



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

1. TO: Chief Procurement Officer
2. FROM: Kevin B. Cronin, Procurement Officer, Office of Elections

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 goods sought are the lease; delivery; installation; testing; and a secure, accurate, and consistent paper ballot, handicapped accessible, and central counter voting, vote tallying and vote counting system and full service component consisting of, but not limited, to storage of all hardware, training of election personnel, maintenance, printing of ballots, and conformance testing.

4. Name of Vendor: Hart InterCivic, Inc,
Address: 15500 Wells Port Dr.
Austin, TX 78708-0649

5. Price:
\$ 8,990,811.06

6. Term of Contract: From: 5/8/08 To: 12/31/08

7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:

Haw. Rev. Stat. §12-2 requires the state to conduct a statewide primary election on September 20, 2008. Haw. Const. Art. II, § 8, and U.S. Const. Art II, § 1, obligate the state to conduct a statewide election on November 4, 2008. The elections may not be postponed for any reason other than a declared natural disaster. Haw. Rev. Stat. §11-92.3.

Because of the pending protest of RFP-06-047-SW, ESS v. Cronin, PCH-2008-3, the state of Hawaii does not have a voting system to conduct the September 20 primary election and the November 4 general election in place. The first voting activity consisting of absentee mail and walk is less than four months from this request. See attached memorandum and attachments.

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

The vendor was selected to provide the DRE voting and vote counting component of the election system deployed for the 2004 and 2006 elections. Voters are familiar with the system. The eligible vendors have been vetted through the RFP process resulting in an appeal of the selection of Hart and protracted delays that may reasonably result in a decision on the merits no earlier than June 7 and perhaps later in June. As PO, Cronin has performed a cost and price analysis that concludes Hart's voting equipment system is a reasonable price and ESS's system offers functional deficiencies not acceptable to the state. See the PO's cost and price analysis attached.

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

The county laws and state and federal statutory and constitutional laws and guidelines mandate state deployment of voting and vote counting systems that comply with specific county, state, and federal requirements. The OE in its RFP has developed and established the specifications to acquire a voting equipment system that results in Hart's system's selection as the one that best meets the state's citizens' needs consistent with county, state, and federal requirements.

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
Kevin B. Cronin	procurement officer	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
	chief election officer	<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to: Department: Office of Elections
 Contact Name: Kevin B. Cronin
 Phone Number: 453-8683
 Fax Number: 453-6006

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.*

Kevin Cronin

May 9, 2008

Department Head

Date

Reserved for SPO Use Only
15. Date Notice Posted <u>5/12/08</u>
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: <p align="center">See attached CPO Comments.</p>

16.

APPROVED DISAPPROVED NO ACTION REQUIRED

Andrew S. Fyler 5/16/08
 Chief Procurement Officer Date

May 16, 2008

CPO Comments:

Notice of and Request for Exemption from Chapter 103D, HRS, (PE-08-126-B)
Hawaii Leased Voting Equipment System

The following summarizes our understanding of the events to date:

- 9/3/07 - RFP 06-047-SW for New Leased Voting Equipment System for 2008 to 2016 Elections was issued by the Office of Elections (OE). Evaluation of the proposals were conducted and notice of award was issued to Hart Intercivic, Inc. (Hart) on 1/31/08;
- 2/20/08 - Election Systems & Software, Inc. (ES&S) protest of the award was received by OE;
- 2/20/08 - OE submitted to the State Procurement Office (SPO) a request for SPO to waive the protest stay. OE subsequently amended the request on 3/5/08 and 4/4/08; however, no action was taken by SPO due to mutual agreement;
- 4/8/08 - OE submitted to SPO an amended request to waive the protest stay stating that "... OE's drop dead date to begin 2008 fall election preparations is April 15, 2008." The SPO's 4/11/08 approval of the request to waive the protest stay was based on the OE's representation that April 15, 2008 was the 'drop dead' date to protect the substantial State interests; and avoid jeopardizing an orderly primary and general election;
- Concurrently the protest process continued through the Department of Commerce and Consumer Affairs' administrative hearings process, that subsequently resulted in an Agreement signed by all the parties, OE, Hart, and ES&S (attachment 10 of PE-08-126-B); and
- 5/7/08 – Among other things, the Agreement required OE to rescind its 1/31/08 notice of award and to conduct a cost or price analysis.

SPO Findings:

OE signed the 5/7/08 Agreement, negating OE's representation in its 4/8/08 request, and containing conditions, dates and timeline that shall be complied with. Any approval of this exemption at this time would be an act of bad faith by allowing OE to circumvent the signed Agreement.

Therefore, this request for exemption is denied.