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

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION
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.
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.

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3	Services of lecturers, speakers, trainers, and script writers; **when the individuals possess specialized training methods that although are not a sole source, procurement by competitive means is either not practicable or not advantageous to the State.**	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 the exemption, with the added language to restrict training services that are competitive.
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 unreasonable to comply with HRS chapter 103D.	Recommend the continuation of the exemption with the proposed amendments.

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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.
6	Insurance [~~to include insurance broker services~~].	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. However, the SPO recommends the deletion of insurance broker services as this service is competitive. The SPO and DAGS Risk Management conducted an RFP for insurance broker services that was determined to be successful. On a case-by-case basis, if an agency believes it is impractical for them to solicit insurance broker services, they may submit an exemption request to the CPO.	Recommend the continuation of the exemption, with the deletion of insurance broker services.

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7	[~~Animals~~] **Rare or exotic animals** and plants, **and animals and plants for research purposes**.	Requested by the City and 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. However, the SPO recommends the amendment on restrictions because unless the animals and plants are rare or exotic such as zoo animals or are needed for research purposes, most other animals and plants may be subject to competition.	Recommend the continuation of the exemption, with the amendment to restrict the exemption to only certain animals and plants.
8	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.	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.
9	[~~Food and fodder for animals.~~]	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. However, these items are competitive. The purchasing agency may seek a CPO exemption if warranted on a case-by-case basis.	Recommend the deletion of this 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 and costs with any available or potential location.	Recommend the continuation of this exemption.

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11	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, **or** professional publications.	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 minor edit.
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 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 has been 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.	Recommend the continuation of the exemption with the proposed amendment.
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.

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14	Procurement of repair services when dismantling is required to assess the extent of repairs.	Requested by the Dept. of Transportation, Dept. of Public Safety, various other State departments and the City and County of Honolulu,. 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 to ask repair shops to disassemble and reassemble vehicles to obtain repair pricing.	Recommend the continuation of this exemption.
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.
16	Radio and television airtime when selection of station is [~~to be made~~] by **[~~current~~] <u>the targeted</u>** audience [~~demographics~~] **<u>(i.e. ethnic or age group, gender, etc</u>**.	Requested by the Dept. of Transportation, Dept. of Health, and City and County of Honolulu. It is not practical to competitively procure certain types of radio or television airtime. Factors such as type, size of listening audience, or programming time to reach a targeted audience may make competitive procurement impractical. Because 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.

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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.
18	**Court reporter services, when the services are for a particular case or reporting incident.**	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 in excess of $25,000 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 of 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.