



**STATE PROCUREMENT OFFICE
NOTICE & REQUEST FOR SOLE SOURCE**

1. TO: Chief Procurement Officer
2. FROM: Russ K. Saito, Comptroller, Dept. of Acct. & Gen. Services
Department/Division/Agency

STATE PROCUREMENT OFFICE
STATE OF HAWAII

09 DEC -9 13:59

Pursuant to §103D-306, HRS, and Subchapter 9, Chapter 3-122, HAR, the Department requests sole source approval to purchase the following:

3. Description of goods, services, or construction:
Chilled water supply for use in air conditioning systems from the Honolulu Seawater Air Conditioning's (HSWAC) downtown Honolulu chilled water system within the Capital District. This system can potentially provide service to various State buildings that use chilled water in their air conditioning systems.

Refer to attached letter of transmittal from Terry E. Thomason dated September 22, 2009 re: "Unsolicited Proposal - Chilled Water Service for Air Conditioning Systems."

<p>4. Vendor Name: Honolulu Seawater Air Conditioning, LLC</p> <p>Address: 7 Waterfront Plaza, Suite 407 500 Ala Moana Blvd. Honolulu, Hawaii 96813</p>	<p>5. Price: \$ T.B.D.</p>
<p>6. Term of Contract: (mm/dd/yyyy) From: <u>around 2014/2015</u> To: <u>2040 approx.</u></p>	<p>7. Prior Sole Source Ref No. _____</p>

8. Feature: The good, service, or construction has the following unique features, characteristics, or capabilities: The HSWAC proposes to provide a unique service of great value and utility to the State in the form of chilled water for air conditioning system on a district wide basis within the Capital District from a single renewable source.

Please note that this sole source request in no way represents acceptance by the State of the price or any other contract terms and conditions proposed by HSWAC "unsolicited proposal."

9. Essential features. How the unique features, characteristics, or capabilities are essential for the agency to accomplish its work:
The HSWAC service in the Capital District will be the only source of chilled water that will potentially will be less costly, for 24 hour operation, if necessary than the electrically driven chiller systems presently in place.

This notice and request for sole source in no way represents acceptance by the State of the price or any other contract terms and conditions proposed by HSWAC "unsolicited proposal."

Any procurement resulting from this sole source approval will be subject to successful development and installation of an operational system; acceptable terms and conditions; and acceptable cost pricing to the State.

11. Alternate source. The following other possible sources for the good, service, or construction were investigated but do not meet our needs because:

Besides the electrically driven chiller systems, there are other potential sources or developers of chilled water systems in the world. However, none have proposed to develop a chilled water system that will provide district wide chilled water to the Capital District. This sole source request is not to develop the chilled water system as the State is not procuring the development/construction of this system. This sole source request is to receive service from the provision, by HSWAC, of district wide chilled water for the entire Capital District, subject to acceptable terms, conditions, and pricing to the State.

12. Direct any inquiries to:

Department: Dept. of Acct. & Gen. Services

Contact Name/Title: Mr. Ernest Y. W. Lau

13 Phone Number:

586-0526

Fax Number:

586-0521

Expenditure may be processed with a purchase order/p-Card: Yes No If no, a contract must be executed and funds certified.

Agency shall ensure adherence to applicable administrative and statutory requirements, including HAR Chapter 3-122, Subchapter 15, Cost or Pricing Data, if required.

14. *I certify that the information provided above is to the best of my knowledge, true, correct and that the goods, services, or construction are available through only one source.*



Department Head Signature

12/9/09

Date

Reserved for SPO Use Only

15 Date Notice Posted: 12-10-09

Submit written objections to this notice to issue a sole source 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

16. Chief Procurement Officer's comments:

Request is disapproved as no response has been provided in response to requested information.

17.

APPROVED DISAPPROVED NO ACTION REQUIRED

Cham S. J. [Signature]
Chief Procurement Officer

7/6/2010
Date

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



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STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

SPO 10-092

December 16, 2009

TO: The Honorable Russ K. Saito
State Comptroller

FROM: Aaron S. Fujioka
Chief Procurement Officer

SUBJECT: Notice & Request for Sole Source; SS 10-019-D
Procurement of Chilled Water Supply for Use in Air Conditioning System
Provided by Honolulu Seawater Air Conditioning

We have reviewed the subject request for sole source procurement consideration; however, the information provided is incomplete and details to the uniqueness of this service to supply chilled water is not provided. At this time, a complete review and analysis on your request cannot be conducted.

