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

1. TO: Chief Procurement Officer  
2. FROM: DBEDT/NELHA/CEROS

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:

Concept development and demonstration of ocean technologies and applied ocean sciences for military maritime purposes under the National Defense Center of Excellence for Research in Ocean Sciences (CEROS). This program is funded solely by federal funds under a Cooperative Agreement presently being negotiated with the Defense Advanced Project Agency (DARPA). No STATE general funds are utilized in this program. See attachment A, Sections 1: Introduction; and Section 2: Funding Source for additional details.

4. Name of Vendor: Various - to be determined  
Address:

5. Price:  
\$Up to \$6M

6. Term of Contract: From: May, 2007 To: Nov 2008

7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State: Project procurements are to be conducted competitively in accordance with: (1) terms & conditions of the FY07 CEROS/DARPA Cooperative Agreement (presently being negotiated); (2) CEROS Operational Plan, Feb 2002; and, (3) CEROS Procurement Plan, revised Mar 2002. The CEROS Procurement Plan, prepared by CEROS and approved by DARPA as a condition of contract funding, establishes the solicitation process & project awards for the FY07 program. Procurement methods, though NOT meeting Chapter 103D, HRS requirements, still ensures competition & fairness. Furthermore, DARPA has been satisfied with CEROS competitive process since 1993. Procurement under 103D, HRS can NOT satisfy the terms of the CEROS/DARPA Cooperative Agreement, and CEROS funding is jeopardized unless the program receives the requested exemption. Attachment A provides additional information. See Attachment A Sections 3-4 for additional details.

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

See Attachment A, Section 5: Stakeholders & Oversight; and, Section 6: Selection Process

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

The procurement will be conducted in accordance with the CEROS/DARPA Cooperative Agreement. The Solicitation will be prepared by CEROS and approved by DARPA. The CEROS Research Advisory Board (RAB) will recommend projects for funding and DARPA will provide approval. The NELHA Board of Directors will be briefed of the RAB/DARPA recommendations and will authorize CEROS to enter into negotiations and, if successful, enter into STATE contracts for the recommended projects. See Attachment A, Section 5: Stakeholders & Oversight; and, Section 6: Selection Process for additional details.

**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                       |                                                    |
|---------------|--------------------------|----------------------------------------------|----------------------------------------------------|
| NELHA         | BOARD OF DIRECTORS       | <input checked="" type="checkbox"/> Approval | <input type="checkbox"/> Administration            |
| BRYAN YEE     | ASSIST ATTORNEY GENERAL  | <input checked="" type="checkbox"/> Approval | <input type="checkbox"/> Administration            |
| DONNA MAU     | CEROS CONTRACTS & GRANTS | <input type="checkbox"/> Approval            | <input checked="" type="checkbox"/> Administration |
| RICHARD HESS  | CEROS TECHNICAL DIRECTOR | <input checked="" type="checkbox"/> Approval | <input type="checkbox"/> Administration            |
| LELAND FAUSAK | CEROS RESEARCH ADMIN     | <input type="checkbox"/> Approval            | <input checked="" type="checkbox"/> Administration |
|               |                          | <input type="checkbox"/> Approval            | <input type="checkbox"/> Administration            |

13. Direct inquiries to: Department: CEROS  
 Contact Name: DONNA MAU  
 Phone Number: 808 587-5500  
 Fax Number: 808 587 5505

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.*

*Richard Hess*

*22 Nov 2006*

Department Head

Date

**Reserved for SPO Use Only**

15. Date Notice Posted *11/22/06*

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

Chief Procurement Officer's comments:

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

16.

APPROVED     DISAPPROVED     NO ACTION REQUIRED

*Adrian S. Fajal*    *11/29/06*  
 Chief Procurement Officer    Date

# Attachment A to Request for Exemption from Chapter 103D, HRS

*EXECUTIVE SUMMARY: CEROS is included in the FY07 Federal Defense Appropriations Bill and is designated to receive approx. \$6M in fund and is presently negotiating the next DARPA Cooperative Agreement expected to be signed in Jan 2007. The 'Exemption from Chapter 103D' is required to set in motion actions required to meet possible FY07 contractual obligations in the Spring/Summer of 2007. This request provides support documentation for 'Exemption From Chapter 103D' with: descriptions of the background, funding source, stakeholders, mission, business approach, unique aspects of the CEROS program, the limitations of the CEROS/DARPA cooperative agreement, selection process and project management process.*

