

**STATE OF HAWAII**  
**REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS**<sup>03</sup> DEC -4 P1:13

TO: Chief Procurement Officer

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

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:**  
 Legal Services as Bond Counsel in connection with the issuance sale and delivery of approximately \$110,000,000 special purpose refunding bonds for The Queen's Health System or one or more of its nonprofit affiliates, which bonds are presently expected to consist of two issues of insured auction rate bonds and one issue of insured and bank liquidity supported variable rate demand bonds (collectively "Bonds"), including advising the State of Hawaii with respect to its rights, duties and obligations in connection with the Bonds; requirements of the Internal Revenue Code; exemption from federal taxation of interest on the Bonds; and related matters.

Vendor:	Cost:	Term of Contract:
Roger L. Davis, Esq.	\$150,000.00, plus out-of-pocket expenses capped at \$4,000.00.	From: Upon CPO Approval To: June 30, 2004

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

Mr. Davis is a nationally recognized bond counsel. National recognition of bond counsel expertise is important because the recognition means that the individual and his or her firm have the requisite breadth and depth of experience and expertise in the area and have substantial backup and resources to respond to the kinds of issues that would arise in complicated bond transactions. Mr. Davis has served as bond counsel to the State since 1996 in transactions where the State has issued special purpose revenue bonds or refunding special purpose revenue bonds for The Queen's Health System or its predecessors, so is well versed in the kinds of issues that arise in financings related to this particular project party, is familiar with how the State operates, and has been very efficient and effective in representing the State's interests. There are only a few local bond counsel (and only two are nationally recognized), but none of them have ever been engaged by the State individually to provide bond counsel services in a transaction of this complexity and magnitude. Last legislative session, Hawaii Revised Statutes, chapter 103D, the State Procurement Code, was amended, and the amendment seems to require that contractors be registered to do business in Hawaii and have a division or office located in Hawaii that is capable of performing the services required by the contract. While Mr. Davis' firm could obtain a certificate of good standing from its home state, and could conceivably establish a local office, 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. This amendment would require Mr. Davis himself to apply for, take, and pass the Hawaii bar examination and become licensed to practice law in Hawaii. Becoming licensed to practice law in Hawaii is costly and time consuming. Moreover, because the bar exam is given only twice a year, it is impractical to require nationally recognized bond counsel to be licensed in Hawaii. Not only would the local staff have to be licensed to practice law in Hawaii, but they would have to have bond counsel expertise and experience. As stated above, there are only two firms in Hawaii that have some national recognition as bond counsel, but hiring these firms would not be practicable or advantageous to the State because to do so would be tantamount to promoting a monopoly and contrary to the purposes and goals of the State Procurement Code, that is, to foster broad-based and full and open competition. (Act 8, Special Session Laws of Hawaii 1993).

Because of the specialized nature of bond counsel services and the need to obtain services from nationally recognized bond counsel, and because of Mr. Davis' past experience, it would not be practicable or advantageous to the State to obtain those services competitively.

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

Due to the highly specialized nature of the work required, and his past experience of successfully performing such work for the State, the Attorney General, and the Department of Budget and Finance (the using agency), would like to retain Mr. Davis for this project over the other nationally recognized bond counsel.

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.

  
Department/Agency Head

DEC 4 2003  
Date

Chief Procurement Officer's Comments:

Please ensure adherence to applicable administrative requirements.

Approved

Denied

  
Chief Procurement Officer

12/10/03  
Date

cc: Administrator  
State Procurement