'06 APR -5 A10:41

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

1. TO: Chief Procurement Officer

2. FROM: Dept. of Budget & Finance; Financial Administration Division
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:
Consultant services are needed to assist the State of Hawaii, Budget and Finance in finding a replacement Third Party Administrator (TPA) for the TuitionEDGE program, the State's section 529 college savings program. The current TPA has informed the State that it does not intend to renew its contract for another five years when the present five year contract expires in March 2007. During the past 5 years, the investment options for college savings programs have undergone significant changes. The State lacks in-house expertise to review the changes and formulate an RFP to retain the services of a new TPA. The services to be provided include: review the current "bundled" structure of the program; recommend whether the State should retain the current structure, have an open architecture structure, or a combination of both; assist the State in drafting an RFP for a replacement TPA; assist the State in reviewing the proposals received in response to the RFP; interviewing at least the top three respondents and selecting a replacement TPA and investment products; assist the State in negotiating and drafting the contract with the selected TPA; assist the State in transitioning the program from the current TPA to the new TPA; and provide other services reasonably requested by the State to seamlessly transfer the program.

4. Name of Vendor: Mercer Investment Consulting Address: One Union Square 600 University Street, Suite 3200 Seattle, WA 98101	5. Price: ~~$90,000~~ Amend to "0" see 4/24/06 memorandum
6. Term of Contract: From: March 2006 To: March 2007	7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State:
The State has less than a year to issue an RFP to find a replacement TPA for the TuitionEDGE program and ensure a seamless transition to the new TPA and maintain the fiscal integrity of the TuitionEDGE program. The present TPA has not yet indicated how much longer beyond the March 2007 end date it is willing to continue to manage the program.

Please see attachment for a detailed timetable.

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:
B&F has determined that competition is not practicable due to the time constraints as detailed in #8 above. The State presently uses the services of Mercer for the State's Section 457 deferred compensation plan because of their expertise in selecting a TPA and investment options. Mercer was selected after a competitive bid process and has provided satisfactory services under its present contract. Mercer also has expertise in the college savings program area and has agreed to provide the services with the understanding that time is of the essence.

 11. P.E. No. 06-61-J

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

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

The contract for services will be drafted by the deputy attorney general assigned to this program. Both B&F and the AG's office will be monitoring the delivery of services as outlined in the contract. Monitoring of the services rendered throughout the contract period will be the priority given the short time frame to: issue the RFP to obtain the services of a new TPA for the State's Section 529 program; review the offerors' responses; and begin the transition process as close to the March 26, 2007 date as possible.

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	
Georgina K. Kawamura	Director	☒ Approval	☐ Administration
Scott Kami	Administrator	☐ Approval	☒ Administration
Rodney J. Tam	Deputy Attorney General	☐ Approval	☒ Administration
Kay T. Ewaliko	Program/Budget Analysis Manager	☐ Approval	☒ Administration
		☐ Approval	☐ Administration
		☐ Approval	☐ Administration

13. Direct inquiries to:

Department: Budget and Finance
Contact Name: Scott Kami
Phone Number: 586-1612
Fax Number: 586-1644

Agency shall ensure adherence to applicable administrative and statutory requirements

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

Georgina K Kawamura

Department Head

APR 4 2006

Date

Reserved for SPO Use Only

15 .Date Notice Posted 4/7/06

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

11. P.E. No. 06-61-J

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

Chief Procurement Officer's comments:

This approval is for the solicitation process only, section 103D-310(c), HRS, and section 3-122-112, HAR, shall apply.

16. [X] **APPROVED** [ ] **DISAPPROVED**

Aaron S. Fujioka 4/26/06

Chief Procurement Officer Date

 11. P.E. No. 06-61-J

structure would best serve the interests of the State and Program participants. It is anticipated that this review process will take between two to four months.

The State also wants the financial consultant to assist the State in drafting the necessary RFPs. If the State decides to keep the Program "bundled", one RFP will have to be drafted. If the State decides to "unbundle" the Program, at least two RFPs will have to be drafted (one for TPA services and one for the investment products). Drafting the RFPs may take several months.

The financial consultant will also be asked to assist the State in evaluating the proposals and negotiating the terms of the proposals. Depending on how the Program will be structured and how many investment products will be offered to Program participants, there may be multiple contracts to execute (e.g., if the Program is "unbundled", separate contracts will have to be entered into with the replacement TPA and each of the investment product providers). This part of the process is anticipated to take several months.

