

**BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU
REQUEST FOR EXEMPTION FROM
CHAPTER 103D**

DATE: October 14, 2009

TO: Paul Kikuchi
Chief Financial Officer

VIA: Procurement Office

FROM: George Gusman III
Chief Legal Counsel

RE: REQUEST FOR EXEMPTION FROM CHAPTER 103D for the selection and award of contracts for the purchase of products from Sensus Technologies, Inc.

Pursuant to Section 103D-102(b)(4)(L), Hawaii Revised Statutes ("HRS") and Subchapter 9, Chapter 3-120 of the Hawaii Administrative Rules ("HAR"), I am recommending that an exemption be granted from the provisions of Chapter 103D, HRS, for Sensus Technologies, Inc. ("Sensus") to provide automatic meter reading products to the Board of Water Supply, City and County of Honolulu ("BWS").

Vendor Name & address: Sensus Technologies, Inc.

Amount of the contract: \$1,350,000.00

Term of the contract: the contract term shall end on the earlier of BWS exhausting its credit under the settlement agreement or August 31, 2012.

Prior exemption contract numbers: none

A. Background

This exemption request arises out of a dispute between Sensus and the BWS. The parties have come to an agreement to settle their dispute, which involves Sensus providing credits to the BWS for the purchase of certain automatic meter reading products ("Products") from Sensus. As such, an exemption from the

requirements of HRS Chapter 103D is required before any purchase of the Products can be made from Sensus. The background to the dispute and the relevant terms of the proposed settlement between the parties is as follows.

On or about May 3, 1999, the BWS and Sensus entered into an agreement whereby Sensus agreed to furnish and install an Automatic Meter Reading System (“AMRS”) for the BWS. The registers, meters, and other components of the AMRS were manufactured, assembled, and/or sold by Sensus and Neptune Technology Group, Inc. Subsequent to the installation of the AMRS components, the AMRS components began failing. The BWS asserted that the AMRS components were defective and/or improperly installed by Sensus. Sensus disputed the BWS’ allegations.

In an effort to amicably resolve the dispute, the BWS and Sensus entered into a settlement agreement whereby Sensus agreed to, among other things, provide the BWS with credits that the BWS may use for the future purchase of Sensus Products. More specifically, the settlement agreement included a list of ten (10) items to which the aforementioned credits could be applied.¹ A copy of the 10-item list is attached hereto as Exhibit “1.” Subsequently, the parties agreed to amend the list of Products to which settlement credit may be applied. A copy of the amended list is attached hereto as Exhibit “2.”²

B. Describe how procurement by competitive means is neither practicable nor advantageous to the Board of Water Supply

Procurement by competitive means is neither practicable nor advantageous to the BWS for the following reasons. First, the purchase of the Products from Sensus

¹ The settlement agreement between the BWS and Sensus allows the parties to amend the list of items that the settlement credit may be applied to upon mutual agreement.

² Should the BWS and Sensus agree to amend Exhibit “2” to include additional Sensus Products, another exemption request will be processed before any additional Sensus Products are purchased.

will allow the BWS to resolve its dispute with Sensus. A settlement allows the BWS to avoid the uncertainty of a lawsuit.

Second, the purchase of the Products at the prices set forth in Exhibit "2" are at prices that are lower than the market price for such items. Thus, the BWS will realize a cost savings on the purchase of the Products.

In summary, the BWS believes that an exemption for the purchase of discounted Sensus Products as outlined above is in the best interests of the BWS. Because of the cost savings and legal certainty gained by the settlement, the BWS does not believe that procurement by competitive means is either practicable or advantageous to the BWS.

Accordingly, I recommend your approval of an exemption from the provisions of Chapter 103D, HRS for Sensus Technologies, Inc., to provide automatic meter reading Products to the Board of Water Supply. The application of this exemption will be limited to these facts and circumstances and may not be used as precedence for the purchase of any other products or award of any other contracts.

I certify that the information provided above is to the best of my knowledge, true, correct.


Requestor


Division Head

OCT 14 2009
Date

OCT 14 2009
Date

Direct Questions to: Kathryn Kanemori

Phone: (808) 748-5078

Date of Public Notice posting: OCT 15 2009 to _____

APPROVED AS RECOMMENDED / NOT APPROVED


PAUL KIKUCHI
CHIEF FINANCIAL OFFICER

OCT 23 2009
Date

APPROVED AS TO AVAILABILITY OF FUNDS



LEIGH MIYASHIRO
FINANCE DIVISION

10/15/09

Date

REVIEWED AS TO PROCUREMENT FORM



KATHRYN KANEMORI
PROCUREMENT & SPECIFICATIONS
OFFICER

10/14/09

Date

**BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU**

October 15, 2009
(Date Notice Posted)

**NOTICE OF REQUEST FOR EXEMPTION FROM
CHAPTER 103D HAWAII REVISED STATUTES**

The Chief Procurement Officer is reviewing a request for exemption from Chapter 103D, Hawaii Revised Statutes for the purchase of products from Sensus Technologies, Inc.

The award shall be made to:

Name of Vendor: Sensus Technologies, Inc.

Address of Vendor: 450 North Gallatin Avenue
P.O. Box 487
Uniontown, PA 15401-0487

Cost: \$1,350,000.00

Term of Contract: Contract term shall end on the earlier of BWS exhausting its credit under this agreement or August 31, 2012.

Direct any inquiries to: Kathryn Kanemori

Address: Board of Water Supply
Procurement Office
630 S. Beretania St.
Honolulu, HI 96843

Telephone No.: (808) 748-5078

Fax Telephone No.: (808) 550-9193

Submit written objection(s) to this Notice of Intent to Issue An Exemption from Chapter 103D, HRS within seven (7) calendar days from the date this notice was posted to:

Chief Procurement Officer
Board of Water Supply
630 S. Beretania St.
Honolulu, HI 96843

Telephone No. (808) 748-5078

103D Exemption Reference No.: BWS 10-02