

**STATE PROCUREMENT OFFICE  
WORKSHOP NO. SPO 225**

**RFPs: GETTING FROM A NOTICE OF AWARD TO AN  
EXECUTED CONTRACT  
FOR HEALTH AND HUMAN SERVICES**

Pursuant to HRS Chapter 103F

01/2015

1

**WHAT HAVE WE LEARNED ABOUT THE RFP  
PROCESS SO FAR?**

1. We started with **PLANNING** (HAR Chapter 3-142)
2. We did a Request for Information (RFI) (HAR Chapter 3-142)
3. We put together and issued the RFP (HAR Chapter 3-143)
  - a. Procurement Notices System (PNS)
  - b. Request for Proposals Website (RFPW)
  - c. Orientation
  - d. Addenda issued, if applicable
  - e. RFP available for a minimum of 28 days

01/2015

2

## The RFP Process So Far (continued)

4. Evaluated the proposals submitted.
  - a. Evaluation committee trained. No conflict of interest.
  - b. Register of all proposals submitted
  - c. Evaluation based solely upon evaluation criteria and relative priorities set in the RFP.
  - d. Numerical evaluations shall include a **written explanation of scores given** in accordance with criteria in the RFP.

01/2015

3

## What's The Next Step?

To Get To An  
Executed Contract

01/2015

4

Notice of Award  
(HAR §3-143-303)

- Shall be sent to each responsive and responsible applicant
- Shall contain a statement of findings and decision
  - ✓ Purchasing agency
  - ✓ RFP title and number
  - ✓ Comments for the evaluation and scores applicant received in support of award/non-award decision
  - ✓ Copy of proposal evaluation worksheet of applicant notice is being sent.
  - ✓ Names of applicant(s) selected. No other information regarding other applicant(s) proposals or evaluations are provided.

01/2015

5

Notice of Award: Statement of Findings and Decision

Competitive Purchases of Service  
Chapter 103F, HRS  
Statement of Findings and Decision

(Date)

State Agency Issuing RFP: \_\_\_\_\_  
(Department, division, branch, etc. as applicable)

Applicant: \_\_\_\_\_ Log # \_\_\_\_\_

Request for Proposal Title: \_\_\_\_\_ RFP ID # \_\_\_\_\_

Applicant's proposal was selected.

Amount awarded subject to appropriation and availability of funds: \$ \_\_\_\_\_

Comments:

Applicant's proposal was not selected.

Comments:

Identification of applicant(s) selected for this RFP:

A copy of applicant's proposal evaluation worksheet is attached for your information.

If there are any questions, please call \_\_\_\_\_ at \_\_\_\_\_  
(Contact name) (Phone #)

State Purchasing Agencies should use this notice in conjunction with their agency's cover letter.

01/2015

6

## Distribution of Notice of Award

- Shall be sent by United States mail and may be sent electronically
- Options:
  - Send by certified mail (can be tracked at [www.usps.com](http://www.usps.com)); or if that is not possible,
  - Prepare a list of applicants. Have the postal service agent postmark each envelope and the list of applicants being mailed a Notice of Award.

01/2015

7

All is going well, until.....

**You Get a  
Protest!**

01/2015

8

### Submission of Notice of Protest (HAR §3-148-301)

- Can only be submitted by US mail or by hand delivery.
- Shall be submitted within 5 working days of the postmark of the notice of findings and decision, or notice of rejection sent to the protestor.

01/2015

9

### ***Once a notice of protest is filed, all activity toward making the award is suspended.*** (HAR §3-148-501)

- No execution of a contract.
- No delivery of services in anticipation of execution of a contract.
- No negotiations or discussions with a provider regarding an intended award.

01/2015

10

### **During the Protest Period:**

- The head of the purchasing agency acts as an impartial party during this process.
- Opposing parties must let the other know before communicating with the head of the purchasing agency about the merits of the protest.

01/2015

11

## **THE PROTEST PROCESS**

HAR CHAPTER 3-148

01/2015

12

## Who Can Protest

### “Protestor” or “protesting applicant”

- ⦿ Any party who is aggrieved in connection with the award of a contract through the HRS Chapter 103F competitive or restrictive procurement process.

01/2015

13

## What can be protested? (HAR §3-148-103)

### A purchasing agency's:

1. Failure to follow procedures established by HRS Chapter 103F;
2. Failure to follow Hawaii Administrative Rules for Chapter 103F; and
3. Failure to follow any procedure, requirements, or evaluation criterion in an RFP issued by the purchasing agency.

