



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

STATE PROCUREMENT OFFICE
STATE OF HAWAII

10 OCT 12 P 2 37

1. TO: Chief Procurement Officer
2. FROM: Mark J. Bennett, Attorney General, Dep't of Attorney General

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:
Special deputy attorney general/legal services to represent the State, and prepare, present and, if necessary, file suit to recover damages similar to those recovered in its AWP Cases, i.e., State v. Abbott Laboratory, et al., Civil No. 06-1-0720GWBC, State v. Schering Corp., Civil No. 07-1-1639GWBC, from additional persons and entities the State identified (in the course of litigating the AWP Cases) that inflated the reimbursement rates, prices, and co-payments the State paid for pharmaceutical products under the Medicaid, MedQuest, and Medicare programs, and/or are liable for the sum.

<p>4. Name of Vendor: Charles Barnhill, Jr. Miner Barnhill & Galland, P.C. Address: 44 E. Mifflin Street, Suite 803 Madison, Wisconsin 53703</p>	<p>5. Price: \$N/A</p>
<p>6. Term of Contract: As soon after approval as possible until final judgment entered, or claims are settled.</p>	<p>7. Prior Exemption Ref. No. 0</p>

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

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

10. A description of the agency's internal controls and approval requirements for the exempted procurement:
The Department will use its Standard Form Agreement (with some amendments) for Special Deputy Attorney General Services to engage Mr. Barnhill. The Agreement will be a contingency fee agreement that provides Mr. Barnhill's firm with 15% of any judgment or settlement, and reimbursement of the reasonable costs recovered from any judgment or settlement (the firm will advance costs). The Attorney General will sign the agreement on behalf of the Department and the State.

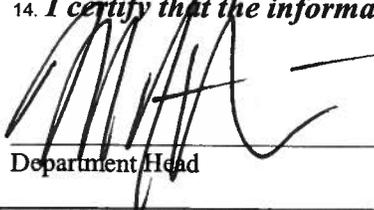
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

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
Christopher Young	Sup'g Deputy Attorney General	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to:	Department: Attorney General Contact Name: Christopher Young Phone Number: (808) 586-1160 Fax Number: (808) 586-1375
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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.*



OCT -7 2010

Department Head

Date

Reserved for SPO Use Only

15. Date Notice Posted 10-12-10

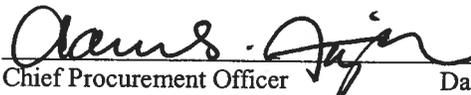
The Chief Procurement Officer is in the process of reviewing this request for exemption from Chapter 103D, HRS. Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven calendar days or as otherwise allowed from the above posted date to:

Chief Procurement Officer
 State Procurement Office
 P.O. Box 119
 Honolulu, Hawaii 96810-0119

Chief Procurement Officer's comments:

According to the department, it is in the best interest of the State to contract services with Charles Barnhill, Jr. because of his knowledge and experience with claims already made against pharmaceutical manufacturers. The department has made the determination that procurement by competition would not be advantageous to the State because it would be inefficient, would cost the State time and could cost the State millions of dollars. Although Mr. Christopher Young is listed as the personnel involved in the approval process and administration of this contract, per Ms. Charlene Aina, Mr. David Moore will manage the contract and not Mr. Young. This approval is with the understanding that Mr. Moore will manage this contract and not Mr. Young, and for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply and this award is required to be posted on the Awards Reporting System.

16. APPROVED DISAPPROVED NO ACTION REQUIRED


 Chief Procurement Officer Date 10/19/10

Attachment A

Mr. Barnhill was retained to represent the State in the AWP Cases through the competitive process for procuring professional services in Haw. Rev. Stat. § 103D-304. See Attachment A1, State of Hawaii State and County Professional Services Awards Additional Information Record Number 4352.

We are requesting a procurement exemption for at least two reasons. First, the scope of work for Mr. Barnhill's current Agreement for Special Deputy Attorney General Services limits the claims that he may make under the contract to claims against pharmaceutical manufacturers, and the additional persons and entities the State wishes to assert claims against are not limited to pharmaceutical manufacturers, although the new claims are related, are very similar to, and will rely on much the same evidence as in the district suit.

Second, while it is likely other attorneys are capable of asserting the claims the State wants to make against the additional non-pharmaceutical manufacturers involved in the process the State uses to reimburse and pay for pharmaceutical product, in the Attorney General's estimation, they would not be able to do it nearly as expeditiously, efficiently, or effectively. At a minimum, other attorneys would need to take additional time -- many months or more -- to familiarize themselves with information, persons, and processes Mr. Barnhill already knows, and devise the means and obtain the resources necessary to gather and organize information pertinent to the additional persons and entities the State wants to sue. Most critically, using another attorney would deny the State the benefit of the knowledge and experience Mr. Barnhill obtained by litigating the AWP Cases. Thus, not retaining Mr. Barnhill would be inefficient, would cost the State time and could cost the State millions of dollars (or more).

While the contract that the Attorney General proposes to use is a contingency agreement, it is in the State's interest to recover the damages due it as quickly and efficiently as possible.

Attachment B

The decision to retain Mr. Barnhill to assert claims similar to those made in the AWP Cases, against additional persons and entities identified in that prior litigation, was made by Attorney General Mark J. Bennett. It was based upon his assessment of the knowledge and experience Mr. Barnhill brought to the State's AWP Cases, the quality of the legal services he and his associates provided in the AWP Cases, including the information they gathered, organized, and presented, the knowledge they acquired in litigating the AWP Cases about the process and the various participants in the process the State uses to make reimbursements, payments, and co-payments for pharmaceutical products, the relationships he established with attorneys for the parties as well as third parties involved in the AWP Cases, and the favorable monetary settlements he obtained for the State from virtually every one of the pharmaceutical manufacturers the State sued.

Attachment A1



**State & County Professional Services Awards
Additional Information
Record Number: 4352**

Project Name: Serve as lead counsel to prepare/file suit(s) in the 1st Cir. Ct. for damages/other relief from drug manufacturers that developed/distributed falsely inflated avg wholesale prices which inflated Medicaid, MedQuest, & Medicare drug reimbursement rates

Posting Date: 2006-04-13 12:26:39.0

Names Submitted for Selection:

1. Charles Barnhill, Jr. (Miner, Barnhill & Galland,
2. Judson Minor (Miner Barnhill & Galland P.C.)
3. Warren Price (Price Okamoto Himeno & Lum)
4. Wilson Miles, III (Beasley, Allen, Crow, Methvin,
5. Clinton Carter (Beasley, Allen, Crow, Methvin, Por

Purchasing Agency: Department of the Attorney General

Category: Legal

Contact Name: Christopher Young

Contact Telephone Number: 808-586-1160

Contact E-Mail Address: christopher.d.young@hawaii.gov

Name and Title of Official Making the Selection: Mark J. Bennett, Attorney General

Relationship Between Principals and the Official Making the Selection: NONE

Review Committee Names:

1. Michael Parrish
2. Charleen M. Aina
3. Steve Kawada

Selection Committee Names:

1. Michael Parrish
2. Charleen M. Aina
3. Steve Kawada

Comments on Amount:

Contingency Agmt: 15% of jdgmt or settlement and all reasonable costs recovered from any jdgmt or settlement

Funding Agency: Depart of Human Services

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