

Suggested HAR changes for
Clarifying Exemption Responsibilities by
Amending HAR §§3-120-4, Exhibit A, and 3-122-14
VERSION A

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to
Chapters 3-120 and 3-122
Interim
Hawaii Administrative Rules

October 30, 2014

SUMMARY

1. §§3-120 and Exhibit A are amended.
2. §§3-122-14 is amended.

1. Section 3-120-4, Hawaii Administrative Rules, is amended to read as follows:

"§3-120-4 Procurements exempt from chapter 103D, HRS.

(a) Notwithstanding the intent of chapter 103D, HRS, to require governmental bodies to procure their goods and services through competitive bidding, it is acknowledged that there may be situations where procurement by competitive means is either not practicable or not advantageous to the State.

(b) Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", is located at the end of this chapter. This exhibit provides a list of goods and services which the procurement policy board has determined to be exempt from chapter 103D, HRS, because although such goods and services may be available from multiple sources, their procurement by competitive means would be either not practicable or not advantageous to the State.

(c) Chief procurement officers may request periodic reports from the heads of purchasing agencies of procurements made pursuant to subsection (b). The heads of purchasing agencies may be required to include in their reports, descriptions of the process or procedures the agency used to select the vendor ensuring maximum fair and open competition whenever practicable.

(d) Chief procurement officers may request that additional exemptions be added to Exhibit A entitled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter.

(e) The procurement policy board shall review Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter, annually or more frequently as needed for amendments.

(f) Purchasing agencies making procurements which are exempt from chapter 103D, HRS, are nevertheless encouraged to adopt and use provisions of the chapter and its implementing rules as appropriate; provided that the use of one or more provisions shall not terminate the exemption and subject the procurement of the purchasing agency to any other

provision of the chapter.

(g) Purchasing agencies shall cite on the purchase order or on the contract, the authority waiver as "Exempt From Chapter 103D, HRS, pursuant to section 3-120-4(b) (cite exemption number from Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter), Hawaii Administrative Rules". [Eff 12/15/95; am and comp 11/17/97; am and comp 6/19/99; am and comp 6/9/01; am and comp 11/15/01; am and comp 11/8/02; am and comp 8/24/09; am] (Auth: HRS §§103D-102, 103D-202) (Imp: HRS §103D-102)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to updates source notes to reflect these amendments are not underscored.

4. These amendments to chapter 3-120, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

2. Exhibit A in Section 3-120, Hawaii Administrative Rules, is amended to read as follows:

"EXHIBIT A"

HAR Chapter 3-120
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS

[03/17/2011] "10/30/2014"

The following list of exemptions, pursuant to HAR §3-120-4, has been determined to be exempt from HRS chapter 103D by the procurement policy board[:]",notwithstanding remaining ethical and contractual requirements of public procurement, guided by HRS §103D-101 and HAR 3-131-1.02:"

Exemption
Number

Exemption

1. Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases, and costs associated with publication of articles in scholarly journals;
2. 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;
3. Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter;
4. Services of legal counsel, guardian ad litem, psychiatrists, psychologists, receivers and masters when required by court order;
5. Insurance to include insurance broker services;

Exemption
Number

Exemption

6. New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
7. Food and fodder for animals;
8. Facility costs for conferences, meetings, and training sessions;
9. Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
10. Arbitrator and mediator services;
11. Interpreter services;
12. Procurement of repair services when dismantling is required to assess the extent of repairs;
13. Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses;
14. Radio and television airtime when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc);
15. Subscription costs and registration or workshop fees for conferences or training; and
16. Court reporter services.

3. Section 3-22-14, Hawaii Administrative Rules, is amended to read as follows:

§3-122-14 Exempted items. Purchasing agencies are granted the authority to prepare specifications for goods, services, and construction procured under sections 103D-102 and 103D-304, HRS. "However, all public employees must continue to conduct and participate in public procurement in a responsible and ethical manner with contracting integrity, guided by HRS §103D-101 and HAR 3-131-1.02." [Eff 12/15/95; comp 11/17/97; comp 03/21/2008] (Auth: HRS §§103D-202, 103D-403) (Imp: HRS §§103D-102, 103D-304, 103D-403)

DRAFT

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-122, Hawaii Administrative Rules, on the Summary Page dated October 30, 2014 were adopted at the Procurement Policy Board meeting on October 30, 2014, pursuant to interim rules authorized by §103D-202, Hawaii Revised Statutes.

The rules replace 3-120 rules and Exhibit A previously adopted and effective on 03/17/2011, and 3-122-14 rules previously adopted and effective on 03/21/2008. The rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

DEAN H. SEKI
State Comptroller

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General

Suggested HAR changes for
Clarifying Exemption Responsibilities by
Amending HAR §§3-120-4, Exhibit A, and 3-122-14
VERSION B

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to
Chapters 3-120 and 3-122
Interim
Hawaii Administrative Rules

October 30, 2014

SUMMARY

1. §§3-120 and Exhibit A are amended.
2. §§3-122-14 is amended.

