

State Procurement Office

Workshop No. SPO 210

**Treatment, Restrictive,
Crisis, & Small Purchase**
of Health and Human Services
And
Exemptions from HRS Chapter 103F

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Procurements 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.**

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Choosing the Right Method of Procurement

- There may be more than one way to procure for a particular service.
- If you can procure it competitively, you probably should.
- Remember the intent of procurement - open and fair competition.
- It is all in the planning.

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HRS Chapter 103F Five Methods of Procurement

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

***Requires posting of public notice**

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

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Restrictive Purchase of Services Application

- **Includes, but is not limited to:**
 - Need for a service in a geographic area available from only one provider.
 - Need for a service with a unique cultural approach designed for a limited target group available from only one provider.
 - Only one provider satisfies limitations imposed by funding source.
- **Term of Contract is Limited**
 - Not to exceed 2 years, or upon CPO approval for good cause, 3 years

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Restrictive Purchase of Service: Application (continued)

- It's a **quantity** issue, not a quality issue.
- If the provider is the "only one" that can perform the service, that **IS** a quantity issue.
- If the provider is "the best" or "best suited," that is a quality issue, and it should be procured competitively - it is **NOT** a restrictive purchase.
- Justification/documentation must be provided. It is the responsibility of the purchasing agency to do the market research and document that the provider is the only one that can provide the services.
- Restrictive purchase approval required no matter source of funding (except for HRS Chapt. 42F grants and when federal government names provider).

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**Restrictive Purchase of Services
Procedure**

- Head of purchasing agency submits a written request for the restrictive purchase to the chief procurement officer (CPO). (Form SPO-H 500)
- CPO posts the notice of restrictive service and the request on the Internet for a minimum of 7 days prior to any approval action.
- If approved, purchasing agency can award the contract 2 days after the protest submittal deadline.

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Restrictive Purchase of Service: *Procedure* (continued)

- Purchasing agency shall post award on the awards/contracts reporting system within 7 days of notice of award.
- **Note:** This method of procurement may be protested.

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**Restrictive Purchase of Service
Completing Form SPOH-500**

The request is a determination by the head of the purchasing agency that there is an adequate basis for a restrictive purchase of service.

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Restrictive Purchase of Service: Form SPOH-500 (continued)

To: Chief Procurement Officer

From: [Redacted]
Department/Division/Branch or Office

Pursuant to §103F-403, HRS, and Chapter 3-144, HAR, the department head has made a determination that an adequate basis for a restrictive purchase of services exists and requests approval to make a restrictive purchase for the following:

1. Title and description of health and human service(s):	[Redacted]
2. Provider Name and Address:	[Redacted]
3. Total Contract Funds:	[Redacted]
Contract Funds per Year (if applicable):	[Redacted]
4. RH No. of Previous Request for this Service (if applicable)	[Redacted]

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Restrictive Purchase of Service: Form SPO-H 500 (continued)

5. Term of Contract:	Start: [Redacted]	End: [Redacted]
If the contract term is longer than 1 year, provide justification for the extended term: [Redacted]		
6. Describe the circumstances justifying a restrictive purchase: [Redacted]		
7. Describe the efforts and results in determining that this is the sole provider who can render services. Include approximate dates: [Redacted]		
8. List state agency personnel, by position title, who will be involved in the approval process and administration of the contract: [Redacted]		
9. Direct questions to (name & position): [Redacted]		
Phone number: [Redacted]		
e-mail address: [Redacted]		

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Examples of Restrictive Purchases

RH No. 12-12

Service: Residential substance abuse treatment services for women and their children on Oahu

Provider: The Salvation Army Family Treatment Services

Justification: The only licensed program in Hawaii that provides residential substance abuse treatment services for women and children.

How do they know? Checked with DOH, ADAD. ADAD issues the licenses.

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Examples of Restrictive Purchases (continued)

RH No. 10-01

Service: Intensive case management for women & children transitioning for reintegration into society from prison, substance abuse treatment, domestic violence, etc.

Provider: Women In Need

Justification: Only provider with existing resources to implement comprehensive array of services to these high risk populations.

