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

- 1. TO: Chief Procurement Officer
- 2. FROM: Department of Health/Tobacco Settlement Project

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 Department of Health requires investment, management and grant making services pursuant to HRS sec. 328L-5. Per HRS sec. 328L-2(b)(3) 12.5% of the tobacco settlement special fund shall be appropriated into the Hawaii tobacco prevention and control trust fund. These funds are to be established as a separate fund in a non-profit entity having a board of directors and qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The entity shall have a proven record of accomplishment in administering a similar trust fund. The Department also requires services to expend the trust fund for tobacco prevention and control. The trust fund to be invested and managed may also receive appropriations, contributions, grants, endowments, or gifts in cash or otherwise from any source, including State, corporations or other businesses, foundations, government, individuals, and other interested parties. The entity shall invest the aggregate principal sum deposited in the trust fund in a manner intended to maximize the rate of return on the investment of the trust fund consistent with the objective of preserving the trust fund's principal.

4. Name of Vendor: Hawaii Community Foundation Address: 1164 Bishop Street, Suite 800 Honolulu, Hawaii 96813	5. Price: \$75K to 100K/quarter
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6. Term of Contract: From: July 1, 2009 To: June 30, 2019	7. Prior Exemption Ref. No. PE-00-14 <i>62</i>
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8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:  
 The combined services of investing, managing the funds and expending for the purpose of tobacco prevention and control programs make it impracticable to work with other public foundations and would frustrate the ability of the State to meet the statutory requirements that created the Hawaii tobacco prevention and control trust fund. It would not be advantageous to the State to secure these services through a competitive process since foundations have specific and often narrow missions that do not allow for such an array of services and support tobacco prevention and control as statutorily required. Also, the State requests a ten year exemption since it would not be practicable to contract for a any shorter duration to set up and manage a diverse investment portfolio for the purpose of preseving the trust fund's principal and a shorter agreement would also frustrate the community grant making and monitoring program.

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:  
 Other foundations that meet the requirements of HRS sec. 328L-5, being a public foundation with a board of directors and formed as a 501(c)(3) of the Internal Revenue Code of 1986 as amended will be contacted and notified of the State's need of the services. These foundations will be asked a standard set of questions, and notified of the price range for establishing the tobacco prevention and control trust fund. The foundations will also be asked about their record of administering a similar trust fund, for setting up a tobacco investment screen, and capacity to support grantmaking for tobacco prevention and control, including but not limited to, reducing cigarette smoking, and tobacco use among youth and adults through education and enforcement activities, and controlling chronic diseases where tobacco is a risk factor. They will also be asked about their willingness to be a contractor and to follow instructions from the State.

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

10. A description of the agency's internal controls and approval requirements for the exempted procurement:  
 The Department of Health has sought guidance from the State Procurement Office in meeting the exempted procurement process. The Tobacco Settlement Project Manager is working under the guidance of the Deputy Director of Administration who administers the Department's Administrative Services Office and the Director of Health who administers the Tobacco Settlement Special Fund. The Tobacco Settlement Project is also relying on guidance from the Office of the Attorney General to meet the statutory requirements of HRS sec. 328-5 and 328L-2 that established the tobacco prevention and control trust fund.

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	
Chiyoume Leinaala Fukino	Director of Health	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Susan Jackson	Deputy Director of Administratio	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Sharon Abe	Administrative Services Officer	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Naomi Chinen	DOH Contract Specialist	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
Lola Irvin	Tobacco Settlement Project Mgr	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration

13. Direct inquiries to: Department: Health  
 Contact Name: Lola Irvin  
 Phone Number: 586-4488  
 Fax Number: 586-4491

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.*

*Susan Jackson*  
 for Department Head

Date 3/11/09

**Reserved for SPO Use Only**

15. Date Notice Posted 3/13/09

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:

Your request is disapproved as it lacks an explanation as to why the requested services cannot be obtained competitively, allowing interested parties an opportunity to fulfill the State's need. HRS Chapter 103D provides various procurement methods to insure open competition, where all potential providers are afforded an equal opportunity to compete for services required by the department. Complex specification, including the statutory requirements, may be included in the solicitation document along with the 10 year contract term.

16.

