(L) and HRS §103F-101(a)(4) shall continue to be submitted using form SPO-007 or SPOH-150 as appropriate. Authorized designated Procurement Officers or personnel are required to attend SPO training Workshop #125, *Exemptions from HRS chapter 103D and/or #210 Treatment, Restrictive, Crisis and Small Purchase of Health & Human Services, and Exemptions from HRS Chapter 103F*, prior to submitting the respective request for exemption for approval.

**DELEGATION OF PROCUREMENT AUTHORITY**

This procurement authority may be further delegated by you to personnel as designated procurement officers or authorized to conduct and participate in procurement activities in accordance with HAR §3-121-16. Participation in procurement activities includes small purchases, developing/drafting a solicitation, reviewing, approving, conducting, managing, and administering the procurement/contract.



## **HRS §103D Hawaii Public Procurement Code**

**HRS §103D-102 Application of this chapter.** (a) This chapter shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, any of which the State receives or is owed; in-kind benefits; or forbearance; provided that nothing in this chapter or rules adopted hereunder shall prevent any governmental body from complying with the terms and conditions of any other grant, gift, bequest, or cooperative agreement.

### **§103D-104 Definitions.**

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

## §103D-104 Definitions.

- “Goods” mean all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, ***excluding land or a permanent interest in land, leases of real property, and office rentals.***

<b>Methods of Procurement</b>		
<b>Method</b>	<b>Bases for Use</b>	<b>Bases of Award</b>
Competitive Sealed Bids	Always used unless it is not feasible or practicable.	Lowest responsive, responsible bid.
Small Purchases	Purchases of smaller quantities for goods and services of less than \$100,000 and construction less than \$250,000.	Lowest responsive, responsible quotation.
Competitive Sealed Proposals	Competitive sealed bidding is not practicable; price is not the most critical factor.	Based on RFP evaluation criteria.
Multi-step Bid	Used when pre-qualification of offerors necessary before considering price.	Lowest bidder of qualified offerors.
Sole Source	Only one source for the required good, service, or construction.	Approved single source at agreed prices.
Emergency	Used to respond the needs that are immediate and serious that are a threat to life, public health, welfare, or safety.	Lowest responsive and/or responsible offeror.
Professional Services	Professional services as defined in rules and statutes.	Qualified respondent that meets determined criteria; prices are agreed to.
Request for Interest (For Federal Grants)	Used prior to applying for the Federal grants where time is limited or economic situations require a "quick" selection process.	Criteria determined in RFI.

## **What is the definition of a procurement exempt from HRS Chapter 103D?**

- A situation where a procurement of a good, service, or construction by competitive means is either not practicable or not advantageous to the State.

“Practicable”- feasible, useful, usable

“Advantageous”- to be a benefit to; to impose upon

## **Where are Procurements Exempt From Chapter 103D, HRS, currently listed?**

- HRS Section 103D-102
- Exhibit A, titled “Procurements Exempt From HRS Chapter 103D, HAR Chapter 3-120;
- For the Executive Branch, CPO approved SPO Form 7 on the SPO website; Each respective Chief Procurement Officer approves procurement exemptions for goods, services, and construction for their own jurisdictions.

## **What kinds of Procurements Exemptions are listed in HRS Section 103D-102?**

1. Grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
2. To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;



## **Continued HRS 103D-102**

3. Obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as Trustee, custodian, or bailee;
4. Entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;

## **Continued HRS 103D-102**

5. Dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
6. For the deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
7. Awards to governmental bodies of the State

## **Continued HRS 103D-102**

8. Loans, under loan programs administered by a governmental body;
9. Contracts awarded in accordance with Chapter 103F, HRS;
10. Goods, services, or construction from a governmental body other than the University of Hawaii Bookstores, from the federal government, or from another state or its political subdivision;

## **Continued HRS 103D-102**

11. Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
12. Works of art for museum or public display;
13. Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;

## **Continued HRS 103D-102**

14. Meats and foodstuffs for the Kalaupapa Settlement;
15. Opponents for athletic contests;
16. Utility services whose rates or prices are fixed by regulatory processes or agencies;
17. Performances, including entertainment, speeches, and cultural and artistic presentations;
18. Goods and services for commercial resale by the State;

## **Continued HRS 103D-102**

19. Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or Counties' bonds;
20. Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal or foreign jurisdiction, when substantially all legal services are expected to be performed outside this state;

## **Continued HRS 103D-102**

21. Financing agreements under chapter 37D,HRS; and
22. Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which requires certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms.