

May 3, 2013

MEMO TO: KIRC Commissioners

FROM: Michael K. Nāho`opi`i, Executive Director

SUBJECT: Approval of Contract for Passenger and Heavy Lift Helicopter Services for FY14

RECOMMENDED MOTION:

To authorize the Executive Director to enter into a contract for Helicopter Transportation Services for Personnel and Cargo with Pacific Helicopter Tours, Inc. for the period July 1, 2013 through June 30, 2014 in the amount of \$111,200.00.

BACKGROUND & SUMMARY:

An Invitation for Bids (IFB) for Helicopter Transportation Services was posted to the Hawaii Electronic Procurement System (HePS) in March 2013 with services anticipated under this IFB to be approximately \$45,000 per KIRC Executive Policy Manual Appendix J. This IFB initially anticipated funding the remainder of FY2013.

Pacific Helicopters (Pachelo) responded to the solicitation with a bid based upon the current FY2013 projects and included services for FY2014. This bid utilized an average of flight for the previous year for which Pachelo was contracted. This bid also includes services for a marine debris cleanup of Kanapou that is pending a grant award from NOAA.

Per the KIRC Executive Policy Manual Appendix J for IFB (\$50,000 or more) the IFB should have been presented to the Commission for approval prior to posting. Since this IFB was initially anticipated to be below \$50,000, approval was not required. The responding bid was greater than \$50,000; therefore Commission approval is needed prior to award.

LEGAL AUTHORITY:

The relevant provisions of Chapter 6K, Hawai`i Revised Statutes, read as follows:

[§6K-6] Responsibilities and duties of the commission. The general administration of the island reserve shall rest with the commission. In carrying out its duties and responsibilities, the commission...

(2) Shall approve all contracts for services and rules pertaining to the island reserve...

[§6K-9.5] Kaho`olawe rehabilitation trust fund. (b) The commission may use moneys in the trust fund to carry out the purposes of this chapter, including hiring employees, specialist and consultants necessary to complete projects relating to the purposes of this chapter.

RECOMMENDATION:

To authorize the Executive Director to enter into a contract for Helicopter Transportation Services for Personnel and Cargo with Pacific Helicopter Tours, Inc. for the period July 1, 2013 through June 30, 2014.



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of July 1, 2013, between Kaho'olawe Island Reserve Commission, State of Hawaii ("STATE"), by its Executive Director (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 811 Kolu Street, Suite 201, Wailuku, Hawai'i 96793 and Pacific Helicopter Tours, Inc. ("CONTRACTOR"), a corporation under the laws of the State of Hawai'i, whose business address and federal and state taxpayer identification numbers are as follows: 1 Airport Road, Hanger 109, Kahului, Hawai'i 96732; 99-0252503; W20057999

RECITALS

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.
- B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.
- C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
- D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.
- E. Pursuant to paragraph 6K-6(2) and paragraph 103D-302, HRS, the STATE is authorized to enter into this Contract.
- F. Money is available to fund this Contract pursuant to:

(1) n/a
(Identify state sources)
 or (2) Title X of Fiscal Year 1994
(Identify federal sources)
 or both, in the following amounts: State \$ 0.00
 Federal \$ 111,200.00

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number OPS13-HELO01 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

One hundred eleven thousand, two hundred and 00/00 DOLLARS
(\$ 111,200.00), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of One thousand one hundred twelve and 00/00 DOLLARS (\$ 1,112.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)
Michael K. Naho`opi`i

(Print Name)
Executive Director

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title) *

(Date)

CORPORATE SEAL
(If available)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of Pacific Helicopter Tours, Inc., CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR is ^{*} is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____

(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, _____ before me appeared _____ and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: Contract for Goods or Services Based Upon

Competitive Sealed Bids

(Notary Stamp or Seal)

Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII SCOPE OF SERVICES

S1.1 Background and Purpose:

The purpose of this contract is to provide helicopter transportation services for personnel and cargo for the Kaho`olawe Island Reserve Commission, primarily from Kahului, Maui to Honokanai`a, Kaho`olawe, as well as within the Kaho`olawe Island Reserve.

