

State Procurement Office
Purchases of Health and Human Services
Chapter 103F, HRS
Competitive Method of Procurement (RFP)

The Protest and Request for Reconsideration Process
For Purchases of Health and Human Services
Pursuant to Sections 103F-501 and 103F-502, HRS and Chapter 3-148, HAR

Contents

General Procedures 1
The Protest Process 2
The Request for Reconsideration Process 5
Flowchart

Forms Used for Protest and Request for Reconsideration Process by Protestor and State Personnel

Protestor	State Personnel
SPO-H-801 Notice of Protest	
	SPO-H-802 Scheduling and Settlement Conference
	SPO-H-803 Scheduling Order
SPO-H-804 Request for Clarification	SPO-H-804 Request for Clarification
SPO-H-805 Response to Request for Clarification	SPO-H-805 Response to Request for Clarification
SPO-H-806 Protest	
	SPO-H-807 Response to Protest
SPO-H-808 Protest Reply	
SPO-H-810 Request for Reconsideration	

Competitive Method of Procurement (RFP)
The Protest and Request for Reconsideration Processes: General Procedures

Resolution by Mutual Agreement

Protests may be resolved by mutual agreement at any time in the protest process utilizing any of the allowable methods for resolution.

Allowable Methods for Resolving Protests

The methods available for resolution of a protest whether by mutual agreement, or decision of the head of a purchasing agency or by the decision of the chief procurement officer in the case of a request for consideration can be one or any combination of the following:

- a) Amending or canceling the request for proposals;
- b) If a contract has been awarded, terminating the contract or declaring the contract null and void from the time of its award;
- c) Initiating a new process to award the contract either by reopening the evaluation process or issuing a new procurement;
- d) Affirming the purchasing agencies decision; or
- e) Dismissing the protestor's protest

Conduct of the Head of the Purchasing Agency and Communication with the Head of the Purchasing Agency

During the resolution of a protest the head of a purchasing agency acts as an impartial party. If the head of the purchasing agency cannot be impartial due to a conflict of interest or other good cause, the head designates another state employee to act in his or her place.

Neither the protestor nor the procurement officer in charge of the protested procurement may communicate with the head of the purchasing agency on matters regarding the protest without first informing the other party. The head of the purchasing agency may not communicate with either the protestor or the procurement officer for the protested procurement as to the merits of the protest without first informing the other.

Suspension of Award

Once a Notice of Protest has been submitted within the required timeframe, the award is suspended and no further action to make the award may be taken including but not limited to:

- a) Execution of a contract
- b) Delivery of services in anticipation of execution of a contract
- c) Negotiations or discussions with a provider regarding an intended award or contract.

In certain circumstances, the chief procurement officer may waive the suspension of award based on the following:

- a) Award of the contract without delay is necessary to protect the health, safety or welfare of a person from an imminent and serious threat;
- b) Brief factual description of the current situation, and how a delay would create an imminent and serious threat;
- c) A determination that the purchasing agency's lack of planning has not caused the necessity of the award delay;
- d) A determination that the waiver of suspension has not been granted in order to frustrate the fair and speedy resolution of the protest.

State Procurement Office
Purchases of Health and Human Services
Chapter 103F, HRS

**Competitive Method of Procurement (RFP)
The Protest Process**

Step	Title	Description/Comments	Who Does It	Submittal deadline	To Whom	Form No.
1	Informal Request for Explanation	After the notice of award (Statement of Findings and Decision) is issued the applicant will usually call the procurement officer of the procurement in question if they are unhappy with the results and considering a protest. <i>Procurement officer:</i> Be patient, listen, and explain any misunderstandings they may have. Advise them of the time limit to file a notice of protest, where to find Form SPOH-800, who it must be sent to, etc. <i>Protestor:</i> Explain clearly what the problem is and listen to the explanation if one is given. Write down the information regarding how to file a notice of protest, the deadline for submission and to whom to send it.	Protestor	An informal explanation can be requested at anytime. However, protestors must keep in mind there is no extension of the submittal deadline for the Notice of Protest (see Step 2).	Procurement Officer for the protested procurement (“Procurement officer”)	N/A
2	Notice of Protest	The protestor files a Notice of Protest indicating their basis of protest as a violation of one or more of the following: 1. The statute, Chapter 103F, HRS (citing the section); 2. The Administrative Rules for Chapter 103F, HRS –Chapters 140-149, HAR (citing the section); or 3. The RFP (citing the page number and specific section).	Protestor	Must be hand delivered or postmarked by US Mail within 5 working days of the postmark of the Statement of Findings and Decision.	Procurement officer, Head of purchasing agency	SPOH-801
3	Scheduling and Settlement Conference	The head of the purchasing agency or designee schedules a Scheduling and Settlement Conference. The purpose of the conference is two fold: 1. In the presence of a ‘neutral party” (the head of the purchasing agency or designee), the protestor and the procurement officer for the protested procurement may discuss the basis of the protest and ascertain if the protest may be settled by mutual agreement . 2. If a settlement by mutual agreement is not possible, the head of the purchasing agency or their designee creates the schedule for the steps in the protest process at the conference. Decision as to whether a request for clarification will be needed and must be decided at the conference. Note: Settlement and Scheduling conference may be conducted in person, by telephone or other electronic communications medium.	Head of purchasing agency or designee schedules conference. Head of purchasing agency/ designee, protestor & procurement officer attend.	Schedule for the meeting must be within 3 days of receiving the Notice of Protest.	Protestor Procurement Officer	SPOH-802