How do they know? Checked with DHS, BESSD, which administers these types of programs. Checked with a number of providers, and criminal justice institutions, and substance abuse treatment agencies. (Names of agencies provided)

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Other Justifications for a Restrictive Purchase

- Copyright
- Federal or State requirement
- Program is proprietary

Remember: It's the purchasing agency's responsibility to justify that the provider is the only one that can provide the service(s).

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Restrictive Purchase of Service *Inadequate Justification*

- ☹ The provider is already providing the services for the purchasing agency.
- ☹ Potential loss of funds
- ☹ Purchasing agency's failure to plan ahead
- ☹ The provider is the "best one."

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Restrictive Purchase of Service

How do I justify that the provider is the only one who can provide the service(s)?

- Do the market research.
- Conducting an RFI is **not** enough!!
- You can:
 - ~ Check with providers.
 - ~ Contact other government agencies.
 - ~ Contact local or national professional associations or organizations
 - ~ Check the internet
 - ~ If the service is a sole source by the federal government, cite the authority and submit the portion of the regulation that refers to the sole source provider
 - ~ Check other sources of authority
- Document, document, document!
Don't JUST tell us – you must put it in writing.

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Restrictive Purchase of Service

In summary, the restrictive purchase of service can only be used when:

- There is something unique about the service that the provider is the **only one** that can provide the service;
- The provider is the **only one** that provides the service; or
- The provider is the **only one** in the geographic area that can provide the needed service.
- Restrictive purchases shall be reported on the awards/contracts database within 7 days of notice of award.

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Treatment Purchase of Services HAR Chapter 3-145

Using the
Treatment List of Qualified Private Providers

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Treatment Method of Procurement HAR Chapter 3-145

Bases for Use:

- Services may become necessary from time to time, but cannot be anticipated accurately on an annual or biennial basis;
- Delaying treatment until the procurement process and contract formation can be completed would render the problem needing treatment worse than at the time of diagnosis or assessment.
- Maximum 1 year term
- Maximum funding \$100,000

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Treatment Purchase of Services (continued)

The State Procurement Office is the agency that compiles the treatment list of qualified providers.

Currently, there is no treatment list available

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**Small Purchase of Services
HAR Chapter 3-146
(Less than \$25,000)**

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Small Purchase of Service

When Do I Use the Small Purchase Method of Procurement?

- When the purchase of the same or like services will be less than \$25,000 in a consecutive 12-month period.
- *How will I know?*
 - ~ Look at the history. What happened the last 2 or 3 years?
 - ~ If you have concerns that this will exceed \$25,000, then this method is not appropriate.

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Small Purchase Procedure

Under \$5000 (follow HRS Chapter 103D for small purchase, Proc. Cir. 2009-15)

- Adequate and reasonable competition is recommended;
- Award shall be made to the lowest responsive, responsible provider; or
- When award to the lowest responsive, responsible provider is not practicable, award shall be made to the provider whose offer provides the best value to the State.

\$5,000 to less than \$15,000

- No less than 3 quotations
- Award to the provider with the most advantageous quotation

\$15,000 to less than \$25,000

- No less than 3 **written** quotations

Rev. 9/2014 Award to the provider with the most advantageous quotation²⁴

**Small Purchase of Service
*Procedures***

- Describe service scope & minimum specifications
- Request quotes
 - As much competition as possible, but at least 3 quotes.
 - SPO recommends all requests and quotes are in writing.
- Evaluate (compliance with minimum specifications)
- Select lowest responsive, responsible quotation
- Award
- Post on the awards/contracts database within 7 days of notice of award.
- Procurement file: All quotes received; if less than required quotes, justification for fewer quotes; justification for award if made to other than the lowest quote.

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**Crisis Purchase of Service
HAR Chapter 3-147
(Emergency)**

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Crisis Purchase of Services

Application

- A crisis seriously threatens life, health or safety; services are not already available, and services are 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 other methods of procurement.

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Examples of Crisis Purchase

CR No. 10-01

Before or after-the-fact: After-the-fact

Service: One-on-one support for a client with dangerous and threatening behavior

Provider: Bobby Benson Center

Justification: Immediate threat to self and safety of others

CR No. 09-01

Before or after-the-fact: After-the-fact

Service: Crisis counseling services for survivors of severe storms on Oahu

Provider: Community Empowerment Services, LLC

Justification: To prevent post traumatic stress disorder, it was imperative to alleviate fear, anguish, stress and other mental illness arising from the disaster.