01/2015

14

**The Protest Process: Step 1**  
**Informal Request for Explanation**  
(HAR §3-148-201)

- Respond promptly.
- Listen and explain.
- May be resolved informally through mutual agreement.
- Advise potential protestor of the submittal deadline to file a notice of protest, where to get Form SPO-H-801, who it must be sent to, etc.

01/2015

15

**The Protest Process: Step 2**  
**Notice of Protest**  
(HAR §3-148-301)

- Shall be postmarked or received within 5 working days of the postmark of the Notice of Findings and Decision or notice of rejection. If late, then protest shall be dismissed (HAR §3-148-301(e)).
- Form SPOH-801 (Notice of Protest)
- Contains a brief description of the basis of the protest.
- Submitted by the protestor to the head of the purchasing agency and the procurement officer by U.S. Mail or hand delivery.

01/2015

16



## Notice of Protest (Form SPO-H-801)

**STATE PROCUREMENT OFFICE  
NOTICE OF PROTEST  
CHAPTER 103F, HRS  
PURCHASES OF HEALTH AND HUMAN SERVICES**

Protester/Applicant	PARTIES	State Purchasing Agency
Name: _____		Department: _____
Address: _____		Division: _____
		Branch/Office: _____
Contact Person: _____		Procurement Officer: _____
Phone: _____		Phone: _____
Fax: _____		Fax: _____

**PROBABLE MATTER**

**Competitive PDS** RFP No. \_\_\_\_\_  **Restrictive PDS** RFP No. \_\_\_\_\_

Description of Health and Human Service Procured: \_\_\_\_\_

**GROUND(S) FOR PROTEST**

**Brief description of ground(s) for protest.**  
*(Check any or all that apply) and provide a brief statement of the grounds for the protest.*

Purchasing Agency failed to follow procedures and/or requirements established by Chapter 103F, \_\_\_\_\_, Hawaii Revised Statutes.  
*(State appropriate section)*

Purchasing Agency failed to follow procedures and/or requirements established by Section 3, \_\_\_\_\_, Hawaii Administrative Rules.  
*(State appropriate section)*

Purchasing Agency failed to follow procedures and/or requirements established by request for proposals (RFP) \_\_\_\_\_.  
*(State appropriate section and paragraph of RFP)*

**Brief statement of grounds for protest:**  
\_\_\_\_\_

FILED REGISTRATION & FEE INFORMATION

I declare, under penalty of perjury that all the information on this notice of protest is true and correct to the best of my knowledge.

\_\_\_\_\_  
(Protester/Applicant Signature)

\_\_\_\_\_  
(Procurement Officer Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
State Procurement Office

01/2015
SPO-H-801 (Rev. 4/13)
17

## The Protest Process: Step 3 Settlement and Scheduling Conference (HAR §3-148-302)

- Purpose
  - To try to resolve protest by mutual agreement;
  - Schedule timeline for requests for clarification, if applicable; and
  - Schedule timeline for the remaining steps of the process.

01/2015
18

Settlement and Scheduling Conference (continued)

- Form SPOH-802 (Settlement and Scheduling Conference)
- Head of the purchasing agency/designee (usually procurement officer) shall organize and conduct settlement and scheduling conference within 3 working days upon receipt of the notice of protest. (HAR §§3-148-302, 3-148-504)
- Can be held in person, by phone or by other electronic medium

01/2015

19

Settlement and Scheduling Conference (Form SPOH-802)

STATE PROCUREMENT OFFICE  
**SETTLEMENT AND SCHEDULING CONFERENCE**  
 CHAPTER 103F, HRS  
 PURCHASE OF HEALTH AND HUMAN SERVICES

PARTIES	
Protester/Applicant	State Purchasing Agency
Name: _____	Department: _____
Address: _____	Division: _____
_____	Branch/Office: _____
Contact Person: _____	Procurement Officer: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____

**PROTESTED MATTER**

**Competitive FOS**       **Restrictive FOS**

FOT No. \_\_\_\_\_      PH No. \_\_\_\_\_

Description of Health and Human Service Procured: \_\_\_\_\_

**ORDER**

The above-named parties or their representatives are hereby ordered, pursuant to Section 5-148-502, HAR, to attend a settlement and scheduling conference

on \_\_\_\_\_ at \_\_\_\_\_

The conference shall be conducted:

face-to-face at \_\_\_\_\_

by telephone \_\_\_\_\_

by other electronic medium: \_\_\_\_\_

If a party desires to attend by an alternate method, please contact:

\_\_\_\_\_ at \_\_\_\_\_ to make appropriate arrangements.

