

State Procurement Office

Overview of Procurement Practices

HRS Chapter 103D

Workshop SPO-170

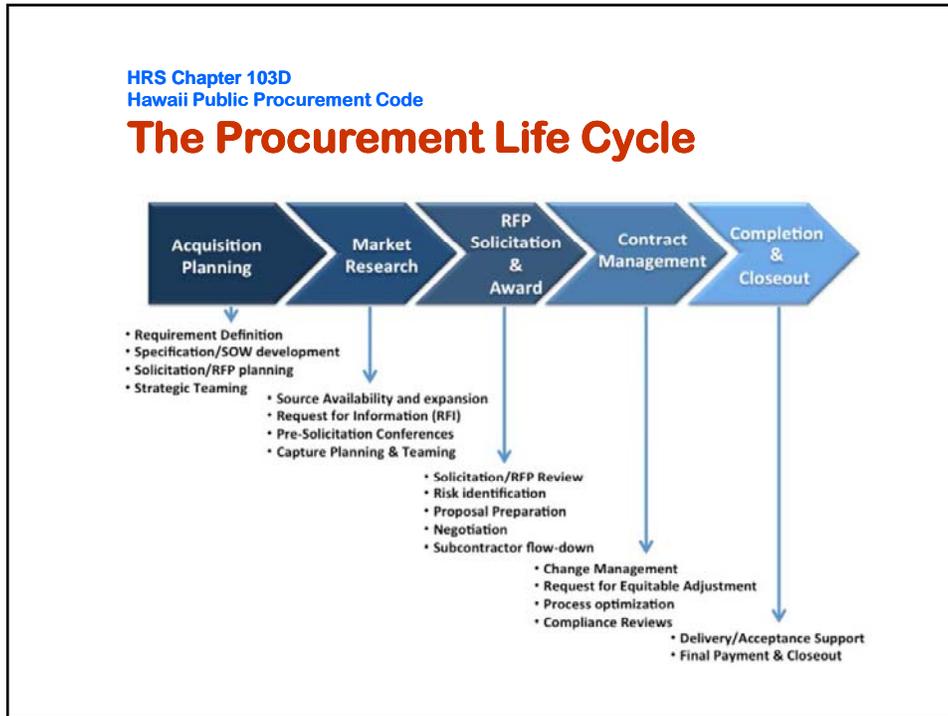
HRS Chapter 103D
Hawaii Public Procurement Code

A Little History

**Adopted from American Bar Association
*Model Procurement Code for State and
Local Governments*, - recognized by:**

- National Association of State Procurement Officials (NASPO)
- Institute for Public Procurement (NIGP)
Formerly called the National Institute of Governmental Purchasing

ACT 008, Sp SLH 1993 - effective 7/1/1994



HRS Chapter 103D
Hawaii Public Procurement Code

Applicability

- Buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction. Includes inventory management and surplus property management.
- All procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, **realizations**, receipts, or earnings, any of which is received or is owed, including in-kind benefits.

HRS Chapter 103D
Hawaii Public Procurement Code

Public Sector Procurement

- We use taxpayer funds;
 - Our “shareholders” are the taxpayers (everyone).
 - Like the private sector, we want best value **AND** we have additional obligations:
- 1. We must be open/transparent.**
 - Everyone has a right to know and have easy access.
 - 2. We must be fair to all qualified vendors.**
 - Everyone has the right to compete.
 - 3. We ARE accountable.**
 - Keep an auditable trail. (document, document, document!)
 - Follow standardized rules and procedures. (Statutes, Administrative Rules, Procurement Circulars, Internal Procedures)

5

HRS Chapter 103D
Hawaii Public Procurement Code

Organization and Responsibilities

- **State Procurement Office (SPO)**
Administrator, responsible:
 - ▶ Review of procurement practices of all governmental bodies*
 - ▶ Provide assistance and advice to all governmental bodies*
 - ▶ Procurement training
 - ▶ Procurement Manual / Vendor Guide
 - **Procurement Policy Board (PPB), a seven member board, responsible to adopt Hawaii Administrative Rules (HAR).**
- *Governmental bodies means any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, government corporation, or other establishment or office of the executive, legislative, or judicial branch of the State, including the office of Hawaiian affairs, and the several counties of the State.

