

State Procurement Office
Workshop No. 200
Basics of Procuring Health & Human Services
Pursuant to HRS Chapter 103F
Part 2, A Brief Overview of HRS Chapters 103D and 103F

Slide 1: The Basics of Procuring Health & Human Services, Part 2 (Title Page)

Welcome to the State Procurement Office's Workshop No. SPO 200, The Basics of Procuring Health & Human Services Pursuant to HRS Chapter 103F. This workshop is the 2nd of 3 parts: Part 1 provided some background information on the State Procurement Office and HRS Chapter 103F, Purchases of Health & Human Services. Part 2 will provide a brief overview of HRS Chapter 103F its statutes and administrative rules. Part 3 will cover resources for you to refer to when planning and preparing your service procurements.

Slide 2: Definition of Health & Human Services

Health and human services is defined in HAR Chapter 3-140 as:

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.

Slide 3: How Do I Know if a Procurement is Subject to HRS Chapter 103F?

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

First, the procurement must be for **services** (as opposed to goods)

Second, the service must be **intended to maintain or improve health or social well-being** and may include assessment, treatment, diagnosis, prevention or educational services.

Third, the service is to be provided **directly to a targeted clientele**.

One way to determine if it's a 103D or 103F procurement is:

Generally, 103D is for operations of the State.

And 103F is services to the public.

But there instances where a services fall in a gray area, meaning it could be both a 103D or 103F. When in doubt, call us and we can help you determine whether the service is a 103D or 103F service.

Slide 4: HRS Chapter 103F, Purchases of Health and Human Services

The Hawaii Revised Statutes provides the authority and lays the foundation for agencies to do what they do.

For purchases of health and human services, there are five parts to the HRS Chapter 103F statutes

Part 1 is General Provisions (Sections 103F-101 to 103F-106): Included in this part are Application of Chapter, Definitions, Education & Training, Exemption from Chapter 103D, Preventing Impairment of Federal Funds, and Authority of the Procurement Policy Board.

Part II is the Planning Organization (Sections 103F-201 to 103F-203): Included in this part are the Interagency Committee on Purchase of Health and Human Services, Community Council, and Collaboration of Providers

Part III is on Procurement Organization (Sections 103F-301 to 103F-302): Included are the Power & Duties of the Administrator, and Delegation of Authority of the Administrator of the State Procurement Office.

Slide 5: HRS Chapter 103F, Purchases of Health and Human Services (continued)

Part IV covers Source Selection and Contract Formation (Sections 103F-401 to 103F-414), which includes the 5 Methods of Selection (Competitive, Restrictive, Treatment, Small Purchases, and Crisis Purchase of Services). Part IV also includes Amendment & Cancellation of Requests, Modification & Termination of Contracts, Types of Contracts, Multi-Term Contracts, Multiple Awards, Time Line, Interim Measure of Assuring Continuation of Services, and Allotment

Part V is on Protests (Sections 103F-501 to 103F-504): and includes Protested Awards, Right to Request Reconsideration, Award of Contract Suspended During a Protest, Exclusivity of Remedies

Slide 6: Hawaii Administrative Rules, Chapters 3-140 to 3-149

Now let's cover the Hawaii Administrative Rules, which establishes the procedures or processes that the statutes allows. Chapter 103F's administrative rules are divided into 10 sections. We will look briefly at each chapter in ensuing slides.

[The chapters are listed.]

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

Slide 7: HAR 3-140, Definitions

HAR Chapter 3-140, Definitions

We will cover just a few of the definitions within this chapter.

The administrator is the administrator of the State Procurement Office

The chief procurement officer, of which there are 21 in the state/counties, are those officials designated by HRS Sec. 103D-203

Contracts are all types of agreements, no matter what they are called. Purchases orders, Memorandum of Agreements, Memorandum of Understanding are all contracts.

Procurement Officer is the person who has delegated authority from the head of the purchasing agency, or the CPO, or their designee to enter into and administer and make written determinations with respect to contracts.

Slide 8: HAR 3-140, Definitions (continued)

Public funds are considered to be any combination of funds from federal, state or local government sources.

A Request for Proposals is a solicitation for providers to respond to by way of a proposal, which provides a detailed plan to provide health & human services to the public, on behalf of a state agency.