S1.2 Scope of Services

The CONTRACTOR shall provide the following estimated transportation services:

- a. 4 Ocean circumnavigational aerial surveys combined with compost toilet servicing
- b. 1 Marine debris survey
- c. 1 Heavy cargo marine debris removal
- d. 3 Plant monitoring survey
- e. 2 Emergency/Disaster flights
- f. 3 Passenger/cargo/external load flights
- g. 2 Passenger transport flights
- h. 2 UXO survey flights
- i. 1 Archaeology flight
- j. Other Support: 20 weekdays of ground support; 2 weekend/holiday days of ground support

S1.3 Changes

The STATE may from time to time, make changes in the scope of work to be performed hereunder by the CONTRACTOR. Any increase or decrease in the amount of the CONTRACTOR'S compensation, which is mutually agreed upon by and between the STATE and the CONTRACTOR, as a result of such changes and/or revisions, shall be incorporated by written amendment to this Agreement.

S1.4 Information Requested

The STATE will furnish the CONTRACTOR for his use, all pertinent information available to the STATE and pertaining to the project in order that the CONTRACTOR may be cognizant of the requirements of the STATE.

S1.5 Electronic Data

Prior to the final acceptance, the CONTRACTOR shall turn over to the STATE all electronic data prepared or obtained by the CONTRACTOR or furnished by the STATE in connection with the work performed under this Agreement at no extra cost to the STATE.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

S2.1 Scope of Payment

In consideration of the services to be performed under this Agreement, the STATE agrees to pay the Contractor as follows:

| TYPE OF SERVICE | QUANTITY BY UNIT | UNIT PRICE | TOTAL COST |
|--|------------------|------------|---------------------|
| 4 ea. Ocean circumnavigational aerial surveys combined with compost toilet servicing | 12 hours | \$1,250.00 | \$15,000.00 |
| 1 ea. Marine debris survey | 3 hours | \$1,250.00 | \$3,750.00 |
| 1 ea. Heavy cargo marine debris removal | 16 hours | \$3,450.00 | \$55,200.00 |
| 3 ea. Plant monitoring survey | 9 hours | \$1,250.00 | \$11,250.00 |
| 2 ea. Emergency/ Disaster flights | 4 hours | \$1,250.00 | \$ 5,000.00 |
| 3 ea. Passenger/ cargo/ external load flights | 3 hours | \$1,250.00 | \$ 3,750.00 |
| 2 ea. Passenger transport flights | 2 hours | \$1,250.00 | \$ 2,500.00 |
| 2 ea. UXO survey flights | 6 hours | \$1,250.00 | \$ 7,500.00 |
| 1 ea. Archaeology flight | 3 hours | \$1,250.00 | \$ 3,750.00 |
| Ground Support Services – Weekday | 20 days | \$ 150.00 | \$ 3,000.00 |
| Ground Support Services - Weekend/ Holiday | 2 days | \$ 250.00 | \$ 500.00 |
| | | | |
| | | | |
| ESTIMATED TRANSPORTATION SERVICES TOTAL | | | \$111,200.00 |



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

After the first three months of the contract term or any extension period, if applicable, the CONTRACTOR may request an increase(s) in Contract price when a substantial price increase(s) on products or services is imposed upon the CONTRACTOR. Such request must be made in writing to the Procurement Officer and must meet the following conditions:

- a. Request for a price increase(s) shall be limited to the actual increase(s) imposed upon the CONTRACTOR.
- b. CONTRACTOR shall submit at the time of such written request, documentation or verification of the increase(s) imposed upon the CONTRACTOR.
- c. No price increase will be allowed for the initial Contract term. A price increase(s), if any, shall be effective upon approval by the Procurement Officer; approval shall be made within ten (10) calendar days after receipt by the STATE.

S2.2 Schedule for Partial Payments

The STATE will only make payments for completed travels and cargo trips. For payment purposes, the CONTRACTOR shall submit each original invoice to the Kaho'olawe Island Reserve Commission for approval and processing. All invoices shall be accompanied by the flight manifest indicating the names of the passengers or cargo trip authorization form issued by the STATE. No payments will be made without the flight manifest or cargo trip authorization form.

S2.3 Final Acceptance and Payment

Final acceptance is stipulated to mean a written notice to the CONTRACTOR of the satisfactory fulfillment of the Contract requirements. Final payment will be made only after issuance of the notice of final acceptance and being compliant with Hawai'i Compliance Express.



STATE OF HAWAII TIME OF PERFORMANCE

S3/1 Time of Completion

Time is of essence in the Agreement and the CONTRACTOR shall perform the work with due efficiency and diligence to complete the work within the specified time.

S3.2 Time Extension

The STATE may, upon written request of the CONTRACTOR and for good cause, extend the completion date of this Agreement by written notice to the CONTRACTOR. This contract may be extended no more than three times, with each extension being no longer than twelve (12) months.

S3.3 Schedule

The transportation service contract shall remain effective through June 30, 2014 unless otherwise amended by the STATE.