HRS Chapter 103D
Hawaii Public Procurement Code

Organization - Chief Procurement Officers (CPO)

21 CPO jurisdictions:

- ▶ **Judiciary:** Administrative Director of Courts
- ▶ **House:** Speaker
- ▶ **Senate:** President
- ▶ **Executive:** University of Hawaii – President
Dept of Education – Superintendent
Office of Hawaiian Affairs (OHA) – Chairperson
Hawaii Health Systems Corp (HHSC) – CEO
All other Executive Depts/Agencies –
SPO Administrator
- ▶ **Counties:** Executive Depts - Finance Director
Councils - Chairperson
Depts of Water – Chief Engineer
Honolulu Authority for Rapid Transportation
(HART) – Executive Director

HRS Chapter 103D
Hawaii Public Procurement Code

Procurement Delegation

- The **Chief Procurement Officer (CPO)** serves as the central procurement officer for its jurisdiction, and may delegate this authority.
- For Executive Branch departments, the SPO Administrator as CPO, has delegated procurement authority to each Department Head (HOPA). (Reference: Procurement Delegation No. 2010-01)
 - ▶ Each Department Head may **further delegate procurement authority**.
 - ▶ **Factors to be considered** for delegation determination:
 - ▶ expertise in terms of procurement knowledge and
 - ▶ specialized knowledge pertinent to authority to be delegated.
 - ▶ Written delegation by Department Heads kept on file at SPO.

HRS Chapter 103D
Hawaii Public Procurement Code

6 Procurement Methods

- ***Competitive Sealed Bidding**
Invitation for Bids (IFB)
- ***Competitive Sealed Proposals**
Request for Proposals (RFP)
- ***Professional Services**
- **Emergency**
- **Sole Source**
- **Small Purchase**

*Requires Public Procurement Notice of Solicitation to be posted on the internet by the purchasing agency:

<http://spo.hawaii.gov> > Procurement Notices/ Bidding Opportunities

HRS Chapter 103D
Hawaii Public Procurement Code

Purchases Not Subject to the Code

- ▶ **HRS chapter 103D** provides for the applicability of the chapter, and when not applicable - See HRS §103D-102(b).
- ▶ **Hawaii Administrative Rules (HAR)** provides a list of exemptions, by Exhibit A, when not practicable nor advantageous to competitively procure.

See HAR chapter 3-120 Exhibit A, list of additional exemptions determined by the Procurement Policy Board (PPB).
- ▶ **Chief Procurement Officer (CPO)** authority to approve exemptions, on a case-by-case basis; requires documentation, justification and written approval.
 - ▶ When exemptions approved by CPO, usually only for procurement process (selecting the vendor) rest of the code applies.

HRS Chapter 103D
Hawaii Public Procurement Code

Terms You Should Know

- **“Goods”** - all property, including but not limited to 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.
- **“Services”** - the furnishing of labor, time, or effort by a contractor.
- **“Construction”** - the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. Includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

HRS Chapter 103D
Hawaii Public Procurement Code

In General

- All sources of funds are subject to compliance with the procurement code.
- Code is flexible and responsive to need.
- By competitive means, must be practicable or advantageous --- apply common sense.

HRS Chapter 103D
Hawaii Public Procurement Code

Benefits

- Increases efficiency in procurement activities and maximize best value to the fullest extent practicable.
- Ensure fair and equitable treatment of all persons who deal with procurement vendors, purchasing agencies.
- Foster broad based competition.
- Provide safeguards for the maintenance of a procurement system of quality and integrity.
- Increases public confidence in the procurement process.
- Protect against abusive practices.
- Does not limit agency autonomy.

HRS Chapter 103D
Hawaii Public Procurement Code

Keys to a Successful Procurement

- ❖ **Good Planning**
- ❖ **Procurement Knowledge**
- ❖ **Good Management**

HRS Chapter 103D
Hawaii Public Procurement Code

Balancing Act

Incumbent Vendor	New Vendor
Local	Non-Local
Award Based on Highest Qualifications	Equitable distribution
Broad-Based Competition	Hawaii –Only Vendors

HRS Chapter 103D
Hawaii Public Procurement Code

Trouble / Hot Spots

- Exceeding the scope of the solicitation.
- Exceeding small purchase threshold.
- Parceling small purchases.
- Inappropriate use of emergency procurement.
- Inappropriate use of exemptions.
- Seeking after-the-fact approval.
- Failing to provide adequate/appropriate disclosure.
- Receiving services without an executed contract.
- Failing to extend contracts on a timely basis.

HRS Chapter 103D
 Hawaii Public Procurement Code

Helpful Hints

- Ask SPO for assistance/consultation.
- Don't make it up as you go along.
- Attend training, when required and/or if refresher needed.
- Be clear on what you are buying.
- Don't use the procurement process to determine your needs; identify your needs first.

Methods of Procurement

Method	Bases for Use	Bases of Award
Competitive Sealed Bids	Always used unless it is not feasible or practicable.	Lowest responsive, responsible bid.
Competitive Sealed Proposals	Competitive sealed bidding is not practicable; price is not the most critical factor.	Based on RFP evaluation criteria.
Multi-step Bid	When pre-qualification of offerors necessary before considering price.	Lowest bidder of qualified offerors.
Professional Services	Professional services as defined in rules and statutes	Qualified respondent meeting determined criteria; price is negotiated after ranking.
Small Purchases	Purchase goods/services less than \$100,000; construction less than \$250,000. Simple to administer. No parceling.	Lowest responsive, responsible quotation.
Sole Source	Only one source.	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.
Request for Interest	Used only prior to applying for the Federal grants where time is limited requires "quick" selection process.	Criteria determined in RFI.

