SUMMARY
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS
HAR §3-120-4

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 6/19/08 PPB Meeting
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".	Requested by the Dept. of Education, Hawaii State Public Libraries Systems, University of Hawaii, and Dept. of Public Safety Flexibility is essential to facilitate innovativeness or matching of teaching material to the environment and people involved; to get the latest books and related materials to the public in the best possible manner. Publishing companies as an industry norm do not sell to jobbers for resale. A similar exemption in HRS §103D-102(b) (4)(C) lacks sufficient coverage; this HAR exemption is more inclusive (added "educational materials" and "web-based databases").	This exemption is supported by law, and provides clarity with the added language. Recommend the continuation of this exemption.	AG – supports SPO recommendation. B&F, EUTF – supports SPO recommendation. Educational materials must be obtained on an ongoing basis for the education of its board members and staff. DCCA – supports SPO recommendation. The DCCA depends on the most current, thorough, and most accurate resources and reference materials. Procuring those resources through competitive means would be impractical and seriously curtail the DCCA's efforts and abilities to protect the public. DOE–supports SPO recommendation. Schools need to select and obtain educational materials that best fit within their established curriculum and programs. Obtaining educational materials through competitive means may result in materials not best suited for educators and students. DOH, HHSC – supports SPO recommendation. DOT – supports SPO recommendation. This exemption is necessary for the purchase of various trade publications, and training and testing materials for the various functions within the department. DLNR – retain the exemption. The Commission on Water Resource Management must have the highest quality of water resource materials, research, educational materials, and database standards to provide the best available information to the public and to make informed critical decisions. It is vital the Commission retains the option of choosing the materials that best fit its needs, regardless of vendor. C&C of Honolulu –retain the exemption. Materials are selected based on specific information necessary for the agency to accomplish their mission.

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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.	Requested by the Dept. of Budget and Finance. The nature of the types of procurements and time constraints involved, prevent agencies from using the competitive process. When the approval to issue a bond is received, the services of agents, rating agencies, printers, etc. need to be expedited to get the bond out on the market. A similar exemption in HRS §103D-102(b)(4)(I), refers to "support facilities". The definition of a "support facility" is an irrevocable letter of credit, surety bond or agreement issued by one or more support facility providers. The definition of "support facility provider" is a bank, trust company, banking association, etc. The exemption in HAR has the correct language.	This exemption is supported by law, and provides clarity with the added language. Recommend the continuation of this exemption.	
3	Services of lecturers, speakers, trainers, **facilitators** and script writers; **when the individual possess specialized training methods, techniques or expertise in the subject matter.**	Requested by the University of Hawaii, Dept of Human Services, and Dept of Human Resources and Development. Competition is not feasible due to the numerous unique methods of training, speaking, and writing styles of individuals and the skills and intangibles of individuals that cannot be quantified. The amended wording is necessary because some types of training services are competitive. As an example, the State Procurement Office competitively solicits computer training services.	Recommend the continuation of this exemption, with the added language to restrict training services that are competitive.	AG – supports SPO recommendation. C&C of Honolulu – retain the exemption. The selection of vendors is based not only on their qualifications but also their effectiveness to the intended audience. DOD –supports SPO recommendation. The DOD has various unique training situations that make it essential to have this exemption. DOH, HHSC – supports SPO recommendation. G. Riki Hokama – retain the exemption without the amendment. The proposed amended language requires a subjective determination as to whether an individual possesses specialized training methods, thus creating the opportunity for conflict. DHRD – supports SPO recommendation but with alternate wording. Competition for these services are not feasible due to the numerous unique methods of training, speaking, and writing styles of individuals and the skills of individuals that cannot be quantified. However, while some services such as computer training services can be competitively procured,

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				the proposed wording will be problematic. Therefore the following is recommended as an alternative: "Services of lecturers, speakers, trainers, and script writers; except for technical training for hard skills, such as computer-related training services." DLNR – supports SPO recommendation. The Commission on Resource Management has specialized needs that sometimes can only be met by a single individual. It is essential for the Commission to have the ability to select lecturers, speakers, trainers, and scriptwriters who have the required knowledge and expertise. The Division of Aquatic Resources recommends including the term "facilitators" with the exemption. PSD – supports SPO recommendation but recommends the following amendment- " when the individuals possess specialized training methods **and expertise in the subject matter,** that although are not a sole . . . " DOT – supports SPO recommendation. The selection of speakers, trainers, and lecturers is based on the subject matter and experience of the speaker.
4	Services of legal counsel, guardian ad litem, psychiatrists, [~~and~~] psychologists, **receivers and masters** when required by court order[~~, or by the Rules of Court in the case of interpreters, in criminal and civil proceedings~~].	Requested by the Judiciary and Dept. of Commerce and Consumer Affairs (DCCA). The DCCA requested the addition of receivers and masters when appointed by the court. Receivers and masters generally are required to conduct reviews, operate businesses, etc. and report directly to the court. The DCCA also recommended the deletion of "interpreters" since they are already covered by exemption item no. 13. The computation rates for these services are fixed by law, judicial rule, or operational policy, which render the requirement for price comparisons moot. The circumstances regarding such proceedings also make it impracticable and	Recommend the continuation of this exemption with the proposed amendments.	G. Riki Hokama – supports the exemption but takes no position on the amendment

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		unreasonable to comply with HRS chapter 103D.		
5	Fresh meats and produce.	Requested by the Dept. of Education and University of Hawaii. The highly perishable nature of fresh meat and produce, and unstable and frequent fluctuations in their pricing necessitate this exemption. The volatile nature of the industry, unexpected requirements, and frequent fluctuations in pricing for fresh meats and produce is not practicable or not advantageous to compete these requirements. The school food service programs often times must determine what to purchase or select menus based on what's available, the quality, unexpected requirements and best pricing at the markets or food distributors. To require firm pricing for fresh meats and produce for any extended period presents an unfair situation for the agencies and vendors.	Recommend the continuation of this exemption.	DOA – recommends retaining the exemption to support local ranchers and farmers, provides quality fresh meats and produce for school culinary programs and encourages purchasing of Hawaii fresh commodities for commercial use. C&C of Honolulu –retain exemption. Items are perishable. Not feasible to store in large quantities. Timely delivery and availability is critical. DOE–supports SPO recommendation. Due to unstable and frequent fluctuation in price, vendors of fresh meat and produce are unwilling to hold firm prices for the length of time required to procure these items competitively. Unexpected requirements also make it impractical to procure these items through competitive means. DOH, HHSC – supports SPO recommendation.
6	Insurance to include insurance broker services.	Originally requested by DAGS Risk Management. Low price alone cannot be used for the selection of an insurance provider and many preferred providers or insurance companies will not respond to competitive solicitations. Because the SPO and DAGS awarded an RFP for insurance broker services that was determined to be successful, the SPO recommended the deletion of insurance broker services.	The SPO initially recommended amending the exemption with the deletion of insurance broker services. However given new information, the SPO recommends retaining this exemption without amendments.	B&F, EUTF – The placement of insurance, is best done by the broker through standard industry practice. C&C of Honolulu- opposed to any changes. It is impractical to separate the services from the product; especially since broker services are paid by the insurance company in the form of commissions. Each agency has their own unique insurance and broker services requirements and need the flexibility to employ a competitive structure best suited to their requirements. Hawaii County - retain the exemption without the amendment. Brokers compete against each other as they all have access to different carriers. The elimination of broker services from the exemption will create the need for an RFP for each type of policy; an unwieldy proposition that will only add unnecessary time and effort to the process. The current process has worked well for the County of Hawaii. DOH, HHSC – retain the exemption as previously written

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				without the amendment. UH – retain the exemption without any amendment. The exemption as presently written provides flexibility to meet the needs of the UH, other agencies and their clients in a timely manner.
7	Animals and plants.	Requested by the City & County of Honolulu and University of Hawaii. Competition is not feasible due to the unique nature, quality, visual appearance, or health of one animal or plant from another. As an example, specifications and pricing cannot determine the selection of all animals and plants. Many times, as in the case of zoo animals or rare plants, the availability may be in short supply or with short notice. The SPO recommended amending the exemption to read "Rare or exotic animals and plants, and animals and plants for research purposes" because it was felt that unless the animals and plants are rare or exotic such as zoo animals or needed for research purposes, most other animals and plants may be subject to competition.	The SPO initially recommended amending the exemption to restrict the exemption to only certain animals and plants. However given new information, the SPO recommends retaining this exemption without amendments. When animals or plants can be procured through a competitive process, solicitations may be issued on a case by case basis. An example is live stock not for zoo purposes.	C&C of Honolulu – retain exemption but without amendments. These items require careful screening to prevent the spread of disease to other animals and plants. There is also an issue of compatibility with other animals that vary with each individual animal. County of Hawaii – retain the exemption but without amendments. Who is to determine what animal or plant species are rare or exotic? Not all zoo animals are considered rare and exotic. There is no consistent formula to weight the value of animals or plants that vary in color, markings, size, vigor or age. While live stock may be purchased based on weight and age, the zoo may also need to purchase live stock for the petting zoo. In this case, color, markings, size, pedigree for breeding, and temperament are factors that need to be considered. As with animals, the agency also provided detailed justification for not exempting only rare or exotic plants. Short supply and short notice also affect animals and plants that are rare and exotic or required for research purposes.
8	New or used items which are advantageous and available on short notice through an	The exemption is essential for commodities available on short notice or subject to quick sale or acquisition, therefore making the competitive process not feasible.	Recommend the continuation of this exemption.	

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 6/19/08 PPB Meeting
	auction, bankruptcy, foreclosure, etc.			
9	Food and fodder for animals.	Requested by the City & County of Honolulu, the University of Hawaii, and Department of Agriculture. The initial language of this exemption was limited to "Food and fodder for animals in a zoo", and subsequently amended to "Food and fodder for animals" to be more generic. As per the C&C of due to the perishable nature of the foods, quality, availability and specialized types of foods that zoo animals require, it is not feasible to bid their food. The UH maintains various types of laboratory and farm animals that require a wide variety of special food that have a limited shelf, and ordered in small quantities. Changes in the feed are also necessary for testing and research purposes. The DOA Animal Quarantine Station must have foods that are accepted by the numerous animals that are quarantined for up to four months. Digestibility by the animals is something that cannot be determined ahead of time or without actual feeding trials. The SPO recommended deleting the exemption because it was felt that food and fodder was competitive; purchasing agencies could seek a CPO exemption if warranted on a case-by-case basis.	The SPO initially recommended deleting the exemption. However given new information, the SPO recommends the continuation of this exemption.	DOA – Reiterated their justification for the exemption. C&C of Honolulu – It is not feasible to order large quantities due to the perishable nature of some foods and the changing dietary needs of animals. It is necessary to protect the well being of animals. County of Hawaii- retain the exemption. Quality in manufacturing and ingredients are critical to the health and welfare of animals. An example is the many recent recalls of dog and cat foods. All animal feeds are not created equally. If this exemption is deleted and animal food and fodder must be purchased competitively, the health and well being of valuable zoo animals will be at risk. At a minimum, amend the language back to "Food and fodder for animals in a zoo." UH – retain the exemption. The UH reiterated their original justification for the exemption and provided additional information in support of the exemption.
10	Facility costs for conferences, meetings, and training sessions.	Agencies have specific requirements such as large meeting and break out rooms for their conferences or meetings. The desired types of facilities and hotels frequently are not available on the required dates for the conferences and meetings, necessitating agencies to negotiate dates, times	Recommend the continuation of this exemption.	AG – supports SPO recommendation. B&F, EUTF – supports SPO recommendation. It would not be practical or feasible for the EUTF to use a competitive process to obtain these facilities.