## TABLE OF CONTENTS

1. INTRODUCTION
2. FUNDING SOURCE
3. UNIQUE ASPECTS OF THE CEROS PROGRAM
4. CEROS/DARPA COOPERATIVE AGREEMENT LIMITATIONS
5. STAKEHOLDERS & OVERSIGHT
6. SELECTION PROCESS
7. MANAGEMENT PROCESS

### 1. INTRODUCTION

- a. Background: The National Defense Center of Excellence for Research in Ocean Sciences (CEROS) was established by federal legislation which specified establishment within an attached agency of the State of Hawaii (initially HTDC then NELHA in 1996) to be funded through the Defense Advanced Research Projects Agency (DARPA).
- b. Mission: The federal legislation further stipulated CEROS is to conduct research and development activities of interest to the Department of Defense on such topics as ocean environment preservation technology, new ship hull design concepts, shallow water surveillance technologies, ocean measurement instrumentation, and the unique properties of the deep ocean environment.
- c. Business Approach: From the start, CEROS was able to take advantage of the flexibility afforded by the attached agencies' exemption from chapter 103D, HRS to fulfill the conditions and intent of the enabling legislation. In accordance with the DARPA agreement, which provides annual federal funding, the CEROS program developed an approach to technical project selection and funding that addressed federal maritime military technical requirements while supporting sustained technology-based economic development in Hawai'i. A detailed outline of the CEROS procurement cycle follows.

2. FUNDING SOURCE: CEROS is annually funded by federal Defense Appropriations funds routed through the Defense Advanced Research Projects Agency. Because there is substantial involvement by DARPA, a Cooperative Agreement is used as the contract vehicle. In the past, CEROS has received funding in the \$5-7M/year range. In FY07 approx \$5.5M has been designated for CEROS. The new proposed DARPA/CEROS Cooperative Agreement will deal with FY07 funds and is expected to be similar to the historic agreements.

### 3. UNIQUE ASPECTS OF THE CEROS PROGRAM

## Attachment A to Request for Exemption from Chapter 103D, HRS

- a. Project Selection: In accordance with the DARPA agreement, the vehicle that funds the program, the CEROS project selection process reflects the federal Department of Defense program development template for soliciting and selecting advanced science and technology projects for funding. Essentially, the federal process:
  - i. solicits broadly,
  - ii. winnows responses through serial evaluations, and
  - iii. negotiates final contract terms and conditions.
- b. Instead of selecting from many candidates for a specific, predetermined technical end product (as in the State's RFP process), CEROS:
  - i. Issues a broad solicitation which is a competition of ideas, not end items;
  - ii. employs a candidate selection process based on technical and military programmatic criteria rather than cost alone; and,
  - iii. negotiates the final technical scope and cost of projects funded.
- c. Process Summary: Under the CEROS program, initial responses to the solicitation proceed through a process of evaluation and selection which yields a group of 20 to 30 specific projects that are candidates for final negotiations and funding. The key steps are:
  - i. CEROS Research Advisory Board (RAB), an advisory panel, after reviewing technical evaluations and specific recommendations from Department of Defense S&T experts, recommends candidate projects.
  - ii. DARPA is consulted regarding the RAB recommendations and provides guidance on the technical worthiness of candidate proposals, knowledge of similar previous or ongoing efforts and feedback as needed. If necessary, the RAB is re-consulted with DARPA input.
  - iii. NELHA Board of Directors are briefed on the RAB/DARPA recommendations and requested to provide permission to negotiate contracts.
  - iv. The individual final technical statements of work and funding amount are negotiated by CEROS personnel for each recommended project until all available funding is committed.
  - v. CEROS personnel then administer contract development to assure timely contract execution and technical project initiation.

#### 4. CEROS/DARPA COOPERATIVE AGREEMENT LIMITATIONS

- a. CEROS is presently negotiating a new Cooperative Agreement with DARPA. The last agreement (MDA972-02-2-0002) was executed in 2002. The agreement was amended annually to fund the CEROS program in response to annual appropriations for the CEROS program in the Department of Defense budget.
  - i. Renewal discussions indicate DARPA expects CEROS to continue to execute a program in the manner of the federal BAA process as a condition of continued funding under the cooperative agreement.
  - ii. If the new procurement process to be specified in the new agreement with DARPA cannot be completed with an exemption from the State Procurement Code, FY07 funding for CEROS will be jeopardized.
- b. The historic CEROS procurement process was developed with guidance from DARPA to satisfy the intent of Congress; the process is timely and cost-effective

# Attachment A to Request for Exemption from Chapter 103D, HRS

and codified in the cooperative agreement between DARPA and NELHA. The new proposed agreement is expected to be similar.

