

March 1, 2013
Agenda Item IV.C.

MEMORANDUM

To: KIRC Commissioners

From: Michael K. Nāho‘opi‘i, Executive Director

Subject: Authorize Executive Director to Sign Supplemental Agreement No. 01 with Zapata Inc.

RECOMMENDED MOTION:

To authorize the Executive Director to execute Supplemental Contract No. 1 to Contract No. 61057 with Zapata Incorporated in the amount of \$702,876.47 to manage Kahua Honokanai‘a and other facilities on Kaho‘olawe for a one-year period commencing on July 1, 2013 through June 30, 2014.

BACKGROUND & SUMMARY:

The current facilities management contract with Zapata Incorporated (“Zapata”) will expire at the end of FY13, June 30, 2013; thus completing their first year of providing services.

This contract extension will continue with two two-man teams (four full-time on-island staff), ½ time base camp manager, ½ time cook, and support from their O‘ahu office staff, which includes administrative support equaling approximately 11% of total time and management support equaling approximately 26%.

DISCUSSION:

Zapata’s performance over the duration of their contract has been excellent. The on-island staff works well with KIRC staff in providing support for boat operations, on-island projects, and volunteers. The management staff is accessible and responsive, and treats KIRC as a valued client.

Cognizant of funding limitations KIRC faces, Zapata has been able to provide a very streamlined proposal with a slight increase (less than 1%) which is due to increased travel expenses and the inclusion of two round-trip helicopter flights for their staff should the need arise. The current contract is \$699,541.82 and billing is at 45.64% but should be at 58%, thus staff anticipates another year of savings.

LEGAL AUTHORITY:

Chapter 6K, Hawai‘i Revised Statutes provides that the KIRC shall approve all contracts for services and may use trust fund monies to fulfill the purpose of this chapter, as excerpted below:

§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. (a) There is created in the state treasury a trust fund to be designated as the Kaho‘olawe rehabilitation trust fund to be administered by the department with the prior approval of the commission. Subject to Public Law 103-139, and this chapter...

(b) The commission may use moneys in the trust fund to carry out the purposes of this chapter, including hiring employees, specialists, and consultants necessary to complete projects related to the purposes of this chapter.

Additionally, the Commission’s “Solicitation and Contracting Policy” calls for contracts of \$50,000 or greater to be presented to the Commission for approval.

RECOMMENDATION:

To authorize the Executive Director to execute a one-year supplemental agreement for Fiscal Year 2013 with Zapata Incorporated in the amount of \$702,876.47 to manage Kahua Honokanai‘a and other facilities on Kaho‘olawe.



STATE OF HAWAII

SUPPLEMENTAL CONTRACT NO. 1

TO CONTRACT 61057

(Insert contract number or other identifying information)

This Supplemental Contract No. 1, executed on the respective dates indicated below, is effective as of July 1, 2013, between the Kaho'olawe Island Reserve Commission, State of Hawaii

(Insert name of state department, agency, board or commission)

("STATE"), by its Executive Director,
(Insert title of state officer executing contract)

(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 Zapata, Incorporated

("CONTRACTOR"),
a Corporation

(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the CONTRACTOR)

under the laws of the State of North Carolina, whose business address and federal and state taxpayer identification numbers are as follows: 6302 Fairview Road, Suite 600, Charlotte, NC 28210 federal ID No. 56-1816365 and state tax license no. W20119112-01

RECITALS

A. WHEREAS, the STATE and the CONTRACTOR entered into Contract 61057
(Insert contract number or other identifying information)

dated July 1, 2012, which was amended by Supplemental Contract No(s).
dated , , which was amended by Supplemental Contract No(s).
dated , , which was amended by Supplemental Contract No(s).
dated , (hereafter collectively referred to as "Contract"), whereby the CONTRACTOR agreed to provide the goods or services, or both, described in the Contract; and

B. WHEREAS, the parties now desire to amend the Contract.

NOW, THEREFORE, the STATE and the CONTRACTOR mutually agree to amend the Contract as follows: (Check Applicable box(es))

- Amend the SCOPE OF SERVICES according to the terms set forth in Attachment-S1, which is made a part of the Contract.
- Amend the COMPENSATION AND PAYMENT SCHEDULE according to the terms set forth in Attachment-S2, which is made a part of the Contract.
- Amend the TIME OF PERFORMANCE according to the terms set forth in Attachment-S3, which is made a part of the Contract.
- Amend the SPECIAL CONDITIONS according to the terms set forth in Attachment-S6 SUPPLEMENTAL SPECIAL CONDITIONS, which is made a part of the Contract.
- Recognize the CONTRACTOR'S change of name.

