



**STATE PROCUREMENT OFFICE
 NOTICE OF REQUEST TO AMEND AN EXEMPTION
 FROM HRS CHAPTER 103D CONTRACT # -4 P121**

TO: Chief Procurement Officer
 FROM: Department of Hawaiian Home Lands
Name of Requesting Department

STATE PROCUREMENT OFFICE
 STATE OF HAWAII

Pursuant to HRS §103D-102(b)(4) and HAR section 3-120-5(d), the Department requests to amend an exempt contract as follows:

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| 1. SPO-007, Exemption Reference (PE) Number: PE-08-078)/D/Ba9 |
| 2. Vendor/Contractor/Service Provider Name: Watanabe Ing LLP |

3. Describe the goods, services, or construction:
 Legal Counsel to represent the Hawaiian Homes Commission, its individual Commissioners, including its Chairman, and the Department of Hawaiian Home Lands in Richard Nelson, et al. v. Hawaiian Homes Commission, et al. originally filed on October 19, 2007.

4. Explain in detail what is being amended:
 To add an additional \$200,000 to the Contract for a total of \$575,000 to cover legal expenses.

5. Amended contract price for this request: \$ \$575,000.00

6. Explain in detail why the amendment(s) are necessary:
 See Attachment A

Attachment A

Procurement Exemptions 08-078-J/D a1-5 and 08-078J/D/Ba7/Ba8/Ba9 allows the Department of Hawaiian Home Lands and the Hawaiian Homes Commission to retain legal counsel for a lawsuit against the above referenced parties.

Background

Procurement by competitive means would not be advantageous to the State as the current Contractor (Watanabe Ing, LLP) is in the best position to coordinate legal activities for which the contractor was originally retained. The litigation is ongoing. On May 2012, the Hawaii Supreme Court issued its decision, and remanded the case to the Circuit Court for further proceedings. The Circuit Court is expected to conduct further proceedings in the case in May 2015, which will likely involve further discovery, motions practice and a trial if issues remain. The Circuit Court heard motions for summary judgment filed by the Plaintiffs and DHHL on November 12, 2014. As of the date of this submission, a decision from the Court on the motions is pending. If the case is not fully resolved on the motions, it is expected that counsel will need to conduct further work on the case in preparation for the trial scheduled for May 2015, which will likely involve further discovery, motions, practice and preparation for the trial on the remaining issues. DHHL also expects to seek further legal advice in 2015 regarding the impact of the Hawaii Supreme Court decision on DHHL's budget request and testimony to the state administration and the 2015 legislature to comply with the Hawaii Supreme Court decision relating to "sufficient sums" for DHHL's administrative and operating expenses

Current Status of the Lawsuit

As noted above, although the Court heard the motions for summary judgment filed by Plaintiffs and DHHL on November 12, 2014, the Court has not ruled on the motions to date. Given the original trial date in May, 2015 (and the discovery cut-off deadline of March 31, 2015), the Contractor therefore had to begin preparing in January, 2015 for the trial on all of the issues in the case. Among other trial preparation, the Contractor began interviewing witnesses named by the other parties, and prepared DHHL witnesses for their depositions. DHHL also participated in and defended various depositions noticed by the other parties. The Contractor has also been involved in documentary discovery by reviewing documents produced by the State of Hawaii, and reviewing and coordinating the production of DHHL documents requested by the State of Hawaii. On April 8, 2015, the Court unilaterally continued the trial in the case to June 29, 2015, but has not yet ruled on the motions for summary judgment.

What this additional monies will be used for

The additional funds will be used to complete the discovery in the case, including completing the review of the documents produced by the State of Hawaii as well as documents requested by the State from DHHL. The additional funds will also be used to prepare for and conduct the trial in this matter. The trial preparation will include preparing trial exhibits, preparing a trial memorandum, preparing witnesses, preparing to question witnesses, responding to a motion for summary judgment filed by the State of Hawaii on April 7, 2015, and preparing and responding to motions in limine. Depending upon the issues remaining if the Court rules on the motions for summary judgment, the trial will likely last between five to ten court days. The funds will also be used for post-trial matters, including responding to any post-trial motions filed by the parties and preparing proposed findings of fact and conclusions of law. As the Legislature is also currently in session, the additional funds may also be used to seek legal advice from the Contractor with respect to the Legislature's position with respect to providing sufficient sums to DHHL in the

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state biennium budget. The contractor estimates that the average cost in legal fees through the end of the trial will likely be \$50,000 - \$60,000 per month. The foregoing estimate does not include any post trial appellate work, although it is likely, given the legal positions of the parties, that one or more of the parties will appeal the trial court's final decision.

A cost analysis / case synopsis graph and data sheet is provided that summarizes all billings (Exhibit A) under this Contract. The \$200,000.00 request under this procurement exemption brings the overall contract amount to \$575,000.00. This may seem substantial, however, given the 6 years of service by this Contractor, the annual compensation is under \$100,000 per year. As mentioned earlier, the current Contractor is in the best position to coordinate legal activities. Should this contract be re-procured, preparation time, combined with on-going discoveries, motions, practice and trial preparation would cripple DHHL's defense and cost much more than the per year annual compensation mentioned above.

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