



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

15 MAY 22 P12:27

TO: Chief Procurement Officer

FROM: Human Services
Name of Requesting Department

STATE PROCUREMENT OFFICE
STATE OF HAWAII

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:
See attached.

2. Vendor/Contractor/Service Provider	KPMG, LLP	3. Amount of Request:
		\$ 25,000,000 State and Fed Funds

4. Term of Contract From: 5/1/2015 5/20/15 per email Ma Hiramatsu	To: 12/31/2017	5. Prior SPO-007, Procurement Exemption (PE):
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6. Explain in detail, why it is not practicable or not advantageous for the department to procure by competitive means:
See attached.

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

PE 15-0591

The Department engaged in a competitive procurement in 2012 for a contractor to build, implement and maintain the integrated eligibility system for the Medicaid and other medical assistance programs. KPMG, LLP was awarded the contract. The new system, known as KOLEA, was implemented on October 1, 2013 as required by the Affordable Care Act. Since then, the Med-QUEST Division has been processing applications and making determinations for Medicaid and CHIP (Children's Health Insurance Program) eligibility. The Department seeks an exemption from State procurement requirements to amend the current contract with KPMG. The Department intends to negotiate a fixed price contract based on deliverables, as this represents the lowest risk to the state.

8. Identify the primary responsible staff person(s) conducting and managing this procurement. (Appropriate delegated procurement authority and completion of mandatory training required).
 *Point of contact (Place asterisk after name of person to contact for additional information).

Name	Division/Agency	Phone Number	e-mail address
Leslie Tawata	Med-QUEST Division	692-8052	ltawata@medicaid.dhs.state.hi.us
Aileen Hiramatsu*	DHS	375-8685	ahiramatsu@medicaid.dhs.state.hi.us

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.


5/22/15

 Department Head Signature Date

For Chief Procurement Officer Use Only

Date Notice Posted: 05/21/15

Inquiries about this request shall be directed to the contact named in No. 8. 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 5/20/2015 to 12/31/2017 and is for the solicitation process only and with the understanding that the department has determined that it would not be advantageous and not practicable to conduct a competitive procurement prior to the next open enrollment period, November 2015. All other requirements per the Procurement code remain valid through the remainder of the contract life.

The following actions will be required to substantiate the good standing of this contract going forward:

- Create a contract in writing as a separate contract vehicle detailing the exemption description, period of performance and additional requirements thereto;
- Ensure any new monies over \$100,000 attached to the contract need to be associated with an evaluated proposal which shall include documented evidence of cost and pricing analysis to determine a fair and reasonable price is received by the State;
- Process a 'new' or 'change to current exemption' request if there is any change in scope;
- Align Payment and Program management against a set of milestones and deliverables;
- Develop an additional contract agreement between all parties (DHS KOLEA Team, Connector Team, CIO, KPMG, Deloitte, PCG) with a Relationship Charter clearly spelling out the roles and responsibilities, communications, and the process of dealing with DRs, disagreements, or any new challenges as they arise;
- Clearly document any Deviation from the plan with reasoning;
- Develop a life-cycle plan for managing the system as from November 2015 and forward. This exemption is a short term approval. How and who will be maintaining the system in the future?
- Pursuant to HRS section 103D-310(c) and HAR section 3-122-112, the procuring officer shall verify compliance (i.e., vendor is required to provide proof of compliance) for all contracts awarded and the award is required to be posted on the Awards Reporting System. Copies of the compliance and awards posting are required to be documented in the procurement/contract file.
- Assure the contracting actions are managed by an authorized procurement specialist who has obtained the required delegation authority and training in compliance with Procurement Delegation No. 2010-01 and Amendment 1, and Procurement Circular No. 2010-05, Statewide Procurement Training. The SPO does not have a record of attendance at the appropriate mandatory procurement training for individual, Aileen Hiramatsu, named in no. 8 and no record of procurement delegation for Leslie Tawata and Ms. Hiramatsu.

