



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

13 APR 10 P3:04

STATE PROCUREMENT OFFICE
STATE OF HAWAII

TO: Chief Procurement Officer

FROM: Department of Attorney General
Name of Requesting Department

Pursuant to HRS § 103D-102(b)(4) and HAR chapter 3-120, the Department requests a procurement exemption for the following:

1. Describe the goods, services or construction:

See Attachment I

2. Vendor/Contractor/Service Provider:

Aloha Data

3. Amount of Request:

\$ 98,167.50

4. Term of Contract From: Approval of exemption To: Delivery of Files

5. Prior SPO-007, Procurement Exemption (PE):

6. Explain in detail, why it is not practicable or not advantageous for the department to procure by competitive means:

See Attachment II

7. Explain in detail, the process that will be or was utilized in selecting the vendor/contractor/service provider:

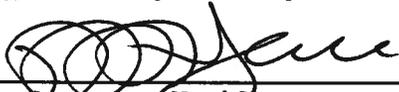
See Attachment III

8. Identify the primary responsible staff person(s) conducting and managing this procurement. (Appropriate delegated procurement authority and completion of mandatory training required).

*Point of contact (Place asterisk after name of person to contact for additional information).

| Name | Division/Agency | Phone Number | e-mail address |
|----------------|-----------------|--------------|--------------------------|
| David T. Moore | OAG | 586-1289 | david.t.moore@hawaii.gov |
| | | | |
| | | | |

*All requirements/approvals and internal controls for this expenditure is the responsibility of the department.
I certify that the information provided above is, to the best of my knowledge, true and correct.*



Department Head Signature

APR 10 2013

Date

For Chief Procurement Officer Use Only

Date Notice Posted: 4/11/13

Inquiries about this request shall be directed to the contact named in No. 8. Submit written objection to this notice to issue an exempt contract within seven calendar days or as otherwise allowed from date notice posted to:

state.procurement.office@hawaii.gov

Chief Procurement Officer (CPO) Comments:

The department was aware of the need for the described services at the latest, in early December 2012. There was sufficient time for the department to address special collaborating requirements, if any and to issue an RFP. This request is disapproved as it lacks justification as an exempt procurement.

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

Approved

Disapproved

No Action Required



Chief Procurement Officer Signature

4/19/2013

Date

ATTACHMENT I

1. Describe the goods, services or construction:

Scanning and indexing services to convert approximately 750,000 pages of the Department of Hawaiian Home Lands' (DHHL) homestead application and lessee files for the 2,721 members of the waiting list subclass in Kalima v. State, Civil No. 99-4771-12 VLC (1st Cir.), into keyword and bar-code retrievable electronic files.

The paper files to be converted and indexed include multi-page application forms, genealogies/family trees, birth, marriage and death certificates, invitations and notices to pre-award and lot selection meetings, and correspondence awarding, accepting, declining, and relinquishing leases and offers of leases. The files also include homestead leases, and documents assigning, transferring, cancelling, terminating, and revoking leases. The papers in each file are of varying weight and size, i.e., onion skin, 3 x 5 inch card stock, 20 pound 8 ½ x 17 inch copy paper, and may include preprinted forms and envelopes (with postal markings). Papers may be stapled and/or folded together. Pages are handwritten or typed, on one or both sides, in black or colors. In addition, before scanning can begin, approximately 15,000 to 20,000 pages need to be added to many of the members' files to make them current.

The files are maintained in DHHL's secured records room at its office in Kapolei. Because the files contain personal and confidential information, the scanning must be done at DHHL's Kapolei office, and the contractor must provide all personnel and equipment needed to convert the paper files into indexed electronic files. For the convenience of DHHL, and to convert the files as soon as possible, work may be scheduled for evening and weekend hours..

ATTACHMENT II

6. Explain in detail, why it is not practicable or not advantageous for the department to procure by competitive means:

Kalima is a class action brought under Haw. Rev. Stat. ch. 674, to recover money damages from the State for injuries caused by breaches of the Hawaiian Home Lands trust committed by state employees between 1959 and 1988. In 2009, the State was found liable for breaches of trust that unreasonably delayed the waiting list subclass members' receipt of homestead leases. By various motions made and decided through February of this year, a Damages Model, with an eligibility, time, and dollar component, was established to determine the amount of damages, if any, each member of the waiting list subclass may have sustained.

The State indexed electronic files are needed to (1) respond to the plaintiffs' discovery requests for answers to written interrogatories that detail the State's defense to each subclass member's damages claim, and for production of documents (including documents from the converted files) that the State would rely upon to make that defense; and (2) allow the State to retrieve information in the files to prepare the State's defense against the members' claims that they suffered money damages while they waited to receive a homestead lease. To achieve these objectives, the information needs to be retrievable both by keyword searches and direct access to pages where the critical information appears.

Procuring the services to convert and index the files by competitive means is not practicable and would be disadvantageous to the State. If a contract had to be awarded competitively, specifications would have to be written, an RFP would have to be prepared and published, and proposals would have to be evaluated after offerors were allowed a reasonable period of time to submit them. The State's discovery responses could be delayed for as much as five times longer than the time, typically 30 days, parties are allowed to respond to requests for discovery. The State could also be sanctioned for that delay. Most critically, until both the competitive procurement and file conversion and indexing processes were completed, the State would be limited to searching each page in each member's file manually, to extract the information it needed to prepare its defense.

