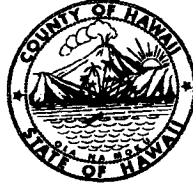


Harry Kim  
Mayor



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April 13, 2004

**PRIVILEGED AND CONFIDENTIAL**  
**COMMUNICATION ATTORNEY-**  
**CLIENT COMMUNICATION**  
**NOT A PUBLIC RECORD**

Milton D. Pavao, Manager  
Department of Water Supply  
345 Kekūanaō'a Street, Suite 20  
Hilo, Hawaii 96720

Attn: Daryl Ikeda

Dear Mr. Pavao:

RE: Brantley Center, Inc.  
Corporation Counsel Work Control No. 04-7325

You requested my opinion on whether you could award the Brantley Center, Inc. a maintenance contract without going out to bid. You indicated that the Brantley Center, Inc. is a nonprofit vocational rehabilitation center.

Pursuant to H.R.S. § 103D-1010, without advertising or calling for bids, you may purchase services from a qualified community rehabilitation program serving people with disabilities that have indicated an interest in supplying the service. Provided, however, that the services meet your specifications and needs, are purchased at a fair market price, and:

- 1) Meet all of the requirements of a qualified community rehabilitation program under section 103D-1001; and
- 2) Maintain a disabled to non-disabled employee ratio equal to or in excess of three-to-one for work hours of direct labor at all times in the work contracted.

Milton D. Pavao, Manager  
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Pursuant to H.R.S. § 103D-1001, a qualified community rehabilitation program means a nonprofit community rehabilitation program for persons with disabilities that:

- 1) Is organized and incorporated under the laws of the United States or this State, and located in this State;
- 2) Is operated in the interest of and employs persons with disabilities;
- 3) Does not inure any part of its net income to any shareholder or other individual;
- 4) Complies with all applicable occupational health and safety standards required by the federal, state, and county governments; and
- 5) Holds a current certificate from the United States Department of Labor pursuant to the Fair Labor Standards Act, Title 29 United States Code Section 214(c), and is certified by the State Department of Labor and Industrial Relations under Section 387-9, and applicable administrative rules relating to the employment of persons with disabilities.

Assuming the Brantley Center, Inc. is a qualified community rehabilitation program, under H.R.S. § 103D-1010, the purchasing agency shall:

- 1) Receive and review proposals submitted by qualified community rehabilitation programs to provide good or services, and determine if they are suitable for purchase by the agency;
- 2) Negotiate the conditions and terms for the purchase, including the price of the offer, between the agency and the qualified community rehabilitation program; provided that the price of the offer shall not exceed the fair market price, and there is assurance that the qualified community rehabilitation program proposal is in compliance with all administrative rules related to purchasing; and
- 3) Ensure that any goods or service purchased from a qualified community rehabilitation program shall not be placed on the Hawai'i products list under § 103D-1002.

Thus, provided the Brantley Center, Inc. meets the qualifications for a qualified community rehabilitation program, you can award to them without calling for bids.

Milton D. Pavao, Manager  
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If you have any further questions, please feel free to call me.

Sincerely,

KATHERINE A. GARSON  
Deputy Corporation Counsel

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