



APR -8 A10:39

PROCUREMENT OFFICE  
STATE OF HAWAII

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

- 1. TO: Chief Procurement Officer
- 2.FROM: Albert "Alapaki" Nahale-a, Chairman, Hawaiian Homes Commission

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:          Reconstruction work for the Kawaihae 1.0 Million Gallon Tank to include construction modifications and alterations to the booster pump station control building to provide additional ventilation for the chlorination room. Construction will also include replacement of metallic equipment items within the chlorination room that have been corroded due to inadequate ventilation.</p>	
<p>4. Name of Vendor: Isemoto Contracting Company, Ltd.          Address: 648 Piilani Street          Hilo, Hawaii 96720</p>	<p>5. Price:          \$400,000 (estimated)</p>
<p>6. Term of Contract: From: CPO Approval To: Dec.31, 2012</p>	<p>7. Prior Exemption Ref. No.</p>
<p>8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:          See attached Explanation</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:          Through the Request for Exemption process, the Department of Hawaiian Home Lands will request a cost proposal for the construction modifications and alterations to the Kawaihae 1 Million Gallon tank, control building and associated site work. If approved DHHL will prepare a Supplemental Contract with Isemoto Contracting Company, Ltd. to perform the modifications and alterations for the building. No additional funds will be required, since \$412,906.78 remain unexpended in the project's construction contract budget. If a negotiated cost cannot be agreed, then DHHL will have to procure a new contractor and accept the consequences regarding the warranty on construction.</p>	
<p>10. A description of the agency's internal controls and approval requirements for the exempted procurement:</p> <ol style="list-style-type: none"> <li>1. Exemption procurement approved by the Chief Procurement Officer.</li> <li>2. Negotiate new scope of work for construction</li> <li>3. Prepare Supplemental Contract with new scope of work, time of performance and contract expiration dates.</li> <li>4. Deputy Attorney General review of draft Supplemental Contract</li> <li>5. Execution of contract by Contractor.</li> <li>6. Final Deputy Attorney General signature</li> <li>7. Contract signed by Chairman</li> <li>8. Issuance of Notice to Proceed.</li> </ol>	

**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
Albert "Alapaki" Nahale-a	Chairman	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Kamana'o Mills	Special Assistant	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Sandra Pfund	Land Develop. Div. Administrator	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
William Makanui	DHHL LDD Engineer	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to:	Department: Hawaiian Home Lands Contact Name: William Makanui Phone Number: 620-9282 Fax Number: 620-9299
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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.*



4/5/2011

Department Head

Date

**Reserved for SPO Use Only**

15. Date Notice Posted 4-8-11

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:

SEE CPO COMMENTS ATTACHED AS PAGE 4.

16.  APPROVED  DISAPPROVED  NO ACTION REQUIRED


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 Chief Procurement Officer                      Date 7/26/2011

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

Isemoto Contracting Company, Ltd. (ICCL) was awarded Contract 55335 for the construction of the Kawaihae 1 Million Gallon Tank, in the amount of \$4,649,940.00. Notice to Proceed was provided on April 16, 2007 with a contract term of 200 working days. The duration of Contract 55335 was extended through three (3) Supplemental Contracts by 399 additional working days. Contract 55335 expired on September 15, 2009.

Construction of improvements including the booster pump control building and chlorination system, was completed by September 15, 2009, in accordance with approved plans and specifications of the County of Hawaii Department of Water Supply (DWS). In spite of constructing the improvements in accordance with DWS plans and specifications, metallic items constructed within the control building have corroded, likely due to insufficient ventilation in the control building. The corroded items will need to be replaced. In addition, since the DWS has not accepted the improvements for maintenance and operations, other associated construction has deteriorated and will require modification or re-construction.

Since ICCL followed the plans and specifications contained in the scope of work, DHHL does not believe ICCL is liable for the corrosion of materials due to insufficient ventilation. DHHL is requesting an Exemption from Chapter 103D, Hawaii Revised Statutes in order to contract ICCL to conduct the reconstruction work. While Contract 55335 has expired, this contract has an unexpended balance of \$412,906.78. DHHL recommends that ICCL be contracted for the reconstruction work within the balance of funds in Contract 55335.

DHHL further recommends to contract with ICCL in order to maintain the warranty on the original construction of other items not impacted by the corrosion issue. Procuring a different contractor through the Invitation for Bid process would void the warranty on the original construction.

**CPO COMMENTS:**

According to the department, the contract for construction work was completed by the contractor on September 15, 2009 and the County of Hawaii, Department of Water Supply (HDWS) did not accept the work completed by the contractor. Warranty by the contractor does not begin until work is accepted by the HDWS. This request is for additional work after the contract expired. The request lacks justification as the department has not provided sufficient information for the additional work needed.

Has it been confirmed that the corrosion was due to insufficient ventilation in the control building? If, yes, how was it determined that the contractor was not responsible? If the contractor was not responsible, then how did this occur and who is responsible?

Was there appropriate oversight, resources and expertise allocated to properly manage the contract?

Were there any planning and design issues and discrepancies that resulted in the need for this additional work?

Were the inspections done properly and on a timely basis as required?

Are there any parties responsible and accountable for this additional cost?

Request is disapproved and department may resubmit, when additional information is available to justify the exemption.

As a reminder, individual(s) participating in procurement activities are required to be in compliance with Procurement Delegation No. 2010-01 and Amendment 1, and Procurement Circular No. 2010-05, *Statewide Procurement Training*, as appropriate. Procurement requests submitted to the SPO listing departmental personnel without written delegated procurement authority and the appropriate mandatory procurement training will be returned with no action taken.