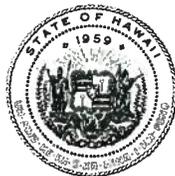


Date Notice Posted
9/27/11

NEIL ABERCROMBIE
GOVERNOR
STATE OF HAWAII



ALBERT "ALAPAKI" NAHALE-A
CHAIRMAN
HAWAIIAN HOMES COMMISSION

MICHELLE K. KAUHANE
DEPUTY TO THE CHAIRMAN

M. WAIALEALE SARSONA
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

September 12, 2011

TO: Aaron Fujioka, Chief Procurement Officer
State Procurement Office

FROM: Albert "Alapaki" Nahale-a, Chairman 

SUBJECT: Notice of and Request for Procurement Exemption
From Chapter 103D, HRS, P.E. No. 11-081-D

STATE PROCUREMENT OFFICE
STATE OF HAWAII

11 SEP 26 PM 2:09

This memo is to respectfully request reconsideration of the State Procurement Office disapproval of the above-referenced request on July 26, 2011.

BACKGROUND:

On April 8, 2011, the Department of Hawaiian Home Lands (DHHL) submitted the above-referenced request for the Kawaihae 1.0 Million Gallon Tank Project, Kawaihae, Big Island. The project consists of constructing a 1.0 million gallon storage tank with appurtenances, including but not limited to, booster pumps, pipelines, service road and a small building (control building) for monitoring and enclosure of a chlorination system. The system was constructed at a cost of \$4,649,940 to provide storage for an existing water system in the DHHL Kawaihae Industrial Park to bring it into compliance with County fire-flow requirements.

Construction of the project was completed in September 2009. The County of Hawaii Department of Water Supply (DWS) deferred acceptance of the system after it was determined that the control building was experiencing corrosion from the chlorination facilities.

Modifications to the control building were proposed by the design engineer and DWS accepted the proposed modifications for implementation on August 14, 2010.

It is critical that Isemoto Construction Company, Ltd. ("Isemoto"), the contractor on the project, construct the corrective work because alteration of its work would invalidate the construction

P.E. No. 11-081D
Amendment 1

warranty on the total project. (Note: DHHL asked DWS if they would accept the system with the exception of the control building so that DHHL could bid it out separately. This request was denied by DWS as they require the total system to be in compliance for acceptance.)

DHHL's construction contract with Isemoto expired on September 15, 2009. The DHHL requests a procurement exemption to contract directly with Isemoto to complete the corrective actions so that DWS will accept the system and the warranty period for the entire project can commence.

QUESTIONS PRESENTED:

- 1. Has it been confirmed that the corrosion was due to insufficient ventilation in the control building?**

No. There are conflicting opinions and an unequivocal confirmation cannot be made. A sub-contractor to Isemoto (Vili Watson of Scada & Control Systems, LLC) suggested that the ventilation was inadequate. However, the designer (R.M. Towill Corporation) stated that it followed DWS specifications for design of the control building and DWS approved the plans and specifications. The DWS has not offered a position.

- 2. If yes, how was it determined that the contractor was not responsible?**

Isemoto constructed the project according to approved plans and specifications and is not considered responsible for the problem.

- 3. If the contractor is not responsible, then how did it occur and who is responsible?**

The design engineer submitted a letter from the chlorinator manufacturer which states that the corrosion is a result of improper shutdown of the system. The existing window in the room should provide the minimum 2 air exchanges daily, as recommended by the manufacturer.

The design engineer verbally informed us that he recalls that the DWS had asked to test the system and said they would shut the system down when complete but the system may not have been properly shut down. This information cannot be confirmed.

- 4. Was there appropriate oversight, resources and expertise allocated to properly manage the contract?**

It appears adequate. Key personnel on the project for DHHL and DWS no longer work for the respective departments.

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

It appears that the planning and design were properly done and approved by DWS.

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

It appears adequate.

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

An unequivocal determination cannot be made. If further analysis is required, DHHL would have no alternative but to retain a claims analysis firm (Ryder Levett Bucknall) to review all files pertaining to the case. A fee of \$25,000 is proposed for the work.

DHHL does not feel the expenditure is warranted given that time is of the essence and the cost to complete the corrective work is \$76,000.

In its procurement exemption request, DHHL listed a price of \$400,000. This expenditure ceiling was requested because time has elapsed since the project was substantially completed in September 2009. DHHL is concerned that additional corrective work will now be requested by DWS, such as repair of erosion along the service road (cost estimate to repair: \$116,673) or other repairs will be required upon final acceptance inspection.

CLOSING REMARKS:

The main objective at this time is to turn over the Kawaihae water system to DWS so that DHHL can be released of liability, operation and maintenance responsibilities. The system is valued at \$4.6 million dollars and we are currently at odds over no more than \$193,000 in known work.

An unequivocal determination of who is at fault for the corrosion cannot be made. The corrective action will include replacement of the corroded equipment, door and window hardware and retrofit of the building to provide additional ventilation so that all possible causes for the problem are addressed. The DHHL seeks your approval



APR -8 AIO :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: \$72,817.35 <i>dkr</i> \$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"> 1. Exemption procurement approved by the Chief Procurement Officer. 2. Negotiate new scope of work for construction 3. Prepare Supplemental Contract with new scope of work, time of performance and contract expiration dates. 4. Deputy Attorney General review of draft Supplemental Contract 5. Execution of contract by Contractor. 6. Final Deputy Attorney General signature 7. Contract signed by Chairman 8. Issuance of Notice to Proceed. 	

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 <u>4-8-11</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" style="margin-top: 50px;">SEE CPO COMMENTS ATTACHED AS PAGE 4.</p>	

16. APPROVED DISAPPROVED NO ACTION REQUIRED



 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.