

**State Procurement Office
Workshop No. SPO 200**

The Basics
of Procuring Health and Human Services
Pursuant to HRS Chapter 103F

Part 2
*A Brief Overview:
HRS Chapter 103F and its Administrative
Rules*

**Definition of Health and Human Services
(HAR Chapter 3-140)**

Services to communities, families, or individuals which are intended to maintain or improve health or social well-being through methods including, but not limited to:

- a) Assessment, treatment, diagnosis, prevention and education services provided directly to a target clientele; or
- b) Insurance coverage for assessment, treatment, diagnosis, prevention and education services provided directly to a target clientele.

How do I know if a procurement is subject to HRS Chapter 103F?

1. The procurement must be for **services** (as opposed to goods)
2. The service must be **intended to maintain or improve health or social well-being** and may include assessment, treatment, diagnosis, prevention or educational services.
3. The service is to be provided **directly to a targeted clientele.**

HRS CHAPTER 103F Purchases of Health and Human Services

Part I. General Provisions

(§§103F-101 to 103F-106)

Application of the chapter; definitions; education & training; exemption from 103D; preventing impairment of federal funds; and authority of the procurement policy board

Part II. Planning Organization

(§§103F-201 to 103F-203)

Interagency committee on purchase of health and human services; community council; and collaboration of providers

Part III. Procurement Organization

(§§103F-301 to 103F-302)

Powers and duties of the administrator; and delegation of authority of the administrator of the state procurement office

HRS CHAPTER 103F (continued)

Part IV. Source Selection and Contract Formation
 (§§103F-401 to 103F-414)

Methods of selection; competitive purchase of services; restrictive purchase of services; treatment purchase of service; small purchases; crisis purchase of services; amendment and cancellation of requests; modification and termination of contracts; types of contracts, multi-term contracts, multiple awards; time line; interim measure for assuring continuation of services; and allotment

Part V. Protests
 (§§103F-501 to 103F-504)

Protested awards, right to request reconsideration; award of contract suspended during a protest; exclusivity of remedies

**Hawaii Administrative Rules
 Chapters 3-140 to 3-149**

3-140	Definitions
3-141	General Provisions
3-142	Planning
3-143 to 3-147	Chapters on each method of procurement (5 methods of procurement)
3-148	Protests and Requests for Reconsideration
3-149	Contracting

HAR Chapter 3-140: Definitions

Administrator: The administrator of the State Procurement Office.

Chief Procurement Officer (CPO): Those officials designated by HRS §103D-203.

Contract: All types of agreements, regardless of what they may be called.*

Procurement Officer: Any person with delegated authority from the head of a purchasing agency, the chief procurement officer, or a designee of either, to enter into and administer contracts, and to make written determinations with respect thereto.

**Applies to 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.*

HAR Chapter 3-140: Definitions (continued)

- **Public Funds:** Funds from any combination of federal, state, and local government sources.
- **Request for Proposals:** All documents whether attached or incorporated by reference, soliciting providers to submit a detailed plan to provide health or human services to the public, on behalf of a state agency.

HAR Chapter 3-141

General Provisions

- ❑ **Purpose and Scope** (*Subchapter 1*)
- ❑ **General Grounds for Rejection** (*Subchapter 2*)
(Failure to cooperate or deal in good faith; inadequate accounting system)
- ❑ **Record Keeping** (*Subchapter 3*)
(Retention of books/records; confidentiality)
- ❑ **General Operating Procedures** (*Subchapter 4*)
(List of providers; cost principles; no exemption from laws governing treatment of persons with disabilities; no exemption from anti-competitive practices; selection of procurement method; availability of forms; **public notice**)
- ❑ **Waivers and Exemptions** (*Subchapter 5*)
- ❑ **Procurement Violations** (*Subchapter 6*)

HAR Chapter 3-141: General Provisions (continued)

Exemptions: HRS Chapter 103F-101

- 1) Contracts to award grants or subsidies of state funds appropriated by the legislature to a specific organization or individual.
- 2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants.
- 3) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board. (HAR §3-141-503)

HAR Chapter 3-141: General Provisions (continued)**HAR Exemptions:**

- Subawards and subgrants to organizations directed by the funding source;
- Grants and subsidies as defined in HRS Chapter 42F
- Affiliation agreements with hospitals and other health care providers required for UH clinical programs; and
- Services of psychiatrists and psychologists in criminal and civil proceedings required by court order or rules of court.

HAR Chapter 3-141: General Provisions (continued)

HAR Exemptions (continued)

- Certain federally funded contracts
 - Federally funding source imposes conditions which conflict with HRS Chapter 103F and its rules;
 - Implementation of a federal program for health and human services that:
 - ✓ Identifies target population;
 - ✓ Defines requirements for provider to be qualified to participate in the federal program; **and**
 - ✓ Price of the health and human services is dictated by federal law
- Further exemption by the CPOs

HAR Chapter 3-141: General Provisions (continued)**Procurement Violations**

- Failure to follow procurement statutes and rules.
- Reporting and corrective action procedure for failure to follow procurement procedures for health and human services, HRS Chapter 103F and its administrative rules. **(Form SPO-16)**

HAR Chapter 3-141: General Provisions (continued)**Examples of procurement violations reported:**

- Failure to post procurement notice
- Failure to extend contract prior to expiration
- Extending a contract when the contract does not allow it
- Failure to request extension of time on a CPO approved exemption
- Requesting an after-the-fact restrictive/exempt CPO approval
- Federal grant applications, which requires naming provider(s)
 - No request for information (RFI) was done
 - Failure to submit a request for exemption or restrictive request if not doing an RFI.
- Exceeding the small purchase limits
- Adding services that are beyond the scope of the contract
- Using a government to government exempt contract as a pass-through to a particular provider to evade competitively procuring the services

HAR Chapter 3-142**Planning**

Planning involves various activities to determine services to purchase

- Request for Information
- Each Other
- Collaboration of Providers
- Procurement Awards, Notices & Solicitations (PANS)
 - Procurement Notices System (PNS)
 - Request for Proposals Website (RFPW)
 - Awards/Contracts Database

HAR Chapter 3-142: Planning (continued)**Requests for Information (RFI)**
HAR §3-142-202

- Purchasing agency shall conduct at least one RFI in preparation for an RFP.
- Recommendation: Conduct 2 RFI's if it is a new service or if modifying the service or configuration of services.
- Describe the information being sought.
Set the procedure for responding.

HAR Chapters 143-147

Five Methods of Procurement

HRS Chapter 103F

Five Methods of Procurement

- Competitive (RFP)
(HAR Chapter 3-143)
- Restrictive (Sole Source)
(HAR Chapter 3-144)
- Treatment
(HAR Chapter 3-145)
- Small Purchase
(HAR Chapter 3-146)
- Crisis
(HAR Chapter 3-147)

HAR Chapter 3-143
Competitive Purchase of Service

- Method of procurement used most often.
- Request for Proposals (RFP) solicited for selection of providers and awarding contracts for delivery of health and human services.
- Public notice required
- Term of contract: As stated in the request for proposals.
- Protestable

NOTE: RFI required (HAR §3-142-202)

Competitive Purchase of Services, HAR Chap. 3-143



**Application for Federal Funding
HAR §3-143-614**

- Applying for federal funds does not exempt a purchasing agency from Chapter 103F.
- When federal funds do not specify any specific provider by federal law or federal grant award to the state, competitive purchase of service shall be used, unless an alternate method is allowed by statutes or rules.
- If federal grant application requires identifying specific provider(s), then a request for information (RFI) may be utilized as established under HAR §3-142-202.

**PUBLIC INSPECTION OF COMPETITIVE PURCHASE OF SERVICE
RECORDS
HAR §3-143-616**

Available for inspection to the extent permitted under current law governing information practices, after execution of a contract by all parties.

Forms for request and reply furnished by Office of Information Practices.

<http://oip.hawaii.gov>

Tel: 808-586-1400

HAR Chapter 3-144
Restrictive (Sole Source) Purchase of Services

Basis for a restrictive purchase include, but are not limited to:

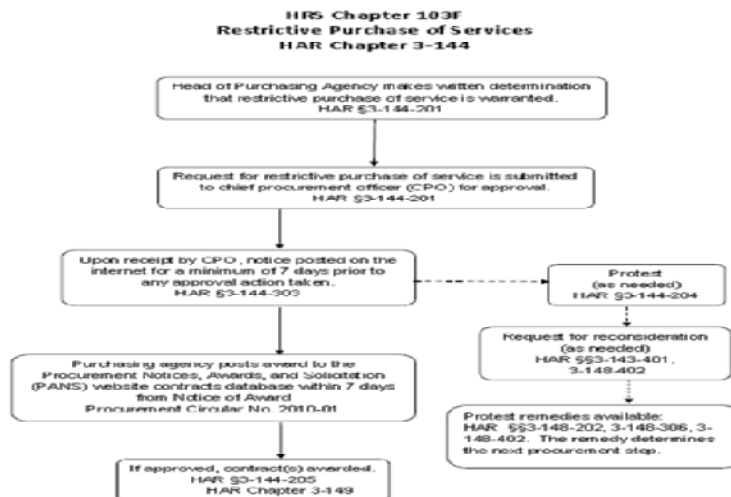
- 1) Service in a particular geographic area available from only one provider.
- 2) Service with a unique cultural approach designed for a limited target group available from only one provider.
- 3) Only one provider satisfies limitations imposed by funding source.

Approval Required: Head of purchasing agency makes a written determination. Chief procurement officer (CPO) approves/disapproves the determination in writing. Request is required to be posted for 7 days prior to CPO action.

Term Limit of Contract: Not to exceed 2 years

Protestable

Restrictive Purchase of Services, HAR Chap. 3-144



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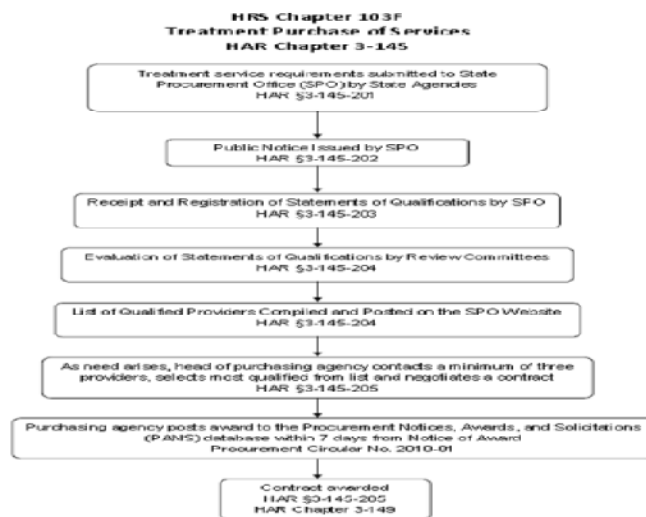
HAR Chapter 3-145

Treatment Purchase of Services

For health and social work professional services

- Bases for use:
 - 1) Services are for \$100,000 or less;
 - 2) Contract term 1 year or less; and
 - 3) Service is only needed sporadically, or problem could get worse if have to wait till competitively procured.
- Includes but not limited to medical treatment, counseling, physical, occupational and other therapeutic services, and referral and case management for those services.

Treatment Purchase of Services, HAR Chap. 3-145



HAR Chapter 3-146

Small Purchases of Services

- Monetary Cap: Less than \$25,000
- In accordance with requirements and rules for small purchases. Generally, this means obtaining 3 quotes.
- Parceling is not permitted. Dividing the purchase of same, like or related services into service purchases of smaller quantities, to evade the statutory competition purchase of service requirements is not allowed.

Note: This is not a mini RFP process.

