



**STATE PROCUREMENT OFFICE
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. See Attachment to SPO-7 DOH/TSP 6-04-09.	
4. Name of Vendor: Hawaii Community Foundation (HCF) Address: 1164 Bishop Street, Suite 800 Honolulu, Hawaii 96813	5. Price: \$75K to 100K/quarter
6. Term of Contract: From: July ^{2 djk} 2009 To: June 30, 2019	7. Prior Exemption Ref. No. 14
8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State: See Attachment to SPO-7 DOH/TSP 6-04-09.	
9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable: See Attachment to SPO-7 DOH/TSP 6-04-09.	

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 Administration	<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
 Department Head

JUN 30 2009

Date

Reserved for SPO Use Only

15. Date Notice Posted 7-2-09

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

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

TO: Chief Procurement Officer
FROM: Department of Health/Tobacco Settlement Project (DOH/TSP)

The Department provides this document as an attachment 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:

Pursuant to HRS sec. 328L-5 the State is required to select an entity to house a separate fund to be known as the tobacco prevention and control trust fund (the Fund). The services required to house the Fund are a complex mixture of administrative, management and grant making functions.

According to statute, the Fund must be established as a separate fund of 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 must administer the Fund so it can 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. This requires that the entity have the accounting systems and expertise to provide nonprofit fund accounting services. The entity must also have the appropriate tax exempt status to receive the various types of contributions, the systems and staff to record contributions and grants, and the ability to provide income and principal trust accounting.

The entity is also required to oversee the investments of the 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 corpus. Investment oversight includes hiring the investment managers, ensuring that the Fund is not invested in tobacco or tobacco related products and monitoring performance. This requires that the entity be able to both hire the investment manager(s) for the Fund, but also exercise independent oversight over the Fund investments. The selected entity must be able to provide quarterly reports on the investment performance of the Fund, audited financials for the Fund and to cooperate with the State for auditing and reporting on the Trust Fund.

In addition, pursuant to HRS sec. 328L-5, the State requires grant-making services from the same entity that houses the Fund to expend the funding for tobacco prevention and control. The grant-making includes reducing cigarette smoking and tobacco use among youth and adults through education and enforcement activities, and controlling and preventing chronic diseases where tobacco is a risk factor. The contracted entity must be able to provide professional grant-making services, including developing the community grant-making strategy, management and administration of a competitive request for proposals (RFP) process and award and oversight of grants, management and administration of the block grant process and evaluation of the grant activities. Finally, the contracted entity must be able to provide contracted technical assistance and training to community organizations as part of the community grant-making process.

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

Procurement by a competitive process would not be practicable to the State because there is no other similarly situated nonprofit entity that can provide the specialized services required by HRS sec. 328L-5. The statute requires that the Fund be established as a separate fund of a non-profit entity having a board of directors, qualifying under section 501(c)(3) of the Internal Revenue Code of 1986. It also requires that the entity have a proven record of accomplishments in administering a similar trust fund. A community foundation is a unique type of charitable organization, made of up numerous separate “component trust funds” viewed as a single entity under the Internal Revenue Code. The Hawaii Community Foundation (HCF) is one of the oldest community foundations in the country, having been established in 1916. It administers more than 400 separate fund accounts including several dedicated specifically to medical research. The HCF has a standing investment review committee and contracts with an independent investment monitor to oversee the investment performance of its funds. The HCF is a statewide public charity, with a broad charitable mission and grant making expertise on every major island. In 2007, the HCF invested more than \$26 million dollars in the State through its various grant-making programs. There is no similar entity in the State.

In 1999 and again in 2009 the Department of Health (DOH) contacted several other charitable organizations in Hawaii to determine whether other entities might be qualified and willing to participate in a competitive process to house the Fund. The responses have been consistent; besides the Hawaii Community Foundation (HCF), other organizations are not able to provide the comprehensive services to the State required under HRS sec. 328L-5 or do not meet the specified criteria. The DOH has not been able to identify any other entity that meets the requirements and provides the combination of services that are statutorily required.

The State contacted three organizations that met the initial statutory criteria of being a nonprofit entity having a board of governors, qualifying under section 501(c)(3) of the Internal Revenue Code in February 2009. The State identified the Hawaii Medical Services Association (HMSA), the University of Hawaii Foundation and the Hawaii Justice Foundation as possible candidates to house the Fund. Cliff Cisco, Vice-President, of the HMSA Foundation said he understood the inquiry was necessary for state procurement processes. He said HMSA was not interested and that HCF was created especially to meet the needs of funds like the tobacco prevention and control trust fund. The UH Foundation Director, Donna Vuchinich and Chief Financial Officer, Bill King asked their board of directors if they were interested in providing the services to the State. The UH Foundation responded that the request is outside of their mission. The third public foundation contacted was the Hawaii Justice Foundation. Robert Leclair reported the trust fund was, “out of their league,” and he was not interested in housing the Fund within his organization. Note that in this case, also, administration of the Fund is not clearly within the mission of the organization.

