

CHAPTER 103F
PURCHASES OF HEALTH AND HUMAN SERVICES

Part I. General Provisions

Section

- 103F-101 Application of this chapter
- 103F-102 Definitions
- 103F-103 Education and training
- 103F-104 Exemption from chapter 103D
- 103F-105 Preventing impairment of federal funds
- 103F-106 Authority of the procurement policy board
- 103F-107 Medicaid contracts; nonprofits and for-profits; reporting requirements

Part II. Planning Organization

- 103F-201 Interagency committee on purchase of health and human services
- 103F-202 Community council
- 103F-203 Participation of providers

Part III. Procurement Organization

- 103F-301 Powers and duties of the administrator
- 103F-302 Delegation of authority of the administrator of the state procurement office

Part IV. Source Selection and Contract Formation

- 103F-401 Methods of selection
- 103F-401.5 Proposals and awards
- 103F-402 Competitive purchase of services
- 103F-403 Restrictive purchase of services
- 103F-404 Treatment purchase of services
- 103F-405 Small purchases
- 103F-406 Crisis purchase of services
- 103F-407 Amendment and cancellation of requests
- 103F-408 Modification and termination of contracts
- 103F-409 Types of contracts
- 103F-410 Multi-term contracts
- 103F-411 Multiple awards
- 103F-412 Time line
- 103F-413 Interim measure for assuring continuation of services
- 103F-414 Allotment

Part V. Protests

- 103F-501 Protested awards
- 103F-502 Right to request reconsideration
- 103F-503 Award of contract suspended during a protest
- 103F-504 Exclusivity of remedies

Cross References

Grants and subsidies, see chapter 42F.

Case Notes

As nothing in this chapter expressly precluded judicial review, it does not violate the separation of powers doctrine; judicial review was available in connection with chapter by way of a declaratory action under §632-1. 127 H. 76, 276 P.3d 645 (2012).

Petitioner's right to equal protection under article I, §5 of the Hawaii constitution not violated as nothing in this chapter prohibited judicial review; judicial review was available by way of a declaratory action under §632-1. 127 H. 76, 276 P.3d 645 (2012).

As construed, this chapter was not unconstitutional for violating the doctrine of separation of powers as petitioner contended, because although the department of education, in interpreting and applying provisions of this chapter and in deciding disputes to which it is a party, exercises aspects of the judicial power, its decisions are subject to judicial review under §632-1, the declaratory judgment statute. 127 H. 263, 277 P.3d 988 (2012).

Under the circumstances of the case, the decisions of the administrative officers of the department of education to reject the proposal of petitioner that responded to a request for proposals to provide health and human services under contracts pursuant to this chapter were subject to judicial review; §§103F-501, 103F-502(c), and 103F-504 do not prohibit judicial review. 127 H. 263, 277 P.3d 988 (2012).

Where there was an implied legislative intent to create a remedy for a purchasing agency's failure to comply with this chapter, and correlatively, nothing expressly indicating an intent to deny one, there was a private right of action allowed against the State (i.e., the department of education) under §632-1 specifically challenging a decision made under this chapter, as to whether the relevant administrative officers complied with the statutes, rules, and the request for proposals. 127 H. 263, 277 P.3d 988 (2012).

Although §632-1 generally endorses declaratory relief in civil cases, it disallows such relief where a statute provides a special form of remedy for a specific type of case; where this chapter provided for a protest process under §§103F-501 through 103F-504, and §103F-504 limited the protestor to an administrative process as the "exclusive means" to resolve contract disputes, declaratory relief under §632-1 was

unavailable because §632-1 specifically mandates that the statutory remedy provided in this chapter must be followed. 125 H. 200 (App.), 257 P.3d 213.

As the statutory language of this chapter clearly indicates the intent of the legislature to deny a private right of action, there is no action in tort; because there is no private right of action under this chapter, there is also no cause of action for damages under chapter 662. 125 H. 200 (App.), 257 P.3d 213.

