



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

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

TO: Chief Procurement Officer

FROM: ATTORNEY GENERAL  
(Department/Division/Agency)

Pursuant to § 103D-102(b)(5), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

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

Various litigation-related expenses, including but not limited to, court reporter expenses for depositions and to purchase transcripts; copying charges; mediator fees; postal expenses (e.g., FedEx and City Express); and trial costs (e.g., making enlargements of exhibits, obtaining aerial photos and other demonstrative exhibits, etc.).

Name of Vendor:	Cost:	Term of Contract:
Varies	Varies	From: N/A To:

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

Litigation-related expenses are often difficult to predict, not only in terms of when they are needed or what is needed, but also how much they will cost. For instance, when our office takes a deposition of a witnesses, it is not possible to determine ahead of time how much it will ultimately cost. The cost is based upon how long the deposition ends up taking, how many pages there are in the transcript, etc. It is also the case that we often have no control over which court reporter we need to deal with, in terms of purchasing transcripts. If a deposition is taken by another party (e.g., Plaintiff's counsel), that party chooses the court reporter and we have no choice but to purchase the transcript from that reporter. The same is true when we purchase transcripts of court hearings and trials – we have to purchase the transcript from the particular reporter who was assigned to that hearing/trial. In addition, we need flexibility to select court reporters based upon the specific services needed. For instance, only certain court reporting services can do depositions on the outer islands. Another example is when we have to subpoena records or take depositions on the mainland, which happens quite often. Only certain reporters can make such arrangements for us. Also, certain court reporters will not only do the deposition, but will prepare the necessary subpoena and have the subpoena served, which obviates the need for us to make separate arrangements with a sheriff. A final consideration with regard to depositions is that they often have to be arranged quickly, due to the parties' and/or witness' availability (this is particularly true with expert witnesses).

In such situations, having to go through the small purchase process would not be practicable, and may result in missed opportunities to take critical depositions.

Other litigation-related expenses present similar difficulties. For instance, we often need to send larger quantities of documents (e.g., exhibits, voluminous documents obtained for class action lawsuits, etc.) to outside copying services to have copies made. It is not possible to know ahead of time how much the final cost will be, particularly when the total number of pages to be copied is uncertain. There are also sometimes irregularly-shaped pages or color pages mixed in, which costs a bit more. Also, similar to depositions, copies often have to be made quickly, for discovery purposes or for court hearings, arbitrations, and/or trials.

Mediator fees and other miscellaneous litigation-related expenses (e.g., obtaining aerial photos of accident sites) are other costs that must be incurred in order to provide a proper defense to the State. Again, however, such costs typically cannot be determined ahead of time.

In sum, the divisions that do litigation at the Department of the Attorney General by necessity incur litigation-related expenses on virtually a daily basis, sometimes small expenses, sometimes large. The purpose of incurring these expenses is to present the most effective defense possible in civil lawsuits brought against the State. The quality of representation will likely be diminished if we must go through the small purchase process for every expense that may exceed \$1,000, particularly since many of our expenses are contingent upon variables that cannot be definitively determined ahead of time. The increased workload on the staff will also be substantial if this process must be followed every time we take a deposition, get an enlargement made, etc. If the quality of our representation is negatively impacted, the end result may be increased cost to the State in settlements and judgments.

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

We can obtain price lists from court reporters and copying services and utilize the least expensive vendor when it is practicable to do so, depending upon the particular services needed and applicable time restraints.

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

The division supervisor, working with the clerical supervisors, reviews and approves invoices for payment.

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

This requested exemption will not require administration of a contract, but rather a series of discrete expenditures with a variety of vendors, for purposes of litigation.

<b>Direct questions to:</b>  Cindy S. Inouye Supervising Deputy Attorney General	<b>Phone Number:</b>  (808) 586-1494
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This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes: \_\_\_\_\_ No:

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

Russell A. Suzuki 12-3-04  
Acting Department/Agency Head Date

**Chief Procurement Officer's Comments:**

Please ensure adherence to applicable administrative requirements.

\_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_

cc: Administrator  
State Procurement Office

Chief Procurement Officer Date