Slide 9: HAR 3-141, General Provisions

HAR Chapter 3-141: General Provisions

Subchapter 1 is the Purpose & Scope: Which is to simplify, clarify, & modernize procurement laws; have continuous development of procurement policies and practices; Have consistent, fair, equitable application of the laws and treatment of all providers; Maximizing the purchasing value of public funds; Fostering broad-based competition; and providing safeguards for procurement quality and integrity.

Subchapter 2 is General Grounds for Rejection: Failure to cooperate or deal in good faith; inadequate accounting system

Subchapter 3 is Record Keeping: It talks about retention of procurement records; provider retention of books and records – 3 years; confidentiality (Also referred to in HAR Chapter 3-143 and existing law governing information practices.)

Subchapter 4 is General Operating Procedures: It talks about 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; and PUBLIC NOTICE (this is also covered under HAR §3-141-407.)

Subchapter 5 covers Waivers and Exemptions; and Subchapter 6 covers Procurement Violations: We will go over a little more about these in the following slides.

Slide 10: HAR 3-141, General Provisions (continued)

In the statutes, HRS Chapter 103F-101, exemptions are:

- 1) Contracts to award grants or subsidies of state funds appropriated by the legislature to a specific organization or individual.

(These are grants and subsidies which fall under HRS Chapter 42F.)

- 2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants.

(These are transactions between state agencies, state and city, state to state, or between any government entities.)

- 3) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board. (HAR §3-141-503)

(These are written requests by department heads and submitted to the CPO for approval.)

Slide 11: HAR 3-141, General Provisions (continued)

- Subawards and subgrants to organizations directed by the funding source; (These are usually federal awards directed to a specific provider)
- Grants and subsidies as defined in HRS Chapter 42F (These are grants and subsidies appropriated to a specific provider under 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.

Slide 12: HAR 3-141, General Provisions (continued)

Under the exemptions section of the administrative rules there are certain federally funded contracts which are exempt from Chapter 103F.

If federal conditions conflict with Chapter 103F and its rules, then the federal conditions supersede HRS Chapter 103F.

If the federal program for health and human services identifies a target population; defines the requirements for a provider to be qualified to participate in the federal program, AND the price of the health and human services is dictated by federal law, then it would be exempt from 103F. But in order to be exempt, all 3 conditions shall be met. Yes, the target population and provider qualifications are seen in federal program requirements, but hardly does the federal government dictate the price.

Like the statutes, the rules provide exemptions by written CPO approval.

Slide 13: HAR 3-141, General Provisions (continued)

Procurement Violations are also covered under HAR Chapter 3-141. Procurement violations occur when an agency fails to follow procurement statutes and rules. When that occurs, the agency with the procurement violation needs to report the violation and address the corrective action to prevent future reoccurrence. For the Executive Branch, procurement violation form SPO-16 would be submitted to the State Procurement Office administrator who is the Executive Branch chief procurement officer.

Slide 14: HAR 3-141, General Provisions (continued)

These are just a few examples of procurement violations that have been 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

Slide 15: HAR Chapter 3-142, Planning

The next chapter of the administrative rules is 3-142, which is on Planning.

There are various activities which are part of the planning process to determine the services to be procured. These include:

- The Request for information (RFI)
- Each other - meaning purchasing agency to purchasing agency
- Collaboration with providers – working towards the good of the public
- You can also refer to PANS (Procurement, Awards, Notices and Solicitation website)

There you will find:

Procurement Notices on the Procurement Notices website;

Request for Proposals website for health and human services RFPs, which goes back to 2004; and Awards/Contracts Database where you can find contract information - Dept., service, provider, contract period, funding amounts, point-of-contact information.

The links to the procurement notices and the awards/contracts database are located on the SPO homepage. The health and human services RFPs can be found under the health and human services section of the SPO website or on the SPO homepage do a search for "RFP Website."

Slide 16: HAR Chapter 3-142, Planning (continued)

Requests for Information (RFI)

RFIs are used to obtain feedback from providers and any other interested party.

Purchasing agencies are required to conduct at least one RFI when preparing for a RFP.

If it is a new service or an existing service with many modifications, then purchasing agencies may issue as many RFIs as necessary.

In a RFI, the purchasing agency would be describing the information being sought and establish the procedures for responses.

Slide 17: HAR Chapters 3-143 to 3-147, Five Methods of Procurement (Title Page)

HAR Chapters 143-147

There are five methods of procurement under HRS Chapter 103F and these five methods are...