This chapter, which gives the department of education the power to be the final arbiter in contract award protests, did not violate the separation of powers doctrine and was not unconstitutional under article VI, §1 of the state constitution where the legislature, in enacting this chapter, determined that the judiciary had no power to review procurement grievance procedures under this chapter; as every enactment of the legislature is presumptively constitutional, a party challenging the statute has the burden of showing unconstitutionality beyond a reasonable doubt; plaintiffs failed to meet that burden. 125 H. 200 (App.), 257 P.3d 213.

Where the legislature did not give the circuit court the power or jurisdiction to review administrative appeals under this chapter, the court did not err when it determined that it did not have the authority to review the department of education's decision and underlying actions under §603-21.9(6). 125 H. 200 (App.), 257 P.3d 213.

"PART I. GENERAL PROVISIONS

§103F-101 Application of this chapter. (a) This chapter shall apply to all contracts made by state agencies and may be used by county agencies to provide health or human services to Hawaii's residents; provided that this chapter shall not apply to:

- (1) Contracts to award grants of state funds appropriated by the legislature to a specific organization or individual;
- (2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants;
- (3) Transactions expressly exempt from the requirements of this chapter; and
- (4) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board.

(b) This chapter shall only apply to contracts solicited or entered into after July 1, 1998, unless the parties agree to

its application to a contract solicited or entered into prior to that date.

(c) Nothing in this chapter or rules adopted hereunder shall prevent any state or county agency from complying with the terms or conditions of any grant, bequest, or cooperative agreement, or from satisfying any requirement of federal statute or regulation to avoid the loss or reduction of federal assistance. [L 1997, c 190, pt of §2; am L 2002, c 182, §5; am L 2003, c 9, §4; am L 2005, c 169, §1; am L 2014, c 96, §14]

" **[§103F-102] Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Administrator" means the administrator of the state procurement office.

"Agency" means any department, authority, commission, council, board, committee, institution, legislative body, agency, or other establishment or office of the executive, legislative, or judicial branch of the State, and includes the office of Hawaiian affairs.

"Chief procurement officer" means those officials designated by section 103D-203.

"Contract" means all types of agreements, regardless of what they may be called.

"Contract amendment" means any written alteration of scope of services, time of delivery, payment terms, amount of payment, or other provisions of any contract accomplished by mutual action of the parties to the contract.

"Data" means recorded information, regardless of form or characteristic.

"Health and human services" means services to communities, families, or individuals which are intended to maintain or improve health or social well-being.

"Provider" means an organization or individual contracted by a state agency to provide health or human services to the public on its behalf.

"Purchasing agency" means a state agency authorized to or responsible for entering into contracts to provide health or human services to the public.

"Request for proposals" means all documents, whether attached or incorporated by reference, soliciting providers to submit a detailed plan to provide health or human services to the public, on behalf of a state agency.

"Scope of service" means any description of the type of activity, including but not limited to, number served, outcomes being sought, target group, and geographic area in which the activity takes place.

"Treatment" means services to individuals and families by health or social work professionals which attempt to alleviate physical or mental illness or behavioral problems, including but not limited to, medical treatment, counseling, physical, occupational and other therapeutic services, and referral and case management services for medical treatment, counseling, and other therapeutic services. [L 1997, c 190, pt of §2]

" **[\$103F-103] Education and training.** The administrator of the state procurement office, either alone or in cooperation with the heads of the purchasing agencies, may develop a comprehensive education and training program for the purchase of health and human services. The program shall be available to agency employees, providers, and all other interested members of the public. [L 1997, c 190, pt of §2]

" **[\$103F-104] Exemption from chapter 103D.** Contracts to purchase health and human services required to be awarded pursuant to this chapter shall be exempt from the requirements of chapter 103D, unless a provision of this chapter imposes a requirement of chapter 103D on the contract or purchase. [L 1997, c 190, pt of §2]