HRS Chapter 103D
Hawaii Public Procurement Code

Competitive Sealed Bidding

HRS § 103D-302

- **Pre-bid conference**
 - ▶ For construction projects estimated >\$500,000,
15-days before bids due
- **Public bid opening**
 - Relevant information, name, bid, open to public inspection
- **Award to lowest responsive, responsible bidder**
- **Public posting*** upon issue of Notice of Award

*Reference Procurement Circular 2010-01, *Posting Procurement Awards, Notices, and Solicitations*

HRS Chapter 103D
Hawaii Public Procurement Code

Competitive Sealed Proposal

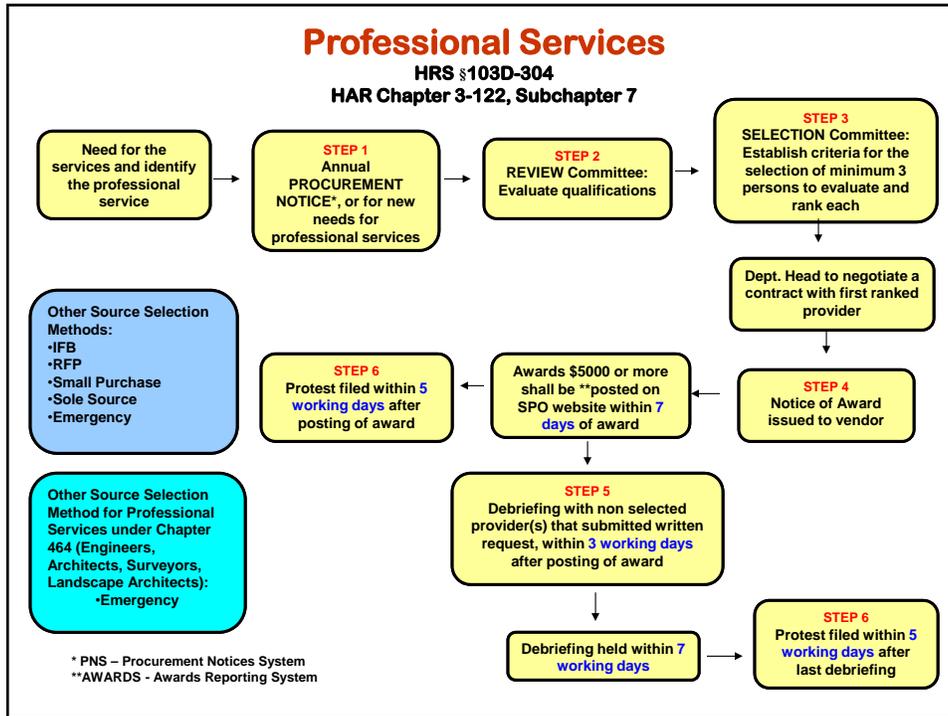
HRS § 103D-303

- **Pre-proposal conference**
 - ▶ For construction projects (design-build) estimated >\$100,000, 15-days prior to offers due.
- **Written evaluation factors in RFP.**
- **Best and final offer (BAFO) optional.**
- **Award to the most advantageous/best value offeror in accordance with evaluation criteria as stated in the solicitation.**
- **Debriefing, if requested, within 3-days.**
- **Public posting*** upon issue of Award

*Procurement Circular 2010-01, *Posting Procurement Awards, Notices, and Solicitations*

Competitive Method of Procurement Invitation for Bids (IFB) Request for Proposals (RFP)		
IFB HRS §103D-302 HAR chapter 3-122, Subchapter 5	Multi-Step IFB HRS §§103D-303 & 103D-302 HAR chapter 3-122, Subchapter 6.5	RFP HRS §103D-303 HAR chapter 3-122, Subchapter 6
<ul style="list-style-type: none"> Detailed specifications Procurement Notice on PNS* Pre-Bid conference for construction or design-build project, total est. contract \$500,000 or more No discussions Award to low bidder Post award on AWARDS** Protest filed within 5 working days of the posting of the award 	Combination IFB/RFP: Step 1: <ul style="list-style-type: none"> Procurement Notice on PNS* Unpriced technical Proposals Pre-Bid conference (same as IFB process) Discussions Determine acceptable proposals Step 2: <ul style="list-style-type: none"> Award to bidder offering lowest priced acceptable proposal Post award on AWARDS** Protest filed within 5 working days of the posting of the award 	<ul style="list-style-type: none"> Solution to a problem Procurement Notice on PNS* Evaluations Discussions Pre-Proposal conference for construction or design-build projects, total est. contract \$100,000 or more Best and Final Offers (optional) Award based on various criteria – price may be a factor Post award on AWARDS** Protest filed within 5 working days of the posting of the award Debriefing of requesting non-selected offeror within 3 working days Protest filed within 5 working days after last debriefing
<small>* PNS = Procurement Notices System **AWARDS = Awards Reporting System</small>		