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

6/2/15

Date

**Attachment to Notice of Request for Exemption from HRS Chapter 103D
KPMG, LLP**

1) Describe the goods, services or construction:

The federal Centers for Medicare & Medicaid Services (CMS) issued a demand that the Hawaii Health Connector (the Connector) develop a Corrective Action Plan (CAP) that includes using the Federally Facilitated Marketplace (FFM) as the platform for processing applications for Advance Premium Tax Credits (APTC) and Cost Share Reductions (CSR) in time for the next Open Enrollment period in November 2015. By using the FFM, the State will transition from a state-based exchange to a Supported State Based Marketplace (SSBM). The CAP was submitted on May 11, 2015. Even though the requirement is on the Connector to become compliant with the federal ACA requirements, the Department, as the state's Medicaid agency, is being required by CMS to implement the necessary system changes to its integrated eligibility system, known as KOLEA, within the same timeframe to enable the State to transition to a SSBM.

The transition requires a vendor to design, develop, implement and perform related maintenance and operations to conduct a two-way transfer of applicant files between KOLEA and the FFM, also referred to as Account Transfer (AT). The vendor would also be required to establish a new interface, DIH31, to verify information on Medicaid eligibility for the FFM. In addition to establishing the new file transfer and interface, the Department must also implement other system changes to KOLEA that include, but are not limited to, making changes to the state hub to ensure the file transfers can be sent through the state hub to the FFM, revising the client facing portal, revising current notices that are sent to applicants and beneficiaries, revising the reports to reflect activities to the FFM, terminating current files and transactions to the Connector, processing applications received from the FFM, amending and submitting required security documentation, and conducting a one-time eligibility determination for all current Connector members prior to the initial submission to the FFM for APTC/CSR determination. These functions will need to be designed, developed, implemented, and maintained by the current vendor, KPMG. See section 6B, below, for further explanation.

All of these new features and functionalities must be in place before the next Open Enrollment period in November 2015 in order for Hawaii to remain compliant as a State-Based Exchange. With only five months available to implement, the Department does not have adequate time to competitive bid for the work.

The Department is seeking a contract amendment for these new services extending to December 31, 2017 to ensure continuing support of all system changes implemented for the 2016 Open Enrollment period (November 1, 2015 through January 31, 2016) followed by the Special Enrollment period.

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

The Department considered the following factors when determining that a new procurement would not be practicable nor advantageous to the department:

- A. Cost and time for preparing, soliciting and evaluating competitive bids given the federally-imposed deadline of November 2015;
- B. Competition in the marketplace; and
- C. Financial risk to the state for not complying with CMS Medicaid regulations.

These factors are discussed in greater detail below:

A. Cost and time for preparing, soliciting and evaluating competitive bids given federally-imposed deadline of November 2015.

All work under this Contract must be completed in time for the next Open Enrollment period in November 2015. Given the short time frame for the implementation, there is insufficient time to prepare, solicit and evaluate competitive bids. The short timeframe is driven by the circumstances outside the control of the Department. The Hawaii Health Connector (the Connector) has been required by the federal Center for Consumer Information and Insurance Oversight (CCIIO) to submit and implement a Corrective Action Plan (CAP) for the next Open Enrollment period which will occur in November 2015. CCIIO is the federal agency charged with ensuring the states meet the ACA requirements related to the health insurance exchanges. The Connector received a directive on March 30 from CCIIO requiring a CAP by April 8, 2015, but the State was provided additional time to submit a CAP by May 11, 2015. Part of the CAP requires Hawaii to transition to a Supported State-based Marketplace (SSBM). This means that the state will use the Federal Facilitated Marketplace (FFM) platform to accept and determine eligibility for Advance Premium Tax Credits (APTC) and Cost Share Reductions (CSR) and if eligible, conduct enrollments into Qualified Health Plans (QHPs). Although the CAP was the result of the Connector's non-compliance with federal requirements, the Department is being forced to make system changes within the same timeframe. The move to a SSBM requires the Department, as the State Medicaid Agency, to perform certain new functions and also connect to the FFM platform within the same timeframe. (See section 1.)

The Department became aware of the CCIIO requirements only recently in March 2015 and has been participating on joint calls with the Governor's Office, the Connector, DCCA, CCIIO, and the Centers for Medicaid and CHIP Services (CMCS) which oversees the Medicaid program. The Department and the Governor's Office explored with CCIIO and CMCS the possibility of extending the deadline to transition to a SSBM to next year's Open Enrollment in November 2016 for qualified health plan enrollment in 2017. CMCS made clear that the state Medicaid agency must comply with the transition along with the Connector. Failure to comply places the State at risk for not meeting Medicaid requirements and losing federal Medicaid funding. (See section 6.C.)