Slide 18: HRS Chapter 103F, Five Methods of Procurement

- Competitive using the request for proposals process
- Restrictive, also known as a sole source
- Treatment
- Small Purchase and
- Crisis, also known as an emergency purchase

Slide 19: HAR Chapter 3-143, Competitive Purchase of Services

The Competitive Purchase of Services is covered under HAR Chapter 3-143. This is the method of procurement which is used most often for purchases of health and human services, using the RFP process for selecting and contracting. We will cover the competitive method of procurement in Workshop Nos. 215 (The RFP Process), 220 (Evaluating Proposals for a RFP), and 225 (RFPs: Getting from a Notice of Award to an Executed Contract). A public notice is required to be posted for the competitive purchase of service method of procurement, the contract term is addressed in the RFP, and doing a RFI is mandatory. The competitive purchase of service method of procurement is protestable.

Slide 20: Competitive Purchase of Service, HAR Chapter 3-143, Flowchart

This is a flow chart of the competitive purchase of service process. This is a quick overview of the competitive method of procurement process. First as part of the planning process, you are required to do a request for information. Next you would be putting together the RFP. A public notice needs to be issued and an orientation conducted. The proposals are received and a register of proposals received are kept. Proposals are evaluated and the notice of award (statement of findings and decision) are issued. If there is no protest, then awards are posted and a contract is issued and executed. If there is a protest, then all processes are suspended until the protest is resolved. The protestor can submit a

request for reconsideration from the CPO if the protestor does not agree with the decision of the head of the purchasing agency. The decision of the CPO is final.

You can obtain a copy of the flowchart from the SPO website. On the homepage, search keyword "Flow."

Slide 21: Application for Federal Funding, HAR 3-143-614

Under HAR Chapter 3-143, competitive purchase of services, an expedited procurement can be done for certain types of federal funding. As a whole, applying for federal funds does not exempt the purchase from being competitively procured under 103F. If the federal funds received do not require you to name a specific provider, then you shall procure competitively unless an alternate method is allowed by statutes or rules. However, if the federal program specifies that when applying for a federal grant, the application requires a provider(s) to be named in the application or there is a greater chance of being awarded a grant is greater if a provider or providers are named, then you are able to use this expedited method, which is doing a request for information pursuant to HAR §3-142-202.

Slide 22: Public Inspection of Competitive Purchase of Service Records, HAR 3-143-616

Chapter 3-143, also covers public inspection of competitive purchase of services records, HAR §3-143-616. Records are available for inspection to the extent permitted under current law governing information practices, after execution of a contract or contracts by all parties. The Office of Information Practices provides forms for release of public document information. OIP's contact information is provided on this slide.

[Listed]

<http://oip.hawaii.gov>, phone number 808-586-1400

Slide 23: HAR Chapter 3-144, Restrictive (Sole Source) Purchase of Services

Restrictive Purchase of Service (Sole Source) is covered under HAR Chapter 3-144.

The basis for a restrictive purchase includes but is 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.

It's a quantity issue, not a quality issue.

If the provider is "the best" or "best suited," that is quality, and you should be procuring it competitively – it is NOT a restrictive.

If the provider is the "only one" that can perform the service, that IS a quantity issue.

To request a restrictive purchase of service approval, the head of the purchasing agency does a written determination and submits to the CPO for approval. The request is posted for a minimum of 7 days prior to CPO action. In the case of the Executive Branch, the State Procurement Office posts the request.

A restrictive purchase is not always easy to justify or prove. And it is the responsibility of the purchasing agency to do its due diligence to show that the provider is the only one.

Justification/documentation must be provided along with the request.

Slide 24: Restrictive Purchase of Services, HAR 3-144 - Flowchart

Here is the flow chart for a restrictive purchase of services. First, the head of the purchasing agency makes a written determination. Then the request is submitted to the CPO. The CPO posts the request for a minimum of 7 days before any action is taken. If there is no protest, then the purchasing agency shall post the award to the awards database and award and execute the contract. If there is a protest, then like protests for the competitive method, the process comes to a halt until the protest is resolved.

You can obtain a copy of the flowchart from the SPO website. On the homepage, search keyword "Flow."

Slide 25: HAR Chapter 3-145, Treatment Purchase of Services

The treatment purchase of services is covered under HAR Chapter 3-145. This chapter can only be used when all 3 of the following criteria are met:

- 1) The services are for \$100,000 or less,
- 2) The contract term is for 1 year or less, and
- 3) Service is only needed sporadically, or the problem would be worse if the service is competitively procured.