<p>HRS Chapter 103D Hawaii Public Procurement Code</p> <h2 style="text-align: center;">Professional Services</h2> <p>HRS §103D-304</p> <ul style="list-style-type: none"> Request for qualification & interest Review committee of 3 or more, compiles listing of qualified persons Selection committee of 3 or more <ul style="list-style-type: none"> Selection criteria: 1) experience; 2) past performance; 3) capacity; 4) additional criteria Evaluates and ranks 3 or more Head of purchasing agency to negotiate in rank order Provides for ‘equal distribution’ of contracts among persons holding same qualifications Debriefing, if requested, in 3-days Public posting* upon issue of Notice of Award <p><small>*Reference Procurement Circular 2010-01, <i>Posting Procurement Awards, Notices, and Solicitations</i></small></p>



HRS Chapter 103D
 Hawaii Public Procurement Code

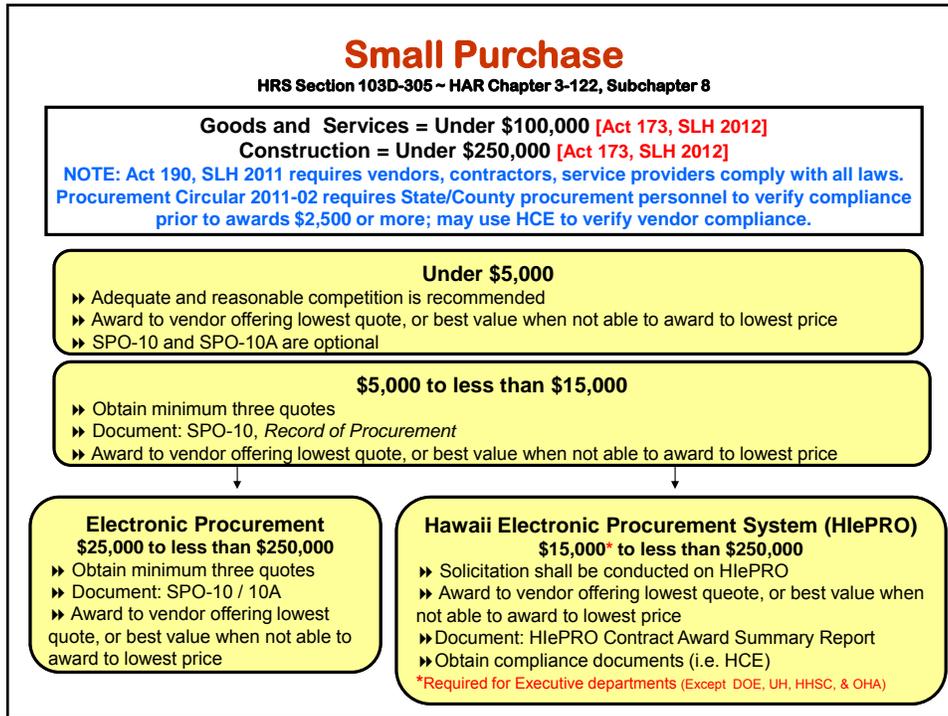
Small Purchases

HRS §103D-305

- Goods and Services less than \$100,000
- Construction less than \$250,000

NOTE: Act 190, SLH 2011 requires vendors, contractors, service providers comply with all laws. State/County procurement personnel required to verify compliance prior to awards \$2,500 or more.

- In accordance with Procurement Policy Board (PPB) rules
 - ▶ Administrative simplicity
 - ▶ As much competition as practicable
- No parceling
 - “Parceling” means the artificial division or intentional division of a purchase of same, like or related items of goods, services, or construction into several purchases of smaller quantities, in order to evade the statutory competitive requirements.
 - During any 12-month period



HRS Chapter 103D
 Hawaii Public Procurement Code

Sole Source
 HRS §103D-306

- **Determined in writing with documented research- only one source.**
- **Review and written prior approval by CPO.**
- **Procurement Policy Board approved list of sole source procurements (CPO approval not required)**
- **Public posting to internet***

*Reference Procurement Circular 2010-01, *Posting Procurement Awards, Notices, and Solicitations*

