

**SPECIAL INVESTIGATIVE COMMITTEE ON THE HYDROGEN INVESTMENT CAPITAL SPECIAL MANAGEMENT
CONTRACT AWARD EXHIBIT LIST**

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Priscilla Thompson/DBEDT
05/25/2007 05:21 PM

To Eileen Harada/DBEDT@DBEDT
cc Louise Mott/DBEDT@DBEDT, Jeffrey
Pang/DBEDT@DBEDT
bcc
Subject letter to bidders

Hi, Eileen:

I've been told that SID (that means me) will be handling procurement related to the hydrogen RFP. Obviously, I'm not clear on what exactly that means. I/we need to get a letter to the top bidders inviting them to meet. I can do the letters, preferably to get them out on Tuesday, May 29, but would appreciate a sample so I don't mess up too badly. We're tentatively holding 6/19/07 for the meeting, which you're welcome to attend.

I've copied Jeff Pang on this since he may have to get involved at some point.

Thanks,
Priscilla

ps. I'll give you a call in the near future once I've had a chance to read through the procurement stuff.

Priscilla C. Thompson
Dept. of Business, Economic Development & Tourism
Strategic Industries Division
235 S. Beretania St., 5th Floor, Honolulu, HI 96813

Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Phone: (808) 586-2353 Fax: (808) 586-2536

www.hawaii.gov/dbedt/ert/

21609

Exhibit 1

Theodore E Liu/DBEDT

08/31/2006 09:57 AM

To Dawn Okuhama/DBEDT@DBEDT

cc

bcc

Subject Fw: Renewable Hydrogen Program

History:

➡ This message has been forwarded.

please set up time and invite Maurice also. it's about hydrogen fund



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

----- Forwarded by Theodore E Liu/DBEDT on 08/31/2006 09:55 AM -----



"Weinman, Barry"

<Weinman@allegiscapital.com>

To "Theodore E Liu" <TLiu@dbedt.hawaii.gov>

cc

08/30/2006 02:35 PM

Subject RE: Renewable Hydrogen Program

Ted .. I leave for China Sept 9-17 and then NY Sep 23-26th

I have time next week:

Monday after 11:30 – 5:30

Tuesday : 10-2

Wednesday 12-3

Thursday : 10-12

I have some thoughts on people and structure and will help if I can informally.

Barry Weinman

Chairman, DragonBridge Capital Merchant Bank

Managing Director, Allegis Capital

From: Theodore E Liu [mailto:TLiu@dbedt.hawaii.gov]

Sent: Wednesday, August 30, 2006 5:14 PM

To: Weinman, Barry

Subject: RE: Renewable Hydrogen Program

Barry,

If you have the time, I'd like to continue our conversation on this. Your thoughts below were welcome

010173

and helpful.

Currently, we are targeting \$500,000 of the \$10M fund to contract with some one or some group to act as the "executive director" or "executive office" of the fund. This person or entity would do the planning, business development, develop partnerships, solicit proposals, use the technical expertise available (or paid) to scrub down any proposal that comes in, and makes a firm recommendation to a small board for projects to fund. We have a few wrinkles to work out, such as whether the small board makes the final decision or whether that needs to be the DBEDT Director. But in any case, the Director's is a up-or-down decision -- i.e., he does not pick between/among proposals.

The program may need to be "housed" within HSDC, but have its own processes and procedures.

I am very eager to kick-off this. The Gov. has just approved the transfer of the \$10M and I want to do more than collect interest thereon.

Would you have the time to meet?

Regards,

Ted



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

"Weinman, Barry" <Weinman@allegiscapital.com>

08/11/2006 08:25 AM

To: "Theodore E Liu" <TLiu@dbedt.hawaii.gov>

cc

Subject: RE: Renewable Hydrogen Program

Ted ... This is a wonderful opportunity for Hawaii and has global potential. Congratulations to you for leading this effort.

010174

I am in contact with Joel Serface who has been working on California's initiative. Joel was a VC with Eastman Chemical, has worked with CALPERS & CALSTERS on the CleanTech initiative and hangs out in the Allegis Palo Alto office. I am trying to learn more about their structure and process.