Pursuant to HRS §103D-306, sole source procurement, which states in part, "A contract may be awarded for goods, services, or construction without competition when the head of the purchasing agency determines in writing that there is only one source for the required goods, service or construction . . ." Further, HAR §3-122-81(c) states, ". . . justification for a sole source purchase must establish that the good, service or construction has a unique feature, characteristic, or capability essential to the agency to accomplish its work and is available from only one supplier or source."

The following statements made in the request raises questions and concerns:

- ". . . in no way represents acceptance by the State of the price or any other contract terms and conditions. . ."

What will be the basis of the resulting sole source contract if price or any other contract terms and conditions are not included?

- Term of contract will begin "around 2014/2015" and ". . . will be the only source of chilled water that will potentially will be less costly . . . than the electrically driven chiller systems . . ."

Request is for a future purchase; how can it be determined that the industry will not expand and other qualified companies will not have similar technology? If a sole source contract is in place, other vendors will not have been given the opportunity to compete for these services. How was it determined that chilled seawater will be less costly than the electrically driven chiller systems?

- *Scope of this request states “. . . there are other potential sources or developers of chilled water systems . . . will provide district wide chilled water to the Capital (sic) District.”*

If other “*potential sources*” are available, then why have they not been informed of the department’s interest and needs and how would this qualify as a sole source?

Additionally the attachments make various statements that are not definitive, but seem subjective and conceptual, based on the “*unsolicited proposal*” of a sole company and not substantiated with any reliability. The “*unsolicited proposal*” appears speculative.

- *“Without any costs to the State, immediately create at least 475 new construction industry jobs . . .”*

What is the figure of the number of jobs based upon; why is this pertinent to this sole source request?

- *“Meet fully the State’s needs for cooling of State buildings for the next 30 years . . .”*

For a technology that is based on future expectations, how can this statement be credible? In 4 to 5 years, new and improved technology may be developed that will also “*meet fully the State’s needs*”.

- *“Comply with all environmental law and procurement law requirements.”*

Laws and requirements have numerous changes, and this sole source request is tentatively set for 2014-2015. Will the same laws and requirements still be applicable? Could this technology not be in compliance with laws and requirements in 5 years?

- *“The proposed contract will also afford the State cost benefits . . . proposal will create a true public-private partnership that will protect the State from development cost risks.”*

Has the “*unsolicited proposal*” provided the cost/pricing data to substantiate this statement? HAR §3-122-123 requires submittal of cost/pricing data for any contract resulting from a sole source procurement expected to exceed \$100,000.

The broad scope and magnitude of this request and precedent setting practice of converting an “*unsolicited proposal*” into a sole source contract warrants feedback from the industry and business community. Pursuant to HRS §103D-306 persons may file written objections to the issuance of a contract and no objection is to be outstanding. A wider notice shall be given to potential vendors to comment and provide written confirmation to this sole source request. Irrespective of the statement in the attachment (Tab B, page 7) on public notice, this additional notice shall not be limited to the “*standard procurement procedures require that the government comply with the public notice protections afforded in sole source procurements*”. An extensive notice should ensure potential interested parties are provided the opportunity to comment on a project of this magnitude, and not limited to the sole source notice.

For the above reasons, the request will be held and remain "pending" to provide the department time to address the above questions and concerns and to submit additional information in response to the following:

- Justification and explanation of unique feature(s) or characteristic in providing district-wide chilled water supply;
- Cost/pricing data to verify the soundness of estimates of future costs and to the validity of cost determinations;
- Written confirmation and any objections from the industry and business community; and
- Responses to the questions stated above.

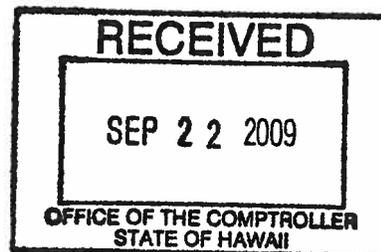
Your staff may contact Donn Tsuruda-Kashiwabara at 586-0565 or by e-mail at donna.tsuruda-kashiwabara@hawaii.gov or you may contact me at 587-4700.



September 22, 2009

HAND DELIVERY

Mr. Russ Saito
Office of the Comptroller
1155 Punchbowl Street, Room 412
Honolulu, Hawaii 96813



Re: Letter of Transmittal – Unsolicited Proposal – Chilled
Water Service for Air Conditioning Systems

Dear Mr. Saito:

Thank you for your call today. Our understanding is that your department would be overseeing the processing of Honolulu Seawater Air Conditioning, LLC's ("HSWAC") unsolicited proposal.

Terry E. Thomason
E-mail:
TThomason@ahfi.com

Please see the enclosed materials we discussed in the September 4, 2009 meeting with representatives of the State Procurement Office, the Dept. of Business, Economic Development and Tourism, and your office. The materials include the following:

1. Our June 15, 2009 letter to Mr. Ted Liu;
2. HSWAC's unsolicited proposal (Tab A); and
3. A summary of relevant procurement law governing unsolicited proposals (Tab B).

