

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

'04 DEC 17 A9:14

TO: Chief Procurement Officer  
 FROM: Attorney General  
 (Department/Division/Agency)

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

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

<b>Description of goods, services, or construction:</b>			
Provide legal services regarding review of State of Hawaii's ("State") rules, forms, policies, and procedures regarding the Hawaii Employer-Union Health Benefit Trust Fund's ("EUTF") enrollment and coverage of domestic partners in its health benefits plans and the State's handling of contributions and taxes related thereto. Services shall include assisting in making any recommended changes to the State's rules, forms, policies and procedures.			
<b>Name of Vendor:</b>	John E. Schembari, Esq.	<b>Cost:</b>	
<b>Address:</b>	Kutak Rock, LLP The Omaha Building 1650 Farnam Street Omaha, Nebraska 68102-2186	\$15,000 including costs	
<b>Term of Contract:</b>	<b>From:</b> Effective date of contract	<b>To:</b> June 30, 2005	<b>Prior Exemption Ref. No. (If applicable)</b>

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

This primary purpose of this contract is to have experienced tax counsel who has knowledge of the tax laws, regulations, and practices relating to health benefits plan coverage of domestic partners review the State's handling of contributions and taxes relating to the EUTF's enrollment and coverage of domestic partners in its health benefits plans. Mr. Schembari is a tax partner in a national law firm, based in Omaha, Nebraska. He has expertise and experience in providing tax advice to health benefits plans. His clientele includes the employee benefits plans of national companies as well as public entities such as the State of Nebraska and City of Omaha. He has expertise and experience in advising health benefit plans as to the tax consequences of offering domestic partner coverage, has set up forms and procedures for health benefits plans offering such coverage, and reviewed existing forms and procedures of health benefits plans offering such coverage. As part of our selection process, we questioned several local counsel who are on the Department's pre-qualified list of attorneys for tax services, but none of them had expertise or experience regarding the handling of tax matters arising from a health benefits plan's coverage of domestic partners. It is unlikely that any local counsel have such expertise or experience since: (a) very few local counsel have expertise or experience with both taxes and health benefits plans; and (b) very few local health benefit plans provide for domestic partner coverage. It is important that the State have expert and experienced counsel review the issues in question as there could be adverse tax consequences imposed on the State for the improper handling of contributions and taxes relating to the EUTF's coverage of domestic partners in its health benefits plans. Consequently, hiring local counsel for this work would not be practicable or advantageous to the State.

In 2003, the Legislature amended HRS, Chapter 103D, the State Procurement Code, i.e., Act 52, SLH 2003. While Mr. Schembari's firm could obtain a certificate of good standing from its home state, and could conceivably establish a local office, if that were required, the local office could not perform the services required by the contract unless it is staffed by someone who is licensed to practice law in Hawaii. Becoming licensed to practice in Hawaii is costly and time consuming. Moreover, because the bar exam is given only twice a year, it is impractical to require tax and health benefits plan

counsel from a nationally recognized firm to be licensed in Hawaii. Not only would the local staff have to be licensed to practice law in Hawaii, but also they would have to have tax, health benefits plan, and domestic partner expertise and experience.

Mr. Schembari is included in the Department's list of pre-qualified attorneys for tax services. The selection of an attorney for this work was conducted in accordance with the requirements of HRS §103D-304 as far as practicable. However, because of the requirements of HRS §103-310 and exemption is required, particularly from the requirements of HRS §103D-310(c) (except for the tax clearance requirements).

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

The Department conducted its selection process under HRS §103D-304. A selection committee of three deputy attorney generals and the EUTF administrator was appointed by the Attorney General to review possible contractors on the Department's pre-qualified list of attorneys for tax services. After review under the selection criteria of HRS §103D-304(e), the selection committee ranked three attorneys and sent such ranking to the Attorney General. The first-ranked attorney was Mr. Schembari.

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

The contract for legal services will be conducted under the supervision of the Attorney General and subject to his final approval.

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

Attorney General

**Direct questions to:**

Mark J. Bennett, Attorney General

**Phone Number:**

(808) 586-1500

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. Sings*      DEC 14 2004  
\_\_\_\_\_  
Department Head or Designee      Date  
*Acting* **First Deputy Attorney General**  
\_\_\_\_\_  
Title (If other than Department Head)

**Chief Procurement Officer's Comments:**

[Empty box for Chief Procurement Officer's Comments]

Please ensure adherence to applicable administrative requirements.

APPROVED       DISAPPROVED

*Adam S. Fitch*      12/23/04  
\_\_\_\_\_  
Chief Procurement Officer      Date

cc: Administrator,  
State Procurement Office

