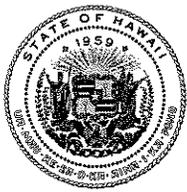


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# STATE PROCUREMENT OFFICE NOTICE OF AND REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS

1. TO: Chief Procurement Officer  
2. FROM: Attorney General

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:

3. Description of goods, services or construction:  
The establishment of a two-year pilot DNA program in the Department of the Attorney General will assist law enforcement agencies statewide in DNA testing and investigations in violent crimes cold cases. Funds in this program will be used exclusively to fund DNA testing and investigative assistance to solve violent crime cold cases, identify missing persons and to train law enforcement in the State of Hawaii. It is believed that by assisting the law enforcement in the state with this funding, there will be a reduction of violent crimes "cold cases" and many missing persons can be identified.

4. Name of Vendor: 1). Identigene and 2). Orchid Cellmark, Inc. Address: 1). 5615 Kirby Street, Suite 800, Houston, Texas 77005 2). 3988 Diplomat Drive, Suite 100, Farmers Broad, Texas 75234	5. Price: \$686,600
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6. Term of Contract: From: Upon Approval To: 05-31-07	7. Prior Exemption Ref. No.
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8. Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State:  
  
(See Attached)

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:  
  
(See Attached)

10. A description of the agency's internal controls and approval requirements for the exempted procurement:  
  
The Department of the Attorney General, Investigations Division, will alternate requests for the DNA testing utilizing both vendors selected.

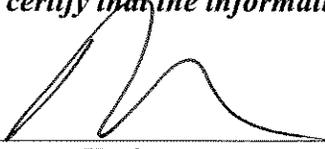
**REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)**

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
Donald Wong	Chief Special Agent	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Clifford Rubio	Special Agent	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Wayne Kimoto	CODIS Manager	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to:	Department: Attorney General Contact Name: Clifford Rubio Phone Number: (808) 586-1240 Fax Number: (808) 586-1371
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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.*



JUN 23 2006

Department Head

Date

**Reserved for SPO Use Only**

15. Date Notice Posted

6/30/06

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:

Chief Procurement Officer  
 State Procurement Office  
 P.O. Box 119  
 Honolulu, Hawaii 96810-0119

Chief Procurement Officer's comments:

16.

**APPROVED**     **DISAPPROVED**

Chief Procurement Officer

Date

**Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State:**

**TIMELINE:**

**April 2005**

DNA Grant application is awarded. However, there was a delay due to the Grant Adjustment Notice to release the funds to hire a contract employee. Before the funds could be released, the position needed to be established and filled and an appropriation was set up for the grant. Approval to establish and fill was received in July of 2005.

Attempts were made with the department's ASO to provide guidance on the procurement process.

**October 2005**

Special Agent Clifford Rubio begins employment with the Department of the Attorney General.

He learned funds for the DNA testing would not be released due to requirements from NIJ in regards to Environmental Assessment issues.

In addition, learned the following:

1. Grant calls to procure outsource DNA lab to analyze evidence
2. Outsource lab to analyze evidence & return data w/notes
3. Returned data / notes subject to technical review by HPD Crime Lab before input into CODIS.
4. Important that outsource DNA lab meets high technical standards of HPD Crime Lab
5. Important that HPD Crime Lab be able to read and convert data from outsource lab.
6. If HPD Crime Lab unable to read/convert data, or technical standards doesn't meet HPD requirements, HPD will reject data and not input into CODIS
7. If this happens, then data received from outsource lab will be useless as it is required that data has to be inputted into local CODIS before going into National Data Base.

Several meetings with Vicki Kitajima from the Department of Accounting and General Services, State Procurement, to begin the process of putting together the requirements the outsource labs has to meet to qualify for bidding.

Clifford Rubio contacted Joanne Furuya of the HPD Crime Lab and informed her of this Grant project and verified that technical standards has to be met by outsource lab that

wins the bid, and a technical review has to be conducted of the data received from this outsource lab. To ensure that the technical standards are met in the bidding process, Cliff Rubio requested a copy of HPD's technical requirements when they bid for an outsource lab. Joanne Furuya related that she would send him a copy.

### **November 2005**

Cliff Rubio received via email from Joanne Furuya a copy of general and technical requirements for outsource labs as required by HPD Crime Lab.

### **November – December 2005**

We worked with State Procurement Officer, Vicki Kitajima in incorporating the technical requirements received from HPD into the Attorney General's bidding process.

### **January 2006**

Clifford Rubio emailed Joanne Furuya informing her that we have completed incorporating the technical requirements she provided and that we will soon be sending out the bid requests.

### **February 2006**

Cliff Rubio and Vernon Santos met with Wayne Kimoto at HPD. They discussed our grant and reminded him that whatever lab is awarded the bid has to be able to be imputed into the CODIS system. They then gave him a copy of our invitation for bids for his review.

At this time Mr. Kimoto was asked to participate in the evaluation process. Due to his current workload, he was unable to participate.

