



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

- 1. TO: Chief Procurement Officer
- 2. FROM: DBEDT / High Technology Innovation Corporation (HTIC)

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:

3. Description of goods, services or construction:
 The High Technology Innovation Corporation (HTIC) is a public, not-for-profit organization established by Act 173, SLH 2005 to facilitate the growth and development of the commercial high technology industry in Hawaii. HTIC is seeking a blanket exemption from Chapter 103D, HRS so it has the flexibility to respond quickly to business opportunities as they arise.

4. Name of Vendor: All vendors Address:	5. Price: \$
6. Term of Contract: From: 1/01/2006 To: Indefinite	7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State:
 The State Procurement Code specifies three ways to procure goods and services: 1) competitive bidding in the form of quotes, request for proposals or requests for bids, depending on the amount of the commitment; 2) sole source; and 3) emergency procurements. Competitive bidding by request for proposals or request for bids requires adequate time to send out requests, receive and evaluate responses. When the need for services in the technology area arise, the level of expertise and who can provide the services is either widely known or recommended by other experts in the area, or for cutting edge technologies there may exist limited numbers, if at all; therefore, sending out requests for proposals or bid are an inefficient use of personnel time and resources. See attached for additional explanation.

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:
 See attached.

10. A description of the agency's internal controls and approval requirements for the exempted procurement:
 There will always be a minimum of two approving signatures for a purchase or commitment of funds. The project or program manager, Controller and or President. Purchases less than \$25,000 can be approved by the Controller. Purchases in excess of \$25,000 are approved by the President or delegated representative. The DBEDT Director or designate will co-sign checks to vendors.

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

12. A list of agency personnel, by position, who will be involved in the approval process and administration of the contract:		
Name	Position	Involvement in Process
Varies	Project or program manager	<input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Steve Sakuda	Controller	<input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Philip J. Bossert, Ph.D.	President	<input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Board for major contracts	HTIC Board	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Sylvia Bollmeier	Contracts Administrator	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to:	Department: High Technology Innovation Cor Contact Name: Philip J. Bossert, Ph.D. Phone Number: 539-3601 Fax Number: 539-3611
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14. This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: YES NO
 Agency shall ensure adherence to applicable administrative and statutory requirements

15. *I certify that the information provided above is, to the best of my knowledge, true and correct.*



DEC 21 2005

Department Head

Date

Reserved for SPO Use Only	
16. Date Notice Posted _____	
The Chief Procurement Officer is in the process of reviewing this request for exemption from Chapter 103D, HRS. Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven calendar days or as otherwise allowed from the above posted date to: Chief Procurement Officer State Procurement Office P.O. Box 119 Honolulu, Hawaii 96810-0119	
Chief Procurement Officer's comments: PLEASE SEE ATTACHED SHEET.	

17. APPROVED DISAPPROVED


 Chief Procurement Officer

1/8/06
 Date

CHIEF PROCUREMENT OFFICER COMMENTS:

The State Procurement Office does not believe any agency should have a 'blanket' procurement exemption from Chapter 103D, HRS. The procurement code was established to ensure the fair and equitable treatment of vendors, foster competition, and increase public confidence in the government procurement system, to name a few of its edicts. The procurement system is uniform, open, fair, and comprehensive, so that there is a level playing field for all vendors/contractors/providers.

We are cognizant of the HTIC mission and purpose, and the benefits to the growth of Hawaii's diverse technology industries. Further, your request states, "... to facilitate the development of the commercial high technology industry." Every governmental entity, including the counties, has its mission to accomplish. Each would like to be unrestricted to respond quickly to meet the needs of the public or the people they serve. The procurement code provides a fair and equitable process to award contracts.

The procurement code provides for those situations or procurements that cannot be procured within the procurement code, in the form of exemptions. A Chief Procurement Officer (CPO) exemption is for a specific, defined procurement that is neither practicable nor advantageous to competitively procure pursuant to Chapter 103D, HRS. In order to obtain a CPO exemption, your agency will need to justify and provide details for the following:

- Identify the type of purchases (goods/services) that cannot be obtained under the procurement code. HTIC should be able to use SPO price and vendor list, and comply with the SPO procurement requirements for your organizations daily operations (i.e. office supplies, computers, routine maintenance services, etc.) (What does your organization need to buy that cannot be procured via competition?);
- Identify the procurement process(s) that would hinder your organization (i.e. public notice, vendor compliance with statutes, protest process, etc.)
- Provide documentation describing how procurement by competitive means is either not practicable or advantageous to the State for this specific purchase(s).
- Provide details of the process or procedures to be followed in contractor selection to ensure maximum fair and open competition as practicable. If your procurement procedures are available, provide a copy.
- What are your agency internal controls and approval requirements for the procurement?

