

STATE OF HAWAII
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS

TO: Thomas Driskill, Jr., Pres./CEO HHSC
FROM: Alice Hall, Director of Contract Management

Pursuant to 103D-102(b)(4), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

Description of goods, services, or construction: All goods, services and construction within \$25,000 to \$100,000 price range, including the following:

Information Systems equipment, software, maintenance, and consulting;
Building repair and maintenance;
Physician services;
Other healthcare provider services;
Construction services and supplies;
Architect & Engineering Services;
Nonclinical Services;
Equipment purchases, rentals and leases;
Equipment maintenance;
Supplies: office, medical, dietary, and other;
Food and beverages

The exemption will be from HRS 103D-302 (competitive sealed bidding), HRS 103D-303 (competitive sealed proposals) and HRS 103D-304 (procurement of professional services).
The exemption will cover all such described contracts and purchase orders solicited and/or executed between July 1, 2005 to July 1, 2006.

Name of Vendor: multiple sources

Cost: variable contract prices of more than \$25,000 but not to exceed \$100,000.

Term of Contract: varies

Prior Exemption Ref No. EX 05-15

Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State: HHSC purchases approximately \$100,000,000 worth of goods, services and construction each year. It is estimated that several hundred individual contract actions valued at approximately \$25,000 to \$100,000 are entered into each year. Application of sealed bid, sealed proposal or professional services source selection methods for the hundreds of individual contract actions exceeds the capability of HHSC's procurement staff. I estimate the additional staff required to execute these actions as formal solicitations will be 1 to 2 additional attorneys and 5 technical procurement staff personnel. This staff augmentation will entail an additional labor cost of approximately \$500,000 to \$700,000 per year. In addition, space at the corporate office and regional offices is very limited so additional office space must be obtained to add to that cost. Other staff involved in procurement activities will also see an increase in work load for selection committee participation, approvals, and tracking of actions.

Apart from increased labor and overhead costs, application of sealed bid, sealed proposal and professional service source selection methods require additional time for (1) preparation of written solicitations; (2) public notice publication periods (up to 30 days); and (3) additional time for evaluations of sealed proposal

and professional service solicitations. I estimate the additional time required to conduct the bulk of the procurements in this category of purchases will be from 45 to 60 days. The increased labor costs and time delays for the large volume of HHSC purchases in this category will divert to HHSC administration moneys intended for patient care and prevent timely responses to accomplish health care services requirements. Physicians, who are independent and have the freedom to practice at other hospitals, have expressed discontent at the delay in obtaining needed supplies and equipment.

In addition, following the more formal process for these relatively small purchases may actually result in less competition. The federal government's experience has been that contractors frequently are unwilling to devote the time and resources required to prepare bids or proposals in formal contract competitions when the total contract value will be only \$100,000 or less. In addition, formal competition for minor contracts not exceeding \$100,000 imposes the same heavy burden on the agency procurement staff as procurements of contracts valued at many millions of dollars. Consequently, formal competition of minor contracts imposes disproportionate and inefficient administration requirements on agencies. For that reason, the U.S. Congress exempted purchases of \$100,000 or less from the general requirement that agencies use sealed bid, sealed proposal or other formal competitive procedures in 2004. See 41 USC §§253(a)(1)(A), (g)(1), and (g)(4). Part 13 of the Federal Acquisition Regulations ("FAR Part 13" at 48 C.F.R. Part 13) implements FASA's simplified acquisition procedures to allow contracting officials to compete purchases using local solicitation of oral or written quotations. FASA and FAR Part 13's use of quotation solicitations is designed to promote efficiency in contracting by avoiding unnecessary burdens on both contractors and agencies.

The requested exemption allowing solicitation of written quotations for purchases not exceeding \$100,000 conforms directly with the simplified federal purchasing procedures the U.S. Congress determined were necessary and appropriate for purchases of this size. As detailed below, it also imposes proper limitations and simplified procedures to prevent abuses. The exemption will encourage competition by affording additional contractors the opportunity to participate who may not have engaged in the formal RFP or IFB process due to lack of skills or personnel to prepare the offer/bids. This will further HHSC's obligation to encourage competition under Chapter 103D while at the same time create greater efficiency by simplifying procedures.

Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:

1. The simplified competitive purchase procedures of HRS 103D-305 will be used for all purchases between \$25,000 and \$100,000, (written quotations) unless the Head of the Purchasing Agency or his designee determines that more competition would more likely result from using the IFB, RFP, or professional services statutes in a particular action.
2. The use of sole source and emergency procurement methodologies may be utilized as appropriate and where compliance with those respective statutes is demonstrated.
3. 3 written quotes shall be solicited from one or more lists of vendors, including, but not limited to the SPO's e-procurement list.
4. Where the Head of the Purchasing Agency or his designee is interested in expanding the vendor lists, a notice will be published in one or more newspapers and/or trade magazines soliciting submission of vendor names.
5. Rotation of the vendors solicited for quotations for similar procurements by the same region will be encouraged in order to promote fair competition.
6. The implementing regulations for HRS 103D-305 and Hawaii State Procurement Office Procurement Directive No. 2002-04 will be strictly followed.

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A description of the agency's internal control and approval requirements for the exempted procurement:

1. As indicated above, HHSC will follow SPO Directive No. 2002-04, and any other applicable guidance published by the SPO relating to written quotation procurements.
2. In addition, internal reviews of contracts will be conducted on an annual basis by senior contract management personnel under the direction of the Director of Contract Management at all sites in order to determine compliance. A list of purchases under this exemption will be compiled. In addition, a report of total dollar amount spent and total number of separate purchases made pursuant to this exemption will be compiled and submitted to the President & CEO.
3. Policies and procedures are in the process of being developed after which time training will be provided to more fully implement the requirements of HRS 103D, to include these requirements.
4. Parceling to artificially split requirements solely to qualify for this exemption's maximum dollar threshold of \$100,000 is prohibited. Any parceling may be the basis for discipline of the personnel involved, up to and including discharge.

A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:

All contract managers, administrators, specialists; procurement specialists; material managers; director of contract management; director of materials management; regional CEO's, regional CFO's, President and CEO, and COO/CFO.

Direct questions to: Alice Hall, Director of Contract Management
Phone Number: 733-4024

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR Yes — No x

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS, TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT

Alice M. Hall *7/27/05* *08/08/05*
Department Head or Designee Date

CEO / President
Title

Chief Procurement Officer's Comments:

See instructions outlined above.

APPROVED — DISAPPROVED

[Signature] *08/09/05*
Head of Procurement Agency Date