State Procurement Office
Purchases of Health and Human Services
Chapter 103F, HRS

**Competitive Method of Procurement (RFP)
The Protest Process**

Step	Title	Description/Comments	Who Does It	Submittal deadline	To Whom	Form No.
4	Scheduling Order	The scheduling order is issued by the head of the purchasing agency. The scheduling order sets the deadlines for requests for clarifications, replies, the protest and the written decision. To the extent practicable, the submission of requests for clarification, protests, and responses shall be completed within 10 working days. More or less time may be provided in the scheduling order at the discretion of the head of the purchasing agency.	Head of Purchasing Agency	At the conference or shortly after.	Protestor Procurement officer	SPOH-803
5	Request for Clarification	Each party submits their “Request for Clarification” in writing to the other party by the deadline established in the scheduling order.	Protestor Procurement Officer <i>(as applicable)</i>	Per scheduling order.	Protestor Procurement Officer <i>(as applicable)</i>	SPOH-804
6	Response to Request for Clarification	As applicable, each party provides a response to the “Request for Clarification” in writing by the date established in the scheduling order	Protestor Procurement Officer <i>(as applicable)</i>	Per scheduling order.	Protestor Procurement Officer <i>(as applicable)</i>	SPOH-805
7	Formal Protest	The protestor files the formal written protest which contains: a) Name and address of the protestor b) Appropriate identification of the procurement (RFP title and Number) c) A statement of reasons for the protest d) Supporting exhibits, evidence or documents to substantiate the protest e) Additional, relevant information that would help the head of the purchasing agency make a decision. f) Declaration by the protestor that all facts alleged in the protest are true and correct to the best of the protestor’s knowledge.	Protestor	Per scheduling order. If mailed it will be considered submitted on the date it was postmarked by US mail. All other deliveries will be considered hand deliveries and considered submitted on the date received.	Head of purchasing agency Procurement officer	SPOH-806

State Procurement Office
Purchases of Health and Human Services
Chapter 103F, HRS