" **[\$103F-105] Preventing impairment of federal funds.** This chapter shall be liberally construed to not hinder or impede a state agency's application for, or receipt and use, of federal funds. [L 1997, c 190, pt of §2]

" **§103F-106 Authority of the procurement policy board.** The policy board established under section 103D-201 shall adopt all rules necessary to implement this chapter. All rules shall be adopted in accordance with chapter 91. The policy board shall consider and decide matters of policy within the scope of this chapter including those referred to it by chief procurement officers. The policy board may audit and monitor implementation of its rules and the requirements of this chapter, but shall not exercise authority over the award or administration of any particular contract, or over any dispute or claim arising from a contract. [L 1997, c 190, pt of §2; am L 1998, c 267, §1]

" **[\$103F-107] Medicaid contracts; nonprofits and for-profits; reporting requirements.** (a) All nonprofit or for-profit medicaid healthcare insurance contractors, within one hundred and eighty days following the close of each fiscal year, shall submit an annual report to the department of human services, the insurance division of the department of commerce and consumer affairs, and the legislature. The report shall be

attested to by a plan executive located within the State and shall be made accessible to the public.

The report shall be based on contracts administered in the State and shall include:

- (1) An accounting of expenditures of MedQuest contract payments for the contracted services, including the percentage of payments:
 - (A) For medical services;
 - (B) For administrative costs;
 - (C) Held in reserve; and
 - (D) Paid to shareholders;
- (2) Employment information including:
 - (A) Total number of full-time employees hired for the contracted services;
 - (B) Total number of employees located in the State and the category of work performed; and
 - (C) The compensation provided to each of the five highest paid Hawaii employees and to each of the five highest paid employees nationwide, and a description of each position;
- (3) Descriptions of any ongoing state or federal sanction proceedings, prohibitions, restrictions, ongoing civil or criminal investigations, and descriptions of past sanctions or resolved civil or criminal cases, within the past five years and related to the provision of medicare or medicaid services by the contracting entity, to the extent allowed by law;
- (4) Descriptions of contributions to the community, including the percentage of revenue devoted to Hawaii community development projects and health enhancements; provided that contracted services shall not be included in the percentage calculation; and
- (5) A list of any management and administrative service contracts for MedQuest services made in Hawaii and outside of the State, including a description of the purpose and cost of those contracts.

(b) The department of human services shall include in all medicaid healthcare insurance plan contracts, the annual reporting requirements of subsection (a).

(c) Any contract under this section shall be governed by the laws of the State of Hawaii.

(d) Within ninety days of receipt of the reports required by this section, the department of human services shall provide a written analysis and comparative report to the legislature. [L Sp 2009, c 12, §2]

"PART II. PLANNING ORGANIZATION

[\$103F-201] Interagency committee on purchase of health and human services. The administrator shall establish an interagency committee on purchase of health and human services comprised of heads of purchasing agencies or their designated representatives. Staff shall be provided by the state procurement office. The interagency committee shall assist the administrator in:

- (1) Securing input from providers to facilitate agency decision-making to assess needs, plan, budget, and purchase health and human services;
- (2) Establishing schedules for planning and purchasing health and human services in relation to the annual and biennial budget cycles;
- (3) Developing criteria to evaluate proposals to provide health and human services, and for restrictive purchases under section 103F-403; and
- (4) Meeting the needs of purchasing agencies and providers for education and training to improve planning for or purchasing of health and human services. [L 1997, c 190, pt of §2]

" **[\$103F-202] Community council.** (a) There is established a community council on purchase of health and human services. The community council shall be comprised of no more than nine voting members, and one non-voting, ex-officio member of the interagency committee on purchase of health or human services designated by the majority of the members of the committee. There shall be a member from each county, except the county of Kalawao, and up to five members interested in health, human services, employment, or the provision of services to children and youth.

