



## 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:

<p>3. Description of goods, services or construction:</p> <p>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 Cooperative Agreement HR0011-07-2-0005 between the Defense Advanced Research Projects Agency (DARPA) and the Natural Energy Laboratory of Hawaii Authority (NELHA). No STATE general funds are utilized in this program.</p>	
<p>4. Name of Vendor: Various - to be determined</p> <p>Address:</p>	<p>5. Price:</p> <p style="text-align: center;">\$Up to \$10M</p>
<p>6. Term of Contract: From: June 2009 To: Dec 2010</p>	<p>7. Prior Exemption Ref. No. 08-064-J</p>
<p>8. Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State:</p> <p>Project procurements are to be conducted competitively in accordance with the terms and conditions of the DARPA/NELHA Cooperative Agreement HR0011-07-2-0005. Although the selection process does not follow Chapter 103D, HRS requirements, the process still ensures fair and open competition. Furthermore, DARPA has been satisfied with CEROS competitive process since 1993. Procurement under Chapter 103D, HRS can NOT satisfy the terms of the DARPA/NELHA Cooperative Agreement, and CEROS FY2009 funding is jeopardized unless the program receives the requested exemption. See Attachment A for additional details.</p>	
<p>9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:</p> <p>See Attachment A.</p>	
<p>10. A description of the agency's internal controls and approval requirements for the exempted procurement:</p> <p>The exempted procurement will be conducted in accordance with the DARPA/NELHA Cooperative Agreement. The Solicitation will be prepared by CEROS and approved by DARPA. The CEROS Technical Director will recommend projects for funding and DARPA will be consulted. The NELHA Board of Directors will be briefed of the CEROS recommendations and will authorize CEROS to enter into negotiations and, if successful, enter into State contracts for the recommended projects. See Attachment A for additional details.</p>	

**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	DEPUTY 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
DONNA MAU	ACTING 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
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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

**NOV 07 2008**

Date

Reserved for SPO Use Only	
	15. Date Notice Posted <u>11/10/08</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 approval is based on NELHA's representation that federal requirements of the grant does not allow adherence to HRS Chapter 103D.                 </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


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 Chief Procurement Officer                      Date 11/18/08

# Attachment A to Notice of and Request for Exemption from Chapter 103D, HRS (SPO Form-7)

*CEROS has received approval to expend approximately \$10 million in FY2009 Federal Defense Appropriations funds. The current Cooperative Agreement which funds the CEROS program is expected to be supplemented by that amount in early 2009. The accompanying 'Request for Exemption from Chapter 103D, HRS' is required to meet FY2009 contractual obligations of the CEROS program. This attachment provides supporting information about the CEROS program, the proposal evaluation and selection process, and the justification for an exemption.*

## 1. INTRODUCTION

- a. Background: The National Defense Center of Excellence for Research in Ocean Sciences (CEROS) was established in 1992 by federal legislation, which specified establishment in an agency of the State of Hawaii to be funded entirely with federal monies through the Defense Advanced Research Projects Agency (DARPA). CEROS exists within the Hawaii Department of Business, Economic Development, and Tourism (DBEDT), as it shares a common Board of Directors with the Natural Energy Laboratory of the Hawaii Authority (NELHA), an agency administratively attached to DBEDT. It is through NELHA that CEROS has its authority to issue contracts.
- b. Mission: The federal legislation stipulated that CEROS was to solicit and support innovative technologies for national maritime applications and sustained technology-based economic development in Hawai'i.
- c. Business Approach: Until 2005, CEROS operated under NELHA's exemption from competitive bidding to fulfill the conditions and intent of the enabling legislation. In accordance with the DARPA Cooperative Agreement, 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. Since 2005, when exemptions from competitive bidding were repealed, CEROS has requested and obtained an annual exemption from Chapter 103-D, HRS.

## 2. PROGRAM FUNDING

CEROS is funded annually by Federal Defense Appropriations funds through a cooperative agreement with DARPA. Since 1992, CEROS has received funding in the range of \$5-10 million per year. In FY2009, approximately \$10 million has been designated for CEROS. The current DARPA/NELHA Cooperative Agreement will be supplemented with the FY2009 funding.

