



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

Received by
State Procurement Office
12/04/2015

TO: Chief Procurement Officer

FROM: Department of Health
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:

<p>1. Describe the goods and/or services:</p> <p>The requested exemption is to procure a rate study and methodology that reviews and revises provider rates for services provided through the State's Medicaid Waiver program for individuals with intellectual and developmental disabilities. This includes a review of service definitions and requirements as well as DDD' policy goals, alignment of rates with Waiver participants' level of need based on Supports Intensity Scale (SIS) assessments, the design and administration of a provider cost survey, collection of data from other independent sources, analysis of claims data to inform fiscal impacts, development of draft rate models outlining the specific cost assumptions for each service, coordination of a public comment period when stakeholders can submit feedback about the rate models, and implementation support.</p>

<p>2. Vendor/Contractor/Service Provider: Burns and Associates</p>	<p>3. Amount of Request: \$ 250,000</p>
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<p>4. Term of Contract From: STATE'S Notice to Proceed</p>	<p>To: 14-Dec-16</p>	<p>5. Prior SPO-007, Procurement Exemption (PE): None</p>
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<p>6. Explain in detail, why it is not practicable or not advantageous for the department to procure by competitive means:</p> <p>See attached #6</p>
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<p>7. Explain in detail, the process that will be or was utilized in selecting the vendor/contractor/service provider:</p> <p>See Attached # 7</p>

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
Vanessa Lau *Mary Brogan*	DDD	587.6043 808.586.5840	vanessa.y.lau@doh.hawaii.gov mary.brogan@doh.hawaii.gov
Wendy Bullard	DDD	808.586.5840	wendy.bullard@doh.hawaii.gov

Handwritten: 12-14-15

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.

Virginia Prosser

Department Head Signature

DEC - 4 2015

Date

For Chief Procurement Officer Use Only

Date Notice Posted: 12-14-15

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 based on the department's determination that it would not be advantageous to conduct a competitive procurement as no firms outside of Burns & Associates (B&A) have developed rate study models for 1915(c) Waivers using the Supports Intensity Scale-based service levels that the department is using to establish individualized support budgets for Waiver participants.

This approval is for the solicitation process only. Pursuant to HRS §1 03D-31 0(c) and HAR §3-1 22-112, the procuring officer shall verify compliance (i.e. vendor is required to be compliant on the Hawaii Compliance Express [HCE]) for all contracts awarded and award is required to be posted on the Awards Reporting System. Copies of the HCE Certificate and awards posting are required to be documented in the procurement/contract file.

If there are any questions, please contact Donn Tsuruda-Kashiwabara at 586-0565 or donna.tsuruda-kashiwabara@hawaii.gov.

Approved Disapproved No Action Required

Donn Tsuruda-Kashiwabara

Chief Procurement Officer Signature 12-29-2015
Date

FORM SPO-007 Notice of Request for Exemption from HRS Chapter 103D

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

BACKGROUND

The Developmental Disabilities Division (DDD) is responsible for approving and overseeing supports for the approximately 3,200 residents of Hawaii with intellectual and developmental disabilities (I/DD) who receive home and community based services (HCBS) through the State's Section 1915(c) Medicaid waiver (so named for the section of the Social Security Act through which Federal funds are available for HCBS). The State annually receives more than \$55 million in Federal funds to provide these services to individuals with moderate to severe I/DD ("Waiver participants").

Hawaii's I/DD Waiver expires on June 30, 2016, and the State must submit a reauthorization application to the Federal Centers for Medicare and Medicaid Services (CMS) by March 31, 2016.

DDD is also in the process of reworking the approach by which it determines Waiver participants' needs and approves services to meet those needs. Specifically, DDD will use the Supports Intensity Scale (SIS) assessment to inform the development of participant-centered service plans. Assessment data will be used to determine each Waiver participants' level of need, which, in turn, will inform the amount and intensity of services that they will receive. This approach is intended to increase the 'fairness' of the system by ensuring that Waiver participants with similar needs have access to similar services and that participants with more significant needs receive more support than those with less significant needs. DDD has contracted with the non-profit Human Services Research Institute (HSRI), the sole organization with the most experience in using SIS information to inform individual budgets, to assist in this process.

At the same time, several recent Federal regulations will have profound impacts on the manner in which services are delivered as well as the costs to providers.

These three issues require the State of Hawaii to undertake a comprehensive review of provider reimbursement rates:

- The renewal application for the Waiver due in March 2016 (with a public comment period ending in mid-February) that requires a fully-described rate study methodology;
- The implementation of an objective assessment to determine participants' levels of need and related changes; and
- New Federal regulations that require States to ensure each Waiver participant has full access to the benefits of community living.