(b) Voting members shall be appointed by the governor and serve for four years. Each voting member shall serve until the member's successor is appointed. Section 26-34 shall apply insofar as it relates to the number of terms and consecutive number of years a member may serve on the council.

(c) Members shall serve without compensation, but shall be reimbursed for actual expenses, including travel expenses, necessary for the performance of their duties.

(d) The community council shall advise the administrator about or assist the administrator in:

- (1) Market or business conditions facing providers;
- (2) Securing input from providers to facilitate agency decision-making to assess needs, plan, budget, and purchase health and human services;

- (3) Facilitating provider participation in the process used by state agencies to plan for and purchase health and human services;
- (4) Establishing schedules for planning and purchasing health and human services in relation to the annual and biennial budget cycles;
- (5) Developing criteria to evaluate proposals to provide health and human services, and for restrictive purchases under section 103F-403; and
- (6) The needs of purchasing agencies and providers for education and training to improve planning for or purchasing of health and human services. [L 1997, c 190, pt of §2]

" **§103F-203 Participation of providers.** (a) Prior to a state agency's release of a request for proposal under section 103F-402, at the request of the agency, a provider shall participate in the agency's development of a delivery plan for health and human services, including, as necessary:

- (1) The sharing of information on community needs, best practices, and providers' resources;
- (2) Evaluating efficiencies in delivering existing services and recommending strategies for eliminating gaps in service delivery; and
- (3) Recommending cost-efficient and effective service alternatives.

(b) A state agency may include a provision in a contract awarded under this chapter a requirement that the provider participate in planning pursuant to subsection (a); provided that notice of this requirement shall be provided in the request for proposals; and provided further that participation in planning pursuant to subsection (a) shall not disqualify a provider from submitting responses to requests for proposals. [L 1997, c 190, pt of §2; am L 2012, c 4, §1]

"PART III. PROCUREMENT ORGANIZATION

§103F-301 Powers and duties of the administrator. The administrator of the state procurement office shall carry out the following duties:

- (1) Assist, advise, and guide state agencies in matters relating to planning and purchasing health and human services;
- (2) Establish and maintain a central health and human services contracts database;
- (3) Develop and administer a statewide orientation and training program for purchasing agency employees,

provider organization employees, and all other interested parties on all matters relating to carrying out the purposes of this chapter;

- (4) Develop, distribute, and maintain a health and human service procurement manual for all state procurement officials;
- (5) Develop, distribute, and maintain a procurement guide for health and human service vendors wishing to do business with the State;
- (6) Perform periodic review of the procurement practices of all governmental bodies which purchase health and human services;
- (7) Contract for such services as may be necessary for the purposes of this chapter; and
- (8) Establish and fill such positions as may be necessary to carry out the functions of this chapter, without regard to chapters 76 and 89. [L 1997, c 190, pt of §2; am L 2002, c 148, §10]

" **[\$103F-302] Delegation of authority of the administrator of the state procurement office.** Subject to rules adopted pursuant to this chapter, the administrator may delegate any authority or responsibility conferred by this chapter to a head or the heads of purchasing agencies. [L 1997, c 190, pt of §2]

"PART IV. SOURCE SELECTION AND CONTRACT FORMATION

[\$103F-401] Methods of selection. Unless otherwise provided by law, all contracts for purchases of health and human services shall be awarded by competitive purchase of services pursuant to section 103F-402, except as provided in:

- (1) Section 103F-403 (Restrictive purchase of services);
- (2) Section 103F-404 (Treatment purchase of services);
- (3) Section 103F-405 (Small purchases); and
- (4) Section 103F-406 (Crisis purchase of services). [L 1997, c 190, pt of §2]

" **§103F-401.5 Proposals and awards.** (a) No contract proposals shall be accepted from any applicant who lacks any license necessary to conduct the business being sought by the request for proposals, with the exception of proposals from applicants to operate a child care program required to be licensed pursuant to section 346-161.