- c. The historic agreement specified project solicitations analogous to federal Broad Agency Announcements (BAA) and selection criteria emphasizing near-term, tangible technical results and deliverables. The new proposed agreement is expected to be similar.
  - d. The historic agreement provided guideline criteria for project selection and states that "The CEROS Research Advisory Board will oversee the review, evaluation and selection of proposed work submitted to CEROS." These provisions assure high quality technical products and overall program breadth. The new proposed agreement is expected to be similar, but with the inclusion of DARPA input.
5. **STAKEHOLDERS & OVERSIGHT:** CEROS receives guidance & direction, oversight, funding, technical priorities, R&D collaboration, project requirements & shared funding, hand-off & project transition and administrative support from many groups:

| Stakeholder                                                              | Guidance, direction                 | Technology Evaluation & Assessment  | Over-sight                          | Funding                             | Set technical priorities            | R&D collaboration                   | Project requirements & shared funding | Hand-off & project transition       | Admin support                       |
|--------------------------------------------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|---------------------------------------|-------------------------------------|-------------------------------------|
| Office of Senator Dan Inouye                                             | <input checked="" type="checkbox"/> |                                     |                                     | <input checked="" type="checkbox"/> |                                     |                                     |                                       |                                     |                                     |
| State of Hawaii Department of Business, Economic Development and Tourism | <input checked="" type="checkbox"/> |                                     | <input checked="" type="checkbox"/> |                                     |                                     |                                     |                                       |                                     | <input checked="" type="checkbox"/> |
| State of Hawaii Attorney General                                         | <input checked="" type="checkbox"/> |                                     | <input checked="" type="checkbox"/> |                                     |                                     |                                     |                                       |                                     | <input checked="" type="checkbox"/> |
| The Natural Energy Laboratory of the Hawaii Authority Board of Directors | <input checked="" type="checkbox"/> |                                     | <input checked="" type="checkbox"/> |                                     |                                     |                                     |                                       |                                     | <input checked="" type="checkbox"/> |
| DARPA                                                                    | <input checked="" type="checkbox"/> |                                     |                                       | <input checked="" type="checkbox"/> |                                     |
| Military Commands & DoD Agencies                                         |                                     |                                     |                                     |                                     |                                     |                                     | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> |                                     |
| CEROS Research Advisory Board                                            |                                     | <input checked="" type="checkbox"/> |                                     |                                     |                                     |                                     |                                       |                                     |                                     |
| Evaluation Team (Paid & Military)                                        |                                     | <input checked="" type="checkbox"/> |                                     |                                     |                                     |                                     |                                       |                                     |                                     |
| HI High Technology Community                                             |                                     |                                     |                                     |                                     |                                     | <input checked="" type="checkbox"/> |                                       |                                     |                                     |

6. **SELECTION PROCESS:** the following 20-steps describe the major events that must be completed to ensure a fair and unbiased process.

| EVENT # | EVENT DESCRIPTION & REMARKS                                                                                          | AMOUNT OF TIME REQUIRED TO COMPLETE | APPROX. COMPLETION TIME |
|---------|----------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------|
| 1       | Identify technical needs & potential project concepts of interest to DoD commands.                                   | Months                              | FALL                    |
| 2       | CEROS Informational Briefing: DoD commands & CEROS present information in preparation for the upcoming solicitation. | 2-days                              | FALL                    |