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Examples of Crisis Purchase (continued)

CR No. 03-02

Before or after-the-fact: After-the-fact

Service: Immediate relocation of developmental disabilities,
mental retardation consumers

Provider: The Arc in Hawaii, Inc.

Justification: Current residential service provider was
decertified by Centers for Medicaid and Medicaid Services

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Crisis Purchase of Service: Form SPO-H 600 (continued)

To: Chief Procurement Officer

From: [Redacted]
Department/Division/Branch or Office

Pursuant to Section 103F-406, HRS, and Chapter 3-147, HAR, the Department Head has determined a crisis condition exists and requests approval to make a crisis purchase for the following:

1. Request made:	<input type="checkbox"/> Before-the-Fact	<input type="checkbox"/> After-the-Fact
2. Title and description of health and human service(s):	[Redacted]	
3. Provider Name and Address:	[Redacted]	
4. Total Contract Funds:	[Redacted]	
5. Term of Contract:	Start: [Redacted]	End: [Redacted] [Redacted]
Crisis purchases of service are limited to current needs only. Enter justification for length of contract: [Redacted]		

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Crisis Purchase of Service: Form SPO-H 600 (continued)

6. Describe the nature of the crisis condition (pursuant to section 3-147-201, HAR):
[Redacted]

7. Describe the reason for selection of the provider (including description of practicable competition):
[Redacted]

8. For approvals requested after-the-fact, explain why it was not practicable to request approval prior to the purchase:
[Redacted]

9. Direct questions to (name & position): [Redacted]
Phone number: [Redacted]
e-mail address: [Redacted]

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Crisis Purchase of Service
A Summary of Things to Remember

- It is the client’s crisis (not yours).
- It involves an immediate and serious need for a service.
- There is a serious threat to health and safety.
- There is no existing contract for the service.
- Limited to current needs only, not to exceed 6 months, 12 months w/justification.
- Request for approval can be submitted to the CPO after-the-fact.
- Post to the awards/contracts database within 7 days of notice of award.

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Exemptions from HRS Chapter 103F

HRS §103F-101
HAR §3-141-503

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Exemptions

- Exemptions are not a method of procurement
- Exemptions are used when it is not practicable/feasible to use any of the five methods of procurement.

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Exemptions from HRS Chapter 103F

Exemption by Statute, HRS §103F-101

1. Contracts to award **grants or subsidies** of
 - **State funds** (*not federal or private funds*),
 - **Appropriated by the legislature, and**
 - **To a specific organization or individual** (*not to a service or geographic area*).
2. Transactions between or among government agencies;

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Exemptions from HRS Chapter 103F

Exemption by Statute (continued)

3. Transactions expressly exempt from this chapter;
and
4. Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board.

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Exemptions from HRS Chapter 103F
Exemptions by Administrative Rule
HAR §3-141-503

1. Subawards and subgrants to organizations directed by the funding source;
Note: Grants which a state agency has to submit an application naming a provider is not an outright exemption by this rule.
2. HRS Chapter 42F grants and subsidies; *(similar to the statute)*
3. UH clinical programs affiliation agreements with hospitals and other health care providers;
4. Psychiatrist and psychologist services in criminal and civil proceedings as required by court order or rules of court;

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Exemptions from HRS Chapter 103F
Exemption by Administrative Rule (continued)

5. Certain federally funded contracts where:
 - a. Source of federal funds imposes conditions on the receipt of funds that conflict with HRS Chapter 103F and its rules; or
 - b. Contract is to provide health and human services to implement a federal program that:
 - 1) Identifies a target class of beneficiaries;
 - 2) Defines the requirements for a provider to be qualified to participate in the federal program; **and**
 - 3) Price of the provided health and human services dictated by federal law.
6. Exemptions approved by the CPO
(Form SPOH-150)

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Examples of Exemptions

PEH No. 12-36

Service: Home visiting services through existing Early Head Start programs

Provider: Parents and Children Together, Family Support Services of West Hawaii, and Maui Family Support Services

Justification: These are the only three agencies in Hawaii designated by the federal government as Head Start providers.

