



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

1. TO: Chief Procurement Officer
2. FROM: Ian Birnie, Hawaii District Harbor Manager

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 Facility Security Plans (FSP) are required under the Maritime Security Transportation Act of 2002. The FSP requires that the commercial harbors control access to only those persons properly credentialed and having a valid reason to conduct business into the harbors of the State of Hawaii. Hilo Harbor assigns security guards to inspect credentials and verify the purpose of persons requesting access into the harbor. The Hawaii District has one security officer and contracts security guard service to staff the required security posts on a 24x7 basis. On August 8, 2008, the contractor had previously concurred to extend the contract for an additional year at a 4% increase. On November 24, the contractor withdrew its agreement to extend the contract before the District executed a contract extension. Contractor is willing to remain on the job for an additional 4 months until a new contract can be bid and awarded.

4. Name of Vendor: American Guard Service, Inc.

Address:
677 Ala Moana Blvd., Suite 725
Honolulu, HI 96813.

5. Price:

\$114,127.20

6.

Term of Contract: From: 12/1/2008 To: 3/31/2009

7. Prior Exemption Ref. No.

0

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

American Guard Service's Julia Matos, Vice President of Maritime Operations notified the Hawaii District on November 24, that AGS would not honor the contract extension rate from \$18.04 to \$18.76 (4%) unless the price was increased from \$18.04 to \$19.65 per hour (8.93%). The AGS contract expires on November 30, 2008. AGS's late notice of withdrawal of the agreement to extend the contract makes procurement by competitive bidding not practical. In order for Hawaii District to be in compliance with its FSP and control access into the Harbor and avoid a procurement violation, the 4-month exemption is needed.

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

The Harbors Division will immediately utilize its newly prepared 3-year security contract specifications used for Honolulu Harbor and Nawiliwili Harbor security contracts to ensure fair and open competition in issuing a new contract.

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

10. A description of the agency's internal controls and approval requirements for the exempted procurement:
 The Harbors Division Administrator has reviewed the documentation leading up to this withdrawal and confirms that the need for an exemption is essential for the Hawaii District to remain in compliance with its FSP and to compliant with the procurement code.

Future contract specifications will no longer contain language for contract extensions thus eliminating situations whereby the Harbors Division will be disadvantaged by the late withdrawals of agreements.

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	
Jean Oshita	Administrative Services Officer	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Davis Yogi	Harbors Administrator	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
Michael Formby	Deputy Director, Transportation	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<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

13. Direct inquiries to: Department: Transportation
 Contact Name: Davis Yogi
 Phone Number: 587-1927
 Fax Number: 587-1982

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.*


 Department Head

11-28-08
 Date

Reserved for SPO Use Only

15. Date Notice Posted 12/01/08

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

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

Chief Procurement Officer's comments:

Procurement exemption is approved from 12/1/08 to 3/31/09 or sooner if a new contract can be executed prior to the end date. This approval is for the solicitation process only, HRS section 103D-310(c), and HAR section 3-122-112, shall apply.

16.

APPROVED DISAPPROVED NO ACTION REQUIRED

Allen S. Jaffe 12/8/08
Chief Procurement Officer Date

SUPPORTING DOCUMENTS

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI

RECEIVED

2008 AUG 11 AM 8 39

DEPT OF TRANS
HARBORS DIVISION
HILO, HAWAII

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
80 KUHIO STREET
HILO, HAWAII 96720
August 5, 2008

IN REPLY REFER TO:
HAR-H
09.09

American Guard Services, Inc.
677 Ala Moana Blvd., Suite 725
Honolulu, Hawaii 96813

Gentlemen:

Subject: FURNISHING SECURITY SERVICE FOR HILO HARBOR,
ISLAND OF HAWAII, JOB HAR-H.D. 1-07, CONTRACT NO.
56436.

This letter is to advise you that you may continue the subject service for an additional year, December 1, 2008 through November 30, 2009 as provided in Section 10.6 TERM OF CONTRACT AND FUNDING.

The future issuance of Renewal No.2 will detail the contract extension.

Please acknowledge your agreement in the space provided below and return the original letter to this office.

Very truly yours,

IAN BIRNIE
Hawaii District Manager

IB:aa

cc: CON

AKNOWLEDGEMNT

By W. M. Moss
AMERICAN GUARD SERVICES, INC.

8-8-08
DATE

RECEIVED
8/7/08 CM



American Guard Services, Inc.

677 Ala Moana Blvd., Suite 725, Honolulu, HI 96813, Tel: 808-537-3201, Fax: 808-537-3205
State Agency License GDA-869

November 24, 2008

Ana-Marie Aiu
State of Hawaii
Department of Transportation
Harbors Division

Re: Security Contract #56436 – 10.7 Escalation Clause

Dear Ana-Marie:

As per our tele-conversation and accordance with the Security Contract Escalation Clause 10.7, we are allowed to request a Bill-Rate increase to reflect the recent Wage Pay-Rate increase that was given to the State's Civil Servant Employees.

In order for AGS to increase our Security Officers to the current prevailing wage of a SR-13 level of \$15.01 per hour, we will need to increase our Bill-Rate from \$18.04 to \$19.65 per hour. This increase is to cover all wage increase related costs to AGS, i.e., payroll taxes, excise taxes, etc.

I have checked with our CFO at our corporate office, and this is the very least we can bill to cover this increase without running into a deficit.

Our company would like very much to continue to service the staff at the Hilo Harbors; we enjoy working with everyone there and we have established a great working team.

