



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

'12 OCT -3 A9:32

STATE PROCUREMENT OFFICE
STATE OF HAWAII

TO: Chief Procurement Officer

Attorney General
Name of Requesting Department

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

1. Describe the goods, services or construction:

This exemption is sought to secure the services of a well regarded U.S. Supreme Court practitioner who specializes in constitutional law as it pertains to reapportionment, in order to assist the SOH in defending the constitutionality of the 2012 Reapportionment Plan being challenged before a 3-judge district court panel in Kostick, et al. v. Nago, et al., which is currently filed as Civil No. 12-00184, U.S.D.C. Hawaii, should an adverse ruling be appealed to the U.S. Supreme Court. Hawaii's constitution specifically directs that the reapportionment plan be based on the State's permanent resident population with the seats of the Legislature allotted to the State's four basic island units. The loser at the District Court level will most likely file an appeal from the adverse decision to the U.S. Supreme Court. The legal services to be provided will include consultation to ensure that a proper and complete record is developed for review by the U.S. Supreme Court. It is contemplated that whomever is selected to provide legal services through this exemption will be retained to continue representing the State in the U.S. Supreme Court pursuant to Haw. Rev. Stat. §103D-102(b)(4)(J).

2. Vendor/Contractor/Service Provider:

Law Firm of Jenner + Block

3. Amount of Request:

Capped at 50,000

4. Term of Contract

From: 10/3/12 To: 12/31/2012

5. Prior SPO-007, Procurement Exemption (PE):

None

6. Explain in detail, why it is not practicable or not advantageous for the department to procure by competitive means:

Possibly because reapportionment occurs only once every 10 years immediately after the Federal census, and the last reapportionment plan was not challenged, we did not receive statements of qualifications and Expressions of Interest in the areas of appellate practice or constitutional law from U.S. Supreme Court practitioners and other attorneys in Washington, D.C. with expertise in reapportionment. The case is presently pending before the 3-judge district court panel with a briefing schedule calling for pleadings to be filed at the end of October and in the first two weeks of November. It is necessary for the State to procure the services of a well respected U.S. Supreme Court practitioner as soon as possible. This cannot be accomplished under existing procurement procedures without an exemption.

By law, reapportionment challenges are heard by a 3-judge panel at the federal district court level and can only be appealed directly to the U.S. Supreme Court. We believe there is a high certainty that any decision of the 3-judge panel will be appealed by the non-prevailing party. It is therefore in the State's best interest to obtain input and participation from counsel with expertise in this specialized area of laws to assure that the best record is developed and all pertinent arguments are presented to the 3-judge panel.

The attorney retained through this exemption, and possibly others, will be retained to prepare the pleadings, and present the State's position before the U.S. Supreme Court through the exemption provided in Haw. Rev. Stat. §103D-102(b)(4)(J).

13-026K

7. Explain in detail, the process that will be or was utilized in selecting the vendor/contractor/service provider:

The Department intends to identify attorneys with expertise in this specialized area of law who are well regarded U.S. Supreme Court practitioners by: 1) Reviewing the names of counsel of record in similar type litigation, 2) contacting the National Association of Attorneys General for recommendations, 3) as well as consulting with constitutional scholars to identify persons who would be qualified to provide scholarly legal services to the State. Time is a consideration, and the Department intends to search as widely as possible within the constraints of the time available. Whoever is selected, highly skilled he or she may be, will benefit from as large a lead time as can be afforded.

8. Identify the primary individual(s) who is knowledgeable about this request, who will conduct and manage this process, and has 1) completed mandatory training; and 2) who may contact for follow up inquiry, if any, Type over "example" and delete cells not used.)

Name of Department Personnel	Division/Agency	Phone Number	e-mail address
Russell A. Suzuki and David Moore	First Deputy Attorney General and Administrative Services Manager	586-1292	Russell.A.Suzuki@hawaii.gov David.T.Moore@hawaii.gov

All requirements/approvals and internal controls for this expenditure is the responsibility of the department.
I certify that the information provided above is, to the best of my knowledge, true and correct.



Department Head Signature

OCT - 2 2012

Date

For Chief Procurement Officer Use Only

Date Notice Posted: 10/3/12

Submit written objection to this notice to issue an exempt contract within seven calendar days or as otherwise allowed from date notice posted to:

state.procurement.office@hawaii.gov

Chief Procurement Officer (CPO) Comments:

Approval is granted for the period 10/03/12 to 12/31/12, however the department is cautioned that seeking an exemption from the procurement code is a questionable practice to remedy the untimely review of a case. Had the department determined the complexity of the case months earlier, when the case was filed in April 2012, HRS section 103D-304 should have been utilized. This approval is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply (i.e. vendor is required to be compliant on the Hawaii Compliance Express) and award is required to be posted on the Awards Reporting System.

If there are any questions, please contact Kevin Takaesu at 586-0568, or kevin.s.takaesu@hawaii.gov.

Approved

Disapproved

No Action Required



Chief Procurement Officer Signature

10/16/2012
Date