Bidding process in progress. Several vendors sent inquiries asking about listed technical requirements to see if certain requirements that they use will be accepted instead. As an example, HPD stated that the vendor has to use an ABI 310. The vendor stated that they use a newer equipment (ABI 3100) and wondered if it would be acceptable.

Being that Wayne Kimoto is the CODIS Manager at the HPD Crime Lab, these inquiries had to be sent and addressed by him as we at the Attorney General's Office are not qualified to determine if these changes would be acceptable by HPD or not. These communications were conducted between Vicki and Wayne.

### **March 2006**

Bidding deadline arrives with a total of nine (9) vendors applying.

Committee members, Donald Wong, Vernon Santos, Liane Moriyama and Cliff Rubio evaluated each lab on a point system based on the minimum technical requirements provided by HPD.

### **April 2006**

All labs are evaluated. One lab was determined to have not registered in time and was ineligible for evaluation.

Sealed bids are opened. DNA Security Inc. has the lowest bid

Vicki Kitajima contacts Wayne Kimoto and advises him of the winning vendor. He is advised by Vicki that they do not want to award the bid to this vendor until they are assured that data from this vendor will be able to be converted to their use so it can be inputted into CODIS. We requested that he run a review of a sample test from DNA Security to determine this.

Wayne Kimoto suggests to Vicki that he prefers to send DNA Security Inc. a mock case to have them analyze this mock case and send back the results to determine if they qualify and if the data can be inputted.

Vicki Kitajima contacts DNA Security Inc. and they agree to analyze this mock case and return the data to HPD for review.

Cliff Rubio dropped off two binders containing the specs submitted by DNA Security Inc. to the HPD Crime Lab for Wayne Kimoto to review.

Contacted Assistant Chief Kerr, who had his concerns about the HPD lab being too busy (per Crime Lab) and also questioned funding of the techs time. We reminded him that Wayne Kimoto is the CODIS Manager, and as such, there is nowhere else we are able to take this data to. A/C Kerr was very open and reiterated that he wants to see that we work this out and will negotiate with the Crime Lab.

Vicki Kitajima advised Cliff Rubio that she spoke to Wayne Kimoto and he is currently reviewing the two binders containing the specs from DNA Security Inc. It appears that based on this review, he would be writing an unfavorable report. Vicki requested that Cliff drop off a copy containing specs of the next lowest bidder, DNA International to Wayne Kimoto for his review.

Cliff Rubio dropped off the binder from DNA International to Wayne Kimoto.

Later in the afternoon, Cliff Rubio was contacted by Vicki. She related that she received Wayne's email report of DNA Security Inc. His report reflects his concerns with DNA Security Inc, but does not address if this DNA lab should be rejected because of the data conversion. Vicki again advises Wayne that we do not want to award the bid to this vendor unless we know that the data will be accepted by HPD. If we do award this

vendor, have them analyze evidence and send the data to HPD, which they, (HPD) later reject, then we would have wasted a lot of money and probably destroyed the evidence during the analysis.

Wayne Kimoto informed Vicki Kitajima that he is not the one to decide if a certain lab is acceptable or not. That decision belongs with the Grant Manager. He can only express his views and concerns. Vicki again advises him that the Grant Manager cannot make this decision without knowing if the data from the awarded lab can be converted.

Several communications were made between Cliff Rubio and Wayne Kimoto regarding his concerns with some of the technical requirements of DNA Security Inc. Of major concern, is whether the data from DNA Security Inc. will be qualified enough to be put into the CODIS system. However, Wayne Kimoto has stated that he has voiced his concerns (via email) but it not his position to accept or reject this lab. That responsibility ultimately rests with the Attorney General as it is our grant and not HPDs.

Several communications were made again between Cliff and Wayne Kimoto. He agreed to send DNA Security a mock case for them to analyze and then Wayne will do a technical review to see if they are able to convert the data for input into CODIS. However, Wayne Kimoto did say that they still have other concerns in the technical aspects of DNA Security and that it might be a good idea to do an on-site inspection of DNA Security before they are given an actual case to work on.

A memo was forwarded to Vicki Kitajima to be forwarded to DNA Security, which we felt we needed to be addressed:

1. Copy of current ASCLDILAB Audit (March 10, 2006)
2. CODIS manager will be submitting a test case sample to DNA Security and will await his approval of the results.
3. There is a possibility that we may do an on-site inspection of DNA Security.

Wayne Kimoto of SIS mailed DNA Security Inc. a mock case as requested.

A letter received from Ruth E. Yamaguchi, Procurement Officer acknowledging our request to further evaluate DNA Security, Inc. She advised us in this letter that the sealed bid process does not allow for re-evaluation of bidder qualifications after the sealed bids have already been exposed.

It was her recommendation that the solicitation be cancelled and re-issued using the request for proposal procurement method.

### **May 2006**

Email received from Vicki Kitajima indicating that the cancellation notice has been issued. She is in the process of drafting the letters to each company affected. Once that

is complete, she advised that should our office need her services, to complete Form SPO-18 and provide the cope of work and evaluation criteria.