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)
Michael K. Naho'opi'i
(Print Name)
Executive Director
(Print Title)

(Date)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)
(Print Name)
(Print Title, if designee of the Director of DHRD)

(Date)



STATE OF HAWAII SPECIAL CONDITIONS

S5.1 The CONTRACTOR is required to comply with generally accepted standards of airmanship, training, and preventative maintenance schedules and procedures in accordance with all applicable federal, state and local regulations.

S5.2 Within 45 days of contract award, the CONTRACTOR shall provide written assurance that the CONTRACTOR'S transportation services under the Contract conform to all applicable federal, state and local regulations. The written assurance shall include a CONTRACTOR confirmation of compliance with applicable regulations and copies of all applicable permits, licenses, and approvals. All costs associated with obtaining and/or maintaining said permits, licenses and approvals shall be at the CONTRACTOR'S expense.

S5.3 Helicopters shall meet the following specifications, as applicable:

- a. Operate in a maximum wind speed of 40 knots with a gust spread of 15 knots;
- b. VHF Radio capable of air-to-air and air-to-ground communication; and
- c. 800 MHz Range Radio transceiver, EF Johnson Model 8565 compatible multi-box.

S5.4 The CONTRACTOR shall be obligated to comply with generally accepted standards of airmanship, training, and maintenance practices and procedures. In addition, CONTRACTOR shall comply with all provisions of applicable statutes, tenders of service, and contract terms as such may affect flight safety, as well as with all applicable Federal Aviation Administration Regulations, Airworthiness Directives, orders, rules, and standards promulgated under the Federal Aviation Act of 1958, as amended. Compliance with published standards may not, by itself, constitute compliance with generally accepted standards of airmanship, training, or maintenance.

S5.5 The CONTRACTOR shall maintain all components and surfaces of the aircraft clean, orderly, and in good state of repair. Failure to do so shall be deemed a failure to comply with generally accepted standards of maintenance to the extent that the failure goes beyond mere cosmetic or housekeeping deficiencies and relates in some manner to confidence in the safety, maintenance, or airworthiness of the aircraft.

S5.6 Should the STATE determine that any of the following conditions exist, the STATE may suspend or place in temporary non-use status the CONTRACTOR'S further performance of air transportation services:

- a. CONTRACTOR'S failure to meet any of the obligations imposed by the preceding paragraphs S5.1, S5.4 and S5.5, above.
- b. Involvement of the CONTRACTOR'S aircraft in a serious or fatal accident, incident, or operational occurrence (regardless of whether or not such aircraft is being used in the performance of this Contract).
- c. Any other conditions which affect the safe operation of the CONTRACTOR'S flights hereunder.
- d. Such suspension shall be accomplished pursuant to applicable federal, state, and local laws and regulations. The suspension procedures, including the temporary non-use, reinstatement and appeals processes, set out therein, shall be binding, final, and conclusive. In no event shall suspension or temporary non-use proceedings, regardless of the outcome, give rise to any liability on the part of the STATE.
- e. Suspension or temporary non-use hereunder resulting in unavailability of the CONTRACTOR'S aircraft to perform service under this contract shall be treated as failure to maintain authorization to engage in air transportation.

S5.7 CONTRACTOR shall defend indemnify, and hold harmless the State of Hawai'i, the KIRC, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. In the case the State of Hawai'i, the KIRC, and their officers, employees, or agents, without any fault on their part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the State of Hawai'i, the KIRC, and their officers, employees, or agents, including attorney's fees.

The CONTRACTOR shall procure and maintain, at its cost and expense and acceptable to the STATE, in full force and effect throughout the term of this Contract, comprehensive general liability insurance, or its equivalent, in an amount of at least \$2,000,000 combined single limit per occurrence for bodily injury and property damage, with an insurance company or companies licensed to do business in the State of Hawai'i. The policy or policies of insurance shall name the State of Hawai'i as an additional insured. 



STATE OF HAWAII
SPECIAL CONDITIONS

The CONTRACTOR shall procure and maintain, at its cost and expense and acceptable to the STATE, in full force and effect throughout the term of this contract, aviation insurance, or its equivalent, in an amount of at least \$2,000,000 combined single limit per occurrence, with an insurance company or companies licensed to do business in the State of Hawai'i. The policy or policies of insurance shall name the State of Hawai'i as an additional insured.

Such insurance will include coverage in like amount for products/completed operations, contractual liability, and personal and advertising injury. "Claims made" policies are not acceptable.