



**STATE PROCUREMENT OFFICE
NOTICE OF AND REQUEST FOR EXEMPTION
FROM CHAPTER 103D, HRS**

- 1. TO: Chief Procurement Officer
- 2. FROM: Scott T. Nago, Chief Election Officer, Office of Elections

Department/Division/Agency

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

3. Description of goods, services or construction:
See Attached

| | |
|--------------------------------|--------------------------------------|
| 4. Name of Vendor: Address: | 5. Price: \$ 230,000 6a 3/2/10 |
|--------------------------------|--------------------------------------|

| | |
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| 6. Term of Contract: From: 3/2/2010 To: 6/30/2010 6a 3/2/10 | 7. Prior Exemption Ref. No. |
|--|-----------------------------|

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:
See Attached

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:
See Attached

10. A description of the agency's internal controls and approval requirements for the exempted procurement:
See Attached

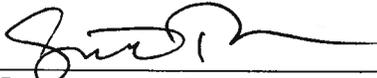
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

| 12. A list of agency personnel, by position, who will be involved in the approval process and administration of the contract: | | |
|---|----------|---|
| Name | Position | Involvement in Process |
| See Attached | | <input type="checkbox"/> Approval <input type="checkbox"/> Administration |
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| 13. Direct inquiries to: | Department: See Attached Contact Name: Phone Number: Fax Number: |
|--------------------------|---|

Agency shall ensure adherence to applicable administrative and statutory requirements

14. *I certify that the information provided above is, to the best of my knowledge, true and correct.*



Department Head

February 22, 2010

Date

| Reserved for SPO Use Only | |
|--|--------------------------------------|
| | 15. Date Notice Posted <u>3/2/10</u> |
| <p>The Chief Procurement Officer is in the process of reviewing this request for exemption from Chapter 103D, HRS. Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven calendar days or as otherwise allowed from the above posted date to:</p> <p align="center">Chief Procurement Officer State Procurement Office P.O. Box 119 Honolulu, Hawaii 96810-0119</p> | |
| <p>Chief Procurement Officer's comments:</p> <p>The Notice of and Request for Exemption from Chapter 103D, from the OOE is dated 2/22/10 and time stamped as received by the SPO on 3/2/10. According to the request, an IFB was to be released on 2/23/10 and we understand that an award is expected soon. Since the IFB has been released and award expected soon, this request for an exemption to delete the protest process is denied. It would be unfair to the offerors who believed they had the protest provision available if they chose to file a timely protest. It would not be appropriate to retroactively delete the protest process as it was not properly disclosed in the IFB.</p> <p>The procurement shall continue forward, and if a timely protest is received and should the protest be denied by OOE, and should the aggrieved party timely file for an administrative review at DCCA, HRS chapter 103D provides for a substantial interest determination for the lifting of the stay on the procurement. Should the lifting of the stay be approved it will also allow for the protest to continue while the contract award moves forward, rather than exempt the protest process and denying the dispute resolution processes to any aggrieved offeror.</p> | |

16. APPROVED DISAPPROVED NO ACTION REQUIRED



 Chief Procurement Officer Date 3/11/2010



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**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

STATE PROCUREMENT OFFICE
STATE OF HAWAII

SCOTT T. NAGO
CHIEF ELECTION OFFICER

February 22, 2010

To: Aaron Fujioka
Chief Procurement Officer

From: Scott T. Nago 
Chief Election Officer

Re: NOTICE OF AND REQUEST FOR EXEMPTION FROM CHAPTER 103D,
HRS (SPO-07) 2010 SPECIAL ELECTION VOTING SYSTEM

The Office of Elections requests an exemption from Chapter 103D, HRS for its upcoming procurement for a voting system. The relevant sections of Form SPO-07 are restated here, in order to provide adequate room to respond to each requirement of the form.

3. *Description of goods, services or construction:*

The State is seeking an integrated voting and vote counting system (herein "voting system") for a vote by mail Special Election that includes hardware, software, firmware, and equipment that has been tested and certified by an Independent Testing Authority. The services and products shall include installation of the voting system and equipment at a location in Honolulu Hawaii. The voting system shall include Help America Vote Act compliant voting devices. Direct recording electronic voting devices with voter verifiable paper audit trails shall be provided at one (1) early voting site. In addition, the vendor will provide all translation services and translated audio recordings required for use with the direct recording electronic voting machines. The contractor shall also coordinate the production of ballots, vote by mail envelopes, and mailing services.

8. *Explanation describing how procurement competitive means is either not practicable or not advantageous to the State:*

At the close of business on February 17, 2010, the Office of Elections received a copy of a letter of resignation from U.S. Representative Neil Abercrombie to Governor Linda Lingle. The letter indicates that the resignation will be effective February 28, 2010. This resignation sets in motion the requirement for a special election to be called by the Chief Election Officer. Specifically, pursuant to HRS § 17-2, when the vacancy occurs on February 28, 2010, the Chief Election Officer will need to subsequently issue an

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election proclamation for a special election. The law provides the election proclamation shall be issued not later than on the sixtieth day prior to the election. The Attorney General has issued an opinion to the Election Commission, on the issue of when such an election would have to occur. The opinion is essentially that there can be no unreasonable delay in holding the election beyond the 60 days notice required in the law. As such, the Attorney General expects that the election will be held in May, given that the earliest the proclamation could be issued is March 1, 2010, (i.e. the day after the vacancy) and an approximately sixty day notice would take us to May 1, 2010. Given the procurement options available to us, we have developed an IFB which we plan to release on February 23, 2010, for a bid opening on March 8, 2010. We would then award to the lowest bidder. Having a vendor in place, we could then issue the election proclamation on March 9, 2010, for an election to be held in May 2010. Unfortunately, the possibility of a protest and subsequent filing in DCCA makes this proposed timeline such to being amended and the special election having to be moved to a date inconsistent with the Attorney General's legal opinion.

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

As indicated, the Office of Elections will issue an IFB to encourage competition. The exemption from procurement would allow the award to be made to the lowest responsive responsible bidder without the ability for a protest or similar challenge to be filed.

10. *A description of the agency's internal controls and approval requirement for the exempted procurement:*

The internal controls and approval requirement is that the procurement officer for the Office of Elections must recommend the exempted procurement. The matter is then discussed with the Chief Election Officer, who serves as the head of the purchasing agency. If the Chief Election Officer is in agreement, the request is submitted to the Chief Procurement Officer.

12. *A list of agency personnel, by position, who will be involved in the approval process and administration of the contract.*

Aaron H. Schulaner General Counsel Approval & Administration

13. *Direct Inquiries to:* Aaron H. Schulaner, General Counsel, 453-8683, Fax: 453-6006

14. *I certify that the information provided above is, to the best of my knowledge, true and correct.*

Chief Election Officer

Date