1. The State's Waiver application must include a "uniform rate determination methods or standards that apply to each waiver service."

As part of its waiver review guidelines, CMS requires that states provide a full description of the methodology employed to establish provider payment rates.

DDD cannot justify the existing rate schedule as it was established at least 15 years ago and no documentation of the original process has been located. Although there have been incremental adjustments to the rates over the years, there have been no detailed analyses or revisions to the rate methodology.

Further complicating matters is that developmental disabilities systems across the country report that CMS has become far more stringent in its reviews of Waiver application, and that CMS has hired a consulting firm specifically to assist CMS in its reviews of rate methodologies that is applying a high level of scrutiny in their work.

2. The personal supports budgeting approach requires a complementary rate schedule.

The current rates are not aligned with DDD's goals for the implementation of participant-centered service plans based on the use of the assessment. There are different rate 'levels' for certain services, but they are not aligned with a standardized assessment such as the SIS. Further, the differences in the service levels are not always specified (that is, the expectations associated with higher rates are not defined because what is "in" the current rates is unknown), preventing DDD from enforcing more intensive services for higher levels.

Additionally, the current rates do not adequately reflect cost differences associated with providing services within a Waiver participant's own home, versus an adult foster home, versus a group home. Finally, the rates do not account for the higher cost of providing services in the community compared to center-based services, a distinction that will be more important as DDD works to comply with the new Federal rules.

3. New Federal regulations will impact providers' costs.

Most notably, CMS' 2014 Final Rule for Community Integration requires states to adjust service arrays and ensure all settings where services are provided allow Waiver participants to have full access to the benefits of community living and the opportunity to receive services in the most integrated setting. The final rule represents sweeping changes to Waiver services, and will require many providers to redesign their programs and service delivery models. The transition plans that states must submit to CMS detail how the states will comply with the Final Rule, including the "specific actions to be taken to come into compliance (including) adjusting reimbursement rates, definitions, and provider qualifications." As part of its review of waiver applications, CMS will be determining whether services and rates are consistent with the final rule.

This makes it imperative that the State implement its rate study as soon as possible by a contractor with the appropriate level of experience to address the complexities of the I/DD service system.

Other recent Federal regulations will also impact provider costs. The Department of Labor's Fair Labor Standards Act- Home Care Rule expands minimum wage and overtime requirements for certain workers. Another DOL rule reduces the number of individual providers who are exempt from the FLSA. These factors must be reviewed as soon as possible within the context of a rate study because the Home Care Rule has recently been implemented and is currently being enforced. Both of these rules have the potential to increase the staffing costs of I/DD providers.

PROJECT SCOPE

For the reasons cited, DDD needs to develop a rate-setting methodology by March 31, 2016. The necessary comprehensive rate study will include:

- A review of service requirements and identification of necessary changes to conform to new Federal requirements and to achieve DDD's policy goals;
- Significant collaboration with providers, including establishment of a provider advisory group to provide input throughout the study as well as a provider survey to collect information regarding service designs and costs that all providers will be invited to complete;
- Analysis of claims data and service need assessment data to evaluate current utilization patterns and to estimate the fiscal impact of any changes to the rates;
- Identification and analysis of benchmark data such as Bureau of Labor Statistics wage information to inform rate model assumptions;
- Development of transparent rate models and supporting documentation that detail the specific assumptions (including the wages, benefits, and billable hours for direct support staff; staffing levels; travel- and facility-related costs; agency overhead costs; etc.) used to establish the rates; and
- Administration of a comment process allowing providers to react to the rate models and revisions to the rate models, as appropriate.

EXEMPTION REQUEST

In order to continue to qualify for the significant Federal funding claimed through the Waiver program and to provide appropriate services to Hawaiians with intellectual and developmental disabilities, a comprehensive study of provider payment rates must be undertaken. DDD has concluded that it *is not practicable* to procure this study through competitive means.

Rather, DDD believes that the most *practicable*, efficient and effective approach to completing the rate study is to contract with Burns & Associates, Inc. (B&A) to lead the rate study. DDD believes this is *advantageous to the State* and is in the best interest of the State for several reasons, including:

1. Provider rates are inseverably linked to personal supports budgets and only one firm has experience with the specific approach that DDD intends to adopt.

As discussed, DDD will use the SIS as well as certain supplemental questions regarding intensity of behavioral and medical challenges to determine Waiver participants' needs and inform their supports planning. For this approach to work effectively, service reimbursement rates must fairly compensate providers based on the intensity of support they deliver in alignment with efforts to establish supports budgets. Put plainly, it does little good to identify Waiver participants' levels of need without requiring providers' to meet these needs, which requires rates that pay for these efforts.