APPROVED  DISAPPROVED  NO ACTION REQUIRED

 4/28/09  
Chief Procurement Officer Date

**Amendment to SPO-7  
Request for Exemption from Chapter 103D, HRS**

**TO:** Chief Procurement Officer  
**FROM:** Department of Health/Tobacco Settlement Project

The Department provides this document as an amendment to the Form SPO-7, "Notice of and Request for Exemption from Chapter 103D, HRS," to provide more detail on the request.

**Section 3. Description of goods, services or construction:**

The scope of services required by the Department of Health (DOH) involves investing and managing the tobacco prevention and control trust fund, and expending the money for tobacco prevention and control. The DOH requires the contractor to develop an investment policy to preserve and grow the principle and provide quarterly reports on the investment performance of the trust fund. The contractor shall also assist and cooperate with the state for auditing and reporting on the trust fund.

The DOH also requires services to expend the funding through grant making. The contractor shall develop the community grant-making strategy including the evaluation plan of the grant activities. The contractor develops and manages the competitive request for proposals (RFP) and award making. There shall be technical assistance provided to community organizations. The contractor shall provide an annual report to the state on the status of all community grants and make periodic evaluation of the community grants program. The contractor may also make larger grant awards to support the comprehensive state tobacco prevention and control program. These include activities such as the tobacco quit line phone referral and counseling services, state and local coalitions, media and social marketing, and evaluations of these efforts. The contractor shall also submit an annual budget for all grant making activities.

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

Changing to another foundation to manage, invest and expend the trust fund would not be advantageous to the State. The statutory requirements and the practical considerations of investing, managing and expending the trust fund require breadth and depth in services and skills. The current investment is based on a 48 month market performance strategy to preserve and grow the trust fund. Reporting on the immediate value of the principle is complex since the investments are in diversified portfolios. HCF has been timely and responsive for State reporting requirements on the performance of the trust fund. On the community grants, HCF currently manages 37 grant awards. To assist with the success of the grantees, HCF conducted an assessment of need and is subsequently providing training workshops. They also manage the evaluation of the grantees through a subcontractor. HCF has been supportive of their staff increasing their knowledge and skills in the issue area. HCF has been meeting the complex requirements of the scope of work and there would be no advantage in engaging another organization.

Procurement by a competitive process would also not be practicable to the State. The DOH has had a contract with the Hawaii Community Foundation (HCF) since June 30, 2000.

The complexity of the scope of services would require at least two years of transition to wind down the investment strategy and the grant managing. The trust fund has an active contingent of stakeholders who rely on the fund. Another foundation would have a steep learning curve in learning the relationships of organizations to the history of the fund while also learning to meet the performance expectations. Bringing on another contractor would be highly impractical for the State given the nature of the work and relationships that need to be maintained.

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

The DOH Tobacco Settlement Project (TSP) conducted informal interviews using the stated procedures to inquire on the interest of other organizations to contract with the State for services. The TSP developed a draft list of interview questions on the interest and capacity of an organization to meet the requirements of 328L-5 HRS and the need of the DOH for services. These questions were reviewed and discussed with the Deputy Attorney General assigned to TSP and with the Deputy Director of Administration. Their revisions, comments and additions were incorporated into the final standard list of questions.

Three organizations that met the statutory criteria of being a nonprofit entity having a board of governors, qualifying under section 501(c)(3) of the Internal Revenue Code of 1986 was contacted. It should be noted that in a review of the largest grant giving organizations in Hawaii, many are private foundations. Amongst the largest foundations that are public, are the Hawaii Medical Services Association (HMSA) and the University of Hawaii Foundations. Cliff Cisco, Vice-President, of the HMSA Foundation stated that he understood the inquiry to ask about interest was necessary for state procurement processes but that they were not interested. Mr. Cisco said that the DOH should work with the HCF and that HCF was created especially to meet the needs of funds like the tobacco prevention and control trust fund. The questions were reviewed with the UH Foundation Director, Donna Vuchinich and Chief Financial Officer, Bill King. They took the questions to the board of directors to review the request; they responded it was outside of their mission. The third public foundation contacted was the Hawaii Justice Foundation. Robert Leclair reported their current grant making budget was \$320,000 and that the trust fund was, "out of their league."