HRS Chapter 103D
Hawaii Public Procurement Code

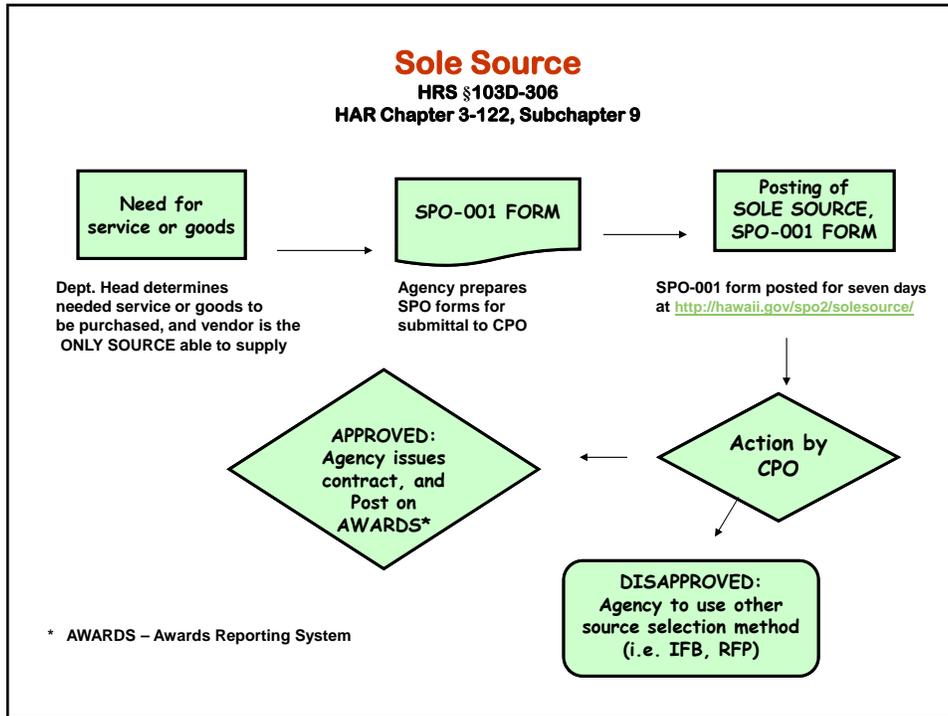
**Sole Source Procurements
as Determined by Procurement Policy Board
HAR §3-122-81**

- Rental of booth space for exhibits at conventions and trade shows when organized by a single sponsor
- For the repair, replacement, installation or relocation of public utility company equipment or facilities
- Annual license renewal and maintenance for computer software
- Procurement of computer software conversions, modifications, and maintenance for existing programs from the manufacturer of the software

HRS Chapter 103D
Hawaii Public Procurement Code

**Sole Source Procurements
as Determined by Procurement Policy Board
HAR §3-122-81 (Continued)**

- Transcripts of court proceedings.
- Repair and maintenance services and supplies from the original manufacturer or its designated representatives; when the manufacturer or its designated representatives is required to provide the services and supplies to retain the manufacturer's warranty or guarantee.
- Procurement of equipment upgrades from the original manufacturer to existing equipment and information technology hardware, when the upgrades can only be obtained from the manufacturer.

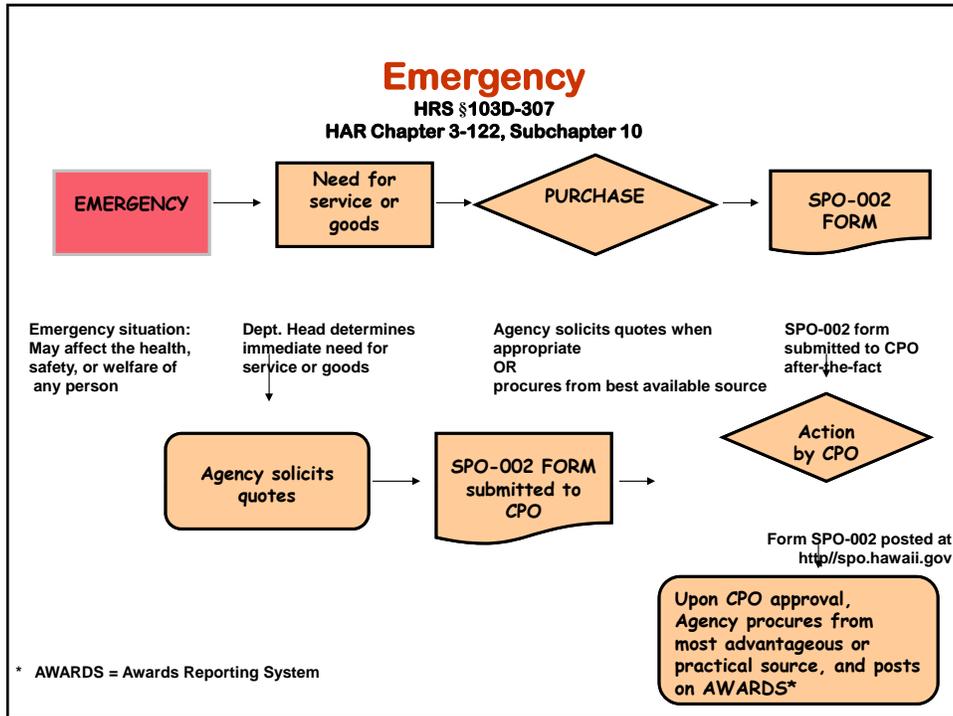


HRS Chapter 103D
Hawaii Public Procurement Code

Emergency

HRS §103D-307

- Threat to life, public health, welfare, or safety.
- Cannot be met through normal procurement methods and government would be seriously injured.
- Continued functioning of government, preservation of property, or health and safety seriously threatened.
- Where practicable, obtain chief procurement officer's prior approval.



