



JUL 15 2008

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

1. TO: Chief Procurement Officer

2. FROM: Micah A. Kane

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:

Architectural services to design residential homes on the Department of Hawaiian Home Lands projects located on the islands of Hawaii (Panaewa and Kaumana), Kauai (Kekaha Residence Lots Unit 4) and Lanai (Lanai Scattered Lots).

4. Name of Vendor: Robert C. Smelker Associates  
Address: P.O. Box 25638, Honolulu, HI 96825-0638

5. Price:  
\$25,000.00

6. Term of Contract: From: 05/25/08 To: 12/30/08

7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:  
See Attachment 1

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:  
The Department of Hawaiian Home Lands (DHHL) will hire Robert C. Smelker Associates to perform the work. Robert C. Smelker Associates was retained by Menehune Development to perform architectural professional services for projects on Department of Hawaiian Home Lands: Kaumana and Panaewa (Hawaii); Lanai Scattered Lots (Lanai); and Kekaha Residence Lots Unit 4 (Kauai). The architectural plans are about 90 per cent completed. DHHL would like to negotiate with Robert C. Smelker Associates on the fees and the remaining scope of work. If these negotiations are not successful, DHHL proposes to buy the copyright of the house plans and procure another architect to complete the design.

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

1. Exemption procurement approved by the Chief Procurement Officer.
2. Contract negotiations with Robert C. Smelker Associates.
3. Contract awarded to Robert C. Smelker Associates.
4. Contract is drafted and approved by AG.
5. Contract signed by Contractor.
6. Contract signed by DHHL Chairman, Hawaiian Homes Commission

**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
Micah A. Kane	Chairman	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Kamana'o Mills	Special Assistant	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Larry Sumida	LDD Administrator	<input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Kamuela Cobb-Adams	Homestead Dev. Coordinator	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Royden Ishii	HHL Engineer	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Stewart Matsunaga	Master-Plan Community Dev. Mgr.	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration

13. Direct inquiries to:	Department: Hawaiian Home Lands Contact Name: Kamana'o Mills Phone Number: 620-9508 Fax Number: 620-9299
--------------------------	---

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.*

  
 \_\_\_\_\_  
 Department Head

MAY 15 2008  
 \_\_\_\_\_  
 Date

Reserved for SPO Use Only	
15. Date Notice Posted	<u>5/19/08</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: <p align="center">                     Chief Procurement Officer                      State Procurement Office                      P.O. Box 119                      Honolulu, Hawaii 96810-0119                 </p>	
Chief Procurement Officer's comments: <p align="center">                     This request is approved based on the DHHL's representation that the design plans are 90% completed and it would not be feasible to hire another contractor. This situation is related to the bankruptcy filing of a DHHL contractor involved with this project.                 </p> <p align="center">                     This approval is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply.                 </p>	

16.  APPROVED     DISAPPROVED     NO ACTION REQUIRED

  
 \_\_\_\_\_  
 Chief Procurement Officer      Date 5/27/08

Attachment 1

Procurement Exemption for Architectural Professional Services  
Robert Smelker Associates

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

This request for procurement exemption has been prepared to finance and build homes directly impacted from Menehune Development Company's (MDC) inability to complete the construction of homes on Hawaiian Home Lands.

Over the past few years, the MDC was in the process of building homes on three islands, Hawaii, Lanai and Kauai. On Monday, November 26, 2007, the MDC notified the Department of Hawaiian Home Lands (DHHL) they would not be able to complete the houses it was contracted to build. On Friday, November 30, 2007, the MDC notified the bonding company, Hardware Hawaii, Inc., of the same.

For those lessees with a "performance" bond, Hardware Hawaii will complete the construction of those homes in accordance with the construction contract. DHHL will be working alongside beneficiaries to assure the bonding company fulfills their construction obligations. If there is a discrepancy between the bonding company and the beneficiary, DHHL will evaluate whether or not DHHL should intervene.

For those lessees without a "performance" bond, Hardware Hawaii is not obligated to complete these homes. Therefore, DHHL as an option desires to build the lessees' homes at the amount of the lessees' construction contracts. In addition, DHHL will treat this project like our master plan community projects where the builder is obligated to DHHL and the "performance" bond and interim financing obligations are between the DHHL and the contractor. The lessees will have no legal or financial obligation until the homes are completed.

Given that some lessees have already waited over two years for their home, any extension of the project using normal procurement methods will result in families having to wait even longer for their homes to be completed.

Regarding the Kaumana, Panaewa, Lanai Scattered Lots and Kekaha Residence Lots Unit 4 projects, MDC hired an architect to perform architectural professional services at these projects. The firm was in the midst of performing work at these projects when MDC filed bankruptcy. DHHL therefore recommends that DHHL enter into direct contractual agreement with the aforementioned architect to complete work already performed for these projects.