

 HAWAII HEALTH SYSTEMS C O R P O R A T I O N <i>"Touching Lives Everyday"</i>	Department: Corporate Finance	Policy No.: PUR 0018
		Revision No.: 1
Policies and Procedures	Issued by: Kelley Roberson COO & CFO	Effective Date: October 1, 2007
	Approved by: Thomas M. Driskill, Jr. President & CEO	Supersedes Policy: November 1, 2006
Subject: PROCUREMENT PROTESTS for Chapter 103D PURCHASES		Page: 1 of 4

- I. **PURPOSE:** To provide a fair process for the resolution of disputes relating to the award of a contract governed by Chapter 103D, HRS.
- II. **POLICY:** It is anticipated that misunderstandings or disagreements relating to the award of contracts may arise. HHSC encourages an open door approach to resolution of issues with vendors and potential vendors. Informal resolution of disputes is the preferred method. In the event informal discussions do not resolve the issue, an interested party in accordance with applicable law and this policy and procedure may lodge a formal protest. A protest is a written objection by an interested party to a solicitation issued by HHSC for bids or proposals for a proposed contract for the procurement of goods or services or a written objection by an interested party to a proposed award. An interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award. This Policy and Procedure shall briefly summarize the major legal requirements for HRS Chapter 103D protests. This policy does **NOT** govern disputes arising from procurement actions which are exempted from Chapter 103D.
- III. **PROCEDURE:**
 - A. **Step One – Informal Resolution.** Any actual or prospective bidder, offeror, or contractor is encouraged to raise questions and concerns to the Contract Manager handling the procurement action. Where desired, the Director of Contract Management or Director of Material Management in the corporate office may be contacted for assistance in resolving issues if the Contract manager is unable to resolve concerns. If it is still not resolved, the Chief Procurement Officer (CPO) may also be contacted. Informal discussions do not constitute a formal protest but shall be considered a mechanism to respond to questions and concerns without the process of a formal protest.
 - B. **Step Two – Formal Protests.** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer or a designee as specified in the solicitation. The protest must be in writing to be considered a formal protest and shall be done in accordance with Hawaii Revised Statutes Chapter 103D-Part VII (701 et seq.) and Hawaii Administrative Rules, Chapter 3.

1. Time to Lodge a Protest: Written protests shall be lodged with the CPO within 5 working days after the aggrieved person knew or should have known of the facts giving rise to the subject of the complaint, or 5 days after posting of the award in the manner outlined in the solicitation, whichever occurs first. (Posting on the State Procurement Reporting System is the recommended method). Exceptions:
 - a. Where a debriefing has been requested in a Request for Proposal or Professional Services List procurement action (103D-303 and 304, respectively), the 5 day period begins after the debriefing has occurred.
 - b. Protests relating to the content of the solicitation shall not be considered unless they are submitted in writing prior to the date set for the receipt of offers.
 - c. The employee first receiving the written protest should note the date, time and manner of delivery and the employee's name, then forward it to the Contract Manager with a copy to the Corporate Contract Management Office for further handling.
2. The Protest Document: Vendors shall follow HAR Chapter 3-126, which provides rules on the content of the protest and other administrative rules governing the process.
3. Processing the Protest:
 - a. The protest shall be sent to the CPO or designee. The Executive Director of Contract Management ("Director") or other supervisor level contracting official shall work with the Contract Manager to investigate the protest, determine if legal counsel should be contacted, and prepare a recommendation to the CPO.
 - b. When a protest has been timely filed, no further action may be taken on the award or contract until the matter is settled, unless the CPO makes a written determination, after consulting with the applicable executive management team member, that the award of the contract is necessary to protect the substantial interests of HHSC. Contract Managers shall work with the Director to make a recommendation relating to this determination. If a protest has clearly not been timely filed, the contracting action may proceed, upon consultation with the Director.
4. Information Request: Protestors may request additional information regarding the solicitation and contract award, which should be released to the Protestor in an expedited manner, in accordance with the requirements of the law. Information relating to the subject of the protest shall be released except where it is proprietary, confidential, or otherwise permitted or required to be withheld by law or rules. Since protests must be filed within tight time frames, it is possible that the Protestor may not have obtained all the necessary information to support the protest. The Protest may be supplemented with additional information once the requested information has been released and the protestor has had the opportunity to review it. However, the failure to receive a response to the request for information does NOT extend the published time periods for action on the part of the protestor.

5. Decision by the CPO: The CPO or designee shall make a decision on a protest as expeditiously as possible after reviewing all relevant information and the decision shall be final.

- a. The decision shall be immediately mailed or furnished to the Protestor with the reasons for the action taken and if the protest is denied, it shall include the following statements:

“This is a final and conclusive decision. You have the right to an administrative hearing pursuant to Chapter 5, HAR Chapter 3-126.”

- b. If the protest is sustained (CPO agrees with the protest), the remedies available to the CPO prior to an award include cancellation of the solicitation or revision of the solicitation to comply with the law.
- c. If the protest is sustained after an award has been made, and there is no bad faith or fraud on the part of the winning contractor, the contract may be:
- 1) ratified and affirmed, provided it is in documented to be in the best interests of HHSC, or
 - 2) terminated and the person awarded the contract shall be compensated for the actual expenses as provided by law.
- d. If the protest is sustained as being in violation of law after an award is made and the person/contractor awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void; or, the contract may be ratified and affirmed, or modified, if the action is in the best interests of HHSC.
- e. Contracts or awards that were made in violation of law shall be terminated if possible, in accordance with the administrative rules.
- f. If the Protestor should have been but was not awarded the contract, the Protestor shall be awarded reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorneys' fees.
- g. The procedures and remedies provided in Chapter 103D and the implementing HARs are the exclusive procedures and remedies available to persons/contractors allegedly aggrieved by a solicitation or award of a contract.

6. Post CPO Decision:

- a. The Protestor shall inform the executive management team member (head of the purchasing agency) within seven calendar days after the final decision if an administrative appeal will be filed. An appeal shall be filed within seven (7) calendar days after the final decision in accordance with subchapter 5, HAR 3-126. In the event an appeal is not filed within this time, and the CPO denied the protest, the contracting action may continue. Any employee receiving an appeal shall be sent it to the Director. The stay on the contract action shall continue until further notice.
- b. The review of the CPO's decision is conducted by the Department of Commerce and Consumer Affairs, Office of Administrative Hearings. The request for a hearing must be filed there. Subchapter 5, HAR 3-126 outlines the process, which includes the hearing of evidence and a written decision by a hearings officer. The hearing is initially scheduled within 21 days of receipt of the appeal. The hearing officer will make a determination whether or not the award was in violation of the law and whether or not to ratify or terminate

the contract. The aggrieved party may then file a request for judicial review in the Circuit Court within 10 calendar days after the issuance of the written decision. The Circuit Court decision may be further appealed, as provided by law.

- c. Contract Managers and executive management team members (as head of purchasing agency) will work closely with the Director, the CPO, and legal counsel before taking any action affecting the protest and appeal, including action relating to the award of the contract.

IV. APPLICABILITY: All solicitations or procurement actions where Chapter 103D is applicable.

V. REFERENCES: HRS Chapter 323F; HRS Chapter 103D; HAR Chapter 3. Reference to Chapter 103D and implementing regulations does not intend to waive any applicable exemption.