(b) Proposals submitted under this chapter shall include all costs, fees, and taxes, and any award or contract shall be for the amount of the proposal. No award or contract shall include any other payment, rebate, or direct or indirect

consideration that is not included in the proposal, such as insurance premium or general excise tax rebates to or waivers for an applicant or bidder. [L 2010, c 69, §2; am L 2012, c 60, §1]

" **§103F-402 Competitive purchase of services.** (a) State agencies to which the legislature has appropriated funds for the purchase of health and human services shall solicit proposals to provide health and human services by purchase of health and human services contracts, by publishing a notice requesting the submission of health and human service proposals; provided that a purchasing agency shall not solicit proposals for any medicaid managed care contract under this section if the anticipated contract sum exceeds \$100,000,000 and the commencement date of the contract is after the expiration of the term of office of the head of the purchasing agency. Notice of the request for proposals shall be given a reasonable time before the date set forth in the request for submission of proposals. The policy board shall adopt rules which specify:

- (1) The form of the notice;
- (2) What constitutes a reasonable interim between notice and the proposal submission deadline; and
- (3) How the notice is to be published, including whether the publication is to be completed in a newspaper of general circulation, by mail, through a public or private telecommunications network, or any other method or combination of methods which the board deems appropriate.

(b) The request shall state all criteria which will be used to evaluate proposals, and the relative importance of the proposal evaluation criteria.

(c) Any applicant who has a question regarding a request may submit the question to the head of the purchasing agency, or a designee, prior to the proposal submission deadline. The head of the purchasing agency, or a designee, shall provide a response in the form of a clarification, or an amendment of the request, that shall be made available to all those who picked up a request.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing applicants during the process of proposal evaluation. A register of proposals shall be prepared and available for public inspection after proposal submission.

(e) If stated in the request, discussions, as provided by rule, may be held with applicants for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Applicants shall be accorded fair and equal treatment with respect to any

opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing applicants. [L 1997, c 190, pt of §2; am L 2010, c 71, §2; am L 2015, c 20, §2]

" **[§103F-403] Restrictive purchase of services.** (a) A contract for the purchase of health and human services may be awarded without competition when the head of a purchasing agency determines in writing that there is a basis for restricting the purchase to a purchase from one provider, and the chief procurement officer approves the restrictive purchase determination in writing. Bases for restrictive purchase of services shall include, but are not limited to:

- (1) Need for a service in a geographic area available from only one provider;
- (2) Need for a service with a unique cultural approach designed for a limited target group available from only one provider; and
- (3) When only one provider satisfies limitations imposed by the source of funds for the procurement.

(b) A purchasing agency shall submit the written determination with evidence supporting the request for a restrictive purchase of services to the chief procurement officer. The determination shall be reviewed by the chief procurement officer and, if approved, a notice of intent to issue a restrictive purchase of services contract shall be posted in a manner that makes it accessible to the public.

(c) The policy board shall adopt rules to allow a reasonable opportunity for objections to be filed, including:

- (1) The manner in which notice is to be posted;
- (2) The duration of notice posting; and
- (3) The contents of the notice including, but not limited to, the name of the provider to be issued the contract, the date on which the contract is to be awarded, a statement indicating that any person may file written objections to the issuance of the contract, the address of the person or agency with whom the objections are to be filed, and the date by which the objections are to be filed.

(d) The written determination, any objections, and a written summary of the disposition of any objection shall be included in the contract database. [L 1997, c 190, pt of §2]

" **[\$103F-404] Treatment purchase of services.** (a)
Treatment services may be purchased in accordance with this section if either or both of the following circumstances are applicable:

- (1) Such services may become necessary from time to time, but cannot be anticipated accurately on an annual or biennial basis; and
- (2) When deferring treatment until solicitation, provider selection, and contract formation can be completed, the problem needing treatment would be rendered worse than at the time of diagnosis or assessment.

