

**STATE PROCUREMENT OFFICE
PROGRAMS EXEMPT FROM CHAPTER 103D, HRS**

DEPARTMENTS AND AGENCIES:

GOVERNOR

Civil Defense and Emergency Act

§128-10 Other powers. “(10) ...Chapter 103D,...shall not apply to any civil defense or other emergency functions...”

Labor Disputes; Stevedoring Industry

§382-3 Government operations. “After the issuance of a proclamation pursuant to section 382-2 and during the emergency thereby proclaimed... The governor may make contracts without regard to chapter 103D....”

BUDGET AND FINANCE

§37D-2 Financing agreements. “(5) The department shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for financing agreements.”

BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Hawaii Tourism Authority

§201B-12 Exemption of authority from taxation and Hawaii public procurement code.

“(b) The authority shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for project agreements, construction contracts, lease and sublease agreements, or other contracts unless a project agreement with respect to a project otherwise shall require.”

COMMERCE AND CONSUMER AFFAIRS

Hawaii Hurricane Relief Fund

§431P-16 Establishment of trust funds. “(a)... Disbursements from the trust funds shall not be subject to chapter 103D and shall be made in accordance with procedures adopted by the board.”

EDUCATION

§302B-7 Charter school local school boards; powers and duties. “Local school boards shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices.”

HEALTH

§103D-102(c) Notwithstanding subsection (a), this chapter shall not apply to contracts made by any regional system board of the Hawaii health systems corporation.

UNIVERSITY OF HAWAII

Research Corporation of the University of Hawaii

§304A-3005 Research corporation excepted from certain state laws. “(2) Chapter 103D, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended.”

ALL POLITICAL SUBDIVISIONS

Civil Defense and Emergency Act

§128-13 Power and authority of local organizations. “(3)Chapter 103D, ... shall not apply to any civil defense functions of and to the extent that the mayor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions.”

Exemptions pursuant to Section 103D-102 (b), Hawaii Revised Statutes:

§103D-102 Application of this chapter. (a) This chapter shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, any of which the State receives or is owed; in-kind benefits; or forbearance; provided that nothing in this chapter or rules adopted hereunder shall prevent any governmental body from complying with the terms and conditions of any other grant, gift, bequest, or cooperative agreement.

(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
 - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
 - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
 - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;
 - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
 - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
 - (G) To governmental bodies of the State;
 - (H) As loans, under loan programs administered by a governmental body; and
 - (I) For contracts awarded in accordance with chapter 103F.
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
 - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
 - (B) Works of art for museum or public display;
 - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
 - (D) Meats and foodstuffs for the Kalaupapa settlement;
 - (E) Opponents for athletic contests;
 - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
 - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
 - (H) Goods and services for commercial resale by the State;
 - (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
 - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;
 - (K) Financing agreements under chapter 37D; and

- (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
 - (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
 - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms.
- (c) Notwithstanding subsection (a), this chapter shall not apply to contracts made by any regional system board of the Hawaii health systems corporation.
- (d) Governmental bodies making procurements which are exempt from this chapter are nevertheless encouraged to adopt and use provisions of this chapter and its implementing rules as appropriate; provided that the use of one or more provisions shall not constitute a waiver of the exemption conferred and subject the procurement or the governmental body to any other provision of this chapter.

Pursuant to §103D-102 (b)(4)(L), HRS, and §3-120-4, HAR, Exhibit A, in Chapter 3-120, HAR, provides list of additional exemptions which the procurement policy board has also determined to be exempt from chapter 103D, HRS:

"EXHIBIT A"
HAR Chapter 3-120
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS
07/17/08

<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;
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.	Fresh meats and produce; (Deleted pursuant to Act 175/SLH 2009 effective 7/1/09)
6.	Insurance to include insurance broker services;
7.	Animals and plants; (Deleted pursuant to Act 175/SLH 2009 effective 7/1/09)
8.	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
9.	Food and fodder for animals;
10.	Facility costs for conferences, meetings, and training sessions;
11.	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
12.	Arbitrator and mediator services;
13.	Interpreter services;
14.	Procurement of repair services when dismantling is required to assess the extent of repairs;
15.	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses;
16.	Radio and television airtime when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc);
17.	Subscription costs and registration or workshop fees for conferences or training; and
18.	Court reporter services.