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STATE PROCUREMENT OFFICE
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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July 28, 2012

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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Mr. Aaron S. Fujioka, Chief Procurement Officer
State Procurement Office ("SPO")
Department of Accounting and General Services ("DAGS")

FROM: William J. Aila, Jr., Chairperson 
Department of Land and Natural Resources ("DLNR")

SUBJECT: PE11-087Ba1 for Project No. F11C763A, Iolani Palace State Monument ("Palace") Heating,
Ventilation and Air Conditioning ("HVAC") Project

This is to transmit our request and additional information regarding the subject procurement exemption. We request your reconsideration of the disapproval of PE11-087Ba1 and approval of our request to extend the term of the contract for the subject project from "07/01/11 to 06/30/12" to "07/01/12 to 1/1/2014". We are requesting a 18-month contract completion period to accommodate coordination of power outages affecting the State Capitol as explained further in this memorandum.

On June 23, 2011, you approved PE11-087B that allowed the HVAC improvements to be contained within the Palace upon the following conditions:

1. Direct negotiations with the lowest bidder shall adhere to the scope of services, required qualifications and other specifications in the solicitation of the subject project.
2. Compliance with Section 103D-310(c), Hawaii Revised Statutes ("HRS") and Section 3-122-112, Hawaii Administrative Rules ("HAR").
3. Approval is for the solicitation process only.
4. Contract shall be for a 12-month period starting from 07/01/11 to 06/30/12.
5. Award is required to be posted on the Awards Reporting System.

On June 29, 2012, you disapproved the subject exemption request to extend the contract period from "07/01/11 to 06/30/12" to "07/01/12 to 06/30/13" based upon "the lack of sufficient justification and information to significantly expand the scope of work, increase the cost by \$974,000 and add another year to the term of the contract..." You stated "the Department may resubmit, requesting CPO approval, by sending a memo (reference PE11-087Ba1) along with a detailed report which includes:

- Documentation that the Department adhered to conditions 1, 2, and 5 (as listed above).
- Description of work and timeline department became aware of the additional work and increase in costs.
- Cost comparison and analysis of cost increases for the nominal changes (as stated in PE11-087B) and additional \$974,000 work required.
- Financial analysis verifying that with all of the above changes EPSMI would be the low bidder."

On July 11, 2012, staff from SPO and DLNR discussed the disapproval and clarified the information that will be needed for the reconsideration. To this end we provide the following:

- I. Brief project background;
- II. Current project and scope (Exhibit 1);
- III. DLNR's compliance with conditions 1, 2, and 5 of PE11-087B (Exhibits 2, 3, 4, 5, 6 and 7);
- IV. Project timeline in relation to PE11-087B (Exhibit 8); and
- V. Cost comparison and financial analysis (Exhibit 9).

PE11-087Ba2

I. Project Background

The Palace was completed in 1882 and restoration work in the 1970s installed the three (3) on-site chiller units in the Palace towers. Since the 1990's, repairs to these components and other parts of the HVAC became more frequent where the Friends of Iolani Palace ("FOIP") curator organization for the Palace restoration and management, implemented in short-term repair measures. These HVAC components continued to deteriorate and fail resulting in the damage of certain sections of the Palace and facilitated the hazards from mold and mildew on irreplaceable artifacts and resources. The severity of potential impacts and damage to priceless artifacts and historical resources has resulted in the removal of several "borrowed" items by the Bishop Museum and DAGS Archives within the last couple of years.

During 2006 and 2007, DLNR requested and obtained funding for the new HVAC system pursuant to Act 160, Session Laws of Hawaii ("SLH") 2006 and Act 213, SLH 2007. A total of \$5,400,000 was appropriated for the design and construction of the new system servicing the Palace. Insynergy Engineering, Inc. ("ISE") was selected as the project's consultant.

During 2008 and 2009, the design phase incorporated in-house and interagency discussions that assessed various location options for the chiller system:

- In-Palace replacement.
- Off-site placement – on Palace grounds in underground vaults adjacent to Archives.
- Off-site placement – in the State Capitol building and in Archives.