I trust and appreciate your understanding and cooperation in this matter. I look forward to hearing from you.

Respectfully,

Julia Matos,
Vice President of Maritime Operations
American Guard Services, Inc.

Cc: AGS - Sherif Assal, Senior Vice President
Hilo Harbor FSO - Ian Birnie

NOV-28-2008 FRI 08:54 AM DOT HARBORS HAWAII

FAX NO. 808 933 8851

P. 02

NOV/26/2008/WED 10:03 AM AGS

FAX No. 808 537 3205

P. 001/001

NOV-25-2008 TUE 12:42 PM DOT HARBORS HAWAII

FAX NO. 808 933 8851

P. 01/01

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SAKIBUOH
JIRO A. SUMADA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
80 KUMIO STREET
HILO, HAWAII 96820
November 25, 2008

IN REPLY REFER TO:
HAR-H
0931

Ms. Julia Matos
Vice President, Maritime Operations
American Guard Services, Inc.
677 Ala Moana Blvd., Suite 725
Honolulu, HI 96813

Re: Security Contract #56436

Dear Ms. Matos,

This letter is to confirm in writing what we agreed to verbally earlier this date. To wit, American Guard Service (AGS) cannot comply with the contract extension previously agreed to and wishes to withdraw from that extension, thus terminating Security Contract #56436 effective 30 November 2008.

AGS agreed to provide temporary security services for Hilo Harbor for four months, December 2008 through March 2009, at the requested rate of \$19.65 per hour. Harbors Division will initiate the bid process for a new contract, intended to begin on 1 April 2009, and it is understood that AGS is eligible to bid for said new contract.

Please indicate your concurrence by signing below. Thank you for your anticipated cooperation.

Sincerely,

IAN BIRNIE
District Manager

IB:aa

cc: CON

CONCUR:

Julia Matos
Vice President of Maritime Operations

11/25/2008
Date

Ian Birnie/HAR/HIDOT
11/25/2008 01:22 PM

To Davis Yogi/HAR/HIDOT@HIDOT, Jean
Oshita/HAR/HIDOT@HIDOT
cc Michael Formby/HAR/HIDOT@HIDOT

bcc

Subject American Guard Service

We were notified yesterday afternoon, November 24, by American Guard Service's Julia Matos, Vice President of Maritime Operations, that they could not honor the contract extension unless we increased the 'Bill-Rate' from \$18.04 to \$19.65 per hour. We can only pay \$18.76 per hour and told her so. The original contract expires November 30, and AGS had already agreed to an extension at the specified rate, which was a four per cent increase over the previous year.

In checking with the State Procurement Office, we were advised that American Guard Service may withdraw from the contract and the extension agreement without penalty. It was recommended that we ask AGS to extend for four months, at the higher rate, so that we can go through the entire bid process once again. This morning AGS agreed verbally to the four month extension, and we have faxed Ms. Matos a letter articulating that situation and requesting her concurrence. We were procided an SPO Form 7, which will allow the four month extension without a procurement violation if it is received in the SPO by November 30. That means that the Form 7 must be processed ASAP in the Division and forwarded - or hand delivered - to that office by COB on November 28, the last working day of the month.

We have roughed out the first part of the SPO-7, but must request your advice on the latter sections that pertain to controls and agency personnel involved in this request for exemption. We don't know who must be involved in the process. If we fax you the form and our draft, may we ask you to complete it and send it on? Thanks.

Ian Birnie/HAR/HIDOT
11/26/2008 05:18 PM

To: Jean Oshita/HAR/HIDOT@HIDOT, Davis
Yogi/HAR/HIDOT@HIDOT
cc: Michael Formby/HAR/HIDOT@HIDOT

bcc

Subject: Hilo Harbor Security Contract

As I advised yesterday, our security contractor, American Guard Service, informed us on Monday afternoon that they would have to withdraw the agreement to extend the contract because the rate increase was insufficient and they would lose money. The current contract expires 11/30/08. SPO provided guidance to the effect that we should submit a form, SPO-07, 'Notice Of And Request For Exemption From Chapter 103D, HRS,' in order to have AGS extend for four months at the higher pay rate, and this had to be done to avoid a procurement violation. It must be in SPO by 11/30, which means COB 11/28. We submitted our draft info for that form and asked that you complete the requested information regarding the approval process. We understand that you are working on it, and we appreciate that. We also prepared a letter for AGS to agree to extending the contract, basically asking that they agree in writing to what they had agreed to verbally. We received their written concurrence this morning.

On November 14 we discussed the Kawaihae and Hilo security contracts, and pointed out that we had previously been advised by the previous Harbors Administrator that we should pay for all security ourselves, rather than splitting it between harbor tenants as we had been doing. We pointed out that it's easier, paperwork-wise, but considerably more expensive. The result is that we are paying the entire amount for the Kawaihae security contract. We sought guidance on the Hilo contract, which had traditionally been split three ways, between Matson, YB and us. We budgeted for the entire amount, so we could pay it all, but it would be to our advantage financially if we only had to pay one-third. On the other hand, Matson plans to open the second gate soon, and if they are contributing to security at the main gate, they could feasibly ask us to share in the cost of security at this second gate, which we did not plan to participate in. We shall have a similar situation with YB at the Kumau Street gate when Pier 4 is operational.

Inasmuch as we have four months in which to go out to bid for a new contract for Hilo security, we have time and need to decide whether to ask Matson and YB to pay one-third each, or should we absorb the entire amount ourselves. Request guidance.