

STATE OF HAWAII
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS

105 NOV 7 P3 02

TO: Chief Procurement Officer

STATE PROCUREMENT DIVISION
 STATE OF HAWAII

FROM: Department of Commerce and Consumer Affairs, Cable Television Division

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

Description of goods, services, or construction: Cable television public, educational, and governmental (PEG) access services until June 30, 2006

Federal law (47 USC §531) allows the State of Hawaii as a franchising authority to establish PEG requirements in a franchise with cable operators. DCCA provided for PEG access in the State through the franchise orders it issued to cable operators under HRS chapter 440G, and the contracts with the PEG access organizations described below. In franchise orders, DCCA recognized the benefit that PEG access provides the public and required cable operators (as one of the conditions to obtain cable television franchises in the State) to provide channels for PEG use and to pay annual PEG access fees for facilities and equipment.

To facilitate public access to PEG programming, DCCA entered into separate contracts with the four PEG access organizations to (among other things) manage and operate the PEG channels, train the public to use the PEG facilities and equipment to create programs, and cablecast the programs created and submitted by the public on the cable operator's channels. DCCA does not consider these organizations to be State or government agencies because they are private, non-profit corporations that are run independent of government, and they have filed articles of incorporation and registered with the State's Business Registration Division.

The PEG access organizations are funded primarily from the annual PEG access fees that the local cable operator (currently Time Warner) is required to pay pursuant to DCCA's franchise orders. The cable operator pays these annual PEG access fees directly to the PEG access organizations, and is allowed to pass these fees on to cable television subscribers under federal law. The cable operator has elected to pass these fees to subscribers and assesses subscribers on a monthly basis. The PEG access organizations do not receive any governmental monies either from the general fund or DCCA's Compliance Resolution Fund. The name and address of each PEG access organization and the approximate amounts that the cable operator paid to each PEG access organization in 2005 are as follows:

Name of Vendor: Address:	Ōlelo Community Television 1122 Mapunapuna Street Honolulu, HI 96819	Cost:	Approximate annual amount \$4,100,000
Name of Vendor: Address:	Na Leo 'O Hawaii 91 Mohouli Street Hilo, HI 96720	Cost:	Approximate annual amount \$692,000
Name of Vendor: Address:	Ho'ike: Kauai Community Television 4211 Rice Street, Suite 103 Lihue, HI 96766	Cost:	Approximate annual amount \$336,000
Name of Vendor: Address:	Akaku: Maui Community Television 333 Dairy Road, Suite 104-A Kahului, HI 96732	Cost:	Approximate annual amount \$813,000

PE-06-20-J

Term of Contract: December 1, 2005	From: December 1, 2005	To: June 30, 2006	Prior Exemption Ref. No. (if applicable)
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The current PEG contracts were signed in 1998 and 1999 and were automatically renewed annually until December 2003 ('Ōlelo, Na Leo and Hoike) and June 2004 (Akaku). DCCA then began re-negotiating these contracts and has been extending them in approximately three-month intervals until the negotiations are completed.

While reviewing the PEG contracts, DCCA asked the Department of the Attorney General and the State's Procurement Office ("SPO") whether DCCA's contracts with these PEG access organizations are subject to the State Procurement Code. After much discussion, DCCA was informed that these PEG access contracts are subject to the State Procurement Code and that none of the exemptions in HRS § 103D-102(b) appear to apply; however, the exemption in HRS § 103D-102(b)(4)(L) allows the chief procurement officer to determine that a good or service is exempt from the Procurement Code even though such good or service is available from multiple sources because procurement by competitive means is either not practicable or not advantageous to the State.

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

DCCA plans to conduct public meetings to obtain the public's input and comments on PEG access and PEG services in the State. These public meetings will be held in each county and will provide the DCCA with input on whether to proceed with the RFP process or to seek an exemption from the SPO. There are a number of complex issues that must be addressed if the State issues an RFP, such as whether the RFP should address issues related to operational practices and policies; transition of resources, staff, facilities and equipment from existing PEGs to new organization(s); and maintaining the level of access services with minimal disruption during the transition. DCCA anticipates that the public comment process and DCCA's evaluation of the issues relating to an RFP will take approximately seven (7) months (i.e., to approximately June 30, 2006). DCCA will update SPO on the progress of its evaluation.

Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:

The vendors listed above are currently the service providers offering PEG access services in cable franchise areas throughout the State. Each PEG organization is responsible for five (5) PEG access channels. PEG Access Channels cable cast programming 24 hours a day, 7 days a week, for a total of 43,800 hours of programming a year. Each PEG access organization has developed operating procedures, policies and practices to manage PEG channels, facilities, equipment and funding. The existing PEG access organizations have the expertise to continue to run the access stations and to provide access services until June 30, 2006. Having the existing PEG access organizations continue to manage and operate the existing access services would provide stability and continuity of services to the public until the DCCA completes its public comment meetings and determines whether to issue an RFP process or seek an exemption.

A description of the agency's internal controls and approval requirements for the exempted procurement:

The Director of Commerce and Consumer Affairs has reviewed and approved the request to obtain a temporary exemption from the Procurement Code and SPO's approval to extend the four (4) PEG access contracts from December 1, 2005 to June 30, 2006.

A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:

Mark E. Recktenwald, Director of Commerce and Consumer Affairs

Direct questions to:
Clyde S. Sonobe, Cable Television Administrator

Phone Number:
586-2620

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes No

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS, TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT.

Mark E. Recktenwald 11/4/05
MARK E. RECKTENWALD Date
Director of Commerce and Consumer Affairs

Chief Procurement Officer's Comments:

When DCCA entered into contracts with OIlelo, Na Leo, Ho'ike, and Akaku during the period 1997-1999, these contracts were subject to the Procurement Code. Despite timely review of the contract by the Department of the Attorney General, DCCA was not aware that the Procurement Code applied to these contracts in 1997-1999, and did not fulfill the requirements of HRS chapter 103D.

The request for an exemption is disapproved. Instead, DCCA shall submit SPO Form-16, "Procurement Violation: Report of Findings and Corrective Actions Request for After-the-Fact Payment Approval," and the SPO will consider the period of the violation to be from the date of the 1997-1999 contracts to June 30, 2006.

The SPO notes that these contracts do not involve the payment of monies from the general fund and there is no request for an after-the-fact approval to disburse general funds.

Please ensure adherence to applicable administrative requirements.

APPROVED

DISAPPROVED

Alan P. Fyler 12/12/05
Chief Procurement Officer Date

cc: Administrator,
State Procurement Office

PE-06-20-J

Submit in Duplicate

STATE OF HAWAII NOTICE OF EXEMPTION FROM CHAPTER 103D, HRS

The Chief Procurement Officer is in the process of reviewing the request from the Department of Commerce and Consumer Affairs for exemption from Chapter 103D, HRS, for the following goods, services, or construction:

Cable television public, educational, and governmental (PEG) access services

Name of Vendor: Address:	Ölelo Community Television 1122 Mapunapuna Street Honolulu, HI 96819	Cost:	Approximate annual amount \$4,100,000
Name of Vendor: Address:	Na Leo 'O Hawaii 91 Mohouli Street Hilo, HI 96720	Cost:	Approximate annual amount \$692,000
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Name of Vendor: Address:	Akaku: Maui Community Television 333 Dairy Road, Suite 104-A Kahului, HI 96732	Cost:	Approximate annual amount \$813,000

Term of Contracts:	From: December 1, 2005	To: June 30, 2006	Cost: See above for each vendor
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Direct any inquiries to:		
Department:	Department of Commerce and Consumer Affairs Cable Television Division	
Contact Name/Title:	Clyde S. Sonobe Cable Television Administrator	Phone Number: 586-2620 Fax Number: 586-2625
Address:	335 Merchant Street, Room 101 Honolulu, HI 96813	

Note: Due to a posting discrepancy, this request is hereby posted this date:

Date Posted: 11/22/05

A copy of this notice of exemption from Chapter 103D, HRS, shall be posted by the Chief Procurement Officer and the purchasing agency in an area accessible to the public, at least seven (7) calendar days prior to any approval action.

Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven (7) calendar days from the date posted to:

Chief Procurement Officer
Office/Agency – DCCA/CATV
335 Merchant St, Room 101
Honolulu, HI 96813

Administrator
State Procurement Office
1151 Punchbowl St., Room 230 A
Honolulu, HI 96813