\_\_\_\_\_ (signature of purchasing officer/designee)      \_\_\_\_\_ (signature of protester)

\_\_\_\_\_      \_\_\_\_\_

01/2015

SPO-802 (REV 1/02)

20

Scheduling and Settlement Conference (continued)

**Who Should Be Involved?**

- **Department head/designee**  
*Role is as an impartial party.*
- **The protestor**  
Role is to explain why they believe the process was flawed.
- **The procurement officer for the protested procurement.**  
Role is to *Listen*
  - Explain any misunderstanding the protestor may have.
  - Make preliminary determination if the process was flawed.
- *It is permissible to have additional staff present*  
(Evaluation committee member(s), RFP coordinator)

01/2015

21

Scheduling and Settlement Conference (continued)

The procurement officer must be knowledgeable of the:

- Procurement process  
*(If the procurement officer is not knowledgeable, it is unlikely the protestor will have any confidence in the procurement process.)*
- RFP
- Proposal
- Evaluation

01/2015

22

## Protest Process: Step 4 Scheduling Order (Timetable)

(HAR §3-148-302 (c) and (d))

- Form SPO-H-803 (Protest Scheduling Order)
- Sets deadlines for each step in the process.
- All submissions up to protestor's reply – Completion within 10 working days, if practicable.
- Head of the purchasing agency decision – Issued within 5 working days from protestor's reply, if practicable.
- Head of State agency has discretion to provide more time.
- Order is issued same day as the conference or the next day.

01/2015

23

## Protest Scheduling Order (Form SPOH-803)

STATE PROCUREMENT CODE  
**PROTEST SCHEDULING ORDER**  
CHAPTER 148, RULES  
PURCHASING OF HEALTH AND HUMAN SERVICES

PARTIES		
Protestor/Applicant	State Purchasing Agency	
Name: _____	Department: _____	
Address: _____	Division: _____	
Contract Number: _____	Branch/Office: _____	
Phone: _____	Procurement Officer: _____	
Fax: _____	Phone: _____	
Fax: _____	Fax: _____	
<b>PROTEST MATTER</b>		
<input type="checkbox"/> Competitive PDS (RFP)	<input type="checkbox"/> Restrictive PDS	
RFP No. _____	PM No. _____	
Description of Health and Human Service Procured: _____		
<b>SCHEDULE</b>		
Form Request for Clarification (if applicable/optional)	Party Responsible	Date Due
Response to Request for Clarification	Protestor & State Purchasing Agency	_____
Submission of Protest	Protestor	_____
Response to Protest	Procurement Officer	_____
Protestor's Reply	Protestor	_____
Written Decision	Head of Purchasing Agency	_____
<b>ORDER</b>		
Pursuant to Section 3-148-302, HAR, the parties are ordered to follow the above schedule for the completion of the protest process. It is further ordered that the protestor should submit the protest to the above named procurement officer and the head of the state purchasing agency pursuant to Section 3-148-303.		
_____	_____	_____
_____	_____	_____

Complete w/in 10 working days, if practicable

Issued w/in 5 working days from receipt of protestor's reply

01/2015

SPO-H-803 (rev. 1/02)

24

## The Protest Process: Steps 5 & 6 **Requests for Clarification and Responses**

- Clarification requests and responses are due in accordance with the Scheduling Order.
- Forms SPO-H-804 (Request for Clarification) and SPO-H-805 (Response to Request for Clarification)

01/2015

25

## Responses to Requests for Clarification

- Read Section HAR §3-148-502, Requests for clarification!
- The protestor may request access to the purchasing agency's relevant procurement records.
- The purchasing agency shall provide access to the extent the information is required or permitted to be withheld by law.

01/2015

26

## Request for Clarification (Form SPO-H-804)

**STATE PROCUREMENT OFFICE**  
**REQUEST FOR CLARIFICATION**  
 CHAPTER 103F, HRS  
 PURCHASES OF HEALTH AND HUMAN SERVICES

PROTESTER/APPLICANT		STATE PURCHASING AGENCY	
Name:	<input type="text"/>	Department:	<input type="text"/>
Address:	<input type="text"/>	Division:	<input type="text"/>
Contact Person:	<input type="text"/>	Branch/Office:	<input type="text"/>
Phone:	<input type="text"/>	Procurement Officer:	<input type="text"/>
Fax:	<input type="text"/>	Phone:	<input type="text"/>
Fax:	<input type="text"/>	Fax:	<input type="text"/>
Requester	<input type="checkbox"/>		<input type="checkbox"/>

**PROTESTED MATTER**

Competitive POS      RFP No.        Restrictive POS      RH No.

