



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

1. TO: Chief Procurement Officer

2. FROM: Major General Robert G. F. Lee, Adjutant General

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:

To procure and deliver equipment and inventory of items using U.S. Department of Homeland Security (DHS) funds for approved homeland security initiatives for State and County response agencies to a terrorism/catastrophic event. Equipment requirements include personal protective clothing, communications interoperability, explosive device mitigation and remediation, chemical, biological, radiological, nuclear, and high explosive (CBRNE) operational and search and rescue equipment, information technology, cyber-security enhancement, detection, decontamination, medical supplies and limited types of pharmaceuticals, power equipment, CBRNE reference materials, terrorism incident prevention equipment, inspection and screening systems, physical security enhancement equipment, agricultural terrorism prevention, response and mitigation equipment, CBRNE logistical support equipment, and intervention equipment. Vendors must obtain and certify that products have been DHS approved for suitability for purchase under these grant funds.

4. Name of Vendor: Arkansas NASPO
Address: OPEN

5. Price:
\$OPEN

6. Term of Contract: From: On CPO Appr. To: 01/01/08

7. Prior Exemption Ref. No.
0

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

Each sub-grantee must follow each grant years' guidance for allowable expenditures. Each purchase must be aligned to the Implementation Strategy for Hawaii Homeland Security goals and objectives. Each sub-grantee has an approved detailed budget worksheet that is aligned with a strategy reference number tied to the state implementation strategy. The detailed budget worksheet and equipment purchases are available for review by DHS Grants and Training. Approved detailed budget worksheets are developed and maintained by the State Department of Defense Civil Defense Division and the sub-grantee. Based on the standardized purchasing listing derived by DHS, required equipment and supplies are ordered by the sub-grantee and delivered to the agencies. State Civil Defense maintains up to 15 sub-grantees which include the four Counties, State Departments of Public Safety, Attorney General, Agriculture, Land and Natural Resources, Health and Transportation and limited private sector agencies that include the American Red Cross and the Healthcare Association of Hawaii.

The grant guidance is very specific and use defined program funding with specific categories for which funds can be used. There are seven program funds under the homeland security grant program: Homeland Security, Law Enforcement Terrorism Protection, Citizen Corps, Urban Areas Security Initiative, Metropolitan Medical Response, Buffer Zone Protection Systems, and Transit Security.

DOD has been awarded multiple grants for the purposes of increasing the State's security measures and our ability to respond to terrorist attacks and/or catastrophic disasters. These grants include a variety of uses, including planning, equipment, training, and exercises. The grants are specific and limited to the purposes and equipment that were included in the grant guidance and award. The range of equipment that is eligible under the grant is extensive and specifications are usually complex. Since the grants have set time frames for the use of the funds and are subject to changes that reflect current threat climates, normal procurement process may result in a situation where the vendor may not be able to deliver required goods and services on time leaving the State vulnerable to unforeseen threats. Furthermore, the delay will cause the State and counties to lose the use of Federal funds due to the expiration of grant performance periods.

Each grant has its own specific guidance and no two grants have used the same guidance since the program began except for the requirement that 80 percent of the funds must be distributed to the county jurisdictions. All expenditures are on a

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

reimbursable basis regardless of the sub-grantee (state or county) requiring purchases to be made with budget funds and then reimbursed with grant moneys. The grant funds over the years have put a strain on state and county financial, procurement, inventory control systems, and monitoring. State sub-grantees may have a more difficult time than the counties in having sufficient funding to satisfy the grant requirements. While the four counties have continued to see a generous share of the homeland security allocations, none have adequate funding to hire a sole grants administrator – only the City and County of Honolulu. In addition, all expenditures regardless of the program require the sub-grantee to have the funds available to purchase the equipment and then request a reimbursement. The entire draw down process and reimbursement takes on an average of 35 days, which impedes the payment which is due and owing in 15 to 30 days. The sub-grantee cannot wait until it is reimbursed to pay the bill. With the 2005 grant, the State grantee was given the authority to obtain an advance, but the advance cannot be used to meet purchase requirements for another grant. As such, the advantages of the limited advance are not really solving the problem with available cash to purchase with or reimbursement. The benefit of the advance serves only the FY 2005 requirements. The Arkansas NASPO allows the State Civil Defense to request the purchase order on behalf of the sub-grantee and make payment on their behalf from their allocation.