Finally, even if the Department had sufficient time to competitively bid for the scope of work, the limited competition would not likely result in more bidders. All of the cost and effort associated with preparing and soliciting a competitive bid would likely realize little or no competition because of the considerations identified in section 6.B.

PE15-0591C

B. Competition in the marketplace

Each state has a State Medicaid Agency and an Exchange and both are required to be compliant with the Affordable Care Act (ACA). For Hawaii, the State Medicaid Agency is the Department of Human Services and the Hawaii Health Connector is the state-based exchange. Since the requirements for the ACA are specific for Medicaid and exchanges, and since the ACA is relatively new, there are only a few vendors who are familiar with and have experience with building and operating information systems supporting Medicaid and the exchanges. So, while there may be other companies that may be able to perform the proposed required services, the number of companies with the necessary expertise is limited. Additionally, several companies that were contracted by other states to conduct their respective information systems builds have since had their contracts terminated (e.g., CGI Federal for Vermont, Massachusetts and the Federal Facilitated Marketplace, Xerox in Nevada, and Noridian in Maryland).

There are even fewer companies with experience transitioning a state a SSBM. Due to systems and operational issues, Oregon and Nevada were required to submit corrective action plans to transition their exchanges to a SSBM. These states became SSBMs for the most recent Open Enrollment period, and Deloitte was the contractor involved in both states. To date, only Deloitte has been involved in the transition from a state-based exchange to a SSBM. Deloitte is also the systems vendor in 19 FFM or SSBM states. Thus, we conclude there is not sufficient competition in the marketplace for this specific work to make a competitive procurement worthwhile.

Because of Deloitte's involvement in similar work, the State pursued a contract with Deloitte for the AT function only. After preliminary discussions, Deloitte declined to perform the scope of work for Hawaii because it is not familiar with Hawaii's system.

Even if Deloitte agreed to contract with DHS for the file transfer, the current contractor would have been required to be involved because developing the transfer file requires knowledge of the current process for receiving application and making determinations, and the data model of where and how data is stored. In both Oregon and Nevada, Deloitte was involved with the states prior to taking on the work to transition the states to SSBMs. In Hawaii's situation, Deloitte has had no presence in the State and thus, has no familiarity with Hawaii's Medicaid eligibility system. Additionally, the current contractor has significant continuing obligations to develop, implement, maintain and operate the KOLEA system under its current contract with the Department, and it is extremely important that nothing be done to interfere with the State's ability to enforce KPMG's contractual obligations before "turnover" of the system to the State at the end of the contract term.

Accordingly, there is no other vendor in the marketplace who can replace KPMG to perform the required tasks in the timeframe allotted by CMS, and a competitive procurement would not be fruitful. The Department must be allowed to amend the current KPMG contract to incorporate the additional work in order for the federally-required functionality to be completed in time for the November 2015 Open Enrollment.

C. Financial Risk to the state for not complying with CMS Medicaid regulations

As discussed earlier, the department is the State Medicaid Agency and, as such, is required to remain compliant with federal Medicaid regulations. Failure to comply with Medicaid regulations, including the transition to the SSBM, potentially puts all federal Medicaid funding at risk. As the State Medicaid Agency, DHS is required to coordinate the Medicaid and CHIP programs with the exchange. The requirements are found at 42 CFR 435 Subpart M-Coordination of Eligibility and Enrollment Between Medicaid, CHIP, Exchanges and Other Insurance Affordability Programs. Failure to comply with any part of the Medicaid program could lead to the withholding of federal matching funds. The penalties are found in 42 CFR 430.35 Withholding of payment for failure to comply with Federal requirements. At risk is over \$1 billion in benefits to over 330,000 beneficiaries and enhanced federal match for systems work which currently covers 90% for development costs and 75% for maintenance and operations. Finally, if the Medicaid program fails to be compliant, the Department may not be able to draw down any enhanced funding for systems development and implementation for the Department's other programs such as TANF, SNAP, LIHEAP, etc.