

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

04 MAR -9 A10:51

TO: Chief Procurement Officer
 FROM: Attorney General
 (Department/Division Agency)

STATE PROCUREMENT OFFICE
 STATE OF HAWAII

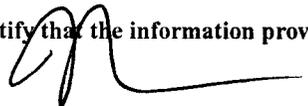
Pursuant to § 103D-102(b)(5), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

Description of goods, services, or construction: Legal Services as Bond Counsel in connection with the issuance sale and delivery of approximately \$55,130,000 Harbor System, Refunding Revenue Bonds to refund Harbor System Refunding Revenue Bonds, Series of 1993 and Harbor System Revenue Bonds, Series of 1994 ("Bonds"), including advising the State of Hawaii with respect to its rights, duties and obligations in connection with the transaction; requirements of the Internal Revenue Code; exemption from federal taxation of interest on the bonds; and related matters.		
Vendor: Craig Scully, Esq.	Cost: \$55,000.00 fixed fee, plus a cap on reimbursable out-of-pocket costs of \$5,000.00	Term of Contract: From: Upon CPO Approval To: June 30, 2005
Explaining describing how procurement by competitive means is either not practicable or not advantageous to the State: <p>Mr. Scully and his firm are nationally recognized bond counsel. National recognition of bond counsel expertise is important because the recognition means that the individual and his or her firm have the requisite breadth and depth of knowledge and expertise in the area and have substantial backup and resources to respond to the kinds of issues that would arise in complicated bond transactions. Mr. Scully has served as bond counsel to the State in numerous transactions, including serving as bond counsel on the Harbor System Revenue Bonds, Series 1997, which closed on April 3, 1997, and the Harbor System Revenue Bonds, Series A and B of 2002, which closed on April 10, 2002. Because of his prior experience with similar transactions and with the Harbors Division of the Department of Transportation, Mr. Scully is well versed in the kinds of issues that arise in financings related to Harbors, is familiar with how the State operates, and has been efficient and effective in representing the State's interests. There are only a few local bond counsel (and only two are nationally recognized), but none of them have ever been engaged by the State to serve as bond counsel on these types of transactions. Consequently, hiring local counsel would not be practicable or advantageous to the State. In 2003, the legislature amended Hawaii Revised Statutes, chapter 103D, the State Procurement Code. While Mr. Scully's firm could obtain a certificate of good standing from its home state, and could conceivably establish a local office, if that were required, the local office could not perform the services required by the contract unless it is staffed by someone who is licensed to practice law in Hawaii. The statute, together with the personal nature of the services of bond counsel, would require Mr. Scully himself to apply for, take, and pass the Hawaii bar examination and become licensed to practice law in Hawaii. Becoming licensed to practice law in Hawaii is costly and time consuming. Moreover, because the bar exam is given only twice a year, it is impractical to require nationally recognized bond counsel to be licensed in Hawaii. Not only would the local staff have to be licensed to practice law in Hawaii, but also they would have to have bond counsel expertise and experience. As stated above, there are only two firms in Hawaii that have some national recognition as bond counsel, but hiring these firms would not be practicable or advantageous to the State when more experienced bond counsel is available.</p> <p>Because of the specialized nature of bond counsel services and the need to obtain services from nationally recognized bond counsel, and because of Mr. Scully's past experience, it would not be practicable or advantageous to the State to obtain those services competitively.</p>		

Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable: Due to the highly specialized nature of the work required, and his past experience of successfully performing such work for the State, the Attorney General and the Department of Budget and Finance and the Department of Transportation (the using agency) would like to retain Mr. Scully for this project over other nationally recognized bond counsel.	
A description of the agency's internal controls and approval requirements for the exemption procurement: The contract for legal services will be conducted under the supervision of the Attorney General and subject to his final approval.	
A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract: Attorney General	
Direct questions to: Mark J. Bennett, Attorney General	Phone Number: (808) 586-1500

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

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



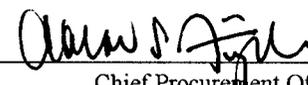
MAR 05 2004

 Date

_____ Department/Agency Head

Chief Procurement Officer's Comments: Approval is granted, with the understanding that the contractor will comply with §103D-310(c) of Act 52 DOTAX and DLIR requirements.
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Please ensure adherence to applicable administrative requirements.

Approved _____ Denied
 
 _____ 3/18/04
 Chief Procurement Officer Date

cc: Administrator
 State Procurement