**Competitive Method of Procurement (RFP)
The Protest Process**

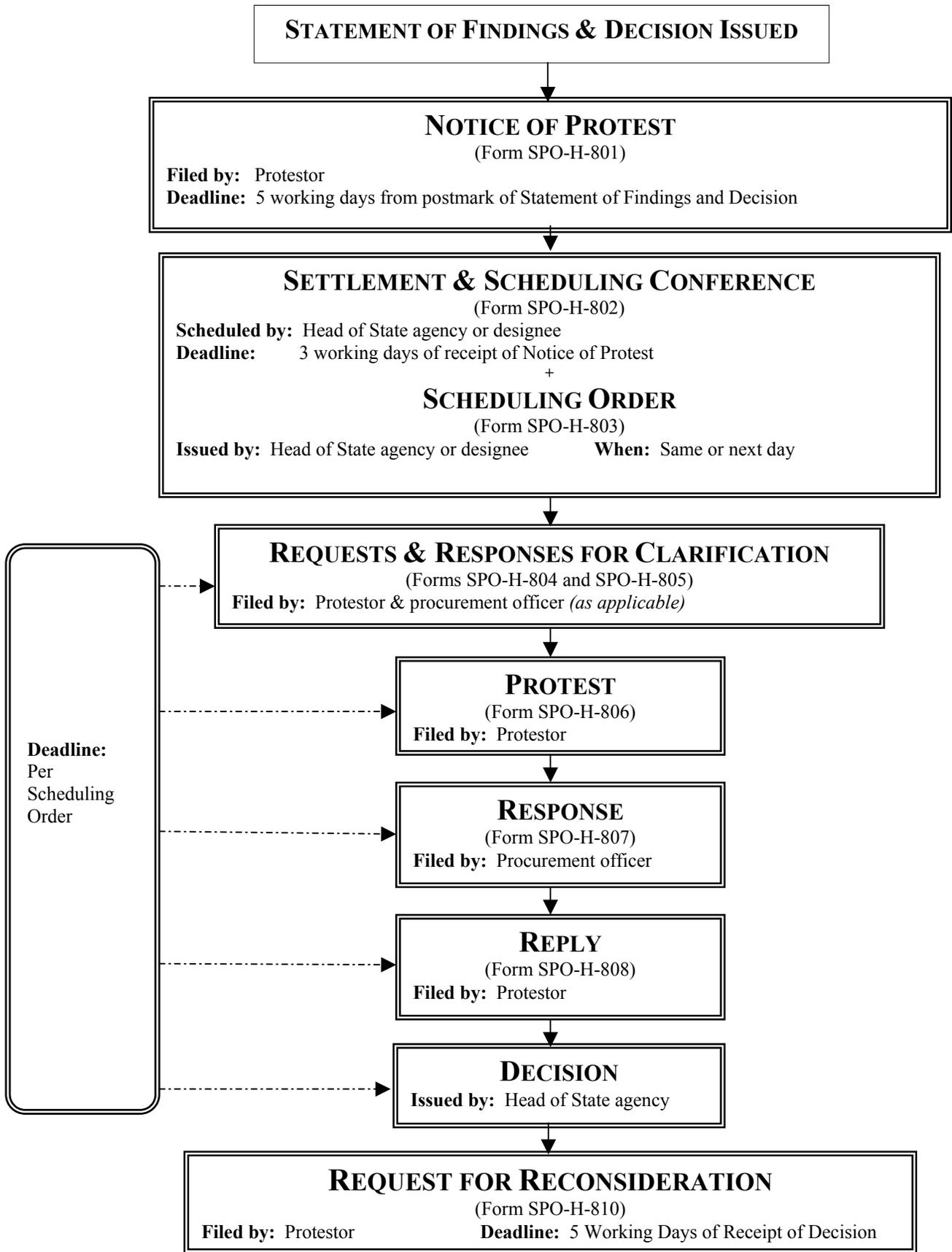
Step	Title	Description/Comments	Who Does It	Submittal deadline	To Whom	Form No.
8	Response to Protest	The purchasing agency issuing the RFP responds in writing to the formal written protest.	Procurement officer	Per scheduling order. Submission must be in the same manner as the formal written protest.	Protestor Head of purchasing agency	SPOH-807
9	Reply	The protestor may make a reply to the purchasing agency's response to the protest. The reply may contain the following: <ol style="list-style-type: none"> 1. Additional reasons or arguments supporting the position of the protestor; 2. Additional evidence or materials supporting the position of the protestor; or 3. Any additional relevant information that would help the head of the purchasing agency make a decision. 	Protestor	Per scheduling order. Submission must be in the same manner as the formal written protest.	Procurement Officer Head of purchasing agency	SPOH-808
10	Decision by the Head of the Purchasing Agency	When a protest cannot be resolved by mutual agreement, the head of the purchasing agency resolves the protest by a written decision. The written decision will be issued by the deadline established in the scheduling order, unless the head of the purchasing agency determines that an extension is necessary and gives written notice to both parties. The written decision must contain the following: <ol style="list-style-type: none"> 1. A statement of the action to be taken or resolution to the protest; 2. A detailed statement of the reason for the resolution, including factual findings; 3. A statement of the protestor's right to request reconsideration; and 4. A statement that the decision is final and conclusive, unless a timely request for reconsideration is made. 	Head of Purchasing Agency	Per scheduling order unless the head of the purchasing agency determines that an extension is necessary and gives written notice to both parties. By hand delivery, US mail, and to the extent practicable by fax.	Protestor Procurement officer Chief procurement officer	---

State Procurement Office
Purchases of Health and Human Services
Chapter 103F, HRS

**Competitive Method of Procurement (RFP)
The Request for Reconsideration Process**

Step	Title	Description/Comments	Who Does It	Submittal Deadline	To Whom	Form No.
1	Request for Reconsideration	The protestor may file a request for reconsideration of a decision by the head of the purchasing agency. It must contain the following: a) A detailed statement of the factual and legal grounds for reconsideration based on the materials presented to the head of the purchasing agency during the initial protest procedure. b) Copies of the scheduling order, formal protest, response, reply, decision and supporting materials submitted during the initial protest procedure.	Protestor	Within 5 working days of receipt of the written decision of the head of the purchasing agency. If mailed it will be considered submitted on the date it was postmarked by US mail. All other deliveries will be considered hand deliveries and considered on the date received.	Chief procurement officer Procurement officer Head of purchasing agency	SPOH-810
2	Reply	The State purchasing agency may submit a reply to the request for reconsideration based on the materials submitted to the head of the purchasing agency during the initial protest period.	State purchasing agency	Within 5 working days of the receipt of the request for reconsideration. Must be submitted in the same manner as the request for reconsideration.	Chief procurement officer Protestor	---
3	Decision by the Chief Procurement Officer	The chief procurement officer issues a written decision to the request for reconsideration resolving the protest which must contain: <ul style="list-style-type: none"> • The decision to uphold the decision of the head of the purchasing agency or to re-open the protest and award an appropriate remedy (see <i>Allowable Methods for Resolving a Protest</i> on page 1), and • A detailed statement of the reason for the decision, including factual findings. 	Chief procurement officer	Within 15 calendar days of the receipt of the request for reconsideration unless the chief procurement officer determines an extension is necessary and notifies both parties. Delivery will be by hand delivery or US mail and to the extent practicable by fax.	Protestor Procurement Officer Head of purchasing agency	---

Chapter 103F, HRS Purchases of Health and Human Services
PROTEST AND REQUEST FOR RECONSIDERATION PROCESS
 For the Competitive Purchases of Services Method of Procurement (RFP)



Note: Protests may be resolved by mutual agreement at any time.