From FY 2000 to FY 2006 the State of Hawaii has received approximately \$100M in funding. These funds have significantly improved the readiness of county jurisdictions and several of the State agencies involved in terrorism, weapons of mass destruction, CBRNE mitigation. As each sub-grantee begins to expend FY 2005 and FY 2006 funds, the State will begin to see a significant increase in interoperable communications for our public safety agencies, cyber and network protection, protection of critical infrastructure, personal protection, and in many other areas.

FY 2003 parts I and II grants were just closed; FY 2004 has \$5M remaining. We have requested three extensions just for this grant. We have seen that virtually all representatives from the sub-grantee agencies working these grants are the same individuals who are responsible for law enforcement, fire management, emergency medical, etc. and that they frequently use the Arkansas NASPO late at night. It is clear that these individuals are on their own time when they are able to work on acquisitions under the grants. The Arkansas NASPO provides one additional avenue for purchasing, but it is not the only way nor should it be the sole purchasing procedure used by sub-grantee agencies. Rather a system that individuals can use to support immediate requirements helps in drawing down the funds as quickly as possible.

Because of the number of extensions the State has requested for each grant, DHS has been critical for what seems to be a lack of focus on expending the grant funds. Our sub-grantees take the grants seriously and work with a myriad of programs to satisfy requirements. The Arkansas NASPO is just one means to help.

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

The National Association of State Procurement Officials (NASPO) organized the Arkansas NASPO under the auspices of prime vendors to solicit and obtain bids for the procurement of approved Homeland Security Equipment at prices that are competitive. The process was used by the Defense Logistics Agency and was transferred to the Arkansas NASPO. The State of Arkansas solicited and obtained bids from three companies to procure equipment. Hawaii was not involved in the selection of the prime vendor and has no control over the selection of the prime vendor. In order to make sure purchases under the Arkansas NASPO are fair and open, we will contact the three companies and work with the company that can execute our purchase requirements within the deadlines required in the most cost-effective manner. We also plan to request that Hawaii participate in the selection of the next prime vendor when it is time to reselect a prime vendor.

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

Each purchase (based on an approved detail budget worksheet) is initiated by the responsible individual at the sub-grantee level and is approved in accordance with the sub-grantee agencies' approval hierarchy before submission to the State Dept of Defense, Civil Defense Division, Homeland Security Grant Section for approval and processing. The Homeland Security Grant Coordinator reviews each order to determine that the purchases are in accordance with the grant guidance, the state strategy, and the detail budget worksheet. For the Arkansas NASPO purchases, the purchase requisition is then submitted to the DOD Fiscal Services Section, which reviews the order, determines the availability of funds and assigns a Purchase Order number. The Fiscal Officer then authenticates the Purchase Order and the order is then submitted to the vendor.

Grant funding for purchases cannot be co-mingled, thus the integrity of the strategy reference number is used as cross reference to ensure that funds are being properly identify and managed.

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	
Edward T. Teixeira	Vice Director of Civil Defense	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Dolores Cook	Homeland Security Coordinator	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
William Moore	Accountant	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
Thomas T. Moriyasu	Departmental Fiscal Officer	<input checked="" type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration

13. Direct inquiries to: Department: Department of Defense
 Contact Name: Thomas T. Moriyasu
 Phone Number: 733-4259
 Fax Number: 733-4237

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.*

refer to 4/13/07 memorandum from Director of Civil Defense to SPO Administrator et

 Department Head Date

Reserved for SPO Use Only

15. Date Notice Posted 4/17/07

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 re-submittal does not provide any new substantial justification that affects our decision to disapprove the prior request. Our memorandum of May 4, 2007 provided our understanding of the U.S. Department of Homeland Security Grants Program. Since no information to dispute this understanding was received, our prior determination remains unchanged. HRS Chapter 103D, provides for an immediate procurement process for situations where an agency determines that there is a real or potential threat to homeland security. Should there be any assistance required or questions, please contact our office.