1. Section 3-120-4, Hawaii Administrative Rules, is amended to read as follows:

"§3-120-4 Procurements exempt from chapter 103D, HRS.

(a) Notwithstanding the intent of chapter 103D, HRS, to require governmental bodies to procure their goods and services through competitive bidding, it is acknowledged that there may be situations where procurement by competitive means is either not practicable or not advantageous to the State.

(b) Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", is located at the end of this chapter. This exhibit provides a list of goods and services which the procurement policy board has determined to be exempt from chapter 103D, HRS, because although such goods and services may be available from multiple sources, their procurement by competitive means would be either not practicable or not advantageous to the State.

(c) Chief procurement officers may request periodic reports from the heads of purchasing agencies of procurements made pursuant to subsection (b). The heads of purchasing agencies may be required to include in their reports, descriptions of the process or procedures the agency used to select the vendor ensuring maximum fair and open competition whenever practicable.

(d) Chief procurement officers may request that additional exemptions be added to Exhibit A entitled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter.

(e) The procurement policy board shall review Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter, annually or more frequently as needed for amendments.

(f) Purchasing agencies making procurements which are exempt from chapter 103D, HRS, are nevertheless encouraged to adopt and use provisions of the chapter and its implementing rules as appropriate; provided that the use of one or more provisions shall not terminate the exemption and subject the procurement of the purchasing agency to any other

provision of the chapter.

(g) Purchasing agencies shall cite on the purchase order or on the contract, the authority waiver as "Exempt From Chapter 103D, HRS, pursuant to section 3-120-4(b) (cite exemption number from Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter), Hawaii Administrative Rules". [Eff 12/15/95; am and comp 11/17/97; am and comp 6/19/99; am and comp 6/9/01; am and comp 11/15/01; am and comp 11/8/02; am and comp 8/24/09; am] (Auth: HRS §§103D-102, 103D-202) (Imp: HRS §103D-102)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to updates source notes to reflect these amendments are not underscored.

4. These amendments to chapter 3-120, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

2. Exhibit A in Section 3-120, Hawaii Administrative Rules, is amended to read as follows:

"EXHIBIT A"

HAR Chapter 3-120
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS

[03/17/2011] "10/30/2014"

The following list of exemptions, pursuant to HAR §3-120-4, has been determined to be exempt from HRS chapter 103D by the procurement policy board[:]"however all methods of public procurement must be made in an ethical manner, with all public employees acting as a fiduciary and trustee of public funds in the public interest, avoiding unethical behavior, maintaining confidentiality, remaining impartial in dealings with any actual or prospective interested party, and identify and eliminate any conflicts of interest to conduct an alternative procurement in a responsible and ethical manner with contracting integrity:"

<u>Exemption Number</u>	<u>Exemption</u>
1.	Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases, and costs associated with publication of articles in scholarly journals;
2.	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;
3.	Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter;
4.	Services of legal counsel, guardian ad litem, psychiatrists, psychologists, receivers and masters when required by court order;

5. Insurance to include insurance broker services;

Exemption
Number

Exemption

6. New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
7. Food and fodder for animals;
8. Facility costs for conferences, meetings, and training sessions;
9. Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
10. Arbitrator and mediator services;
11. Interpreter services;
12. Procurement of repair services when dismantling is required to assess the extent of repairs;
13. Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses;
14. Radio and television airtime when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc);
15. Subscription costs and registration or workshop fees for conferences or training; and
16. Court reporter services.

3. Section 3-22-14, Hawaii Administrative Rules, is amended to read as follows:

§3-122-14 Exempted items. Purchasing agencies are granted the authority to prepare specifications for goods, services, and construction procured under sections 103D-102 and 103D-304, HRS. "However, all public employees must continue to conduct and participate in public procurement in a responsible and ethical manner with contracting integrity, acting as a fiduciary and trustee of public funds in the public interest, avoiding unethical behavior, maintaining confidentiality, remaining impartial in dealings with any actual or prospective interested party, and identify and eliminate any conflicts of interest to conduct an alternative procurement in a responsible and ethical manner with contracting integrity)." [Eff 12/15/95; comp 11/17/97; comp 03/21/2008] (Auth: HRS §§103D-202, 103D-403) (Imp: HRS §§103D-102, 103D-304, 103D-403)

DRAFT

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-122, Hawaii Administrative Rules, on the Summary Page dated October 30, 2014 were adopted at the Procurement Policy Board meeting on October 30, 2014, pursuant to interim rules authorized by §103D-202, Hawaii Revised Statutes.

