



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

- 1. TO: Chief Procurement Officer
2. FROM: DLNR / Kaho'olawe Island Reserve Commission (KIRC)

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:
All fresh, frozen and dry food items needed to prepare meals on Kaho'olawe for KIRC personnel and volunteers who spend up to seven days per week on-island. In all of FY10, KIRC estimates it will prepare 3,000 - 3,500 breakfasts, lunches and dinners. KIRC's FY10 food budget is \$73,500; this exemption request would only apply from November 2009 through June 2010, so the equivalent is \$49,000. KIRC's food list is attached.

4. Name of Vendor: VIP Foodservice, Rimfire Imports, Costco, Love's, etc
Address: Kahului and Wailuku, Maui
5. Price: \$49,000

6. Term of Contract: From: approval To: 6-30-10
7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:
KIRC's food purchasing differs significantly from other state agencies, such as the Departments of Education and Public Safety. KIRC does not have a great deal of secure storage space (including safe from bugs and rodents) on Maui or Kaho'olawe for dry, fresh or frozen food items, so orders must be made once per week or every other week. Additionally, the volume of personnel can change significantly from week to week - sometimes there will be as few as two staff on-island, other times there will be groups as large as 60 - so food purchasing has to be able to support large variations in numbers. Lastly, personnel and volunteers have a diversity of dietary restrictions (e.g., allergic to shellfish, lactose intolerance, vegetarian), which change from week to week since personnel changes from week to week. \*\* See attachment for more explanation \*\*

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:
Open competition was provided during the last IFB process in May 2008. Through the end of FY10, no additional competition will be sought. KIRC will generally continue to purchase items from those vendors who won bids under the May 2008 IFB; however, if vendors are out-of-stock or have weekly specials, KIRC will have the flexibility to purchase different items from different vendors. (If this request is approved, we anticipate submitting a renewal request for FY11, which will involve KIRC obtaining curring price lists from all vendors and doing price comparisons.)

10. A description of the agency's internal controls and approval requirements for the exempted procurement:
Orders are approved by KIRC's Deputy Director and are placed by KIRC's Logistics Specialist; invoices are processed by KIRC's Administrative Specialist III, under the approval of the Executive Director.

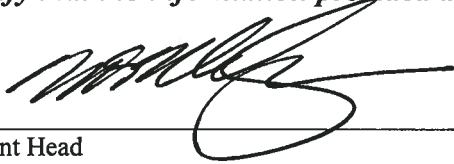
**REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)**

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
Michele McLean	Deputy Director	<input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Keone Laepaa	Logistics Specialist	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
David DeMark	Administrative Specialist III	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Michael Nahoopii	Executive Director	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to:	Department: DLNR - KIRC Contact Name: Michele McLean Phone Number: 243-5030 Fax Number: 243-5885
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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.*



10/15/09

Department Head

Date

**Reserved for SPO Use Only**

15. Date Notice Posted 10-19-09

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

Chief Procurement Officer's comments:

16.  **APPROVED**  **DISAPPROVED**  **NO ACTION REQUIRED**

Chief Procurement Officer

Date

Until October 1, 2006, the contractor that managed KIRC's Kaho`olawe base camp also purchased all food products. To save money and have more control over purchases, KIRC assumed this responsibility three years ago, issuing its first IFB in September 2006 for approximately 350 food items. Additional IFBs followed in June 2007 and May 2008. All three IFB processes resulted in contracts with three vendors (VIP, Rimfire and King) to purchase the items for which bids were received. All three processes also resulted in many items not receiving bids, so SPO approval was obtained each time to purchase these non-bid items via P.O. from other vendors (Costco, Love's, Meadow Gold, etc.).

This process locks KIRC into purchasing specific items from one vendor, and other specific items from another vendor. This creates problems and is not practicable when a vendor is temporarily out-of-stock of an item, because we cannot purchase that item from anywhere else. It is also not practicable because vendors have dollar thresholds for delivery; if we fall short of the delivery dollar threshold for one vendor, then we cannot add items (from another vendor) to make up for it. This also not advantageous to the KIRC for two reasons: (1) we are not able to benefit from weekly specials that vendors may have on items for which they are not contracted, and (2) vendor prices change weekly, so one vendor may have the lowest price for an item at the time of the bid, but another vendor could have the lowest price at any time in the future.

If KIRC were to continue with an annual solicitation process, it would undoubtedly have the same result that it has had since 2006 – three contracts with three vendors plus SPO approval for the non-bid items. Using HePS for future solicitations is also not practicable or advantageous. In a training session on October 13, 2009, KIRC staff discussed the solicitation of food products. **THE TRAINER RECOMMENDED THAT KIRC OBTAIN A PROCURMENT EXEMPTION.** Although HePS allows the buyer to list goods from more than one class (*e.g.*, frozen food – class 385, perishable food – class 390), the email alert to vendors is only sent to those vendors who are registered for the first listed class (*e.g.*, frozen food – class 385). Therefore, for KIRC to solicit its food list on HePS, at least six separate solicitations would have to be posted to cover all of the classes (in addition to frozen and perishable, there is dairy, staples or dry goods, bakery, and spices). This would then result in KIRC having six contracts with one vendor, making accounting and invoicing far more complicated than it needs to be, and likely facing vendor refusal to do so. These issues aside, the practical result of soliciting on HePS would be the same as the past three IFBs: KIRC would contract with three vendors for most items and would need SPO approval for the non-bid items. This would again leave KIRC with the challenges noted in the paragraph above, which provides the reasons for the exemption request.

Another factor that makes the current procurement process not practicable or advantageous is the confusion and frustration over the processing of contracts and approvals for non-bid items.

The IFB process typically results in a contract with a list of goods, their quantities and prices, and a total dollar value. But this does not suit KIRC's food contracts because we do not know the quantities. It would be more appropriate to pick an estimated total dollar value and attach the vendor's bid price list, but this is not acceptable to DLNR Fiscal or DAGS. Instead, our food contracts indicate that we'll purchase ten or 100 of each item for the sake of having an actual contract total, which we know is completely inaccurate. Strangely, Fiscal and DAGS rejected one of our last food contracts and told us to submit a P.O. instead, which we did (and which seems more appropriate). But after one year, we were told to get a contract time extension from the vendor in order to continue to invoice through the P.O., which was unusual because we did not have a contract in the first place, and because P.O.s generally do not expire.

For the non-bid items (items that were included in the IFBs but no bids were made for them), each year we have submitted a Request for Alternative Procurement to SPO in order to purchase these items through P.O.s with the vendors that carry them. These items are generally carried by Costco, Love's Bakery and Meadow Gold Dairy. These vendors have told us – year after year – that they do not want to submit bids and they do not want a contract with the State, but they are happy to fill orders through a P.O. Year after year, SPO eventually approves our Request for Alternative Procurement, but it has come with the requirement that we re-solicit the non-bid items on HePS. Year after year, we jump through this hoop with the same result again – no bids.

Between Fiscal, DAGS and SPO, there have been lapses in approvals or finalizing of contracts, resulting in procurement violations because we have continued to purchase needed food items. We cannot shut-down our island operations during these lapse times, which we would be forced to do if we could not purchase food for our personnel.

Mahalo.