

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

TO: Chief Procurement Officer

FROM: Budget and Finance/Office of the Public Defender

(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:

Description of goods, services, or construction:

~~Court reporting services~~ Transcripts of court proceedings

Name of Vendor:

Cost:

Address:

Varies

Varies

Term of Contract:

From : 1/1/2003

To: ~~now~~

Prior Exemption Ref. No. (if applicable)

Upon CPD Approval

12/31/2006

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

The Office of the Public Defender provides legal services to indigent persons charged with criminal offenses. In the course of its representation of clients, the office is constitutionally required to obtain transcripts of prior court proceedings in order to effectively represent defendants in both trials and appeals of convictions. The transcripts of prior testimonies of witnesses are required for trial proceedings to meet the office's obligation to uphold clients' Sixth Amendment right to confrontation of witnesses. In appeals, transcripts are required to examine the record of the lower court proceeding(s) and deliver effective representation of clients.

It is not possible for the Office of the Public Defender to go through the procurement by competitive means process for obtaining transcripts of court proceedings. Almost 100% of the required transcripts are obtained through the state Judiciary pursuant to Sections 606-12 and 606-13, Hawaii Revised Statutes (HRS). The court reporters who record the courtroom proceedings throughout the state are hired and employed by the Judiciary. The Public Defender has no voice in the hiring of reporters and the assignments of reporters to the individual courtrooms. We must order transcripts from the particular reporter who is assigned to the courtroom(s) in which the proceedings occurred.

Moreover, procurement by competitive means is not necessary with respect to the Judiciary's court reporters. The price per page is standardized by the Hawaii Supreme Court as provided for in Section 606-13, HRS. See Rules Governing Court Reporting in Hawaii, Rule 19. (Attached as "Appendix A"). Therefore, there is no variation in the rates being charged. Every Judiciary court reporter must comply with the rate schedule.

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

Transcripts are ordered from the court reporter who was assigned to the court session in which the proceeding occurred.

REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

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

A division supervisor must approve every request for transcript. The Public Defender reviews and signs each invoice for payment. Summary Warrant Vouchers are generated by the Administrative & Research Office, reviewed by its Fiscal Staff and approved by the Director of Finance or designee as delegated.

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

Payment approval process for Court Reporter services:

- 1) Supervising Deputy Public Defender
- 2) Chief Deputy Public Defender
- 3) Public Defender
- 4) Director of Finance or designee as delegated

Direct questions to:
John M. Tonaki
Public Defender

Phone Number:
586-2090

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes X No

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS, TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT.

Department Head or Designee

Date

Hiroshi K Kawamura MAR - 2 2005

Title (If other than Department Head)

Chief Procurement Officer's Comments:

While we understand the necessity of obtaining transcripts in a timely manner, every effort shall be made by the Office of the Public Defender to have the respective court reporter(s) comply with chapter 103D-310, HRS.

Please ensure adherence to applicable administrative requirements.

APPROVED

DISAPPROVED

[Signature] 3/14/05

Chief Procurement Officer Date

cc: Administrator,
State Procurement Office