STATE PROCUREMENT OFFICE
 CHAPTER 103D, HRS
 Hawaii Public Procurement Code

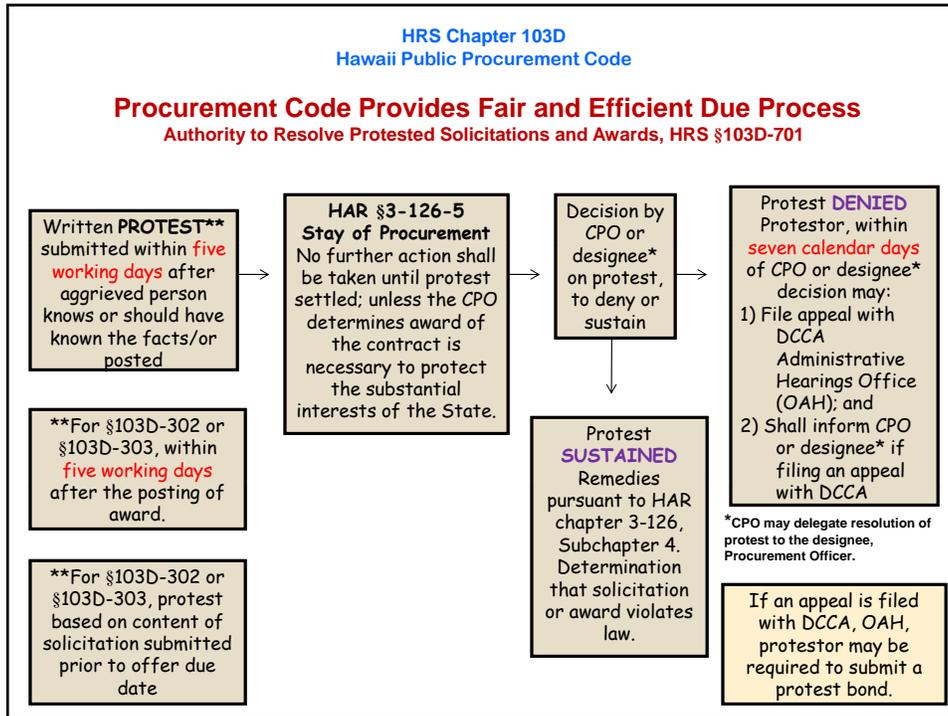
Compliance

HAWAII COMPLIANCE EXPRESS (HCE)

ACT 190 SLH 2010 amended HRS §103D-310(c), which requires “*All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State ...*”, to additionally require procurement personnel to verify compliance for awards pursuant to HRS §103D-305 (small purchase procurement), that are \$2,500 or more.

Vendors may use Hawaii Compliance Express to provide documentation.

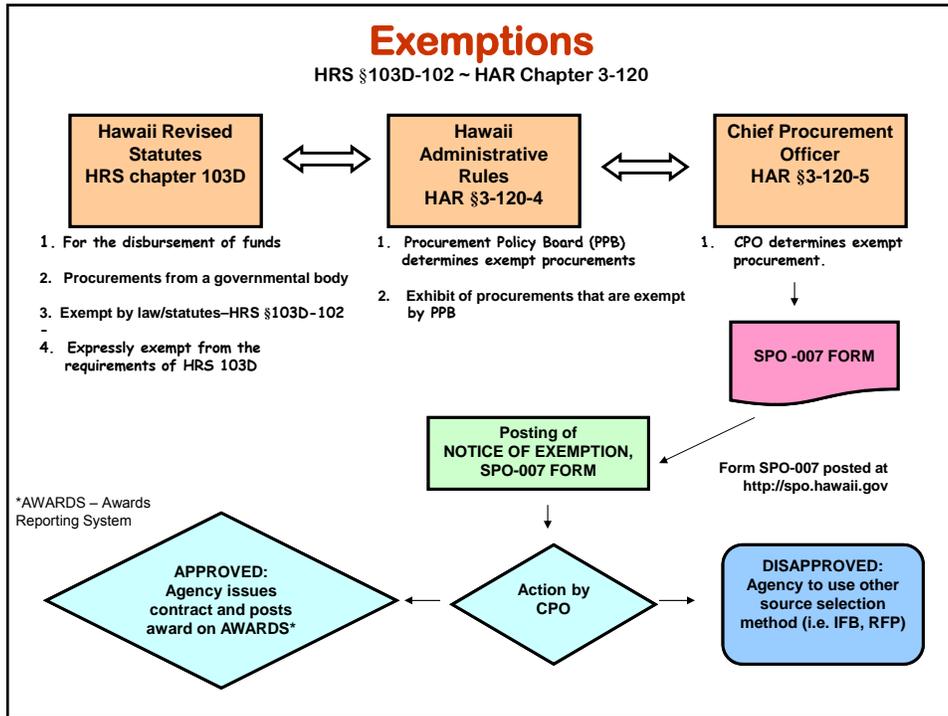
Information and vendor registration on HCE is available at <https://vendors.ehawaii.gov/hce/>



