

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

DATE: December 30, 2008

TO: Dean A. Nakano
Deputy Manager And Chief Engineer

VIA: Procurement Office

FROM: Darwin Ching

RE: REQUEST FOR EXEMPTION FROM CHAPTER 103D for the selection and award of a contract for completion of punch list items for Aiea Heights Water System Improvements, Part II Project

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 selecting a contractor to award a contract to complete the punch list items for the Aiea Heights Water System Improvements, Part II Project.

Vendor Name & address: Thurston-Pacific, Inc.
220 Puuhale Road, #A-5
Honolulu, Hawaii 96819

Amount of the contract: \$29,900.00

Term of the contract: 120 days from the Notice to Proceed

Prior exemption contract numbers: none

A. Background:

On July 18, 2003, the Board of Water Supply, City and County of Honolulu ("BWS") entered into a contract with of Preferred Constructors, Inc. ("PCI") for the Aiea Heights Water System Improvements, Part II Project ("Project"). The \$2.5 million Project was to install approximately 8,600 linear feet of 12-inch and 8-inch mains and appurtenances along Aiea Heights Drive from Aiea Heights Drive 277 Reservoir to Puliki Place and rehabilitate existing roadway along Aiea Heights Drive from Olopana Street to Hakina Street and from entrance to Aiea Heights State Park (mauka end) to Kihewa Place.

On June 21, 2007, the BWS received a letter from Ronald K. Kotoshirodo ("Receiver") advising that he had been appointed as the receiver for PCI. Specifically, the Receiver advised that because of a lawsuit that had been filed in Arizona involving a dispute over the ownership of PCI, PCI had been placed under the Receiver's authority and control. The Receiver further advised that he was the only person who was to take action on behalf of PCI, including but not limited to the authority to sign documents on behalf of PCI.

Subsequently, the BWS utilized its best efforts to ensure that PCI completed the Project. However, despite the efforts of the BWS, PCI failed to complete the Project. Specifically, despite various requests by the BWS, PCI failed and/or refused to complete various Project punch list items. The punch list items include the following:

1. Five (5) valve box covers are paved over. Contractor must expose and adjust to finish grade.
2. Two (2) valve boxes are sinking. Contractor must adjust to grade.
3. Two (2) 1' x 1' AC pavement areas are sunken. Contractor must patch to grade with AC.
4. Two (2) valve box frames are cracked. Contractor must remove and replace.

The first punch list item requires immediate attention as it is imperative that the BWS be able to access its valves to control the flow of water in the event of a main break. Because the valves were paved over, the BWS would not be able to control the amount of water that comes out during a main break increasing the chances of severe damage to property and persons.

As such, on November 7, 2008, the BWS wrote to the attorney for the Receiver demanding that PCI complete the outstanding Project punch list items. More specifically, the November 7, 2008 letter advised that pursuant to the terms of the Project contract, if PCI failed to begin work on the punch list items within seven (7) days of the date of the letter, the BWS would find PCI in default of the Project contract. The letter further advised that if the BWS found PCI in default, the BWS would take all necessary steps to complete the punch list items, including but not limited to securing another contractor to complete such work and charging such expense to PCI.

The attorney for the Receiver responded to the November 7, 2008 letter via a letter dated November 10, 2008. In the November 10, 2008 letter, the Receiver's attorney advised that PCI would not complete the punch list work as PCI no longer holds a Hawaii contractor's license. The BWS responded by way of a letter dated November 13, 2008 advising that the BWS would secure the services of another contractor to complete the punch list items and use the retainage from the Project to pay for such work. The BWS also advised that should the retainage be insufficient to cover the cost to complete the punch list items, the BWS would pursue PCI for such additional cost.

However, it appears that the Project retention will be sufficient to cover the cost of the work in question. Specifically, the Project retention amount is \$64,927.11. Based on quotations provided by three (3) separate contractors, the BWS anticipates that the retention amount will be sufficient to complete the above-referenced punch list items.

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

Procurement by competitive means is neither practicable nor advantageous to the BWS as the work in question requires immediate attention because of the potential for damage to persons or property in the event of a main break. While the work in question does not rise to the level of an emergency procurement, the BWS believes the work in question should be completed as expeditiously as possible. The BWS has sought quotations from three (3) contractors, all of whom have experience with BWS projects, are willing and able to complete work started by another contractor, and have sufficient capacity to complete the work in question in an expeditious manner. The BWS does not believe it is prudent to take additional time to bid this work out when the BWS is able to secure multiple quotes from several experience BWS contractors who can complete the work quickly.

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

The BWS has secured estimates from three (3) contractors who are experienced in the type of work required to complete the Project. Specifically, the BWS received the following estimates from the following contractors:

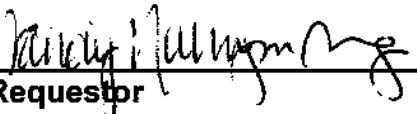
1.	Thurston-Pacific, Inc.:	\$29,900.00
2.	Ideal Construction, Inc.:	\$33,000.00
3.	Koga Engineering and Construction, Inc.:	Force account Proposal (estimated \$50,000.00)


The BWS has selected the contractor with the lowest price estimate to complete the Project. In addition, Thurston-Pacific, Inc. has sufficient experience with BWS projects and the capacity to complete the work in question in an expeditious manner.

The contract with Thurston-Pacific will be exempt only from the selection/solicitation provisions of Chapter 103D, HRS. All other provisions of Chapter 103D, HRS shall be applicable and Thurston-Pacific will provide the BWS with a current tax clearance certificate, certificate of good standing, a certificate of compliance, the appropriate bonds, and a certificate of insurance. The contract will also be subject to the same General Terms and Conditions that are applicable to all BWS construction contracts.

Accordingly, I recommend your approval to exempt the award of a contract for the Project from the selection provisions of Chapter 103D, HRS. The application of this exemption will be limited to these facts and circumstances and may not be used as precedence to award any other contracts.

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


Requestor


Division Head

12/30/08
Date

December 30, 2008
Date

Direct Questions to: Darwin Ching

Phone: (808) 748-5732

Date of Public Notice posting: December 30, 2008

APPROVED AS RECOMMENDED / NOT APPROVED


DEAN A. NAKANO
DEPUTY MANAGER AND CHIEF ENGINEER

1/9/09
Date

APPROVED AS TO AVAILABILITY OF FUNDS



PAUL KIKUCHI
CHIEF FINANCIAL OFFICER *PK*

12/30/08
Date

REVIEWED AS TO PROCUREMENT FORM



KATHRYN KANEMORI
PROCUREMENT & SPECIFICATIONS
OFFICER

12/30/08
Date

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

December 30, 2008
(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 selection and award of a contract for completion of punch list items for Aiea Heights Water System Improvements, Part II Project.

The award shall be made to:

Name of Vendor: Thurston-Pacific, Inc.
Address of Vendor: 220 Puuhale Road, #A-5
Honolulu, Hawaii 96819
Cost: \$29,900.00
Term of Contract: 120 days from the Notice to Proceed

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 09-02