The off-site option was preferred as it provided emergency generator capabilities and an opportunity for DLNR to optimize limited CIP funding with other State agencies to improve energy efficiency and climate control systems. Also, the off-site location provided improved access to the HVAC components compared to the confined areas in the existing Palace tower locations.

In 2009 and 2010, DLNR and DAGS discussed the off-site placement of the chiller system. The focus shifted to the basement of Kekauluohi Building ("Archives") as a suitable option for an off-site chiller system, as it became apparent that a vault on Palace grounds was not feasible due to impacts to arboreal resources and significance disturbance of the Palace grounds that may impact buried cultural artifacts, resources and potential kupuna iwi. For the use of the basement in Archives, DLNR proposed to include this building in the HVAC improvements.

The project was advertised in May 2010 and bids were received in June 2010. Bids were opened and the low bidder was Economy Plumbing & Sheet Metal, Inc. ("EPST") whose bid was \$4,387,000. There is \$4,527,849 encumbered for the construction of this project. The scope of this project included:

- Iolani Palace -Replacement of fan coil/air handler units, outdoor air ductwork, reheat coils, chilled water piping insulation, DDC controls. Repairs to gypsum board ceiling. New access panels to service equipment. Replace in-kind existing panels and lighting affected by ceiling removal work. Chilled water lines to mauka/ewa corner of Keauluohi Bldg to new central plant.
- Archives Bldg – New transformer/meter and central plant (basement), cooling tower (exterior), and generator back-up capability (includes wiring and (3) manual/automatic transfer switches, operational test of manual transfer switches, operational instruction manual). Replacement of inefficient fan coil units/air handler units.

To utilize Archives's basement, DAGS required that DLNR enter into a memorandum of agreement ("MOA") to clarify cost sharing issues for the operation, maintenance, repair and replacement of the new chiller system, they did not want to pay more than what is currently paid for the Archives' AC operational costs. From July 2010 to February 2011, staff from DLNR and DAGS tried to negotiate the MOA, including the appropriate respective cost shares for utility, emergency and scheduled repair costs, and maintenance responsibilities and contract costs for the new chiller system. It was estimated that \$200,000 would be needed annually for the new HVAC system servicing the Palace and Archives. Under the terms of the MOA, either DAGS or DLNR would have to solely pay these continuing costs and pursue reimbursement. Refer to pages 3 through 4 of PE11-087B for a detailed summary of this situation.

Due to unanticipated reductions in general funded operating funds, DAGS and DLNR were not be able fully pay the operating costs of the shared system, which made this option infeasible. FOIP have the ability and were willing to pay for all the operating, maintenance and repair costs of the new HVAC system serving the Palace. Because the Archives option was not feasible and FOIP was able to finance all operating and repair costs, DLNR decided, with

FOIP concurrence, that the HVAC system was more appropriate in the Palace. This situation led DLNR to submit its request for PE11-087B to allow the in-Palace system in May 2011.

II. Current Project Scope

The approval of PE11-087B allowed the components of the HVAC system from Kekaulouhi to be located within the Palace. The current project scope remains unchanged as the new HVAC system serving the Palace will be constructed within the Palace. The work eliminated from Archives totaled \$1,082,000 and the replacement of this work is summarized as additional work of existing bid items and new unanticipated work required in the Palace totaling \$1,082,000. The following is a summary of the above, refer to Exhibit 1:

Work Eliminated - Archives: \$1,082,000	Additional Work needed - Palace: \$701,550	New Unanticipated Work - Palace: \$380,450
Exterior piping, conduit, trenching and grading from Archives to the Palace	New central plant mechanical room in the attic requiring foundation improvements.	Acoustical insulation - sound protection from new mechanical room to mitigate noise impacts from the new HVAC system to the Palace.
Architectural, structural, civil engineering improvements were required for both structures.	New plumbing, drainage and water line installations. Also, additional electrical improvements.	Allowance for temporary generator rental and fuel. The generator is needed when power to the Palace is off to install electrical improvements including a new circuit switchgear to allow external power source to be connected to the Palace during emergencies
Direct digital control ("DDC") for the Archives system	Architectural improvements to minimize impacts of the systems waterlines, power lines, emergency power outlets and panels to the Palace's exterior and interior architecture.	
Commissioning or quality control monitoring for the Archives system	New Palace staff office in the attic to replace the displaced area used by the new mechanical room.	
Testing, adjustment and balance of climate quality at Archives	New DDC system for the chiller plant only.	Allowance for the retrofitting of existing chiller units to continue its operation during the installation of HVAC system components.
Electrical improvements	Testing, adjustment and balance of climate quality at the Palace.	
New air handling units and fan coil units in Archives	Service contract for the in-Palace chiller plant and towers.	Allowance for the repair of the existing chiller units in case of failure during its use during the construction period, and rental of temporary chiller units during the period when the new chillers need to be connected and the existing chillers need to be disconnected, demolished and removed.
Emergency power improvements - a new switchgear mechanism on the existing power circuit, hook-up capability of an external generator source, and repairs and improvements of exterior and interior areas in both Archives and the Palace respectively.	Additional electrical work in the Palace for the new chiller units and mechanical room components, new panels and power line alignments, and additional work for the AHU/FCU components.	
Relocation of telecommunication and LAN equipment	Revised demolition and removal costs of the existing chillers in the Palace towers requiring removal of the tower roofs through the use of lift cranes.	Allowance for HECO service. Required power outages affecting the Palace and the State Capitol.
Demolition and removal of the existing chiller units		
Temporary air conditioning units for use in Archives and the Palace.		

II. Current Project Scope, continued

We reiterate that the current scope of the project has not changed from the original scope of constructing a new HVAC system serving the Palace. The additional work in the Palace is for bid items that required additional improvements to accommodate the in-Palace system. This did not increase the scope of the project but identified additional work for existing items that all bidders considered. The unforeseen new work only became apparent during the revisions to the plans and negotiations with EPSI. This would have occurred regardless of whom was awarded the contract.

We note that there will be two power outages for this project that will affect the Palace and State Capitol. The outages are needed to install a switchgear to the Palace's power circuit to enable the use of eternal power sources during power outages affecting the Palace and its HVAC system. We are not certain when we can schedule these outages as in August and November 2012, there will be primary and general election activities occurring that cannot be interrupted. Also, during the 2013 Hawaii State Legislative session, disruptions cannot occur during the January to May 2013 period. In light of these circumstances, we are requesting a completion date of January 1, 2014, to complete the project. We are currently working with various staff from DAGS to coordinate the power outages and other project activities that may impact DAGS facilities on the Palace ground.

III. DLNR's Procurement Compliance

In regards to the information provided in PE11-087B to determine the low bidder, the table on page 7 of PE11-087B shows the bid comparisons of all bids for the initial solicitations for the project and calculated estimations for "at Iolani Palace" work. Items 24, 26, 27 and 28 should not have been included for the "at Iolani Palace" columns, refer to Exhibit 2. These items totaled \$48,000, respectively, so an adjustment was needed across the board for all bidders to reduce all calculated "at Iolani Palace" bids by this amount, refer to Exhibit 3. We reiterate that this amount was added for "at Iolani Palace" work only for all bidders. After the adjustments, the determination of the low bidder for the "at Iolani Palace" work remained unchanged, EPSI was still the low bidder.

Pursuant to Condition No.1 of PE11-087B, DLNR negotiated directly with the lowest bidder, EPSI, as directed by the exemption. The negotiation was between Alvin Satogata, DLNR and Kent Matsuzaki, EPSI.

The negotiation was conducted during the period of June 2011 through May 2012. Exhibit 4 shows the notarized acknowledgement of DLNR and EPSI confirming the negotiations, and Exhibit 5 shows EPSI's negotiated proposal.

As far as compliance with HRS §103D-310(c) and HAR §3-122-112: Exhibit 6 shows EPSI's HCE compliance as of October 31, 2011; and Exhibit 7 shows DLNR's posting of contract award to EPSI.