## Attachment A to Request for Exemption from Chapter 103D, HRS

| EVENT # | EVENT DESCRIPTION & REMARKS                                                                                                                                                                           | AMOUNT OF TIME REQUIRED TO COMPLETE | APPROX. COMPLETION TIME     |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-----------------------------|
| 3       | CEROS negotiates with STATE for procurement exemption                                                                                                                                                 | TBD                                 | FALL                        |
| 4       | CEROS issues solicitation Posted on online at: <a href="http://www2.hawaii.gov/bidapps/">www2.hawaii.gov/bidapps/</a> and <a href="http://www.ceros.org">www.ceros.org</a>                            | Days                                | FALL<br>_ days after #3     |
| 5       | Technology Providers submit Project Concept White Papers <sup>1</sup> (5-page project abstracts) to a secure server.                                                                                  | 4-Weeks                             | WINTER<br>(approx. Dec/Jan) |
| 6       | Project Concept White Papers evaluated <sup>2</sup> by: (1) paid technical consultants <sup>3</sup> and (2) DOD military and civilian personal experts <sup>4</sup> in fields addressed in proposals. | 4-Weeks                             | WINTER<br>(approx. Jan/Feb) |
| 7       | CEROS Research Advisory Board (RAB) reviews evaluations and select projects for full proposals <sup>5</sup> .                                                                                         | 1-Day                               | WINTER<br>(approx. Feb)     |
| 8       | DARPA Consultations <sup>6</sup>                                                                                                                                                                      | 2-3 Days                            | WINTER<br>(approx. Feb)     |

<sup>1</sup> 80-100 submissions received by deadline in recent years. Typically, total funding request = 5-10X funds available; each proposed project has a unique result.

<sup>2</sup> Evaluations based on 5 KEY CRITERIA to winnow the best and most appropriate concepts from the less suitable submissions: (1) maritime military technical quality (20% of final score); (2) relevance and importance (20%); (3) for approach and capabilities (20%); (4) anticipated benefits and transition potential (20%); and, (5) cost and budget (20%). Each review contains a numeric score and specific recommendation for action. Each review also contains comments on each evaluation criterion and summary comments on the overall evaluation and recommendation. Tabulations are conducted on a secure server with automated tabulation.

<sup>3</sup> Paid technical evaluators, with military technical expertise and high-level technical program management experience, recommend either 'Invite Full Proposal' or 'Do Not Invite Full Proposal' based on criteria in the solicitation.

<sup>4</sup> DoD expert evaluators recommend and rank projects for 'Full Proposal' according to relevance and importance of the proposed work to specific command technical needs.

<sup>5</sup> RAB considers both the technical evaluations and the DoD expert recommendations and rankings to ID the most technically promising and militarily relevant submissions. RAB recommends a roster of projects for invitation to submit full technical proposals.

<sup>6</sup> DARPA is consulted regarding the RAB recommendations and provides guidance on the technical worthiness of candidate proposals, knowledge of similar previous or ongoing efforts and feedback as needed. If necessary, the RAB is re-consulted with DARPA input.

## Attachment A to Request for Exemption from Chapter 103D, HRS

| EVENT # | EVENT DESCRIPTION & REMARKS                                                                                                                                                                                                                                                                                                                                     | AMOUNT OF TIME REQUIRED TO COMPLETE | APPROX. COMPLETION TIME |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------|
| 9       | CEROS notifies each principal investigator <sup>7</sup> of the RAB recommendation (Yes/No) and provides instructions for preparation and submission of full technical and cost proposals for recommended projects.<br>Projects NOT recommended for a full technical proposal receive no further consideration for funding under the solicitation <sup>8</sup> . | 2-3 Days                            | WINTER<br>(approx. Feb) |
| 10      | Full technical proposals containing: (1) Technical Project Summary; (2) Technical Project Description and Justification <sup>9</sup> and, (3) Detailed Cost Proposal <sup>10</sup> are submitted. Proposal provides technical detail to justify the project's technical claims, methods and costs.                                                              | 4-weeks                             | WINTER<br>(approx. Mar) |
| 11      | Proposal evaluated <sup>11</sup> by paid technical consultants & DOD Military & Civilian Expert Team. Results are reported out to an automated Secure Server <sup>12</sup> for tabulation, scoring & future reference.                                                                                                                                          | 5-weeks                             | SPRING (approx<br>Apr)  |
| 12      | CEROS RAB reviews proposal evaluations, recommends projects for funding <sup>13</sup> , and sets technical & cost negotiation targets.                                                                                                                                                                                                                          | 1-2 days                            | SPRING (approx<br>Apr)  |

<sup>7</sup> There is NO preset limit on # of projects or total funding requested by selected projects. Typically, RAB recommends 20-30 projects for full proposals with a total request for funding around 2 times the anticipated funds available.

