



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

- 1 TO: Chief Procurement Officer
2 FROM: DBEDT/Natural Energy Laboratory of Hawaii

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:
Two out of three of NELHA's deep sea water pipelines were damaged in the near shore area by the October 15, 2006 earthquake and subsequent aftershocks and are in need of offshore repairs.

4 Name of Vendor: Harbor Offshore Inc.
Address: 5720 Nicolle St., Ventura, CA 93003

5 Price:
\$295,200.00

6 Term of Contract: From: Upon approv. To: 06/30/09

7 Prior Exemption Ref. No.

8 Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:
The majority of NELHA's aquaculture tenants rely on the 18" and 40" pipelines. Currently only the 40" is in working condition.

9 Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:
RFP-08-01-NELHA, issued on 10/10/07, to perform 18" and 40" pipeline repair work was subsequently cancelled because improper general conditions had been attached to the solicitation.

10 A description of the agency's internal controls and approval requirements for the exempted procurement:
Standard DBEDT contract reviews and approval processes have been and will continue to be followed for this project.

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
Jan War	NELHA Operations Manager	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Laurence Sombardier	NELHA Contracts Specialist	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Eileen Harada	DBEDT Contracts Specialist	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Ron Baird	NELHA CEO	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Ted Liu	DEBDT Director	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to:	Department: DBEDT/NELHA Contact Name: Ron Baird Phone Number: 808-329-7341 X225 Fax Number: 808-326-3262
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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.*



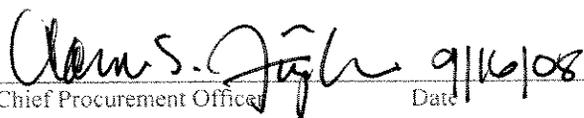
SEP 05 2008

Department Head

Date

Reserved for SPO Use Only	
	15. Date Notice Posted <u>9/08/08</u>
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: <p align="center"> Chief Procurement Officer State Procurement Office P.O. Box 119 Honolulu, Hawaii 96810-0119 </p>	
Chief Procurement Officer's comments: <p align="center">SEE ATTACHED CPO COMMENTS</p>	

16. APPROVED DISAPPROVED


 Chief Procurement Officer Date 9/16/08

CPO COMMENTS:

The following summarizes our understanding of the events to date:

- 10/15/06 NELHA's 40-inch deep sea water pipeline was damaged by an earthquake and is in need of offshore repairs.
- 02/07 A temporary patch is placed on the pipeline's crack.
- 10/10/07 RFP-08-01-NELHA issued but cancelled the solicitation because improper general conditions were attached to the solicitation.
- 12/21/07 A second RFP-08-07-NELHA was issued with proposals due on 2/20/08. The award to the first ranked offeror is protested by the second ranked offeror. DBEDT denies the protest.
- 06/03/08 The second ranked offeror files a request for an administrative hearing with the DCCA. One of the items included in the protestor's complaint is that the first ranked offeror did not have the proper State of Hawaii license at the time they submitted their proposal.
- 06/27/08 The DCCA Hearing Officer's Findings of Fact, Conclusions of Law and Decision were for DBEDT to reevaluate the proposals to determine whether the offerors were properly licensed at the time they submitted their proposals.
- 07/24/08 A request by NELHA to cancel the RFP is submitted to the director of DBEDT. The reason for the cancellation as stated by NELHA, is that none of the offerors submitted a written notice of intention to bid as required by Paragraph 2.1 of the RFP's General Conditions. For that reason, all bidders should be disqualified, none of the proposals considered for award, and the RFP must be re-issued. The request for cancellation was approved by the director on 08/06/08.
- 08/25/08 It is discovered that the temporary patch has failed and the pipeline crack has significantly increased.
- 08/26/08 A new temporary patch is installed over the damaged pipeline. The repair is still partially leaking and is vulnerable to failure at any time.

09/05/08 DBEDT submits a Notice of and Request for Exemption from Chapter 103D, HRS, for the repair of the 40-inch pipeline. The justification for the request is that the agency has twice attempted to procure the services through the RFP method and because of the worsening condition of the pipeline, it is no longer practicable or advantageous to re-issue another RFP.

The request is also for NELHA to contract with the vendor that was the highest ranked offeror under the RFP, because as stated in the request; maximum fair and open competition was conducted and the vendor is now currently licensed to do business in Hawaii.

STATE PROCUREMENT OFFICE (SPO) FINDINGS:

1. The DCCA Hearing Officer's Findings of Fact, Conclusions of Law and Decision (Decision), ordered NELHA to reevaluate the proposals to determine whether the offerors were properly licensed at the time they submitted their proposals.
2. NELHA did not comply with this Decision as it was determined that none of the offerors submitted a written notice of intention to bid, rendering all offers to be non-responsive.
3. 7/24/08 NELHA submitted a request to DBEDT to cancel the RFP with the justification that none of the offerors submitted a written notice of intention to bid, rendering all offers to be non-responsive and that the RFP must be re-issued.
4. 8/6/08 Director Liu approved the cancellation of the RFP.

DECISION:

This request for exemption is disapproved.

Director Liu's approval was based on the offers being non-responsive and that the RFP would be re-issued. NELHA should have immediately re-issued the RFP. A procurement exemption would not be fair as it would eliminate open competition for all potential offerors.

NELHA should re-issue the RFP as stated in the NELHA 7/24/08 request for cancellation letter to Director Liu. A new RFP can be expedited because the agency's General Conditions have been corrected, and pursuant to HAR section 3-122-16.02 (a)(2), the procurement officer may make a written determination when less than thirty calendar days between the public notice and receipt of offers still provides adequate competition.