Going through a competitive process would not be advantageous to the State. As stated above, the State believes there is no other similarly situated nonprofit entity that is a tax exempt entity with a proven track record with similar trust funds that has a broad charitable mission consistent with the Fund. Thus a competitive bid process would not result in any advantage to the State. Services would be disrupted during the competitive procurement process since contracts for services and community-based grantees would not be renewed. Contracts and grants run on different performance periods so some services such as the Hawaii Quitline may be offline for many months. The current contract requires a twelve month wind down period so the

State would have to go through wind down process under the current contract while at the same time, go through a competitive bid process for the new contract. The trust fund has an active contingent of stakeholders who rely on the funding to provide services to the public. The Department cannot justify disruption in services to the public when the HCF is meeting the requirements for the scope of work required under HRS sec. 328L-5. The HCF has been contracted since 2000 to manage the tobacco prevention and control trust fund under an exemption from HRS sec. 103D.

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 developed a standard set of questions based on the needs of the State and required by HRS sec. 328L-5. The DOH is willing to set up a fair and competitive process in keeping with HRS sec. 103D procurement policies should there be any qualified organizations that express interest in applying for the funding through a request for proposals.

The following questions were developed to find possible qualified organizations. HMSA, UH and Hawaii Justice Foundations all declined the opportunity to be considered through a competitive process. The interviews were halted before all of the questions were asked to HMSA Foundation and Hawaii Justice Foundation because they were not interested in providing services to the State or not qualified due to mission limitations.

Questions to Foundations to Determine Qualification and Interest:

1. *Are you a nonprofit entity having a board of directors and qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended?*
2. *As a foundation, are you able to provide the following services to the State:*
 - a. *Create a separate trust fund for tobacco prevention and control with money from the State?*
 - b. *Can you create the trust fund that receives appropriations, contributions, grants, endowments, or gifts in cash or otherwise from any source, including the State, corporations or other businesses, foundations, government, individuals, and other interested parties?*
 - c. *Is there any problem should the assets of the fund include:*
 - i. *Moneys from the State, county or federal government;*
 - ii. *Private contributions of cash or property; and*
 - iii. *Income and capital gains earned by the trust fund?*
3. *While the services for the trust fund is needed by the Department of Health, the Department of Budget and Finance by law has the oversight authority over the fund and may make periodic financial audits of the fund. Is there any reason this would be problematic for your foundation?*
4. *Can you provide services to invest the trust fund to maximize the return on investment of the trust fund consistent with the objective of preserving the trust fund's principal?*
5. *Currently, the value of the trust fund is about \$38 million dollars. What percentage increase would the trust fund addition be to the overall value of the moneys you now manage?*
6. *There is legislative activity now underway that may severely reduce the revenue stream to the trust fund. Are you willing to work with a trust fund that is often targeted by legislation for possible reallocation?*

7. *Since the moneys are tied to the State, can you execute a state contract and are you willing to follow instructions from the State?*
8. *How does your organization invest and manage other trust funds you currently handle? Please explain the personnel capacity available in your organization to invest and manage the tobacco prevention and control trust fund.*
9. *The current investment has a tobacco screen so no money is invested in corporations that have an interest in tobacco. Would you be willing and able to provide a list of and discuss your investment plan and screen annually with the State?*
10. *The scope of services also includes expending the moneys through granting process for tobacco prevention and control. Please explain your personnel capacity to:*
 - a. *Develop and conduct competitive community based grant making;*
 - b. *Provide technical assistance and training program for implementation and evaluation;*
 - c. *Monitor and communicate with grantees on the implementation of their plans;*
 - d. *Report on the effectiveness of the grant processes and the measurable results of the grant resources.*
11. *Is the foundation able to provide the services described above, investing, managing and expending the trust fund for tobacco prevention and control, for ten years to the State through a contract for services?*

The contract for services is an approximation based on the value of the principal which is affected by market performance, revenue, and expenditures. Range of compensation by quarter for the entire scope of services for investing, managing and programmatic services for community-grant making: \$75,000 to \$100,000.