FROM: _____

TO: _____

As set forth in the documents attached hereto as Exhibit _____, and incorporated herein.

A tax clearance certificate from the State of Hawaii is is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

A tax clearance certificate from the Internal Revenue Service is is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

The entire Contract, as amended herein, shall remain in full force and effect.

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.

FUNDING AGENCY: (if other than contracting agency)

STATE

By _____
Signature

(Signature)

Michael K. Naho'opi'i

(Print Name)

PRINT NAME: _____

Executive Director

DIRECTOR OF _____

(Print Title)

DATE: _____

(Date)

CORPORATE SEAL
(If available)

CONTRACTOR

Zapata, Incorporated

(Name of Contractor)

(Signature)

Eric A. Brundage

(Print Name)

General Manager, Pacific Group *

(Print Title)

(Date)

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
COMPENSATION AND PAYMENT SCHEDULE

2.1 Compensation

In consideration of the service to be performed under this Supplemental Agreement, the STATE agrees to pay the CONTRACTOR a sum of SEVEN HUNDRED TWO THOUSAND EIGHT HUNDRED SEVENTY-SIX AND 47/100 DOLLARS (702,876.47), to be paid in accordance with the itemized budget submitted with the proposal, for the full and faithful performance under the terms and conditions of this Agreement, as follows:

Component	Hours/Units	Rate	Total
Project Manager	533	\$ 149.02	\$ 79,427.66
Administrative Assistant	232	\$ 48.82	\$ 11,326.24
Travel For On-island Support	4	\$ 375.71	\$ 1,502.84
Travel For KIRC Meeting Attendance	2	\$ 454.61	\$ 909.22
Other Direct Costs – Admin Supplies (Lump Sum)	1	\$ 5,000.00	\$ 5,000.00
Administration and Management Subtotal			\$ 98,165.96
Base Camp Manager	1,040	\$ 77.00	\$ 80,080.00
Lead General Maintenance Technician (2)	4,000	\$ 58.45	\$ 233,800.00
General Maintenance Technician (2)	4,000	\$ 51.15	\$ 204,600.00
Chef	1,040	\$ 48.31	\$ 50,242.40
Travel for Base Camp Manager	26	\$ 344.40	\$ 8,954.40
On-island Personnel Subtotal			\$ 577,676.80
Subtotal			\$ 675,842.76
Tax (4%)			\$ 27,033.71
Total			\$ 702,876.47

All charges for changes as may be required and authorized in writing by the STATE, after approval of the respective stages of the work have been made by the STATE, will be paid in accordance with the unit cost stipulated in the budget submitted with the proposal, which is mutually agreed upon by the STATE and the CONTRACTOR, provided that the CONTRACTOR shall not be entitled to compensation for such changes as shall be necessary or required by the STATE due to error or omission by the CONTRACTOR.

2.2 Schedule for Payments

For payment purposes, the CONTRACTOR shall submit the original certified invoice to the STATE for approval and processing. The CONTRACTOR shall invoice the STATE for only work/hours performed, and direct costs incurred during the billing period, and the STATE shall make payments for actual work performed and costs incurred.

2.3 Final Acceptance and Payment

Final acceptance is stipulated to mean a written notice to the Contractor of the satisfactory fulfillment of the requirements of this Agreement. Final payment will be made only after issuance of the notice of final acceptance and compliance with Hawaii Compliance Express.



STATE OF HAWAII

TIME OF PERFORMANCE

3.1 Time of Completion

Time is of the essence in this Contract and the CONTRACTOR shall endeavor to complete requested tasks with due efficiency and diligence within the time specified upon assignment.

3.2 Time Extension

The STATE may, upon written request of the CONTRACTOR and for good cause, extend the completion date of this Contract by written notice to the CONTRACTOR. The STATE may extend the completion date no more than two more times, and such extension may be no longer than twelve (12) months.

3.3 Schedule

All tasks listed in the Scope of Service (Attachment - S1) shall be carried out in a continuous manner for an additional period of 12 months, beginning on the effective date of this Contract (July 1, 2013 through June 30, 2014).



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
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 Zapata, Incorporated, 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 Eric A. Brundage

Print Title General Manager, Pacific Group

Name of Contractor Zapata, Incorporated

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: _____

(Notary Stamp or Seal)

Notary Signature Date

NOTARY CERTIFICATION