Small Purchase of Services, HAR Chap. 3-146

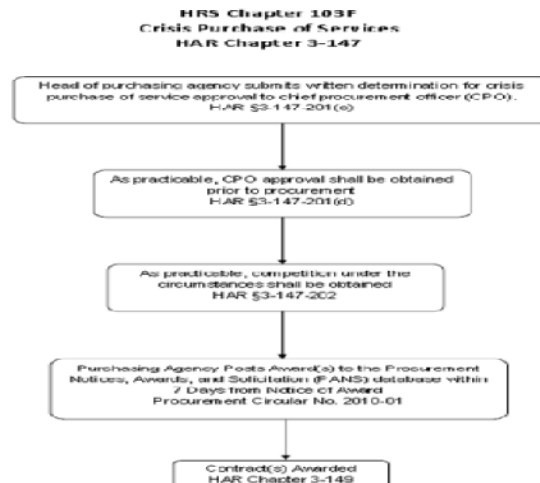


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HAR Chapter 3-147 Crisis Purchase of Services

- Services for a crisis that seriously threatens life, health or safety; are not already available, and needed immediately.
- Both of the following must be met:
 - ✓ The crisis results from domestic violence, physical or mental illness or injury, homelessness, etc. and results in a serious threat to life, health and safety.
 - ✓ The crisis generates an immediate and serious need for health or human services that cannot be met by any other purchasing agency that provides health and human services, or under other provisions of HRS Chapter 103F.

Crisis Purchase of Services, HAR Chap. 3-147



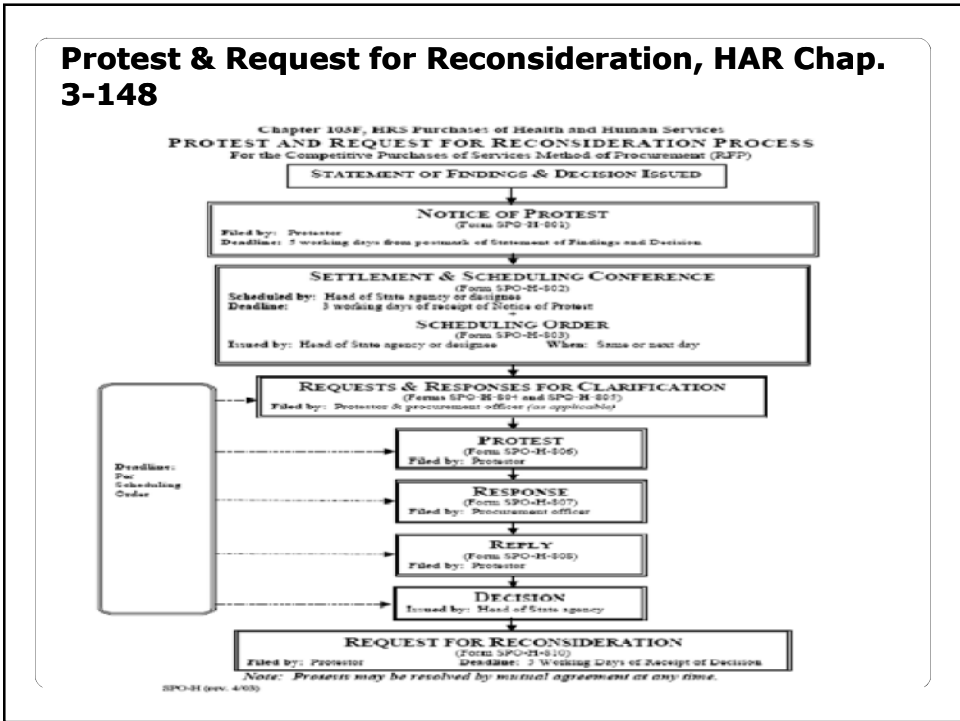
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HAR Chapter 3-148

Protests and Requests for Reconsideration

- **Only 2 methods of procurement may be protested:**
 - Competitive (RFP)
 - Restrictive (Sole Source)
- **Basis for Protests**
 Failure to follow:
 1. HRS Chapter 103F
 2. HAR Chapter 103F
 3. The RFP

(Forms and instructions are on the SPO website.)



HAR Chapter 3-149 Contracting

- Contracts subject to availability of funds
- Contract requirements
- Termination of contracts
- Extension of existing contracts
- Use of multi-term contracts
- Contract amendments
- Parceling
- Monitoring and evaluation of contracts

State Procurement Office

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Basics of Purchases of Health and Human Services
SPO 200, Part 2

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