Contracts for treatment services shall be awarded on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the administrator shall publish a notice describing the types of treatment services that may be needed throughout the year on a periodic basis and inviting providers engaged in providing these treatment services to submit current statements of qualification and expressions of interest to the office. The chief procurement officer may specify a uniform format for statements of qualifications. Providers may amend these statements by filing an amended or new statement prior to the date designated for submission.

(c) The administrator shall form an initial review committee consisting of a minimum of three employees from a state agency or agencies with sufficient education, training, and licenses or credentials to evaluate the statements of qualifications which the administrator receives in response to the notice published pursuant to subsection (b). The committee shall review and evaluate the submissions and other pertinent information, including references and reports, and prepare a list of qualified providers to provide treatment services during the fiscal year. Providers included on the list of qualified treatment providers may amend their statements of qualifications as necessary or appropriate. Providers shall immediately inform the administrator of any changes in information furnished which would disqualify the provider from being considered for a contract award.

(d) When the need to purchase treatment arises, the head of a purchasing agency shall select the provider most qualified to provide the needed treatment from the list of qualified providers.

(e) The head of the purchasing agency, or a designee, shall negotiate a contract, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, nature, and complexity of the

treatment services to be rendered, or use the rate established by the administrator, if any. If negotiations fail, upon written notice of an impasse to the provider selected under subsection (d), the head of the purchasing agency shall choose another provider from the list of qualified providers, and conduct further negotiations. Negotiations shall be conducted confidentially.

(f) Contracts for treatment in excess of \$100,000 or one year shall be procured using section 103F-402, competitive purchase of services, unless a waiver of this subsection is approved by the chief procurement officer. [L 1997, c 190, pt of §2]

" **[\$103F-405] Small purchases.** Purchases of health and human services of less than \$25,000 are small purchases, and shall be made in accordance with section 103D-305 and rules adopted by the policy board to implement that section. [L 1997, c 190, pt of §2]

" **[\$103F-406] Crisis purchase of services.** (a) The head of a purchasing agency may contract to purchase health and human services essential to meet a crisis by means other than specified in this chapter if:

- (1) The crisis results from domestic violence, physical or mental illness or injury, homelessness, lack of food, or such other reason, and seriously threatens life, the health, or the safety of any person; and
- (2) The crisis generates an immediate and serious need for health or human services which cannot be met through services available from the departments of health or human services, or under other provisions of this chapter.

(b) The crisis purchase of services shall be made with such competition as is practicable under the circumstances and, where practicable, approval from the chief procurement officer shall be obtained prior to the purchase. A written determination of the need to make a crisis purchase, and the reasons for selecting the provider shall be included in the contract file. [L 1997, c 190, pt of §2]

" **[\$103F-407] Amendment and cancellation of requests.** A request may be amended or canceled, or any or all proposals may be rejected in whole or in part, as specified in the request or in accordance with rules adopted by the policy board, when it is in the best interest of the state agency which issued the request to amend or cancel the request, or reject proposals in whole or in part. The reason for amending or canceling a

request, or for rejecting proposals in whole or in part shall be set out in writing and included in the contract file, and made available to the public. [L 1997, c 190, pt of §2]

" **[§103F-408] Modification and termination of contracts.**

(a) The policy board shall adopt rules specifying when a contract clause providing for adjustments in time of performance, scope of service, payment amount and terms, or other contract provisions as appropriate, by prior written consent of the parties, may be included in a contract to purchase health and human services.

(b) The policy board shall adopt rules requiring the inclusion of a contract clause providing for termination of the contract, either in whole or in part, for non-performance, reduction in funds available to pay the provider, or a change in the conditions upon which the need for the service was based. The purchasing agency shall be required to provide advance written notice to the provider organization with the reasons for the termination. [L 1997, c 190, pt of §2]

" **§103F-409 Types of contracts.** (a) Any contract that will promote the State's best interests may be used.

(b) A standard contract form for health and human services, including purchases and grants, shall be provided to governmental bodies by the attorney general that may be utilized, at the option of the head of the purchasing agency, without requiring prior approval as to form by the attorney general so long as no substantive changes are made to the form and the contents are appropriate.