HRS CHAPTER 103D
 Hawaii Public Procurement Code

Procurement Code Allows for Exemptions When Required

- **When procurement by competitive means is not practicable or not advantageous:**
 - **HRS §103D-102(b)** (CPO approval not required)
 - **Procurement Policy Board determination by rules** (CPO approval not required)
 Ref. HRS §103D-102(b)(4)(L) and HAR §3-120-4
 - **Chief procurement officer (CPO) prior approval in writing**
 Ref. HRS §103D-102(b)(4)(L) and HAR §3-120-5



- ### HRS Section 103D-102 Non-Applicability
- For grants or subsidies
 - defined in HRS Chapter 42F, 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;
 - Payments to or on behalf of public officers and employees
 - for salaries, fringe benefits, professional fees, or reimbursements;
 - To satisfy obligations that the State is required to pay by law,
 - fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee);
 - Entitlement programs established by State or federal law
 - public assistance, unemployment, workers' compensation;
 - Dues/fees of organizations
 - of which the State or its officers/employees are members,
 - Deposit, investment, or safekeeping
 - including expenses related to their deposit, investment, or safekeeping;
 - To governmental bodies of the State;
 - As loans, under loan programs administered by a governmental body;
 - For contracts awarded in accordance with chapter 103F;...
- See HRS Section 103D-102 for complete listing

HAR Chapter 3-120, Exhibit A

- **Research, reference and educational materials**
 - books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, web-based databases, costs associated with publication of articles in scholarly journals
- **Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;**
- **Services of lecturers, speakers, trainers, facilitators and scriptwriters,**
 - when the provider possess specialized training methods, techniques or expertise in the subject matter;...

For complete listing, see HAR Chapter 3-120, Exhibit A

HRS CHAPTER 103D Hawaii Public Procurement Code

What is a Price List (PL) and Vendor List (VL) Contract?

- A **Price List (PL)** contract is a group of common items or services competitively bid to set the prices contractually for a specified time period, and the resulting contract is issued by a Chief Procurement Officer (CPO). A vendor awarded a PL contract is obligated to provide the specified goods or services, at the contracted price and terms, to all purchasing agencies committed to the contract. Examples of PL contracts are gasoline, newspaper publication, forms, office supplies.
- A **Vendor List (VL)** contract is comprised of qualified vendors that were competitively solicited to provide specified goods and/or services (i.e. Copiers and Facsimile Equipment, WSCA Computer Equipment and Services, etc.) for a specified period and usually at discount rates from a vendor's established catalog or product lists.

HRS Chapter 103D
Hawaii Public Procurement Code

Cooperative Purchasing

Cooperative Purchasing - Procurement conducted by a public or external procurement unit with one or more public procurement units, external procurement units or non-profit private procurement units, pursuant to HRS §103D-801.

- Must be in compliance with the requirements of HRS chapter 103D and HAR chapter 3-128;
- May not be entered into without prior written approval of the CPO;
- Any public procurement unit intending to participate in an external procurement unit's (e.g. another state) cooperative purchasing agreement, shall place a public notice within the State pursuant to HAR §3-122-16.03, of the external procurement unit's solicitation. The notice shall also include a statement of the public procurement unit's intent to participate in such cooperative purchasing agreement.
- Procurement Circular 2008-04, HAR chapter 3-128, *Governmental Relations and Cooperative Purchasing* issued 8/5/08

HRS Chapter 103D
Hawaii Public Procurement Code

Procurement Circulars and Directives

- **DIRECTIVES** are issued by the Administrator of the SPO on behalf of the Procurement Policy Board to transmit information and documents to the Chief Procurement Officers (CPO). Directive numbers are usually assigned by date of issuance.
- **CIRCULARS** are issued by the CPO of the Executive Branch [Administrator of the SPO] to provide guidance and rules for Executive Branch agencies, and additionally to CPO jurisdictions. Circular numbers are assigned by subject.

HRS CHAPTER 103D
Hawaii Public Procurement Code

Procurement Code of Ethics

- Intent - to ensure public government employees act in good faith, ensure fair and equitable treatment to persons involved in public procurement process, and to foster public confidence in government procurement.

Employees are responsible to:

- Avoid the intent and appearance of unethical behavior and practices.
- Diligently follow procurement laws and rules.

