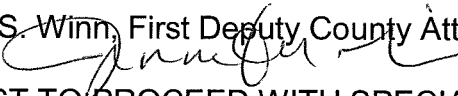


COUNTY OF KAUA'I
OFFICE OF THE COUNTY ATTORNEY

February 6, 2014

TO: Steven A. Hunt, Director of Finance

FROM: Jennifer S. Winn, First Deputy County Attorney


RE: REQUEST TO PROCEED WITH SPECIAL COUNSEL PROCUREMENT
PURSUANT TO HAWAII ADMINISTRATIVE RULES, SECTION 3-126-5:
STAY OF PROCUREMENTS DURING PROTEST

On January 17, 2014, the Division of Purchasing posted Professional Services Solicitation 2014-PROF-6-A.1 – **SPECIAL COUNSEL PRO BONO SERVICES RELATED TO ORDINANCE 960**. The deadline for submission of resumes and letters of intent was January 31, 2014 at 2:00 p.m.

On January 30, 2014 a letter of protest was received from Lance D. Collins, Esq., challenging the professional services solicitation for various reasons. On January 31, 2014, a letter denying protest was sent to Collins citing failure to comply with HAR section 3-126-3(c). Collins has since filed a Motion for Administrative Hearing through the Department of Commerce and Consumer Affairs challenging the protest denial. The first appearance for the County via telephone conference call is scheduled for Friday, February 14, 2014.

As you are aware, a lawsuit has been filed against the County with regard to passage of Ordinance 960, namely Syngenta Seeds, Inc.; a Delaware corporation, et al. vs. County of Kaua'i, Civil No. CV14-00014 BMK (U.S. District Court). The County is required to answer this lawsuit on February 14, 2014. Because the Office of the County Attorney has a conflict in representing the County in this matter, special counsel is required. Executing a contract with special counsel in time for the February 14 answer date is critical to the substantial interests of the County.

Pursuant to HAR 3-126-5:

Stay of procurements during protest. When a protest has been filed pursuant to section 3-126-3 or 3-126-4, no further action shall be taken until the protest has been settled, ***unless the chief procurement officer makes a written determination after consulting with the head of the purchasing agency, that the award of the contract is necessary to protect the substantial interests of the State.*** (emphasis added).

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The risk of harm to the County should special counsel not be in place by the scheduled answer date could be substantial and irreparable. As such and pursuant to HAR 3-126-5, the Office of the County Attorney is requesting that we proceed with the convening of the review and selection committee to review the one (1) resume and letter of intent received to determine the issue of qualification as it relates to the content of solicitation 2014-PROF-6-A.1. Should the submission be deemed unqualified, the Office of the County Attorney requests approval to proceed with the procurement of special counsel during this stayed period of protest relying upon the professional services procurement 2014-PROF-1-A.1 which was publicized on June 17, 2013 and from which the Office of the County Attorney has designated pre-qualified law firms and attorneys who are available for special counsel services.

APPROVED:



STEVEN A. HUNT
Director of Finance