It would not be advantageous to the State to re-solicit this project for the following:

- The re-soliciting of this project will result in a loss of \$5,400,000 of existing funding if the contract with EPSI is cancelled. The appropriations funding this project have lapsed and no new funding has been appropriated.
- The urgency for the HVAC improvements in the Palace has reached a stage where Palace artifacts and resources have been impacted by mold and mildew from failing climate control and borrowed items from the Bishop Museum and DAGS Archives were returned to ensure their safeguard.
- DLNR believed that it had complied with solicitation and procurement requirements for this project in implementing the project's primary objective of climate control improvements serving the Palace.
- EPSI was the lowest bidder submitting complete bids for the in-Palace work.

IV. Project/Contract timeline

The period from June 2011 through June 2012 comprised of redesign meetings and design drafts, vetting with FOIP, revised design plans and contract negotiations. Refer to Exhibit 7 for a detailed chronology of events.

In June 2011, EPSI was determined the low bidder pursuant to the approval of PE11-087B. To ensure that the contract was based on the current scope of work, changes to the contract was deferred until DLNR identified design and construction revisions.

IV. Project/Contract timeline continued

During June through September 2011, meetings were held between DLNR, ISE, and FOIP, for revisions to install the new HVAC system within the Palace. One critical component was locating the mechanical room containing the system's chiller units. The appropriate location was the FOIP curator staff office area in the attic. Although use of this area would displace staff, it did not impact Palace operations and activities and provided access to the system during operation, maintenance and repairs. Design revisions for the mechanical room were needed to address foundation improvements, new drainage installation, new water lines, electrical improvements and acoustical insulation to mitigate noise impacts. In addition, a new office area was needed for the displaced Palace staff. There was available space in the attic. The office design incorporated the historic architecture elements of the Palace with the functional work area needs of staff.

During October through November 2011, design revisions continued and informal discussion were held with EPSI on the proposed in-Palace revisions.

In November 2011, DLNR transmitted the construction contract to EPSI for their initial bid for work in the Palace and Archives to use as a basis for the revisions to the project. pricing updates, and revisions to the contract. DLNR believed that EPSI should have a base document to work on as the major design revisions were identified, also we wanted EPSI's insights as to these revisions. We reiterate that these revisions did not change the scope of the project to construct a new HVAC system serving the Palace, but made necessary revisions for the improvements needed for the in-Palace system.

During November and December 2011, ISE continued to work on plan revisions with DLNR, FOIP and EPSI and in January 2012, EPSI received the draft revised plans for their review and pricing.

During January through April 2012, design revisions were continuing with involvement by FOIP, ISE, DLNR and EPSI, as design options for electrical, structural, architectural and operational improvements required adequate vetting and confirmation. During this period, DLNR was intensely focused upon completing the plan revisions and starting the improvements. At the time it became apparent that the project could not be completed by June 30, 2012, a timely request for extension was not submitted. Also, there was a transfer of project management in DLNR during this period, and the 12-month period for the project completion, as approved in PE11-087B, was construed as the period required to execute the contract. Staff was intensely focused upon completing the plan revisions, acquiring accurate cost information and initiating contract execution and implementation, nonetheless, we acknowledge the oversights described above.

During April through May 2012, the plan revisions were finalized by ISE and EPSI submitted its final pricing.

In May 2012, DLNR and EPSI negotiated the final pricing of the project which totaled \$4,387,000. EPSI's revised pricing included additional needed in existing line items and new work resulting from unanticipated improvements which were identified in the June 2011 – April 2012 period; the new work would have been required to whomever was awarded the bid.

V. Cost and Financial Analysis

In your disapproval in PE11-087Ba1, you stated that the project cost increased by \$974,000. We want to clarify that the cost increase we identified in the subject procurement exemption was \$200,000. EPSI, in May 2012, submitted a project cost of \$4,387,000 for the new HVAC system serving the Palace. We used this amount and added the \$200,000 for contingency for a total of \$4,587,000 identified in PE11-087Ba1. We believe the following provides clarification on this issue, refer to Exhibits 1 and 9:

- The project cost provided in PE11-087B was \$3,613,000. This was DLNR staff's cost estimate in extrapolating in-Palace costs from the bids received for Project No. F11C763A, refer to PE11-087B. This estimate was used to determine the lowest bidder, and EPSI appeared to have the lowest completed bid for the in-Palace work. With the disclosure in Section III and the submittal of Exhibit 3, the adjusted in-Palace estimate should be \$3,565,000. This does not change our assessment that estimated project costs, as shown on page 7 or Exhibit 3, are estimates that staff used to determine the in-Palace work for the respective bidders. Due to the lapsing of available funding at the time of solicitation, DLNR was not able to re-solicit bids from participating bidders but believes that staff's estimate was a fair and reasonable approach to determine the low bidder for in-Palace work only. We reiterate that \$3,565,000, as amended, is an estimate to determine the low bidder and not the negotiated cost for the project.