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 6/19/08 PPB Meeting
		and costs with any available or potential location.		C&C of Honolulu –retain the exemption. The location of the facility is important to achieve maximum attendance. DOD – supports SPO recommendation. DOD's international involvement requires certain security measures to be met which make it difficult to select low bidders. DOH, HHSC – supports SPO recommendation. G. Riki Hokama – retain the exemption. It can be difficult to find acceptable facilities that are available on the dates needed and fit the conference's specifications. The Council must negotiate dates, times, and costs with any available or potential location. DLNR – retain the exemption. The Division of Aquatic Resources has encountered problems paying for break-out rooms in the past; recommend to add "including break-out rooms". DOT – supports SPO recommendation. Needed for securing conference rooms for various DOT conferences.
11	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, **or** professional publications.	Requested by the City & County of Honolulu, the University of Hawaii, and various other State departments. It is not feasible to competitively solicit certain types of advertisements when agencies are required to address or reach a specific audience through a limited source of specialized publications.	Recommend the continuation of this exemption, with the typo clarification.	AG – supports SPO recommendation. G. Riki Hokama – supports SPO recommendation. It is not feasible to competitively solicit certain types of advertisements when agencies are required to address or reach a specific audience through a limited source of specialized publications.
12	[~~Professional consultant services as required under Chapter 658, HRS~~] **Arbitrator and mediator services**.	Requested by the Dept. of Agriculture, Dept. of Land and Natural Resources, Dept of Labor and Industrial Relations, and various other State departments. Arbitrators or mediators are periodically required to settle controversies between agencies and the public. HRS Chapter 658 (Arbitration and	Recommend the continuation of the exemption with the proposed amendment.	AG – supports SPO recommendation.

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		Awards) provides for a neutral third party to settle differences between parties. Selection of a neutral third party arbitrator or mediator makes the competitive procurement process impractical. HRS Chapter 658 was repealed and replaced with HRS Chapter 658A (Uniform Arbitration Act) which is basically the same. Rather than changing the reference from Chapter 658 to Chapter 658A, the SPO recommends the exemption be amended to simply refer to arbitrator and mediator services.		
13	Interpreter services.	Requested by the University of Hawaii and Dept. of Human Services. When purchasing sign language and oral interpreter services, the UH must abide by the Hawaii State Coordinating Council of Deafness Administrative Rules, Chapter 11-218, which requires the UH to hire a hearing impaired person's preferred interpreter when possible or use the interpreter determined by the Hawaii Services on Deafness- the only interpreter referral agency in the State. The Dept. of Human Services requires this exemption for hiring a vision impaired, hearing impaired, or non-English speaking person's preferred interpreter.	Recommend the continuation of this exemption.	AG – supports SPO recommendation. DOH, HHSC – supports SPO recommendation. Services are needed for the health care industry and reiterates the justification provided by the Dept. of Human Services.
14	Procurement of repair services when dismantling is required to assess the extent of repairs.	Requested by the City & County of Honolulu, Dept. of Transportation, Dept. of Public Safety, and various other State departments. Competitive procurement of repair services is impractical when the item is required to be disassembled to determine the extent of the work required. An example is the repair of vehicles where the problem or extent of the repairs is not known until the vehicle has been disassembled. It is not practical or reasonable to require agencies	Recommend the continuation of this exemption.	C&C of Honolulu –retain the exemption. Without dismantling, it would be impossible to determine the scope of some repairs. Once dismantled, it may not be practical to utilize the services of another vendor. DOH, HHSC – supports SPO recommendation. DOT – supports SPO recommendation. This exemption is used quite frequently for the dismantling and repair of the department's heavy and specialized equipment.