If you have any questions, please contact me at 441-6242 or my associate, Elizabeth Haws Connally, at 441-6170.

American Savings Bank Tower
18th Floor
1001 Bishop Street
Honolulu, Hawai'i 96813
Phone: (808) 524-1800
Fax: (808) 524-4591

Carter Professional Center
Suite C21
65-1230 Mamalahoa Highway
Kamuela, Hawai'i 96743
Phone: (808) 885-6762
Fax: (808) 885-6011

One Main Plaza
Suite 521
200 Main Street
Honolulu, Hawai'i 96793
Phone: (808) 244-1160
Fax: (808) 442-0794

www.ahfi.com

TET:mmhb
Enclosure

cc: Honolulu Seawater Air Conditioning, LLC

Very truly yours,

A handwritten signature in cursive script that reads "Terry E. Thomason".

Terry E. Thomason



Attorneys at Law • A Law Corporation

June 15, 2009

Via Hand Delivery

Mr. Ted Liu
Director
Dept. of Business, Economic Development and Tourism
No. 1 Capitol District Bldg.
250 S. Hotel Street
Honolulu, Hawaii 96813

Re: Unsolicited Proposal – Chilled Water Service For Air Conditioning Systems

Dear Mr. Liu:

On behalf of our client, Honolulu Seawater Air Conditioning, LLC ("HSWAC"), we submit for your consideration the attached unsolicited proposal (at Tab A). In the proposal, HSWAC offers to provide the State chilled water for air conditioning systems.

HSWAC's proposal offers unique services of great value and utility to the State. If you accept HSWAC's proposal, the resulting contract will:

- Without any cost to the State, immediately create at least 475 new construction industry jobs for the installation and maintenance of HSWAC chilled water system;
- Reduce State energy costs by eliminating the need for electrically driven chiller systems presently in place in State Buildings;
- Preserve potable water presently consumed in the State's electrically driven chiller systems;
- Meet fully the State's needs for cooling of State buildings for the next 30 years; and

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www.ahfi.com

Mr. Ted Liu
Director
June 15, 2009
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- Comply with all environmental law and procurement law requirements.

The proposed contract will also afford the State cost benefits that are not usually present in contracts such as this. HSWAC's proposal will create a true public-private partnership that will protect the State from development cost risks. HSWAC's offer ensures the State incurs no cost obligations until HSWAC actually delivers chilled water to State facilities. In return for a long-term service contract relationship, HSWAC will assume all infrastructure development cost risks.

In accordance with your guidance to us, HSWAC is committed to complying with your expectation that the proposal be addressed in full compliance with procurement law. To meet this requirement, we prepared the Procurement Law Summary ("Summary") attached at Tab B. The Summary outlines the legal authority and generally accepted procurement procedures under which government agencies routinely receive, review and accept unsolicited proposals as binding contracts such as the proposal HSWAC submits here. The Summary also addresses specific aspects of the proposal we anticipate you will need to review in your consideration of the HSWAC proposal.

We believe the Summary will be a useful reference for you in performing your Head of Purchasing Agency duties in considering HSWAC's proposal. However, the Summary is crafted specifically for use by your legal counsel and your procurement staff professionals. The Summary includes legal citations to and quotations of relevant procurement rules that govern formation of contracts in response to unsolicited proposals.

We trust that the Summary will promote a shared understanding of the legal rules governing consideration of HSWAC's proposal. A common grasp of the applicable rules and procurement principles will assist both parties and avoid any misunderstandings. It will also afford you confidence that the steps taken in considering the HSWAC proposal are in full compliance with the law.

We are prepared to meet with your legal counsel and staff to address any questions or concerns they may have. Please direct them to call us at our office to arrange any discussions you determine necessary to achieve a full understanding of the proposal and ensure compliance with legal requirements.

Mr. Ted Liu
Director
June 15, 2009
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In conclusion, we submit that you will find HSWAC's proposal conforms to all Hawaii State procurement rules and requirements. It also offers significant benefits to the State. Under the circumstances, HSWAC asks that the State accept HSWAC's proposal using the procurement procedures and considerations outlined in the Procurement Law Summary at Tab B.

Please call us if you have any further questions.

Sincerely,


Terry E. Thomason
Elizabeth Haws Connally

TET:EAH:mmhb

Enclosures:

- TAB A - Unsolicited Proposal for Delivery of Chilled Water for Air Conditioning Systems
- TAB B - Procurement Law Summary