Description of Health and Human Service Procured:

**REQUEST**

Pursuant to Section 3-148-502, H.A.R., request is made for the following information:

Pursuant to the scheduling order, response to this request is due by

To coordinate transmittal of your response, please contact:

at

(Name of contact person)      (Phone number)

01/2015      SPO-H-804 (4.03)      27

## Response to Request for Clarification (Form SPO-H-805)

**STATE PROCUREMENT OFFICE**  
**RESPONSE TO REQUEST FOR CLARIFICATION**  
 CHAPTER 103F, HRS  
 PURCHASES OF HEALTH AND HUMAN SERVICES

PROTESTER/APPLICANT		STATE PURCHASING AGENCY	
Name:	<input type="text"/>	Department:	<input type="text"/>
Address:	<input type="text"/>	Division:	<input type="text"/>
Contact Person:	<input type="text"/>	Branch/Office:	<input type="text"/>
Phone:	<input type="text"/>	Procurement Officer:	<input type="text"/>
Fax:	<input type="text"/>	Phone:	<input type="text"/>
Fax:	<input type="text"/>	Fax:	<input type="text"/>
Responder	<input type="checkbox"/>		<input type="checkbox"/>

**PROTESTED MATTER**

Competitive POS      RFP No.        Restrictive POS      RH No.

Description of Health and Human Service Procured:

**RESPONSE TO REQUEST**

Pursuant to Section 3-148-502, H.A.R., the following attachment(s) are submitted in response to the request for information:

**CERTIFICATION**

I declare, under penalty of perjury that all information provided is true and correct to the best of my knowledge.

(Signature of protester)      (Signature of responder)

(Title)      (Signature printed name)

01/2015      SPO-H-805 (4.03)      28

## The Protest Process: Step 7

### Formal Protest

(HAR §3-148-303)

- Filed by Protestor: Form SPO-H-806 (Protest)
- Contains:
  - ✓ A detailed statement of the reasons for the protest;
  - ✓ Supporting exhibits, evidence, documents; and
  - ✓ Additional relevant information that would help the purchasing agency make a decision.
- Due date in accordance with scheduling order.

01/2015

29

## Protest (Form SPO-H-806)

STATE PROCUREMENT OFFICE  
**PROTEST**  
CHAPTER 103F, HRS  
PURCHASES OF HEALTH AND HUMAN SERVICES

PARTIES	
Protestor/Applicant	State Purchasing Agency
Name:	Department:
Address:	Division:
Contact Person:	Branch/Office:
Phone:	Procurement Officer:
Fax:	Phone:
	Fax:

**PROTESTED MATTER**

Competitive FOS       Restrictive FOS

RFP No. \_\_\_\_\_ FOS No. \_\_\_\_\_

Description of Health and Human Service Procured: \_\_\_\_\_

**ATTACHMENTS**

Attachment A - Statement of Facts and Arguments (Reasons for Protest)

Attachments B-1 to B-\_\_\_\_: Evidence to Support the Statement of Facts or Argument (as needed)

**RELIEF REQUESTED PURSUANT TO CHAPTER 148, HAR**

Cancel the RFP or seek approval of restrictive purchase of service

Amend RFP as provided in "ATTACHMENT" and re-issue RFP

Terminate awarded contract

Re-evaluate proposals

Re-procure necessary services under a new competitive purchase of service (RFP)

Declare awarded contract null and void

**CERTIFICATION BY PROTESTOR**

I declare, under penalty of perjury that all facts contained in this protest are true and correct to the best of my knowledge, and that the documents attached hereto as Exhibits B1 to B-\_\_\_\_\_ are true and correct copies of the originals.