(c) Each contract shall expressly state that the recipient or provider is an independent contractor and provide that the recipient or provider shall indemnify and hold harmless the State, the appropriate contracting agency, and the appropriate officers, employees, and agents from and against all claims, damages, and costs arising out of or in connection with the acts or omissions of the recipient or provider. [L 1997, c 190, pt of §2; am L 2014, c 96, §15]

" **[§103F-410] Multi-term contracts.** A contract for health and human services may be for any period of time and for multiple terms if the head of a purchasing agency deems it to be in the best interest of the purchasing agency to enter into an extended term or multi-term contract, provided the possibility of an extended term or multi-term contract is included in the request for proposals, if applicable, funds are available for the first fiscal period of the initial term of the contract when the contract is executed, and the contract expressly provides

that extension or renewal is subject to the availability and appropriation of funds. [L 1997, c 190, pt of §2]

" **[§103F-411] Multiple awards.** Most contracts for the competitive purchase of health and human services will be through the award of multiple contracts, and the policy board shall adopt rules prescribing the manner in which multiple contracts are to be awarded. [L 1997, c 190, pt of §2]

" **[§103F-412] Time line.** At least once annually, the administrator shall give public notice, as provided by rules, of the types of health and human services state agencies anticipate they will need so that providers may have advance notice of possible future opportunities to submit proposals. [L 1997, c 190, pt of §2]

" **[§103F-413] Interim measure for assuring continuation of services.** If funds are appropriated and available, the chief procurement officer, or a designee, may extend the term of a contract which has not terminated for up to six months after the termination date of the contract, to assure the provision of services to the public without disruption. [L 1997, c 190, pt of §2]

" **[§103F-414] Allotment.** Contracts to expend and appropriations for the purchase of health and human services shall be subject to the allotment system generally applicable to all appropriations made by the legislature. [L 1997, c 190, pt of §2]

"PART V. PROTESTS

[§103F-501] Protested awards. (a) A person who is aggrieved by an award of a contract may protest a purchasing agency's failure to follow procedures established by this chapter, rules adopted by the policy board, or a request for proposals in selecting a provider and awarding a purchase of health and human services contract, provided the contract was awarded under section 103F-402 or 103F-403. Amounts payable under a contract awarded under section 103F-402 or 103F-403, and all other awards of health and human services contracts may not be protested and shall be final and conclusive when made.

(b) The protest shall be submitted to the head of the purchasing agency, in writing, within five working days after the postmark date on the notice of award.

(c) The head of the purchasing agency, or a designee, may settle and resolve a protest by one or more of the following means:

- (1) Amending or canceling a request for proposal;
- (2) Terminating the contract which was awarded;
- (3) Initiating a new process to award a contract;
- (4) Declaring the contract null and void from the time of its award; or
- (5) Affirming the purchasing agency's contract award decision.

This authority shall be exercised in accordance with rules adopted by the policy board.

(d) If the protest is not resolved by mutual agreement, the head of the purchasing agency, or a designee, shall promptly issue a decision in writing. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protesting person of the protester's right to reconsideration as provided in this part.

A copy of the written decision shall be mailed or otherwise furnished to the person who initiated the protest.

(e) A decision under subsection (d) shall be final and conclusive unless a request for reconsideration is submitted to the chief procurement officer under section 103F-502. [L 1997, c 190, pt of §2]

Case Notes

As nothing in this chapter expressly precluded judicial review, it did not violate the separation of powers doctrine; judicial review was available in connection with chapter 103F by way of a declaratory action under §632-1. 127 H. 76, 276 P.3d 645 (2012).