Furthermore, the financial consultant will assist the State in overseeing and monitoring the transition of assets from the current TPA to the replacement TPA and new investment products. This part of the process will be the most time consuming because the replacement TPA will be required to establish an office in the State, establish new accounts, interface with the investment products, create new Program materials, have the assets transferred to the new investment products, etc. Regardless of the Program's structure and the types of investment products offered, the State may require the replacement TPA to seek a private letter ruling from the Internal Revenue Service to ensure that the new Program complies with section 529 of the Code. Depending on the types of investment products provided, the State may also require the replacement TPA to obtain the approval of the Securities Exchange Commission and/or Federal Deposit Insurance Corporation. It is anticipated that this part of the process will take between three to six months (for your information, the current TPA estimates that it will take six months to just transition the assets to the new TPA and investment products).

Based on the foregoing, it is highly optimistic that the replacement TPA and investment products will be selected and the assets transferred within the short timeframe. Requiring the State to issue a separate RFP in order to obtain the services of a financial consultant before engaging in the process described above will make it virtually impossible to meet the March 2007 deadline.

The State proposes to use Mercer because Mercer is one of the leading/premier investment and financial consulting firms in the country. Mercer is very familiar with section 529 programs and has expertise in evaluating and recommending investment products to the State. The State's Deferred Compensation Plan ("**DCP**") currently uses Mercer. Mercer has assisted the DCP in obtaining a new TPA, "unbundling" the DCP, and selecting new investment products. Because of Mercer's involvement with the DCP, Mercer is very familiar with the State's procurement process.

Based on all of the above, it is not practicable or advantageous to the State to procure financial consultant services by competitive means. On the contrary, granting an exemption from procurement to hire Mercer is practicable given the extremely short deadline and the fact that the State only intends to use Mercer until the assets are successfully transferred to the new TPA and investment products; thereafter, the State will issue an RFP if the State decides to hire a financial consultant on retainer. Granting the exemption will also be advantageous to the State and Program participants because the services and expertise of one of the leading investment/financial consulting firms in the country will be used to assist the State during this extremely complex transition process.

Timeline Attachment - Revised March 21, 2006

Timetable for Transitioning to a New Third Party Administrator (TPA) for the TuitionEDGE Program

Target Date	Task/Milestone
March 26, 2007	First day of contract with new TPA
March 25, 2007	Last day of contract with current TPA
March 1 - May 31, 2007	Transition period for TuitionEDGE to move from current TPA to new TPA
December 19, 2006 - February 28, 2007	Contract negotiations with new TPA
November 2 - December 18, 2006	Consultant reviews responses to RFP; provides summary; provides its assessment of top three respondents; State selects new TPA
November 1, 2006	Due date for responses to RFP
September 1, 2006	RFP issued to obtain the services of a TPA for TuitionEDGE
August 1 - August 31, 2006	Formulation of RFP
June 1 -July 31, 2006	Consultant reviews current "bundled" structure of TuitionEDGE; make recommendations on whether the State should retain the current structure, go "unbundled" or devise a structure that is a combination of the two. State reviews consultant's recommendations, makes decision on which configuration to follow, directs consultant to draft RFP accordingly.
March - May 31, 2006	DBF negotiates contract with consultant to provide services to assist the State in issuing an RFP to find a new TPA for TuitionEDGE
March 29, 2006 (approximate)	DBF seeks SPO's approval to be exempt from the Procurement Code to hire a consultant because time is of the essence (section 103D-102(b)(4)(L), HRS)

March 9, 2006	Current TPA agrees to fund the proposed consultant contract to assist the State in finding a new TPA to manage TuitionEDGE
March 8, 2006	Governor approves request to obtain the services of a consultant
February 17, 2006	DBF transmits letter to current TPA acknowledging receipt of letter of intent to end contract on March 25, 2007; included in letter is the proposed scope of services to be provided by the consultant to be paid by fees that the current TPA would have been spending on a financial consultant as per their agreement with the State.
January 19 - February 16, 2006	DBF negotiates scope of services with consultant to assist the State in reviewing TuitionEDGE, make recommendations as to whether the present plan should continue as is or be a combination of offerings, assist in the preparation of an RFP to obtain the services of a new TPA, assist the State in reviewing the responses to the RFP, recommend three top respondents, assist the State during the transition from the current to new TPA, and provide other services as may be reasonably requested by the State.
January 18, 2006	DBF receives written notification dated January 18, 2006 (via facsimile) that the current TPA will elect to terminate the agreement to manage TuitionEDGE on March 25, 2007