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Examples of Exemptions (continued)

PEH No. 11-13

Service: Urinalysis testing and adult substance abuse case management and treatment services for eligible recipients

Provider: The Alcoholic Rehabilitation Services of Hawaii, Inc. dba Hina Mauka

Justification: Agency was in the procurement process. Already exercised rule for extension of contracts during the procurement process, HAR §3-149-301. Initially requested 6 more months extension.

Outcome: Agency had to provide timeline to show the need for the additional time. Approved period was only for 4 months.

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Examples of Exemptions (continued)

PEH No. 11-14

Service: Assistance to families experiencing a crisis such as eviction, utility shutoff, etc. (non-recurrent short term benefits)

Provider: Various

Justification: Already have approved exemption, PEH No. 10-15. This request to continue the exemption for 12 months to use up current funding. No cost extension.

Note: PEH No. 10-14 – noncompetitive service. RFI issued and award to all qualified providers

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Exemptions from HRS Chapter 103F: Form SPOH 150

To: Chief Procurement Officer

From: [Redacted]
Department/Division/Branch or Office

Pursuant to § 103F-101(a)(4), HRS, and Chapter 3-141, HAR, the Department requests a procurement exemption to purchase the following:

1. Title and description of health and human service(s):	
[Redacted]	
2. Provider Name and Address:	
[Redacted]	
3. Total Contract Funds:	
Contract Funds per Year (if applicable):	
[Redacted]	
4. Reference number of Previous Request for this Service (if applicable):	
[Redacted]	
5. Term of Contract:	
Start:	[Redacted]
End:	[Redacted]
6. Describe how procurement by competitive means is either not practicable or not advantageous to the State:	
[Redacted]	

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Exemptions from HRS Chapter 103F: Form SPO-H 150 (continued)

7. Describe the reason for the selection of the provider including a description of how the procedure ensured the maximum fair and open competition practicable:	
8. Describe the state agency's internal controls and approval requirements for the exempted procurement:	
9. List the state agency personnel, by position title, who will be involved in the approval process and administration of the contract:	
10. Direct questions to (name & position):	
Phone number:	
e-mail address:	

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Exemptions from HRS Chapter 103F

Inadequate Justification :

- ☹ The provider is already providing the services for the purchasing agency.
- ☹ Potential loss of funds
- ☹ Purchasing agency's failure to plan ahead.

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Deadlines for Reporting on Awards/Contracts Reporting System

Method of Procurement	Deadline
Competitive (HRS §103F-402) Restrictive (HRS §103F-403) Treatment (HRS §103F-404) Small Purchases (HRS §103F-405) Crisis (HRS §103F-406)	7 days of notice of award
Exemptions from HRS Chapter 103F	7 days of notice of award
Amendments, extensions, supplemental agreements (Reference HAR Chap. 3-149)	7 days of notice of award
Funds Actually expended	60 days of close of each fiscal year and 90 days of contract expiration
Major Accomplishments	90 days of contract expiration

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**Procurement Awards, Notices & Solicitations (PANS)
(Awards/Contracts Reporting System)**

- All restrictive, treatment, small purchase, crisis and exempt contracts **shall** be posted to the awards/contracts reporting system.
- Update contracts database yearly until contract expiration.
- Online reports are only as accurate as the data entered.
- Great method of keeping track of contracts.
- Use it for planning/collaboration.

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The Health and Human Services Reporting Awards User Guide

Is a step-by-step manual
It will save you time!
Use it!

<http://spo.hawaii.gov/for-state-county-personnel/manual/procurement/pans/pans-overview/>

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SPO Website

<http://hawaii.gov/spo>

➤ **For Restrictive, Crisis, and Exempt POS Requests for CPO approval**

On the SPO homepage, click on:

"Contract Awards"

"Awards"

"hawaii.gov/spo2"

"Contracts for Health & Human Services"

"Requests for Chief Procurement Officer Approvals..."

Includes:

- Copies of executive branch requests and CPO action for restrictive, crisis and exemption requests (from fiscal year 2003);
- Purchasing agency, status, provider name, total funds, and contract term.

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State Procurement Office
<http://hawaii.gov/spo>

Questions? Contact:

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