\_\_\_\_\_  
Procurement Officer's Signature

\_\_\_\_\_  
Signature of Protestor/Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Procurement Officer's Signature

01/2015

SPO 02-004 (1/08/2)

30

## The Protest Process: Step 8 Response to the Protest (HAR §3-148-304)

- Form SPO-H-807 (Response to Formal Protest)
- Purchasing agency's response
- Deadline per scheduling order
- Substantiate with exhibits/documents
- Be factual
- Address (all) the issues raised by the protestor
- Send by U.S. mail or hand deliver

01/2015

31

## Response to Protest (Form SPO-H-807)

STATE PROCUREMENT OFFICE  
RESPONSE TO FORMAL PROTEST  
CHAPTER 1057, HRS  
PURCHASING OF HEALTH AND HUMAN SERVICES

PARTIES	
Protestor/Applicant	State Purchasing Agency
Name:	Department:
Address:	Division:
Contact Person:	Branch/Office:
Name:	Procurement Officer:
Ext:	Name:
	Ext:

**PROTESTED MATTER**

Competitive P.O.S       Restrictive P.O.S

RFP No. \_\_\_\_\_      EIT No. \_\_\_\_\_

Description of Health and Human Service Procure d:

**RESPONSE TO PROTEST**

Pursuant to Section 3-148-304, HAR, attached is the purchasing agency's response to the formal protest.

**CERTIFICATION**

I declare, under penalty of perjury that all information provided is true and correct to the best of my knowledge.

\_\_\_\_\_  
Name

01/2015

SPO H-807 (10/13)

32



## The Protest Process: Step 9

### Reply by Provider

(HAR §3-148-305)

- Form SPO-H-808 (Protest Reply)
- Reply by protestor
- Due per scheduling order
- Contains:
  - Additional reasons/arguments;
  - Additional evidence/materials; or
  - Additional information that would help the head of the State agency make a decision.
- Send by U.S. mail or hand deliver

01/2015

33

## Protest Reply (Form SPO-H-808)

**STATE PROCUREMENT OFFICE  
PROTEST REPLY  
CHAPTER 103F, ICS 2  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

PARTIES	
Protester/Applicant	State Purchasing Agency
Name: _____	Department: _____
Address: _____	Division: _____
Contact Person: _____	Branch/Office: _____
Phone: _____	Procurement Officer: _____
Fax: _____	Phone: _____
	Fax: _____

PROTESTED MATTER	
<input type="checkbox"/> Competitive POS	<input type="checkbox"/> Restrictive POS
RFP No. _____	FH No. _____
Description of Health and Human Service Procured: _____	

REPLY BY PROVIDER	
Pursuant to Section 3-148-303, HAR, the attached is submitted in reply to the state agency's response to the formal protest.	

_____ (Name)	_____ (Signature of official's position)
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01/2015

SPO-H-808 (4/03)

34

If the dispute cannot be resolved in good faith,...

- “then the head of the purchasing agency may resolve such dispute as fairly as possible in light of all the circumstances.” (HAR §3-148-502(e))

01/2015

35

The Protest Process: Step 10

**Decision by the Head of Purchasing Agency**  
(HAR §3-148-306)

- Issuance of the decision is per scheduling order, unless head of the purchasing agency gives written notice that an extension to a certain date is necessary.
- Contains:
  - Statement of action to be taken/resolution to the protest;
  - **Detailed statement of reasons for decision including factual findings;**
  - Statement of protestor’s right to request reconsideration;
  - Statement that the decision is final and conclusive, unless a timely request for reconsideration is made.

• Send by U.S. mail or hand deliver

07/2015

36

## **Resolution of Protest by Mutual Agreement (HAR §3-148-202)**

- A protest may, at any time, be resolved by mutual agreement, in writing, and signed by both parties.

Mutual agreement remedies:

1. Amend or cancel RFP
2. Terminate awarded contract
3. Re-open evaluation process or re-solicit
4. Declare contract null and void from time of award
5. Affirm award decision
6. Dismiss the protest

01/2015

37

## **REQUEST FOR RECONSIDERATION (HAR §§3-148-401 TO 3-148-402)**

01/2015

38

## Request for Reconsideration 3 Steps

1. **Protestor submits request to the chief procurement officer and opposing party within 5 working days after receipt of decision of the head of the purchasing agency.**

Form SPO-H-810 (Request for Reconsideration of a Protest)

- Detailed statement of factual and legal grounds for reconsideration based on materials presented to the head of the State agency; and
- Copies of scheduling order, protest, response, reply, decision and supporting materials submitted during initial protest procedure.

