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STATE PROCUREMENT OFFICE
STATE OF HAWAII

STATE PROCUREMENT OFFICE
NOTICE OF AMENDMENT TO EXEMPTION FROM CHAPTER 103D, HRS, CONTRACT

1. TO: Chief Procurement Officer

2. FROM: Department of Commerce & Consumer Affairs/CATV
Department/Division/Agency

3. Name of Contractor: See attachment sheet

4. P.E. Reference No. 06-064-1

5. Description of goods, services, or construction:
Cable television public, educational, and governmental ("PEG") access services

6. Scope of work for the contract is revised as follows:
Request to extend procurement exemption for an additional six (6) month period (i.e., from July 1, 2009 to December 31, 2009)

Original Contract Price: $See attachment

Amended Contract Price: $See attachment

7. Reason: This / These amendment(s) are necessary because:
See Attachment Sheet to 06-064-1

8. Direct questions to: Clyde S. Sonobe Phone: 586-2620

Agency shall ensure adherence to applicable administrative and statutory requirements.

9. ***Pursuant to § 103D-102, HRS, and § 3-120-5, HAR, I certify that the information provided above is, to the best of my knowledge, true and correct***

Lawrence M Reifurth 5/19/09
Department Head Date

Reserved for SPO Use Only

10. Date Posted: 5/20/09

11. Submit written objections to this notice of intent to amend a procurement exemption contract 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:

12. [X] APPROVED [ ] DISAPPROVED

Chief Procurement Officer 6/8/09
Date

13. P.E. No. 06-064-01

SPO-07B (Rev. 05/29/2007)

3. Name of Contractor(s):

Currently, the Department of Commerce and Consumer Affairs ("**DCCA**") has contracts with the following PEG access organizations for the provision of PEG access services in the State:

a. Olelo Community Television ("**Olelo**");
b. Akaku: Maui Community Television ("**Akaku**");
c. Hoike: Kauai Community Television ("**Hoike**"); and
d. Na Leo O Hawaii ("**Na Leo**").

6.

		Original Contract Price Received in 2008	Amended Contract Price for period Anticipated operating fees for 2009
a.	Olelo --	$4,503,406	$4,549,696
b.	Akaku –	1,024,522	1,112,194
c.	Hoike --	452,466	496,678
d.	Na Leo --	933,442	1,012,504

7. Reason: This/These amendment(s) are necessary because:

In late 2005, it was determined that DCCA's PEG access services contracts were subject to the State's Procurement Code ("**Code**") unless one of the exemptions in HRS section 103D-102(b) applied.

In February 2006, and in light of that determination, DCCA held public comment meetings throughout the state to obtain public input on whether to issue an RFP or seek an exemption from the Code for PEG access service contracts. After considering the public comments received, DCCA submitted a "Notice of and Request for Exemption from Chapter 103D, HRS" to the State Procurement Office ("**SPO**") on April 10, 2006. The SPO reviewed DCCA's exemption request and subsequently determined that the PEG access services contracts should be awarded in accordance with the Code. However, to ensure that PEG access services would continue to be provided to the public until the new contract(s) were awarded, the SPO approved DCCA's exemption request from July 1, 2006 to June 30, 2007 to complete the competitive procurement process in accordance with HRS chapter 103D.

On November 22, 2006, on behalf of DCCA, the SPO issued a Request for Information ("**RFI**") to obtain the public's comments on and suggested amendments to a draft Request For Proposals ("**RFP**") for PEG access services.

In December 2006, DCCA held public comment meetings on Oahu, Hawaii, Maui, Molokai, and Kauai to obtain the public's input on the draft RFI and PEG access services.

After considering the public's input and comments, DCCA requested that the exemption be extended for another six-month period (i.e., from June 30, 2007 to December 31, 2007) to allow DCCA to issue a second RFI. On March 16, 2007, the SPO issued a second RFI. The public was again invited to submit written comments on and suggested amendments to a second draft of the RFP. On March 27, 2007, SPO approved DCCA's request for an extension of the exemption to December 31, 2007.

After reviewing the comments to the second RFI, DCCA and the SPO issued the final RFP on July 30, 2007. Protests were filed shortly thereafter, and the RFP was subsequently postponed on or about August 14, 2007, until further notice.

On August 3, 2007, Akaku filed three (3) lawsuits against DCCA in Maui regarding the RFP. In one of the lawsuits, Akaku v. Lawrence Reifurth, et al., Civil No. 07-1-0278(1) in the Circuit Court of the Second Circuit, Akaku argued that the method DCCA uses to designate and select a PEG access organization is a "rule" and that DCCA's RFP was invalid because DCCA failed to follow the rulemaking requirements of HRS chapter 91.

Akaku subsequently filed a Motion for Preliminary Injunction against DCCA, which was heard by the Honorable Joel E. August on October 4, 2007. In his November 15, 2007 Order, Judge August denied Akaku's Motion for Preliminary Injunction. However, Judge August also stated his belief that DCCA needed to adopt a rule that specified the method, factors and criteria that DCCA would use to designate and select a PEG access organization.

Accordingly, to comply with Judge August's suggestions, DCCA commenced the rulemaking process. On December 4, 2007, DCCA requested a further extension of its procurement exemption to July 15, 2008 to allow DCCA to complete the rulemaking process before proceeding with the RFP. The SPO approved this extension request on December 13, 2007.

During the 2008 Session, the Hawaii State Legislature adopted House Concurrent Resolution No. 358 ("**HCR 358**") which requested that DCCA establish a task force to solicit public input and examine methods other than the Public Procurement Process to oversee the PEG access organizations' expenditures and to ensure proper checks and balances.

On May 30, 2008, DCCA submitted a Notice of Amendment to Exemption from Chapter 103D, HRS, Contract to SPO, requesting that its procurement exemption

be extended for an additional six-month period (i.e., from July 15, 2008 to January 15, 2009). On June 24, 2008, SPO granted the exemption to December 31, 2008 on the condition that DCCA completed the rulemaking process before December 31, 2008 and submitted to SPO monthly status reports on its progress.

Accordingly, DCCA proceeded with the rulemaking process and submitted monthly status reports on the progress of the rulemaking process to SPO. The new rule amendment, Hawaii Administrative Rules §16-131-70, became effective on December 3, 2008.

On December 12, 2008 DCCA submitted a Notice of Amendment to Exemption from Chapter 103D, HRS, Contract to SPO, requesting that its procurement exemption be extended for an additional six-month period (i.e., from January 1, 2009 to June 30, 2009) during which time the three pending protests could be addressed. SPO granted the exemption to June 30, 2009.

By letter dated February 19, 2009, SPO denied the three pending protests. On February 27, 2009, Akaku filed a request for hearing with the Office of Administrative Hearings on the denial of its protest, and an administrative hearing on the denial of the protest is scheduled for July 15, 2009. In addition Respondents filed a Motion for Summary Judgment on all claims against them, and the hearing on this motion is set for June 30, 2009.

To ensure the continued provision of PEG access services to cable television subscribers while the procurement process continues, DCCA is requesting a six month extension to the procurement exemption (i.e., from July 1, 2009 to December 31, 2009). During this period, DCCA anticipates that Akaku's appeal to the Office of Administrative Hearings of the denial of its protest will be completed, and depending on the result of Akaku's appeal, SPO and DCCA will be working towards further processing of the RFP or the development of a revised RFP if necessary.