

STATE OF HAWAII
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS 05 JUL 13 A8:11

TO: Chief Procurement Officer

FROM: ATTORNEY GENERAL
(Department/Division/Agency)

STATE PROCUREMENT OFFICE
STATE OF HAWAII

Pursuant to § 103D-102(b)(4), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

Description of goods, services, or construction:

Expert legal services for the Department of Justice's investigation of the Oahu Community Correctional Center, and the subsequent court action pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 ("CRIPA").

Name of Vendor: Paul Aucoin
Address: 480 South High Street
Columbus, OH 43215
ID No. 310949351

Cost: \$58,000.00

Term of Contract:

From: August 1, 2005
To: Completion

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

The federal Department of Justice ("DOJ") has initiated an investigation of the conditions of confinement at the Oahu Community Correctional Center ("OCCC"), with a focus on the provision of mental health services to inmates and detainees. See letter from Bradley Schlozman to Governor Linda Lingle dated June 16, 2005.

DOJ has orally informed us that they will begin the discovery process in July of 2005 with a request for documents, followed by an informal visit by Assistant U.S. Attorney Verlin Deerinwater, and a more formal organized inspection by a team of experts. Past experience has demonstrated that the presence of a CRIPA expert in the initial stages of the investigation is vital to a prompt and successful resolution of any controversy.

Before DOJ begins its investigation, the State of Hawaii must consider how to prepare for the investigation, including identifying potential issues of vulnerability, deciding what type and how many experts should be retained, and what kind of documents should be searched for. The CRIPA expert must also become familiar with the Department of Public Safety's correctional facility and health care system prior to the DOJ inspection. Accordingly, insufficient time exists to conduct a competitive procurement process given the need to have the CRIPA expert prior to the DOJ inspection.

Mr. Paul Aucoin is an Ohio attorney who is experienced in complex constitutional litigation and, on behalf of the state defendants in the action, brought a lengthy case regarding conditions in a psychiatric hospital in Ohio to a successful conclusion. He was also hired in 2001 to assist the State of Hawaii in its long-standing CRIPA case involving the Hawaii State Hospital, United States v. State of Hawaii, Civ. No. 91-00137 DAE. Mr. Aucoin was brought in almost ten years after the case began, and the State of Hawaii is close to finally resolving the case. The State of Hawaii is very happy with Mr. Aucoin's assistance. Furthermore, his knowledge of the mental health system in Hawaii will be a significant asset in the DOJ's investigation of OCCC's mental health services.

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

The DOJ has conducted only two prior CRIPA investigations in Hawaii: (1) the Hawaii State Hospital and (2) the Hawaii Youth Correctional Facility. There is no attorney in private practice that has both expertise in CRIPA investigations as well as familiarity with Hawaii's mental health system. Indeed, given the fact that all prior CRIPA investigations were against public facilities, there may be no private attorneys in the State of Hawaii who have any extensive experience with CRIPA at all. Accordingly, no other legal experts were contacted.

A description of the agency's internal controls and approval requirements for the exempted procurement:

- Initial inquires by deputy attorney general Bryan Yee
- Negotiation and drafting of contract by deputy attorney general Bryan Yee, supervisor of the department's Public Safety, Hawaiian Home Lands and Housing Division
- Approval of the contract by the Attorney General
- Coordination of services between Mr. Aucoin and the Department of the Attorney General by Bryan Yee
- Review of itemized billings by Bryan Yee

A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:

This contract will be a special deputy contract between Mr. Aucoin and the Department of the Attorney General, with the Department of Public Safety funding the contract.

Department of the Attorney General

- Mark J. Bennett, Attorney General
- Lisa M. Ginoza, First Deputy Attorney General
- Bryan C. Yee, Supervising Deputy Attorney General, Public Safety, Hawaiian Home Lands & Housing Division.

Department of Public Safety

- Frank Lopez, Director of Public Safety

Direct questions to:

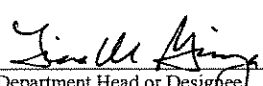
Bryan C. Yee, Deputy Attorney General

Phone Number:

587-2978

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes ☐ No ☐

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS, TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT.

 7/11/05
 Department Head or Designee Date
 First Deputy Attorney General
 Title (If other than Department Head)

Chief Procurement Officer's Comments:

Please ensure adherence to applicable administrative requirements.

☒ APPROVED

☐ DISAPPROVED

cc:

Administrator,
State Procurement Office

 7/22/05
 Chief Procurement Officer

Date