



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

09 SEP 29 AM 11:11

1. TO: Chief Procurement Officer
 2. FROM: Attorney 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: Legal services in connection with review of, and recommendation of revisions to, the Employees' Retirement System's pension plan to insure compliance with the Internal Revenue Code and in connection with the submission of the pension plan to the Internal Revenue Service for a determination letter confirming that the plan satisfies the relevant requirements of the Internal Revenue Code.			
4. Name of Vendor: J. Thomas Maloney, Esq. Address: Pacific Tower, Suite 2200 1001 Bishop Street Honolulu, Hawaii 96813		5. Price: \$155,000 (estimate)	
6. Term of Contract:	From: Later of (1) CPO Approval or (2) October 1, 2008 <u>CA</u>	To: June 30, 2009	7. Prior Exemption Ref. No. (If applicable)
8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State: Mr. Maloney is a partner in the Carlsmith Ball LLP law firm. The Carlsmith law firm was retained to provide legal services to the Employees' Retirement System (ERS). Mr. Maloney will be leaving the Carlsmith law firm to form his own firm. The ERS and the Attorney General would like to continue to retain the services of Mr. Maloney. The Carlsmith Ball law firm was retained to provide legal services to the ERS relating to federal pension tax matters affecting the ERS. The law firm was originally retained on the basis of the qualifications of John Khil, another partner in the firm. However, during the course of the contractual relationship with the law firm, Mr. Maloney has become the primary attorney providing services under the contract. Tax law relating to public pension plans is a highly specialized field. The consequences of non-compliance with the applicable tax law are severe: loss of the plan's tax exempt status or large monetary penalties. Pension tax counsel must not only have a thorough knowledge and understanding of applicable federal tax law, but must also be very familiar with the operations of the ERS and the provisions of State law governing the ERS. In the more than four years during which Mr. Maloney has advised the ERS, he has demonstrated that he has the requisite knowledge, understanding and familiarity. Mr. Maloney's services have been timely and responsive. Mr. Khil has the requisite knowledge and understanding of the applicable federal tax law; however, Mr. Khil acknowledges that no one at the Carlsmith Ball firm has the level of familiarity with the ERS that Mr. Maloney has. Once Mr. Maloney leaves the Carlsmith Ball firm, it is not likely that the firm will be able to continue to provide the level of service that Mr. Maloney has provided to the ERS. At the request of the ERS, the Attorney General intends to enter into a contract with Mr. Maloney, for the balance of the Carlsmith Ball contract term and compensation, on the same terms and conditions (including scope) as the Carlsmith Ball contract. (The Carlsmith Ball contract provides for very favorable hourly rates for the personnel providing services: \$250 per hour for Mr. Maloney and Mr. Khil. Their regular hourly rate is \$360.) The Carlsmith Ball contract will not be terminated; however the compensation limit of the contract will be reduced. The reduction in the Carlsmith Ball contract compensation limit will be to an amount approximately \$5,000 more than the compensation payable as of the date of transfer of responsibilities to Mr. Maloney's new firm. The Carlsmith Ball contract will not be terminated or assigned to Mr. Maloney because it is in the best interests of the ERS to continue to have Mr. Khil available for limited consultation purposes at the reduced hourly rate provided by the contract.			

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

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

The contract with the Carlsmith Ball firm was entered into in accordance with the procedures for procurement of professional services under HRS § 103D-304. The contract with Mr. Maloney will be on the same terms and conditions, including cost, as the contract with the Carlsmith Ball firm. The compensation limit for the Carlsmith Ball contract will be reduced by the amount of the compensation limit for Mr. Maloney's contract.

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

The original contract for legal services was conducted under the supervision of the Attorney General and was subject to his approval. The new contract will be subject to the Attorney General's final approval.

12. A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:

Name	Position	Involvement in Process	
Mark Bennett	Attorney General	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Diane Kishimoto	Deputy Attorney General	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
David Shimabukuro	Administrator, ERS	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration

13. Direct questions to: Department: **Attorney General**
 Contact name: **Diane Kishimoto**
 Phone Number: **(808) 586-0618**
 Fax Number: **(808) 586-1372**

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.

SEP 26 2008

Department Head

Date

Reserve for SPO Use Only

15. Date Notice Posted 10/1/08

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

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

Chief Procurement Officer's Comments:

This approval is based on the AG's determination that it would be advantageous for the State to utilize this attorney based on his prior experience as the primary pension tax counsel providing legal services to the ERS. 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

Oliver S. Fyler 10/9/08
Chief Procurement Officer Date