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

1. TO: Chief Procurement Officer
2. FROM: DLNR, Division of Forestry and Wildlife

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:

The award of Legacy Land grant funds to State agencies, county agencies, and nonprofit land conservation organizations that have previously received Legacy Land grant funding for the acquisition of the land. Funds may be used "to protect, maintain, or restore resources at risk on these lands, or [for uses] that provide for greater public access and enjoyment of these lands" (HRS 173A-9).

4. Name of Vendor: To be determined through Chapter 173A, HRS, award pro

Address:

*DKK*  
upon *DKK* CFO approval

5. Price:

\$

6. Term of Contract:

From: ~~1-3 yrs~~

To:

*DKK*  
2 years

7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State: Procurement under Chapter 103D, HRS, is neither practicable nor advantageous because there is an existing statutory decision-making process for awarding grant funds that conflicts with the requirements of HRS 103D. The principles that 103D seeks to enforce are already addressed under HRS 173A. Eligible vendors are limited to a small and easily-reached group of applicants; awards are limited to entities that have previously received a Legacy Land award for the acquisition of land. The decision-making process is already established as open and public; the Commission and Board review of applications at public meetings. Attempting to meet the requirements of both statutes would create an unnecessary burden and an inefficient process.

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

A request for proposals will be issued annually to all eligible vendors using current contact information. Eligible vendors are limited by statute to nonprofits, counties, or State agencies that have acquired lands using a Legacy Land grant. The State Legacy Land Conservation Commission will review proposals at a public meeting and assess proposals using criteria formed under the Chapter 91, HRS, rulemaking process. Draft criteria are attached.

These recommendations will be brought before the Senate President and Speaker of the House of Representatives. The Board will award funds based on these recommendations and subject to the approval of the Governor.

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

Under Chapter 173A, HRS, a nine-member State commission reviews proposals at an open public meeting and recommend projects to the Board of Land and Natural Resources for funding. Prior to awarding funds, the Board of Land and Natural Resources (BLNR) must consult with the Senate President and Speaker of the House of Representatives. The resulting awards are then subject to the approval of the Governor. Controls and approvals inherent in the statutory award process include: an application process subject to open records laws, decision-making by two public boards at two open meetings subject to the Sunshine Law, and additional decision-making oversight by members of legislature and the Governor. Post-award internal controls will include: review of the contract terms by the BLNR and the Attorney General's office and staff oversight of contract administration and payment under the guidance of administrative rules.

**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
Paul Conry	DOFAW Administrator	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Laura Thielen	BLNR Chairperson	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Molly Schmidt	LLCP Coordinator	<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

13. Direct inquiries to: Department: Land and Natural Resources  
 Contact Name: Molly Schmidt  
 Phone Number: 586-0921  
 Fax Number: 586-0923

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 

10/26/10  
Date

**Reserved for SPO Use Only**

15. Date Notice Posted 10-28-10

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:

SEE CPO COMMENTS ATTACHED AS PAGE 3.

16.  APPROVED  DISAPPROVED  NO ACTION REQUIRED

 4/18/2011  
 Chief Procurement Officer Date

**CPO COMMENTS:**

Act 139, SLH 2008 amends HRS §173A-5 for use of funds to include costs related to the operation, maintenance and management of lands acquired by these funds. Contracts for operation, maintenance and management of lands are subject to HRS Chapter 103D. Therefore, the following Hawaii Administrative Rules (HAR) are applicable during the Competitive Sealed Proposals method of procurement pursuant to HRS §103D-303:

HAR §3-122-9.01	A purchasing agency is not required to disclose information . . . until posting of the award . . .
HAR §3-122-51(a)(1)	Proposals and modifications shall not be opened publicly . . .
HAR §3-122-51(a)(2)	Proposals and modifications shall be shown only to members of the evaluation committee and state personnel or their designees having legitimate interest in them.
HAR §3-122-53(f)	The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion process.
HAR §3-122-58(b)	. . . shall be available for public inspection upon posting of award . . .

The department has determined that applications for funding and the review of such applications are subject to HRS Chapter 92, which would allow the public to view these applications, make comment and have discussions about the applications which would conflict with the above HAR sections.

Due to this conflict and to allow disclosure for public review and input for funding before award is made, a limited exemption is approved from April 1, 2011 to March 31, 2013 and exempts only those 5 HAR sections noted above. Additional requests for exemption from HRS Chapter 103D may be submitted as an amendment to this procurement exemption.

Although no written delegated procurement authority is required for a *Request for Exemption from Chapter 103D, HRS*, it is noted that Ms. Molly Schmidt, the contact person has not taken the appropriate required mandatory procurement training. As a reminder, any individual participating in procurement activities must be in compliance with Procurement Delegation No. 2010-01 and 2010-01, Amendment 1 and Procurement Circular No. 2010-05, as appropriate.