It is for temporary services only. If the service is for a term longer than 1 year, then another method of procurement needs to be utilized. Also, if it is a service that a purchasing agency uses only a few times each year, however, the same services are used year after year, then the service is a planned purchase and must be procured through another method of procurement. And if the services are critically threatening health, life, or safety then the crisis method of procurement should be used.

This method of procurement was used very little throughout the years because other methods of procurement are available to purchasing agencies; therefore, there is currently no treatment list available.

Slide 26: Treatment Purchase of Services, HAR Chapter 3-145 – Flowchart

This is the flow chart for treatment purchase of services.

Requirements are submitted to the State Procurement Office.

The State Procurement Office issues a public notice for statements of qualifications

Evaluation committees are formed to evaluate the statements of qualifications received.

A qualified list of providers is compiled.

And as the need arises, purchasing agencies utilize the list.

Slide 27: HAR Chapter 3-146, Small Purchase of Services

Small Purchase of Services are covered under HAR Chapter 3-146

Small purchases are purchases totaling less than \$25,000 during any 12 consecutive month period.

103F's \$25,000 threshold is tied into statutes. Small purchases generally means obtaining 3 quotes.

Although not all small purchases require written quotes, agencies are encouraged to always get quotes in writing since there needs to record of the quotes received in the procurement file.

Slide 28: Small Purchase of Services, HAR Chapter 3-146 - Flowchart

Here is the flow chart for small purchases.

The purchasing agency determines that the service required will be less than \$25,000 for any 12 consecutive month period. Quotes are obtained and evaluated. The award needs to be posted on the awards/contracts database and awarded.

You can obtain a copy of the flowchart from the SPO website. On the homepage, search keyword "Flow."

Slide 29: HAR Chapter 3-147, Crisis Purchase of Services

HAR Chapter 3-147 covers crisis purchase of services

Crisis purchase of services are services for:

- Services for a crisis that seriously threatens life, health or safety; are not already available, and it's 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.

You must remember that the crisis must be the clients, not yours.

Running out of funds is not a crisis

Lack of planning is not a crisis for the purposes of this method of procurement.

Slide 30: Crisis Purchase of Services, HAR Chapter 3-147 – Flowchart

Here is the flow chart for a crisis purchase of services.

The head of the purchasing agency determines that crisis services are required.

CPO approval is required, but if it is not possible to get approval before-the-fact, then the services can be procured and the CPO request for approval submitted after-the-fact. Obtain as much competition as is practicable. The award is required to be posted on the awards/contract database.

You can obtain a copy of the flowchart from the SPO website. On the homepage, search keyword "Flow."

Slide 31: HAR Chapter 3-148, Protests and Request for Reconsideration

HAR Chapter 3-148 covers protests and requests for reconsideration.

There are only 2 methods of procurement that are protestable --- the competitive and restrictive purchase of services.

Under HRS Chapter 103F, there are only 3 things that can be protested and that is that the purchasing agency did not follow statutes, rules or the RFP.

All protest forms are located on the SPO website. On the SPO home page search keyword "protest."

Slide 32: Protest and Request for Reconsideration – Flowchart

The protest and request for reconsideration flow chart provides a quick glimpse of the process.

The purchasing agency:

- 1) Sends out the statement of findings & decision
- 2) The protestor submits a Notice of Protest
- 3) A settlement and scheduling conference is held
- 4) Requests and responses for clarifications are done

- 5) Protestor submits a formal protest
- 6) The purchasing agency responds to the formal protest
- 7) The protestor replies
- 8) The head of the purchasing agency makes a decision
- 9) The protestor, if not satisfied, can request for reconsideration from the chief procurement officer
- 10) The chief procurement officer issues a decision.

You can obtain a copy of the flowchart from the SPO website. On the homepage, search keyword "Flow."

Slide 33: HAR Chapter 3-149, Contracting

The last chapter of the rules HAR Chapter 3-149 covers Contracting

This chapter covers:

- 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

Slide 34: Thank you

That brings us to the close of Part II of the SPO Workshop 200. But before you leave, a self certification form will pop up on your screen. Please complete and click on the submit button. Soon after there will be a short survey, which we would like you to complete. We appreciate your feedback. If you have any questions regarding what was covered in this session, please call or email me, Corinne Higa at the phone number or email address shown on this page.

Thank you for attending.

[Point-of-contact listed]

Corinne Higa

(808) 587-4706

corinne.y.higa@hawaii.gov