<sup>8</sup> If requested, CEROS provides feedback, comments or recommendations from the abstract review to both the companies preparing full proposals and those NOT SELECTED.

<sup>9</sup> 'Technical Project Description' consists of a cover page and sections describing the project's technical objectives, technical rationale, expected results, approach to the technical problem, background and a discussion section to establish the context for the project and justify its importance. Proposed work has a base period of performance of 6 to 12 months, but options to extend the period of performance for up to 12 additional months may be included in proposals.

<sup>10</sup> 'Cost Summary' consists of a cover page and breakdowns of the following basic cost elements by task, as applicable for a firm fixed-price level of effort contract: materials and services, direct labor, indirect costs, other costs and facilities capital cost of money. The Cost Summary also includes letters of agreement or intent from principal subcontractors, technical consultants, or planned collaborators who may play key roles in executing the proposed effort

<sup>11</sup> Technical Evaluation is conducted for: (1) maritime military technical quality (20% of final score); (2) relevance and importance (20%); (3) for approach and capabilities (20%); (4) anticipated benefits and transition potential (20%); and, (5) cost and budget (20%).

<sup>12</sup> Each review contains a numeric score and specific recommendation for action: Fund essentially as proposed; or Fund with suggested limitations or modifications; or Reconsider for funding if additional funding becomes available; or Do not consider for funding – Reject. Each review also contains comments on each evaluation criterion and summary comments on the overall evaluation and recommendation.

<sup>13</sup> RAB may recommend all, part or none of a particular proposal for funding based on reviewers' evaluations, recommendations and comments. In the end, the RAB recommends a Core technical program that maximizes technical return from the proposed projects by identifying "best value" for the funding available.

## Attachment A to Request for Exemption from Chapter 103D, HRS

| EVENT # | EVENT DESCRIPTION & REMARKS                                                                                                                                                                                                 | AMOUNT OF TIME REQUIRED TO COMPLETE | APPROX. COMPLETION TIME  |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------|
| 13      | DARPA consultations <sup>14</sup>                                                                                                                                                                                           | 1-2 days                            | SPRING (approx Apr)      |
| 14      | CEROS Technical Director: (1) briefs the NELHA Board of Directors on the RAB/DARPA recommendations; and, (2) requests approval to enter into negotiations, and, if successful, into contracts for the recommended projects. | 1-day                               | SPRING (approx May)      |
| 15      | NELHA BoD authorizes negotiations with selected offerors                                                                                                                                                                    | 1-day                               | SPRING (approx May)      |
| 16      | CEROS notifies each principal investigator <sup>15</sup> of RAB/DARPA recommendations and NELHA BOD decision (i.e., proceed to negotiations or not recommended).                                                            | 1-2 days                            | SPRING (approx May)      |
| 17      | Proposal Provider Oral Presentations                                                                                                                                                                                        | 1-2 days                            | SPRING (approx Apr)      |
| 18      | CEROS Technical Director and Contracts and Grants Administrator negotiate: Scope & Funding; and, Terms & Conditions for recommended projects.                                                                               | 3-4 months                          | SUMMER (approx. Jun-Sep) |
| 19      | CEROS Contracts & Grants Administrator prepares contracts, coordinates review and execution, and submits for encumbrance                                                                                                    | 3-4 months                          | SUMMER (approx. Jun-Sep) |
| 20      | Project Work Begins                                                                                                                                                                                                         | 3-4 months                          | SUMMER (approx. Jun-Sep) |

7. **MANAGEMENT PROCESS:** CEROS personnel administer contract development throughout the life of the contract to assure timely contract execution, oversight, and technical excellence. Efforts include, but are not limited to:
- a. Identification and inclusion of DoD and other government stakeholders as project mentors and transition partners
  - b. Conducting formal contract kick-off discussions, mid-project reviews and final reviews
  - c. Conducting periodic site visits at industry partners facilities and consultations with all stakeholders
  - d. Reviewing and approval of reports required for all tasks and products of the effort.

<sup>14</sup> DARPA is consulted regarding the RAB recommendations and provides guidance on the technical worthiness of candidate proposals, knowledge of similar previous or ongoing efforts and feedback as needed. If necessary, the RAB is re-consulted with DARPA input.

<sup>15</sup> CEROS provides instructions for negotiations and requests that recommended offerors schedule a date for negotiations. Projects not recommended for negotiations or funding can request a debriefing on their proposal.