Although §632-1 generally endorses declaratory relief in civil cases, it disallows such relief where a statute provides a special form of remedy for a specific type of case; where this chapter provided for a protest process under this section through §103F-504, and §103F-504 limited the protestor to an administrative process as the "exclusive means" to resolve contract disputes, declaratory relief under §632-1 was unavailable because §632-1 specifically mandates that the statutory remedy provided in this chapter must be followed. 125 H. 200 (App.), 257 P.3d 213.

Under the express terms of §103D-709(c), petitioner could not seek review of the chief procurement officer's decision on a chapter 103F health and human services contract pursuant to chapter 103D unless the protest was decided under one of the sections listed in §103D-709(c); §103D-709(c) thus foreclosed

petitioner from seeking review of the chief procurement officer's decision made pursuant to this section under the procedures of §103D-709. 127 H. 76, 276 P.3d 645 (2012).

Under the circumstances of the case, the decisions of the administrative officers of the department of education to reject the proposal of petitioner that responded to a request for proposals to provide health and human services under contracts pursuant to this chapter were subject to judicial review; §§103F-502(c) and 103F-504 and this section do not prohibit judicial review. 127 H. 263, 277 P.3d 988 (2012).

" **[§103F-502] Right to request reconsideration.** (a) A request for reconsideration of a decision of the head of the purchasing agency under section 103F-501 shall be submitted to the chief procurement officer not later than five working days after the receipt of the written decision, and shall contain a specific statement of the factual and legal grounds upon which reversal or modification is sought.

(b) A request for reconsideration may be made only to correct a purchasing agency's failure to comply with section 103F-402 or 103F-403, rules adopted to implement the sections, or a request for proposal, if applicable.

(c) The chief procurement officer may uphold the previous decision of the head of the purchasing agency or reopen the protest as deemed appropriate.

(d) A decision under subsection (c) shall be final and conclusive. [L 1997, c 190, pt of §2]

Case Notes

As nothing in this chapter expressly precluded judicial review, it did not violate the separation of powers doctrine; judicial review was available in connection with chapter 103F by way of a declaratory action under §632-1. 127 H. 76, 276 P.3d 645 (2012).

Under the circumstances of the case, the decisions of the administrative officers of the department of education to reject the proposal of petitioner that responded to a request for proposals to provide health and human services under contracts pursuant to this chapter were subject to judicial review; §§103F-501 and 103F-504 and subsection (c) do not prohibit judicial review. 127 H. 263, 277 P.3d 988 (2012).

" **[§103F-503] Award of contract suspended during a protest.** In the event of a timely protest, or request for reconsideration, no further action to award the contract until the issue is resolved shall be taken, unless the chief

procurement officer makes a written determination that the award of the contract without delay is necessary to protect the health, safety, or welfare of a person, as provided by rules. [L 1997, c 190, pt of §2]

" **[§103F-504] Exclusivity of remedies.** The procedures and remedies provided for in this part, and the rules adopted by the policy board, shall be the exclusive means available for persons aggrieved in connection with the award of a contract to resolve their concerns. [L 1997, c 190, pt of §2]

Case Notes

As nothing in this chapter expressly precluded judicial review, it did not violate the separation of powers doctrine; judicial review was available in connection with chapter 103F by way of a declaratory action under §632-1. 127 H. 76, 276 P.3d 645 (2012).

Under the circumstances of the case, the decisions of the administrative officers of the department of education to reject the proposal of petitioner that responded to a request for proposals to provide health and human services under contracts pursuant to this chapter were subject to judicial review; §§103F-501 and 103F-502(c) and this section do not prohibit judicial review. 127 H. 263, 277 P.3d 988 (2012).

Although §632-1 generally endorses declaratory relief in civil cases, it disallows such relief where a statute provides a special form of remedy for a specific type of case; where this chapter provided for a protest process under §103F-501 through this section, and this section limited the protestor to an administrative process as the "exclusive means" to resolve contract disputes, declaratory relief under §632-1 was unavailable because §632-1 specifically mandates that the statutory remedy provided in this chapter must be followed. 125 H. 200 (App.), 257 P.3d 213.