Based on efforts to this point, it is anticipated that DDD will adopt a seven-level framework (that is, Waiver participants will be assigned to one of seven levels of need based on their assessment results). This framework, with slight variations from state to state, is the most common SIS-based model in the country. Adopting a model that has been tested, validated, and proven effective in other states is a priority for DDD in order to most efficiently produce a successful approach.

Burns & Associates is an expert in the development and implementation of participant-centered service plans, budgets, and rates. No consultant in the country has developed more rate schedules for I/DD waiver programs and certainly no firm has comparable experience in developing rates based on the SIS. Further, it is believed that B&A is the only firm that has established rate models within this seven-level framework. In fact, B&A in collaboration with HSRI, is responsible for developing the framework and *it would not be advantageous to the State to separate these already ongoing efforts.*

2. B&A's and HSRI's experience working together on supports budget and rate study work will result in a minimum of conflict and false starts.

B&A has significant experience working with HSRI, which is assisting DDD in the development of the personal supports budgets. In fact, B&A is already a subcontractor to HSRI current contract work for DDD. As such, B&A is already involved in DDD's efforts to implement the SIS, create individual budgets, and review service definitions. Utilizing B&A to conduct the rate study ensures that the Rate Study project will fit seamlessly into DDD's other initiatives. Procuring another contractor would result in duplication of effort and unnecessary costs while a third contractor is "brought up to speed."

B&A and HSRI have worked together to complete work similar to with DDD is undertaking in the following jurisdictions:

- Virginia Department of Department of Behavioral Health and Developmental Services (2013 – Present)
- North Carolina Department of Health and Human Services (2012 – Present)
- Maine Department of Health and Human Services, Office of Aging and Disability Services (2012 – Present)

- New Mexico Department of Health, Developmental Disability Supports Division (2009 – Present)
- Georgia Division of Developmental Disabilities (2007 – Present)
- Alberta (Canada) Seniors and Community Supports (2010 – 2012)
- Missouri Division of Developmental Disabilities (2010)
- Rhode Island Department of Behavioral Health, Developmental Disabilities and Hospitals (2010-2015)

This experience will be key to the timely and efficient development of a rate methodology and schedule for the Waiver renewal application.

3. The rate study must navigate a changing Federal landscape.

As discussed, a number of Federal regulations and policies are impacting provider costs and states' rate methodologies.

Burns & Associates has assisted or is currently assisting 11 states in constructing fee schedules for I/DD services, instituting the SIS, or doing both. As such, B&A is at the forefront of the Federal issues described earlier as well as establishing rates consistent with CMS' requirements.

Additionally, B&A's "independent rate-setting" approach relies on information from a variety of sources, which is necessary due to the length of time since rates were last reviewed. Other consultants rely on an actuarial-type review of provider costs to develop rates. As noted, however, the State's rates have not been reviewed for at least 15 years so cost data will primarily reflect current rates rather than actual market conditions. B&A considers provider cost data, but also considers information from other sources, including the Bureau of Labor Statistics, rates paid for comparable services in other programs, etc. Further, this approach allows the State to make adjustments to incorporate policy changes that would not be reflected in current costs.

The experience and structure that B&A will bring to this process will lend credibility to the effort, which is integral to gaining buy-in from Waiver participants, providers, and other stakeholders.

4. DDD does not have the internal staff expertise to complete the study and does not have the authority to establish new short term positions and hire staff (and then have the new staff complete a rate study) before the March 2106 Waiver application due date.

As detailed above, the rate study will be an extensive effort. It will require experienced staff from several academic disciplines whose combined rate study time is estimated to require the equivalent of a full-time staff person working for five-to-six months. DDD does not have the expertise and could not develop this expertise in the short time needed to address these expanded Federal requirements.

For the foregoing reasons, DDD requests permission to execute an exempt contract with Burns & Associates, Inc. If granted, this exemption will ensure that DDD will have a new and compliant rate methodology in time for the implementation of the renewed Waiver on July 1, 2016.

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

Based on the work that has already begun in regards to instituting the Supports Intensity Scale (SIS) and developing personal supports budgets, DDD sought information regarding consultants with experience in establishing complementary rate schedules. Specifically, DDD evaluated published rate-setting materials that consultants have made available online, spoke with developmental disabilities authorities in other states and organizations, and consulted with the Human Services Research Institute, which is assisting in DDD's SIS-related activities.

This process clearly demonstrated that Burns & Associates, Inc. brings the most experience to similar project across the country, employs an approach that will best meet DDD's needs, and already has familiarity with the State's Waiver program based on its subcontract work for HSRI.