01/2015

39

## Request for Reconsideration (Form SPO-H-810)

STATE PROCUREMENT OFFICE  
**REQUEST FOR RECONSIDERATION OF A PROTEST**  
CHAPTER 105F, HRS  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

PARTIES	
Protester/Applicant	State Purchasing Agency
Name: _____	Department: _____
Address: _____	Division: _____
_____	Branch/Office: _____
Contact Person: _____	Procurement Officer: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____

**PROTESTED MATTER**

Competitive POS       Restrictive POS

RFP No. \_\_\_\_\_      RH No. \_\_\_\_\_

Description of Health and Human Service Procured: \_\_\_\_\_

**REQUEST**

To the Chief Procurement Officer:

Pursuant to Section 2-149-401, HAP, request for reconsideration of the decision of the head of the state purchasing agency in the above-reference matter is hereby made.

This decision of the head of the purchasing agency was received on \_\_\_\_\_.

Reconsideration of decision of the head of the state purchasing agency is necessary because:

factual determinations made by the head of the state purchasing agency were clearly erroneous; and/or

the head of the state purchasing agency erroneously interpreted the applicable law.

Argument regarding the reasons supporting this request for reconsideration is attached as Exhibit A.

Copies of the Scheduling Order, Protest, Answer, Reply, and Decision (if any) together with all supporting exhibits and materials are attached as Exhibit B.

**CERTIFICATION**

I declare, under penalty of perjury, that all the information contained in this request for reconsideration is true and accurate to the best of my knowledge, and that this document attaches hereto to Exhibit A-B as true and accurate copies of the original.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of State Purchasing Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

01/2015

SPO-H-810 (Rev. 1/03)

40

Request for Reconsideration (continued)

**2. Reply by State agency**

Within 5 working days after submittal of the request for reconsideration, purchasing agency may submit a reply to the request.

- Based on materials submitted to head of State agency during initial protest period.

01/2015

41

Request for Reconsideration (continued)

**3. Decision of the Chief Procurement Officer (CPO)**

Within 15 calendar days of receipt of request; unless CPO provides written notice of the extended deadline.

Contains:

- Decision to uphold the head of the State agency or reopen the protest and award an appropriate remedy (from the allowable methods for resolving a protest pursuant to HAR §3-148-402(d));
- A detailed statement of the reason for the decision, including factual findings.

01/2015

42

### Request for Reconsideration (continued)

- ◎ CPO Resolutions
  - Amend or cancel the RFP
  - Terminate awarded contract
  - Re-open evaluation or re-solicit
  - Declare the awarded contract null and void
  - Affirm purchasing agency's award decision
  - Dismiss protest

01/2015

43

### Protest Process Summary: Flow Chart

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)

STATEMENT OF FINDINGS & DECISION ISSUED

NOTICE OF PROTEST  
(Form SPO-H-801)

Filed by: Protestor  
Deadline: 5 working days from postmark of Statement of Findings and Decision

SETTLEMENT & SCHEDULING CONFERENCE  
(Form SPO-H-802)

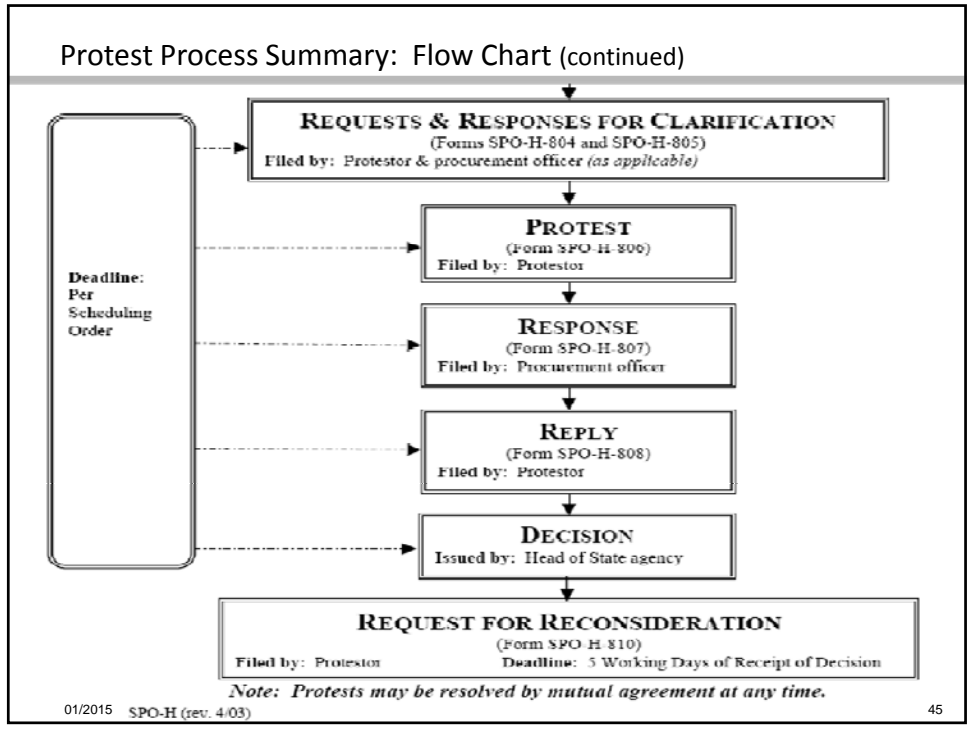
Scheduled by: Head of State agency or designee  
Deadline: 3 working days of receipt of Notice of Protest