Your request (PE-06-036-J) is denied. You may re-submit SPO Form-7, for the SPO to reevaluate your request, based upon the CPO exemption requirements. Please include a copy of HTIC internal procurement policies and procedures to be followed in lieu of complying with Chapter 103D.

Please call me at 587-4700 should you have questions on this matter, or your staff may contact Justin Fo at 586-0577.

State Procurement Office
Notice of and Request for Exemption
From Chapter 103D, HRS

8. Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State: Continuation from page 1.

HTIC will be entering into agreements that require specific technical skill sets. Research and scientific skill sets are extremely narrow and focused and are not always able to be competitively bid. Strategic partnerships are not bid; rather they are cultivated through due diligence and agreement of mutual objectives. There may be situations in which these strategic partnerships will require contracting with specifically desired service providers.

Procurement policies and procedures must be timely and responsive to achieve our goals and objectives to facilitate the development of the commercial high technology industry. Many emerging research and technology companies, foundations, endowments, and corporations or foreign governments are not familiar with the State's procurement process as a whole or with what looks to them like a myriad of rules, regulations and directives that State agencies must comply with, thus they will lose interest quickly if HTIC is unable to respond in a timely manner. Business opportunities may be lost if this State entity cannot keep up with the expected timelines of its partnering organization.

HTIC needs to be operated as efficiently as private sector companies to maximize the purpose of establishing this not-for-profit entity. Much of the bureaucracy of filling out forms, seeking multiple approvals or exemptions, and timeline to fulfill 103D bidding requirements will only replicate a slow acting sector of the government.

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

In its recent hearings on procurement, the special legislative task force requested that HTDC provide a copy of its internal procurement policy and procedure manual to member Representatives Nakasone and Herkes for review. As a result of this review, Representative Nakasone recommended that the Hawaii Tourism Authority, which already has an exemption from 103D, contact HTDC to obtain a copy of HTDC's manual because of its thorough and complete process for managing procurement. HTIC will use this manual and processes as appropriate in managing its procurement activities. Further any future changes to Chapter 103D will become part of HTDC's internal contracts manual and the spirit of these policy changes will be followed, and respective procedures will be adopted as appropriate.

In general, good business practices will be followed and HTIC will be responsible for obtaining price comparatives for goods and services that are readily available through several vendors. Price quotes will be obtained for specialized services if possible but HTIC may sole source for services when it is impractical or unbeneficial to the State to seek competitive bids or when competitive bid procedures have been exhausted or when qualified vendors are simply not available to the State. A competitive bid process will be developed by HTIC that is responsive to the needs of the organization.

Routine purchases:

HTIC will first look at vendors on the price list but may deviate if more advantageous pricing can be obtained elsewhere.

Price quotes or bids will be solicited when possible for items that in aggregate do not exceed \$500, but is not required. Price quotes or bids will be solicited for items that in aggregate exceed \$500.

Documentation in file will justify sole source selection of a vendor or circumstances in which quotes or bids were not feasible to obtain. Two levels of approvals will be necessary for purchases. The appropriate project or program manager, and the Controller or President will need to approve purchases. In the scheduled absence of either the Controller or President, a third party may be assigned authority by the President.

Major Purchases:

HTIC shall provide written scope of work and solicit written price quotes from a minimum of three vendors. Justification is required to document a sole source selection of a vendor for circumstances in which quotes or bids are not feasible to obtain. The project or program manager, and Controller or President will need to approve major purchases. The President may delegate this authority.

Contracted Services:

HTIC shall seek written responses to requests for bids or proposals from a minimum of three vendors unless services are to be contracted through a sole source. Justification is required to document sole source selection of a vendor. The project or program manager, and Controller or President will need to approve the purchase. The Board will give final approval to enter into major contracts with the selected vendors. The Board may delegate this authority to the President.