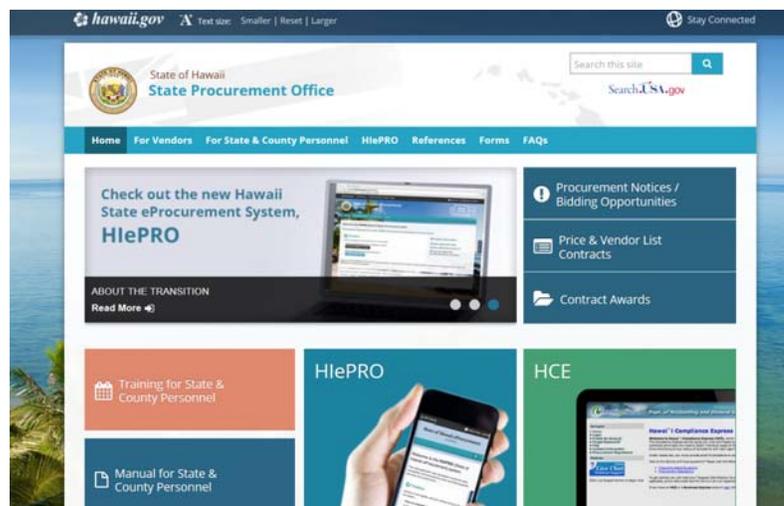
HRS CHAPTER 103D
Hawaii Public Procurement Code

Procurement Code of Ethics

- Refrain from activity that would create **or appear** to create conflict of interests between personal interest and interests of the government agency.
- Identify and eliminate conflicts of interests.
- Avoid soliciting or accepting money, loans, credits, discounts, favors, or services from present or potential vendors which may influence or appear to influence purchasing decisions.
- Ensure all persons are afforded equal opportunity to compete in a fair and open process.

What's New at SPO

SPO HOMEPAGE at <http://spo.hawaii.gov>



HiePRO
the New eProcurement System
<http://hiepro.hawaii.gov>



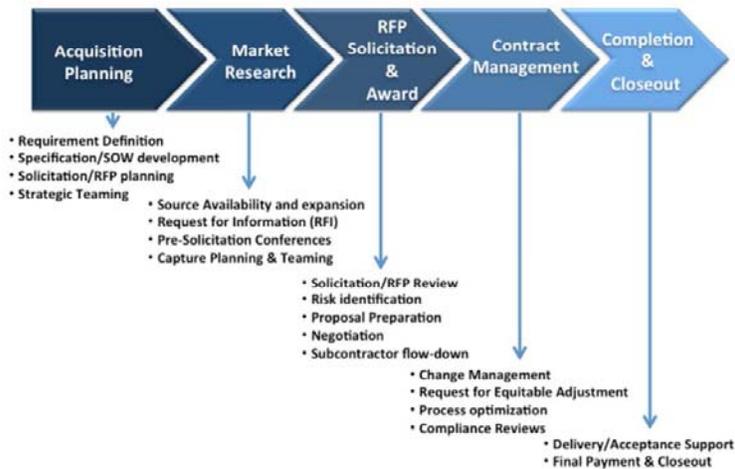
HiePRO
<http://hiepro.hawaii.gov>
Solicitations and Awards Automatically Posted

The screenshot displays the "Public Search" interface. At the top, there is a navigation bar with "Home", "Commodity Codes", "Public Search", and "Vendor Registration". The main heading is "Public Search". Below the heading, there are two tabs: "Notice of Solicitation" and "Awards". The search form includes several input fields and dropdown menus: "Solicitation Number", "Department Solicitation Number", "Keyword", "Status" (dropdown), "Island" (dropdown with "Statewide" selected), "Publication Date on or after", "Due Date on or after", "Method of Procurement" (dropdown), "Department" (text input), and "Category" (dropdown). At the bottom of the form are two buttons: "Clear Search" and "Search".

State Procurement Office New Directions

- Strong Focus -Education and Training
 - Encompassing the entire acquisition lifecycle from planning /acquisition strategy to close of contract.
 - Market Research
 - Cost and Pricing
 - On demand videos.
 - Comprehensive manual.

Training will Encompass the Procurement Life Cycle



SPO New Directions

- Innovation in Procurement
- Past Performance
- Cooperative Purchasing – GSA
- Small Business and Veteran's Preferences

SPO New Directions How Will We Get there

- Focus Groups
 - Health and Human Services
 - Small Business
- Business Process Engineering
 - Input from all Departments and CPO Jurisdictions
- Training

State Procurement Office
CHAPTER 103D, HRS
Hawaii Public Procurement Code

Summary

- Statutes, its administrative rules and policies are the single source that assures all purchasing entities utilize the same process and procedures.
- Private sector, the businesses and vendors, have come to understand these processes and procedures, assuring fair and equal treatment.
- SPO procurement information at <http://spo.hawaii.gov>

Thank you for attending