V. Cost and Financial Analysis continued

- EPSI's revised project costs submitted in May 2012 for the in-Palace system was \$4,387,000. This included all additional work needed for the bid items and new work described previously; we note that these costs were not apparent until revisions were discussed and the contract was negotiated. During the negotiations, DLNR reiterated that funding for the project was \$4,387,000 and the contract could not exceed this amount. This is the amount of the project budget, sans contingency, as it reflects the costs for all work needed for the new HVAC system serving the Palace.
- The deleted work from Archives and the additional and new work costs for the in-Palace system totaled \$1,082,000, respectively, which amounted to an equal tradeoff. The additional and new work costs were \$701,550 and \$380,450 respectively. As we stated previously, these items were not included during the project's design and bid package preparation and surfaced after the in-Palace revised designs were discussed and the contract was negotiated. Any bidder would have had to include these in-Palace costs to their project costs. Refer to Exhibits 1 and 8 for details to these items.
- The additional \$200,000 we are seeking is to cover contingency costs at less than 5% of the total project cost. On page 7 of PE11-087B, \$260,000 was estimated as the contingency amount needed for the project difficulties of tight areas in the Palace and subsequent design support; as noted above these amounts were estimates, at that time, that were considered in lieu of actual costs for the additional work for the in-Palace system. Improvements in an irreplaceable historical resource such as the Palace will result in unexpected costs as these improvements will be affecting historical and cultural areas and resources. The additional \$200,000 we are seeking will assure our abilities to address these unforeseen costs and improvements. We reiterate that \$4,587,000 was the maximum funding we have for this project and we this amount to achieve project goals.

The information provided above and included in the respective exhibits clarifies the project costs in PE11-087B and PE11-087Ba1 and provides insights as to what had transpired during the project design, procurement and contract negotiating activities for the new HVAC system serving the Palace. We cannot stress enough the importance of this project in preserving and maintaining an iconic symbol in Hawaii's history and legacy.

We believe that the information we have submitted provides a clearer understanding of the project and our request for time extension for the period of July 1, 2012 through January 1, 2014.

If you have any questions and/or to schedule a meeting, please contact Russell Kumabe, AICP, of my staff at 587-0305 or email: russell.p.kumabe@hawaii.gov.

Exhibits:

- Exhibit 1 – Current Project Scope – cost comparisons of deleted and new work
- Exhibit 2 – Page 7 calculation discrepancy
- Exhibit 3 – Revised page 7 with adjustment corrections
- Exhibit 4 – Notarized acknowledgement by DLNR and EPSI
- Exhibit 5 – EPSI's negotiated proposal
- Exhibit 6 – EPSI HCE compliance as of October 31, 2011
- Exhibit 7 – DLNR's posting of contract award to EPSI
- Exhibit 8 – Timeline
- Exhibit 9 – Cost comparison and financial analysis

c: Daniel Quinn
Carty Chang

CPO COMMENTS: This approval is based on the department's representation that the work required is limited to the original scope of work and that rebidding would not be advantageous to the State as it would increase costs, increase the risk to historic and cultural artifacts and result in the lapsing of funds. This request is approve with the following conditions:

1. All work conducted by the contract shall adhere to the scope of services, required qualifications and any specification identified in the solicitation Jon No. F11C763A;
2. Approval is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply (i.e. vendor is required to be compliant on the Hawaii Compliance Express);
3. Contract period is 07/01/12 to 01/01/14; and
4. Award is required to be posted on the Awards Reporting System.

If there are any questions, please contact Bonnie Kahakui at 587-4702, or bonnie.a.kahakui@hawaii.gov.

Approved Disapproved

Alexis. [Signature] 8/13/2012
Chief Procurement Officer Date