SCHEDULING ORDER

(Form SPO-H-803)  
Issued by: Head of State agency or designee      When: Same or next day

01/2015

44



**DISCUSSIONS WITH APPLICANTS  
AFTER NOTICE OF AWARD  
AND BEFORE CONTRACT  
EXECUTION**

(HAR §3-143-404)

01/2015 46

## ALLOWABLE PURPOSE OF DISCUSSIONS

To negotiate a more advantageous contract for the state.

01/2015

47

### Scope of Discussions

- Contractual terms and conditions not specifically discussed in the request for proposals (RFP); and
- Contractual terms and conditions which are substantially the same/do not constitute a **material change to the proposal**. Cannot materially alter the criteria, specifications, or scope of work of the original proposal.

01/2015

48



## **MATERIAL CHANGE TO A CONTRACT**

Any change that would have adversely affected the proposal's rating during the evaluation process.

Are the following material changes?

01/2015

49

Is this a Material Change?

- In the proposal, the awardee indicated they would have a 7 MSW social workers. They now are proposing only 3. The RFP requires 4 MSW social workers. The number of social workers was included in the evaluation criteria.

01/2015

50

## Is this a Material Change?

- The provider wants to change the rate they proposed in the proposal. The rate was part of the evaluation criteria.

01/2015

51

## Is this a Material Change?

- A purchasing agency issued a RFP whereby 7 divisions within the department would be participants. After the contract was awarded, 6 divisions did not require the services.

01/2015

52

## Conducting the Discussion/Negotiations

- Establish:
  - ✓ Procedures
    - Consistency in how discussions are conducted among providers.
    - Criteria for face-to-face negotiations vs. over the phone/by mail.
  - ✓ Schedules
    - Timing

01/2015

53

## Procedures in Conducting Negotiations

- Plan ahead of time.
- What issues do you want to address with each provider?
- Have an agenda (topic notes are helpful, too).
- One person or more at the negotiations?
- Let the provider know the topics you'd like to discuss so they can be prepared.

01/2015

54

## Putting It All Into A Contract

01/2015

55

## AG Forms Online for HRS Chapter 103F

<http://hawaii.gov/forms>

Click "Internal Forms" tab

Health and human service forms:

Form Nos. AG-103F01 to AG-103F15

01/2015

56

## **Contract Order**

1. Contract
2. Provider Acknowledgement
3. Certificate of Exemption From Civil Service
4. Provider's Standard of Conduct
5. Scope of Services
6. Time of Performance
7. Compensation and Payment Schedule
8. General Conditions
9. Special Conditions

01/2015

57

## **Contract Order (continued)**

10. Certifications
11. Attestation of Internet Posting
12. Public Notice
13. Tax Clearance or Hawaii Compliance Express Certificate
14. Certificate of Insurance
15. Other purchasing agency requirements