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 6/19/08 PPB Meeting
		to ask repair shops to disassemble and reassemble vehicles to obtain repair pricing.		
15	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses.	Requested by Dept. of Human Services. Pursuant to HRS Section 346-15, the Department of Human Services may pay for the burial costs of deceased medical or financial assistance recipients or unclaimed corpses to any licensed provider of mortuary and crematory services, with a maximum limit of $400. The law further specifies that when the decedent is survived by relatives, the relatives shall also be permitted to make their own arrangements for the burial or cremation of their deceased relative.	Recommend the continuation of this exemption.	C&C of Honolulu –retain the exemption. HRS Section 841-19 requires indigent persons to be decently buried or cremated. The timely disposition of a body is critical to the operation of the medical examiner or corner and to provide a dignified and decent disposition. DOH, HHSC – support SPO recommendation. DHS – supports SPO recommendation. The burial costs of deceased medical or financial assistance recipients or unclaimed corpses to any licensed provider of mortuary and crematory services is limited to a maximum $400.
16	Radio and television airtime when selection of station is [~~to be made~~] by **[~~current~~] the targeted** audience [~~demographics~~] **(i.e. ethnic or age group, gender, etc**.	Requested by the Dept. of Transportation, Dept. of Health, and City & County of Honolulu. Factors such as type, size of listening audience, or programming time to reach a targeted audience may make competitive procurement impractical. The meaning of audience demographics is not clear; the SPO proposes the amendment to provide examples of a targeted audience (i.e. ethnic or age group, gender, etc.).	Recommend the continuation of the exemption with the proposed amendment.	UH – supports SPO recommendation. Recommends amending the exemption to read: Radio and television airtime and advertising space in print and other media when selection [~~of station~~] is [~~to be made~~] by [~~current~~] the targeted audience [~~demographics~~] (i.e. ethnic or age group, gender, etc .
17	**Subscription costs and registration or workshop fees for conferences or training.**	Particular subscriptions, conferences or training workshops are very limited, specialized, and selection is generally determined by the agency's work requirements. For that reason, it is not practical to competitively procure these expenditures.	Recommend the approval of this exemption.	AG – supports SPO recommendation. B&F, EUTF – supports SPO recommendation. It would not be practical or feasible to ask national organizations to bid on their subscriptions or workshop offerings. DOD – supports SPO recommendation. The costs for these items does not lend to competitive bidding. HHSC – supports SPO recommendation to approve and include this exemption. G. Riki Hokama – supports SPO recommendation. The selection of educational and professional subscriptions, workshops, and conferences is appropriately made on the

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				basis of an agency's work requirements.
18	**Court reporter services.**	Requested by the Attorney General's Office, Dept. of Budget and Finance, and the Public Utilities Commission. HRS Section 606.13.6 prohibits the contracting for private court reporter services unless for a particular case or reporting incident. Court reporters violating this section shall be subject to discipline, censure, suspension or revocation of their license. In any litigation, flexibility is needed to meet the court reporting needs of each particular case. When court reporting services are identified for a 'particular case or reporting incident', unknown factors such as how long each deposition will take, location, number of parties involved make it not practicable to define the requirements. The unpredictability of litigation that requires the services of a court reporter may initiate as a small purchase, but escalate to amounts of $50,000 or more. Court reporters provide a unique service. The quality of individual services, as well as the various types of services, varies from reporter to reporter, and from firm to firm. HRS 606-13.6 prohibits entering into contracts if there is no specific case or 'reporting incident', therefore an establish list of court reporter services is not allowable. When a 'particular case or reporting incident' comes up it is impracticable to competitive solicit for services due to lack of time to meet the immediate needs of the agency.	Recommend the approval of this exemption.	AG – supports SPO recommendation when the services are for a particular case or reporting incident. B&F, EUTF – supports SPO recommendation. This is a specialized service with fairly standardized fees and limited availability. G. Riki Hokama – supports SPO recommendation. In legal and other time-sensitive matters, flexibility is needed to meet the court reporting needs of each particular situation.