## 3. UNIQUE ASPECTS OF THE CEROS PROGRAM

- a. Program Goals: CEROS supports innovative research within broad topic areas, and seeks new ideas, concepts, and processes that are generated by commercial companies. There is no specific product to be developed, and no common or well-defined scope of service that is requested from all competitors. Each proposal submitted to CEROS is unique, distinct, and different from others submitted at the same time.
- b. Selection Standards: In accordance with the DARPA agreement, the CEROS project selection process reflects the Department of Defense program development template for soliciting and selecting advanced science and technology projects for funding.

- c. Selection Process: Rather than selecting from multiple offerors for a specific, predetermined, and common work statement (as in the State's customary RFP process), CEROS:
  - i. issues a broad solicitation (similar to a federal Broad Agency Announcement),
  - ii. employs a candidate selection process based on technical and military programmatic criteria, and,
  - iii. negotiates the final technical scope and cost of projects funded.

**4. PROGRAM OVERSIGHT AND STAKEHOLDER PARTICIPATION**

CEROS benefits from the active cooperation and support of many agencies, groups, and individuals. CEROS receives guidance and direction, evaluation assistance, programmatic oversight, setting of technical priorities, research and development collaboration, project requirements and shared funding, project transition to advanced funding sources, and administrative support from the following:

Stakeholder	Guidance and direction	Evaluation & Assessment	Oversight	Technical priorities	R&D collaboration	Requirements; shared funding	Project transition	Administrative support
Office of Senator Daniel Inouye	<input checked="" type="checkbox"/>							
State of Hawaii DBEDT	<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"/>
NELHA 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"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Evaluation Team (military and contracted experts)		<input checked="" type="checkbox"/>						
Hawai'i High Technology Community					<input checked="" type="checkbox"/>			

**5. COOPERATIVE AGREEMENT BETWEEN DARPA AND NELHA**

- a. The CEROS procurement process was developed with guidance from DARPA to satisfy the intent of Congress. The process is timely and cost-effective, and is codified in the cooperative agreement between DARPA and NELHA, which emphasizes near-term and tangible technical results and deliverables.
- b. A Cooperative Agreement currently exists between DARPA and NELHA; it is intended to be supplemented annually with funding for the CEROS program in response to yearly appropriations for CEROS in the Department of Defense budget.
  - i. In FY2009, as in prior years, CEROS will execute a program similar to the federal BAA process as a condition of continued funding under the cooperative agreement.
  - ii. The FY2009 funding for CEROS is contingent upon the granting of an exemption from Chapter 103-D, HRS.

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

EVENT	DESCRIPTION	APPROX. DATES
1	Identify technical needs and potential project concepts of interest to DoD commands.	Fall 08
2	CEROS Industry Day briefing: DoD commands and CEROS present information in preparation for the upcoming solicitation.	Oct 08
3	CEROS requests exemption from STATE procurement process.	Oct 08
4	CEROS issues solicitation (posted online at <a href="http://www.hawaii.gov/bidapps">www.hawaii.gov/bidapps</a> and at <a href="http://www.ceros.org">www.ceros.org</a> ).	Nov 08
5	Offerors submit 6-page project abstracts to a secure server.	Dec 08
6	Abstracts evaluated by (1) technical consultants and (2) DoD military and civilian subject matter experts.	Jan 09
7	CEROS Technical Director reviews evaluations and recommends projects for full proposals.	Jan 09
8	DARPA consultation.	Jan 09
9	Abstract offerors notified of the CEROS decision; selected projects are provided Instructions for Preparation and Submission of Technical and Cost Proposals.	Jan 09
10	Full technical proposals are submitted; each contains technical and costs elements in accordance with the Instructions.	Feb 09
11	Proposal evaluated by (1) technical consultants and (2) DoD military and civilian subject matter experts.	Mar 09
12	CEROS Technical Director reviews proposal evaluations, recommends projects for funding, and sets technical and cost negotiation targets.	Mar 09
13	Discussions with offerors, if necessary, for clarification purposes.	Mar 09
14	DARPA consultation.	Mar 09
15	CEROS Technical Director: (1) briefs the NELHA Board of Directors on the project recommendations and (2) requests approval to enter into negotiations and into contracts for the selected projects.	Mar 09
16	CEROS notifies each offeror of the selection decision ( <i>i.e.</i> , selected for negotiations, or not selected).	Apr 09
17	CEROS staff negotiates Scope of Services, Compensation, and Terms and Conditions for selected projects.	Apr-May 09
18	CEROS staff prepares contracts, coordinates review and execution, and submits for encumbrance.	Jun-Jul 09
19	Project work begins.	Aug-Sep 09