Requiring the State to use competitive means to scan and index the application and lessee files would also prevent the State's attorneys from collaborating¹ with the contractor to compile a catalog of criteria for selecting documents that are likely to contain information pertinent to the State's defense, with which to effectively index the converted files. Instead, the catalog for indexing the electronic file would have to be compiled by a technical consultant retained for that purpose, so that the catalog could be included in the written specifications for the RFP that was published. Collaborating with the contractor before the files are scanned is critical to indexing the files effectively and economically. It would provide the Kalima Litigation Team with the opportunity to both gain an understanding of what the scanners and software the contractor uses

¹ At the last monthly status conference, the plaintiffs' counsel asked that they be permitted to participate in sessions with the contractor to develop the criteria for selecting documents for indexing.

are capable of detecting, and provide the contractor's staff with details about the kinds of information that needs to be extracted from the converted files, and where that information is located in those files.

The eligibility component of the Damages Model sets out the prerequisites subclass members must satisfy to recover money damages, including among other things, whether the member is at least 50% Hawaiian, applied for a homestead on or before June 30, 1988, and is or was previously a homestead lessee or married to a homestead lessee. The time component of the Damages Model describes the factual "variables" for calculating how long a subclass member waited to receive a homestead; these "facts" include when, where and for what type of homestead a member applied, and when, if at all, the member accepted, deferred, or declined a homestead award.² Retrieving information pertinent to determining eligibility and calculating waiting time from the converted files will depend entirely on how closely the selection criteria we use to index the files takes us to the documents in the file that contain the information we need.

Without an exemption the Kalima Litigation Team will not be able to collaborate with the contractor to develop the selection criteria it used to index the electronic files. Without that collaboration, information in the converted files will be retrievable by Adobe keyword searches, without the advantage of an effective index. The keyword search would retrieve every page that the word "lease" appeared on a document in the file, but we would need to read each of those pages before we found the one that "offered" the lease, "awarded" the lease, or "deferred the offer of a lease." An inordinately greater amount of time would be needed to prepare the State's defense to the 2,721 waiting list subclass members' damages claims.

² The court has already specified that the third or dollar component of the Damages Model is to be the annual rent each subclass member paid to live on while the member waited for a homestead lease. The amount that is to be used as the dollar component for purposes of determining the damages claims of subclass members who waited for a residential homestead on Oahu will be established by the court on the basis of evidence presented by the parties' respective experts at a two day trial that is scheduled to begin on October 1, 2013.

ATTACHMENT III

7. Explain in detail, the process that will be or was utilized in selecting the vendor/contractor/service provider:

In early December, the Department's Major Litigation Unit Chief surveyed deputy attorneys general and attorneys from several law firms in Honolulu who have tried multi-million dollar damage cases involving large volumes of printed material, to identify firms in Honolulu capable of scanning and producing electronic files that could be searched by keywords and direct access to specific pre-coded pages or documents.

Multiple attorneys suggested two companies in Honolulu might be able to provide the electronic digitized files we believe we need: Aloha Data and Honolulu Copy. To learn what would be involved in converting the subclass members' application and lessee files into electronically searchable files, the Unit Manager and other members of the Kalima Litigation Team, met with representatives from each vendor. We outlined what we wanted to do with the indexed electronic files, the limitations we needed to impose to minimize disruptions in DHHL's operations and protect the confidential information in the files, and the limited time we had under rules of discovery and then present litigation schedule to prepare the State's defense.

Both vendors inspected the room where the paper files are kept and the work site DHHL would be providing for the project. They also reviewed the contents of a sampling of files application and lease files that varied by type, island, age, and volume, to gain a sense of what the files contained. After the visit, each vendor described multiple ways the files could be scanned and indexed so that information could be retrieved with varying degrees of precision, and what assistance we would need to provide for those purposes. Aloha Data indicated that it would be able to scan and index the files at DHHL's offices, with staff and equipment it already had. Honolulu Copy indicated that it had the staff and equipment to scan the files at DHHL's offices but would need to work with a subcontractor in Colorado to add the indexing necessary to retrieve information from the electronic files by means other than an Adobe keyword search. It also was not clear whether their indexed file would be delivered for upload onto our own server, or uploaded onto a "data cloud" accessible to us via the Internet.

Each vendor also submitted cost estimates for the discrete tasks their staff would perform convert the paper files to indexed electronic files. Aloha Data provided two price estimates for work to complete the job in three months: \$86,387.40 with a unit price per page of \$0.095 (if pages were not dog-eared, etc., and documents were not "book marked"), and \$98,167.50 with a unit price per page of \$0.115 (if pages needed to be straightened or "book marked"). Honolulu Copy also provided two prices: \$60,000 with a unit price of \$.07 for scanning and \$.01 for OCR per page; and approximately \$64,800 with the same unit prices per page, plus \$1,500 to host 10GB of data on its "data cloud," and \$3,300 for 55 hours of database review and indexing by its subcontractor in Colorado. Honolulu Copy projected that it could complete the job in two months.

Our final selection of Aloha Data was based principally on its staff's detailed description of how the documents could be indexed, and their willingness to work with the Kalima Litigation Team to compile the catalog that we believe is critical to effectively indexing the electronic files so that

we will be able to extract information pertinent to the eligibility and time components of the Damages Model directly. Considerations that weighed against Honolulu Copy's selection included (1) access and security concerns arising out of Honolulu Copy's reliance on a "data cloud" to store and access the indexed electronic files, and working with staff in Colorado via the Internet to index the files, rather than side-by-side here in Honolulu.