01/2015

58

### Document Checklist for Contract Submittal – HRS Chap. 103F

DOCUMENT CHECKLIST FOR CONTRACT PAYMENTS  
FOR HRS CHAPTER 103F  
PURCHASES OF HEALTH AND HUMAN SERVICES

**1. Required Contract Submittal Documents for Encumbrance or Initial Payment (X = required)**

Form No.	Form Title	Competitive Purchase of Services AG Form 103F	Restrictive Purchase of Service HRS §103F-403	Crisis Purchase of Service HRS §103F-406	Exemption from HRS Chapter 103F
<b>CONTRACT DOCUMENTS:</b>					
	Contract pages	X	X	X	X
AG-103F7	Provider's Acknowledgement	X	X	X	X
AG-103F8	Certificate of Exemption from Civil Service	X	X	X	X
AG-103F9	Standards of Conduct Declaration	X	X	X	X
AG-011	Attachment 1 – Scope of Services	X	X	X	X
AG-013	Attachment 2 – Time of Performance	X	X	X	X
AG-012	Attachment 3 – Compensation and Payment Schedule	X	X	X	X
AG-103F13	General Conditions for Health and Human Services Contracts	X	X	X	X
AG-015	Special Conditions	As Applicable	As Applicable	As Applicable	As Applicable
SPO-020	Statement of Attestation for Internet Posting with copy of Procurement Notice (Download on 1 <sup>st</sup> day)	X	X		
	Certificate of Insurance	X	X	X	X
	Tax Clearance Application	X (\$25,000 and over)	X (\$25,000 and over)	X (\$25,000 and over)	X (\$25,000 and over)
SPOH 500	Copy of CFO Approved Notice of and Request for Restrictive Purchase of Service		X		
SPOH 600	Copy of CFO Approved Request for Crisis Purchase of Service Pursuant to Section 103F-406, HRS			X	

1 of 2

01/2015 59

### Document Checklist for Contract Submittal – HRS Chap. 103F

DOCUMENT CHECKLIST FOR CONTRACT PAYMENTS  
FOR HRS CHAPTER 103F  
PURCHASES OF HEALTH AND HUMAN SERVICES

SPOH 150	Copy of CFO Approved Notice of and Request for Exemption from Chapter 103F, HRS				X
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**2. Documents To Be Submitted to DAGS, Pre-Audit for Initial and Subsequent Payments During Contract Term**

Form	Form Title	Competitive Purchase of Services AG Form 103F	Restrictive Purchase of Service HRS §103F-403	Crisis Purchase of Service HRS §103F-406	Exemption from HRS Chapter 103F
MBP462	Summary Warrant Voucher	X	X	X	X
SAF C-03	Purchase Order	If applicable	If applicable	If applicable	If applicable
	Original Invoice	X	X	X	X
	Tax Clearance (For Final Payment)	If applicable (\$25,000 and over)	If applicable (\$25,000 and over)	If applicable (\$25,000 and over)	If applicable (\$25,000 and over)

**3. Things to check for:**

- Contract Execution Date. Contract effective date should not be prior to the date on which the parties sign off on and fully execute the agreement. Comptroller's Memorandum No. 2009-14.
- The notary acknowledgement date is the same as the date the service provider executed the contract.
- The time of performance is correctly stated throughout the contract.
- The certificate of insurance is current.
- The service provider's legal name on the contract matches all supporting documents.
- The service provider name on the Hawaii Compliance Express compliance certificate matches the contract name.
- Contract modifications/supplemental agreements are submitted when payments are based on the amendments.
- The contract/p.o. vendor code name and address matches the "Remit To" name and address.
- Payments are for services rendered within the contract period.
- Payments do not exceed the maximum funding amount.
- Tax clearances are submitted with invoices for final payment.

2 of 2

01/2015 60

## Timely Execution of Contracts

- Make this top priority.
- It is parseling to make a small purchase in anticipation of execution of a contract.
- You can extend an existing contract for the same service per HAR §3-149-301, if the reason is continuity of services. **NOTE: A contract can only be extended if it has not expired.**

01/2015

61

## Extension of Existing Contract During Procurement Process (HAR §3-149-301)

An existing contract may be extended if:

1. Purpose is for continuity of service between termination of contract to be extended and effective date of new executed contract;
2. Extension shall be for 6 months or less;
3. Funds are appropriated and available; and
4. Terms of the extended contract is fair, reasonable and remain substantially the same as the original contract, as amended.

HOWEVER,

01/2015

62

### Extension of Existing Contract During Procurement Process (continued)

- The contract can only be extended if it has not expired!

Note: Include a written determination in the procurement file.

01/2015

63

And Lastly,

**DON'T FORGET TO POST AWARDS to the Posting Awards, Notices and Solicitations (PANS) awards/contracts database**

01/2015

64



## Posting of Awards/Contracts Procurement, Awards, Notices & Solicitations (PANS)

- Post on the awards/contracts database (PANS) within 7 days of the date on the notice of award (statement of findings and decision) or award of contract, whichever is earlier.
- Funding is the amount estimated to be expended during the fiscal year (not contract year).
- If contract is not by fiscal year, enter an estimate for the fiscal year. It may be changed later.

### **FYI**

- Modifications to contracts shall be reported on the awards/contracts database within 7 days of the execution of the supplemental agreement.

01/2015

65

State Procurement Office  
<http://spo.hawaii.gov>  
Click "Health and Human Services..."

## **QUESTIONS?**

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01/2015

66