## 7. SELECTION PROCESS DETAIL

- a. Process Overview: Responses to the annual Solicitation proceed through an iterative process of evaluation and selection which yields a final group of projects that are candidates for negotiations and funding. The key steps are:
  - i. Abstracts (limited to 6 pages in length) are received in response to the annual Solicitation; typically from 80 to 100 Abstracts are received.
  - ii. Abstracts are evaluated and ranked; a variable number (typically 25-35) are selected for invitation to submit full proposals.
  - iii. Full proposals are received from offerors and are evaluated and ranked in the same manner as the Abstracts.
  - iv. The CEROS Technical Director, after reviewing technical evaluations and comments from the Evaluation Team and Department of Defense S&T experts, recommends candidate projects for funding.
  - v. The NELHA Board of Directors is briefed on the CEROS recommendations and is requested to provide permission to negotiate and enter into contracts.
  - vi. The individual final technical statements of work and funding amounts are negotiated by CEROS staff for each recommended project until all available funding is committed.
  - vii. CEROS personnel then administer contract development to assure timely contract execution and technical project initiation.

- b. Abstract and Proposal evaluations: Evaluations are based on the following criteria which are listed in descending order of relative importance: (1) Overall Scientific and Technical Merit, (2) Realism of Work Plan and Schedule, (3) Offeror's Capabilities and Relevant Experience, (4) Plans and Capability to Accomplish Technology Transition, and (5) Cost Realism. These criteria are described in the Solicitation. Each reviewer provides comments on each evaluation criterion, along with overall evaluation and funding recommendation. Reviews are conducted and compiled on a secure server with automated tabulation.

Evaluations are done with the assistance of contracted independent technical evaluators who are recognized subject matter experts in their fields, and with DoD/military technical experts having high-level technical program management experience. The DoD/military expert evaluators recommend and rank projects according to relevance and importance of the proposed work to specific command technical needs. Evaluators are required to sign appropriate non-disclosure and conflict of interest statements.

- c. DARPA Consultation: The DARPA Program Manager and other DARPA representatives are consulted regarding the CEROS recommendations and also provide guidance on the technical worthiness of candidate proposals, knowledge of similar previous or ongoing efforts, and provide feedback as needed.
- d. Submission of Full Technical and Cost Proposals: Proposal are prepared and submitted in accordance with Instructions provided by CEROS to each selected offeror.

Technical Proposals describe the project's technical background and objectives, the existing state of knowledge, innovative approach to the technical problem, the expected results, and a task-based work plan and schedule. 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 (but with no assurance of future funding).

Cost Proposals provide detailed breakdowns of the cost elements by task, as applicable to a firm fixed-price, level of effort contract: materials and services, direct labor, indirect costs, travel and other direct other; and facilities capital cost of money. The Cost Proposal also includes letters of agreement or intent from principal subcontractors, technical consultants, or planned collaborators. No fee or profit is permitted on CEROS contracts.

- e. Role of the CEROS Technical Director: The CEROS Technical Director may recommend all, part, or none of a particular proposal for funding based on reviewers' evaluations, recommendations, and comments. The CEROS Technical Director recommends a Core technical program that maximizes technical return from the proposed projects by identifying "best value" to the State for the funding available.

**8. MANAGEMENT PROCESS:** CEROS personnel administer contract development throughout the life of the contract to assure timely contract execution, oversight, and technical excellence. Efforts include:

- 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 inspection of industry partners facilities;
- d. Conducting periodic consultations with all stakeholders; and
- e. Reviewing and approval of reports required for all tasks and products of the effort.