Email received from Wayne Kimoto that they received the mock sample case back from DNA Security, Inc. Cliff advised him that we (Attorney General's Office) have proposed to cancel the current bidding process and look into re-issuing the bid using the request for proposal procurement method.

### **June 2006**

After several attempts to meet, the following personnel met at the HPD Crime Lab.

AG's - George Karonis, Vernon Santos, Lori Cadium, Cliff Rubio, Vicki Kitajima

HPD - Joanne Furuya, Wayne Kimoto, Kathy

A discussion on the Request for Proposal method was done. It was learned from Vicki that we would have to form a technical review committee to draft the specs of the proposal, and then to evaluate the labs that submits proposal.

HPD addressed their concerns that their lab personnel are overwhelmed with their own cases and inquired about the AG's paying for overtime for the lab personnel to:

1. draft the specs language needed for the proposal
2. three DNA lab personnel to evaluate the labs that submits proposal. Vicki highly recommended that HPD provide a minimum of three DNA specialists.

Vicki Kitajima then indicated that there is another method we might consider, which we were unaware of, that is choosing a lab via an Emergency Exemption. This would require us submitting a form SPO-07.

Charles Heurich, Program Manager for the Department of Justice, Office of Justice Programs, was contacted and advised of the delay in the bidding process as we had problems with some of the labs not meeting our CODIS requirements. He was also advised that this new RFP process might take another six months.

He related that Orchid Cellmark and Identigene have had their Environmental Assessments and are available as vendor labs.

He further stated that our grant ending date is 5-31-07. We only get a one-time extension up to 12 months. In order to get this extension, we must justify extraordinary circumstances to extend it farther than that. And the word there is that a slow procurement process probably isn't enough to justify another extension. This also means that if we have funds left at the end of this period, we will probably have to return them to NIJ.

Lori Cadium left a message for Vicki Kitajima advising her that we are seriously considering on using Form SPO-07 to acquire a vendor lab via an Emergency Exemption as the grant ends on May 31, 2007, and the RFP process may take another six months.

After a discussion was made with State Procurement, a decision was made to proceed with the Emergency Exemption method.

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

The vendors must have experience providing forensic testing services. Consideration will be given to those laboratories meeting the following conditions providing a minimum of five professional references that are using services of the type proposed in this Notice. The references must include forensic laboratories where the vendor has successfully provided serological and DNA testing within the last 5 years or more. At least one of these references must be from a government agency that held a contract of similar size and scope as those listed in this Notice within the last 5 years. The vendors shall provide the company name, the location where the service was provided, contact person(s), customer's telephone number, e-mail address, dates of service provided, and a description of the service type. References may be contacted to verify the vendor's ability to perform the contract. The Department of the Attorney General reserves the right to use any information or additional references deemed necessary to establish the ability of the vendor to perform the conditions of this Notice. Negative references may be grounds for disqualification.

The vendors shall specify how long the individual/company providing the service has been in the business of providing forensic biological fluid screening and DNA analysis services and under what company name. A resume or summary of qualification (per DAB guidelines), proficiency test records (dates, types of proficiencies taken (i.e. serology, DNA), results), work experience, education, skills, etc., which emphasize previous experience in the area of forensic biological fluid screening/identification and forensic DNA analysis, must be provided for all key personnel who will be involved with any aspect of the contract. The vendors must also include the following minimum information:

- Identification and description of the laboratory facility and equipment slated to process the Department of the Attorney General cases.
- Date of casework validation of Applied Biosystems AmpF1STR Profiler Plus and Cofiler kits (for forensic laboratories in the United States), analysis utilizing Applied Biosystems Macintosh version of GeneScan and Genotyper software, on a Applied Biosystems 310 Genetic Analyzer. Length of time validated procedure has been used on casework.
- Documentation of accreditation by ASCLD-LAB and/or Forensic Quality Services (FQS) under legacy and/or ISO 17025 including the latest external FBI QAS audit document with findings and responses. If the last audit was internal, provide a copy of this audit with responses and findings.
- The name, phone number, and e-mail of a dedicated project manager to handle correspondence, inquiries, troubleshooting and negotiations.

The vendors should provide a description of the work plan and the methods to be used that will demonstrate to the Department of the Attorney General what the vendors intends to do, the time frame necessary to accomplish the work, and how the work will be accomplished. Vendors must include the following minimum information:

- All standard Operating procedure manuals including technical procedures, quality manuals, troubleshooting procedures, corrective action policies, contamination control, laboratory security and information control procedures.
- A sample case file, as specified in the contract.
- Current caseload capacity and any projected scale-up plans. Include the maximum number of cases that would be able to be processed for this contract per 60-day period, give the vendor's other caseload and projects.

Consideration should be given to those labs providing certification of compliance with NEPA, meeting the general and technical specifications. We would also like to prioritize those labs that have successfully provided serological and DNA testing for a government agency that held a contract of similar size and scope within the last five years. In addition, have had their DNA testing results reviewed and uploaded to the FBI national database.