16. APPROVED DISAPPROVED NO ACTION REQUIRED

Alana S. Fujish 6/8/07
 Chief Procurement Officer Date

LINDA LINGLE
GOVERNOR

MAJOR GENERAL ROBERT G. F. LEE
DIRECTOR OF CIVIL DEFENSE

EDWARD T. TEIXEIRA
VICE DIRECTOR OF CIVIL DEFENSE



PHONE (808) 733-4300
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STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE DIRECTOR OF CIVIL DEFENSE
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

April 13, 2007

Mr. Aaron Fujioka
Procurement Administrator
State Procurement Office
1151 Punchbowl Street, #230A
Honolulu, Hawaii 96813

Dear Mr. Fujioka:

Materials for your Support Team!

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

Thank you for the meeting on April 10, 2007, to discuss the procurement exemption for the use of the Arkansas National Association for Procurement Officials (NASPO) and the Prime Vendor Program for the State of Hawaii.

Based on the discussions please see the attached State Procurement Office Notice of and Request for Exemption from Chapter 103D, HRS. Request your review and approval for an exemption based on the information contained in the attachment. The importance of this program and successful execution of the Homeland Security Grants Program cannot be over emphasized.

If additional information is needed, please have your staff contact Ms. Dolores Cook, State Civil Defense, at 733-4301 extension 542, or email dcook@scd.hawaii.gov.

Sincerely,

ROBERT G. F. LEE
Major General, HING
Director of Civil Defense

Attchs.

c: Mr. Tom Moriyasu, Fiscal Officer
Department of Defense

Mr. Mike Vincent, Deputy Attorney General
Department of the Attorney General

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
LESLIE S. CHINEN
DARYLE ANN HO
GREGORY L. KING
RUSS K. SAITO

AARON S. FUJIOKA
ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

SPO 07-0271

May 4, 2007

MEMORANDUM

TO: Robert G.F. Lee, Major General, HING
Director of Civil Defense
Department of Defense

FROM: Aaron S. Fujioka 

SUBJECT: Notice of and Request for Exemption From Chapter 103D, HRS,
to Participate in the Arkansas NASPO Cooperative Contract for
Approved Homeland Security Initiatives
Ref: SPO No. P.E. 07-097-C

A preliminary review of the subject request for exemption from chapter 103D, HRS, was completed based on information contained in the request, conversations and an e-mail received from Ms. Dolores Cook. In reviewing this request, it is likely to be disapproved for the following reasons:

- The U.S. Department of Homeland Security Grants Program (Program) requirements are similar to other federally funded programs that adhere to HRS chapter 103D to procure goods, services, and construction. We understand the counties only utilize the Arkansas cooperative contract for about 25% of their procurements under this Program.
- The Program's equipment and supplies are of a routine nature and the sub-grantees do not require these purchases to be expedited or acquired in an urgent manner. We have confirmed that the sub-grantees are aware that if they encounter a homeland security situation that requires an expedited procurement, they may utilize the emergency procurement method under HRS section 103D-307 which would immediately allow the obtaining of goods, services or construction.
- There is no overwhelming need to allow an exception to participate in a cooperative agreement that does not comply with the requirements of HRS chapter 103D. Similar requests by other agencies to participate in cooperative agreements that did not comply with procurement statutes have been denied. There is a fairness issue since other vendors are not provided an opportunity to participate.

- Although the Arkansas cooperative contract provided for the use of various vendors, utilizing only the prime vendor has raised questions as to whether the pricing received was reasonable. Rebecca O'Neal, contract administrator for the Arkansas cooperative contract, advised that the best pricing was not being afforded to Hawaii, and the use of another vendor could show a significant cost savings if the end users conducted price comparisons before they placed orders for the needed items. In addition, the prime vendor has been utilized to provide equipment and supplies as "add ons" even when they were not the awarded vendor and at questionable pricing.
- We are not aware of any special conditions or restrictions that prevents sub-grantees from adhering to the procurement code. There is sufficient amount of time for sub-grantees to plan and utilize an appropriate procurement selection process.
- The demands of the Program and the prior use of the prime vendor have not improved the sub-grantees ability to spend the allotted funds in a timely manner as evidenced by the fact that the FY 2004 grant has \$5 million remaining.
- With the recent establishment of a process for sub-grantees to obtain advancement of funds commencing with the FY 2005 purchases, there is sufficient time to process vendor payments. If necessary, sub-grantees can choose to request up to ninety (90) days advancement of funds.

I would appreciate any comments or corrections to our statements before taking final action on this request.

If you have any questions, please call me at 587-4700, or your staff may contact Colin Tanaka at 586-0558.