The rules replace 3-120 rules and Exhibit A previously adopted and effective on 03/17/2011, and 3-122-14 rules previously adopted and effective on 03/21/2008. The rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

DEAN H. SEKI
State Comptroller

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General

Suggested HAR changes for
Clarifying Exemption Responsibilities by
Amending HAR §§3-120-4, Exhibit A, and 3-122-14
VERSION C

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to
Chapters 3-120 and 3-122
Interim
Hawaii Administrative Rules

October 30, 2014

SUMMARY

1. §§3-120 and Exhibit A are amended.
2. §§3-122-14 is amended.

1. Section 3-120-4, Hawaii Administrative Rules, is amended to read as follows:

“§3-120-4 Procurements exempt from chapter 103D, HRS.

(a) Notwithstanding the intent of chapter 103D, HRS, to require governmental bodies to procure their goods and services through competitive bidding, it is acknowledged that there may be situations where procurement by competitive means is either not practicable or not advantageous to the State.

(b) Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", is located at the end of this chapter. This exhibit provides a list of goods and services which the procurement policy board has determined to be exempt from chapter 103D, HRS, because although such goods and services may be available from multiple sources, their procurement by competitive means would be either not practicable or not advantageous to the State.

(c) Chief procurement officers may request periodic reports from the heads of purchasing agencies of procurements made pursuant to subsection (b). The heads of purchasing agencies may be required to include in their reports, descriptions of the process or procedures the agency used to select the vendor ensuring maximum fair and open competition whenever practicable.

(d) Chief procurement officers may request that additional exemptions be added to Exhibit A entitled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter.

(e) The procurement policy board shall review Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter, annually or more frequently as needed for amendments.

(f) Purchasing agencies making procurements which are exempt from chapter 103D, HRS, are nevertheless encouraged to adopt and use provisions of the chapter and its implementing rules as appropriate; provided that the use of one or more provisions shall not terminate the exemption and subject the procurement of the purchasing agency to any other

provision of the chapter.

(g) Purchasing agencies shall cite on the purchase order or on the contract, the authority waiver as "Exempt From Chapter 103D, HRS, pursuant to section 3-120-4(b) (cite exemption number from Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated [03/17/2011] "10/30/2014", located at the end of this chapter), Hawaii Administrative Rules". [Eff 12/15/95; am and comp 11/17/97; am and comp 6/19/99; am and comp 6/9/01; am and comp 11/15/01; am and comp 11/8/02; am and comp 8/24/09; am] (Auth: HRS §§103D-102, 103D-202) (Imp: HRS §103D-102)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to updates source notes to reflect these amendments are not underscored.

4. These amendments to chapter 3-120, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

2. Exhibit A in Section 3-120, Hawaii Administrative Rules, is amended to read as follows:

"EXHIBIT A"

HAR Chapter 3-120
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS

[03/17/2011] "10/30/2014"

The following list of exemptions, pursuant to HAR §3-120-4, has been determined to be exempt from HRS chapter 103D by the procurement policy board[:]",notwithstanding the ethical and contractual requirements to conduct all public procurement in a responsible and ethical manner and contracting integrity pursuant to HRS chapters 84 and 103:"

Exemption
Number

Exemption

1. Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases, and costs associated with publication of articles in scholarly journals;
2. 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;
3. Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter;
4. Services of legal counsel, guardian ad litem, psychiatrists, psychologists, receivers and masters when required by court order;
5. Insurance to include insurance broker services;

<u>Number</u>	<u>Exemption</u>
6.	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
7.	Food and fodder for animals;
8.	Facility costs for conferences, meetings, and training sessions;
9.	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
10.	Arbitrator and mediator services;
11.	Interpreter services;
12.	Procurement of repair services when dismantling is required to assess the extent of repairs;
13.	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses;
14.	Radio and television airtime when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc);
15.	Subscription costs and registration or workshop fees for conferences or training; and
16.	Court reporter services.

3. Section 3-22-14, Hawaii Administrative Rules, is amended to read as follows:

§3-122-14 Exempted items. Purchasing agencies are granted the authority to prepare specifications for goods, services, and construction procured under sections 103D-102 and 103D-304, HRS. "However, all public employees must continue to conduct and participate in public procurement in a responsible and ethical manner and contracting integrity pursuant to HRS chapters 84 and 103." [Eff 12/15/95; comp 11/17/97; comp 03/21/2008] (Auth: HRS §§103D-202, 103D-403) (Imp: HRS §§103D-102, 103D-304, 103D-403)

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DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-122, Hawaii Administrative Rules, on the Summary Page dated October 30, 2014 were adopted at the Procurement Policy Board meeting on October 30, 2014, pursuant to interim rules authorized by §103D-202, Hawaii Revised Statutes.

The rules replace 3-120 rules and Exhibit A previously adopted and effective on 03/17/211, and 3-122-14 rules previously adopted and effective on 03/21/2008. The rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

DEAN H. SEKI
State Comptroller

Dated: _____

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APPROVED AS TO FORM:

Deputy Attorney General