LINDA LINGLE
GOVERNOR

'06 APR 25 P3:55

GEORGINA K. KAWAMURA
DIRECTOR

STANLEY SHIRAKI
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION

April 24, 2006

ADMINISTRATION
STATE PROCUREMENT OFFICE
STATE OF HAWAII

'06 APR 25 P3:05

MEMORANDUM

TO: Mr. Aaron Fujioka, Chief Procurement Officer
Department of Accounting and General Services

FROM: Scott Kami, Administrator
Financial Administration Division

SUBJECT: Additional Information Regarding the "Notice and Request for Exemption from Chapter 103D, HRS" for Services Pertaining to the State's College Savings Program

This Memorandum further clarifies some of the information provided in Form SPO-07, entitled "Notice and Request for Exemption from Chapter 103D, HRS" ("**Notice**"), that was filed with the State's Procurement Office on or about April 7, 2006. The Notice requests an exemption to hire an independent financial consultant for the State's College Savings Program ("**Program**"). The Program is authorized under Hawaii Revised Statutes chapter 256 and allows participants to save for college expenses and receive the favorable tax benefits provided to such programs under section 529 of the Internal Revenue Code ("**Code**").

As described in the Notice, the State has a contract with a Third Party Administrator ("**TPA**") to provide both TPA services and the investment products to Program participants. The current contract expires in March 2007, and the current TPA has indicated that it does not want to renew the contract.

The State would like to hire Mercer Investment Consulting, Inc. ("**Mercer**") to (among other things) assist the State in evaluating the current structure of the Program, modifying the Program in the best interest of the State and Program participants, drafting an RFP (or RFPs), selecting a replacement TPA and investment products, and transitioning the Program's assets to the new investment products. Because the State has less than one year to find a replacement TPA and transition the Program assets to the new investment products, the State is requesting an exemption to hire Mercer immediately.

The following information clarifies and supplements the Notice filed on April 7, 2006:

Item 5: Price:

This amount should be changed from "$90,000" to "$0" because no State funds will be used to fund Mercer's contract with the State. The $90,000 figure is an estimate of the amount of fees that Mercer will charge to provide the necessary financial consultant services. The current TPA will be solely responsible for paying these fees.

Under the current five-year contract with the TPA, $30,000 is set aside each year to fund financial consultant services. To date, no funds have been expended. Thus, the current TPA has agreed to pay the estimated $90,000 needed for the financial consultant services. It is proposed that Mercer will be paid during the middle of the project, and after a replacement TPA has been contracted with and the Program's assets have been successfully transferred to the replacement TPA. Mercer will invoice the State, and the State will immediately forward the invoices to the current TPA for prompt payment directly back to Mercer. Thus, no State or general funds will be used to pay Mercer.

Item 8: Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State.

Because the current TPA does not want to renew the contract in March 2007 and has indicated that they do not want to stay much beyond this date, the State has less than one year to effectively replace the TPA. Given this extremely short time period, there is insufficient time to issue an RFP for a financial consultant, have the financial consultant review the Program and make recommendations to the State, issue RFPs for a replacement TPA and investment products, and transition the records and assets to the replacement TPA and new investment products, respectively.

Section 529 programs across the country have changed dramatically since the time our Program was established in 2002. In the beginning, a significant majority of states had "bundled" programs like ours (i.e., the same entity provided TPA services and the investment products to the state). Over time, there has been a shift to "unbundle" these plans (i.e., have separate entities provide the TPA services and investment products). This "unbundling" is also referred to as "open architecture".

The State wants to hire a financial consultant to review the Program's structure, compare it to other states, and make recommendations on whether to keep the same "bundled" structure, move to an "unbundled" structure, or implement some combination of the two. The State lacks the expertise to conduct this review on its own. Because both the TPA and investment products need to be replaced, and the State will have to essentially establish a new plan from scratch, the State needs assistance to determine which type of