I am a strong believer in the Executive Director model for these type programs—a single point of public/private contact that reports to a relatively small and active Board. I think the Board structure—a subset of HSDC 2-4, and perhaps 2-4 from the purely private sector seems about right. Other interested agencies and constituents could have observer rights but my experience with big Boards is not good. I think people like Ron Higgins, Bob Clark, Richard Lim, maybe a VC from Hawaii or Kauai (Jim Lally on HI—Kleiner Perkins, or Bill Davidow Kauai,—Mohr Davidow (CalTec Trustee) —I could recommend half a dozen. This may not be PC but it is the right structure.

The Executive Director would run things day to day—work with companies like GE, VC firms like Technology Partners, Kleiner Perkins, National & State Government departments, etc. Maurice and other technical consultants would be used for technical due diligence but the Exec Dir would be a business person who could talk to legislatures, corporate types, investors, university researchers, local community leaders (especially the Hawaiian community), and future prospects for exporting and deploying the winning technology and programs. The type of attractive, articulate person that would do Hawaii proud.

The mission would be to assist many different renewable energy projects to get started in Hawaii and help with permitting, site selection, community relations, funding, etc. The goal would not be for government to pick the winners in advance but to let the ideas blossom and the market pick the winners.

Obviously you know more than I do about all this but I do know without a strong focused person, with broad support the potential will not be achieved. I don't know how to hire and pay such a person—it would be better if they are not a State employee, but I don't know the politics on this. I would do a local search—the person needs to really know Hawaii and its unique issues and I think a mainlander might know more about the business operations but could wind up Dobelle like. A business leadership background with government experience — maybe both local and DC --- should be part of the criteria.

I think the \$10 million could be leveraged to over a \$100 million of investment and that the entity ought to get a fair amount of equity in each deal even if there is no cash investment. HiBEAM received 1-2% of each company for helping them navigate the business and financing maze. Now HiBEAM is self sufficient and no longer needs financial support from its membership.

Just to make clear my interest—I am here to support Governor & you and this program—from a background position. I have no time to play any other official or non-official role. I could help with the search, make some useful introductions but want to remain on the bench, not the field. Virginia has long ago filled out divorce papers—she almost filed them when DragonBridge closed—if I get involved it would be a no-brainer for her and I don't have the time or energy to find and work with any more lawyers.

Best

barry

From: Theodore E Liu [mailto:TLiu@dbedt.hawaii.gov]

010175

Exhibit 3, page 3

Sent: Thursday, August 10, 2006 11:44 AM
To: Weinman, Barry
Subject: Renewable Hydrogen Program

Please see below. Interested in our conversation yesterday. Please let me know your thoughts.



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

010176

Theodore E Liu/DBEDT
08/08/2006 09:40 AM

To Dawn Okuhama/DBEDT@DBEDT
cc
bcc
Subject Re: Fw: Hawaii Energy Initiative

I prefer to meet in person.



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

Dawn Okuhama/DBEDT



Dawn Okuhama/DBEDT
08/08/2006 09:33 AM

To Theodore E Liu/DBEDT@DBEDT
cc
Subject Fw: Hawaii Energy Initiative

Ted --

Did you just want a phone call with Barry or have him come here?

Dawn M.T. Okuhama
Assistant to the Director
DBEDT
P.O. Box 2359
Honolulu, Hawaii, USA 96804
phone: 808-586-2355
fax: 808-586-2377

SCHEDULING NOTE: Please be advised that the Director's schedule may change unexpectedly. On those occasions, we will attempt to provide maximum notification and schedule alternate arrangements that accommodates everyone's schedule.

----- Forwarded by Dawn Okuhama/DBEDT on 08/08/2006 09:32 AM -----



"Weinman, Barry"
<Weinman@allegiscapital.com>
08/07/2006 02:51 PM

To <DOkuhama@dbedt.hawaii.gov>
cc
Subject Re: Hawaii Energy Initiative

010177

My cell: 392-6975
If Ted prefers I can come by. My office is only 3 blocks away.

Sent without Spelcheka
Barry Weinman
Managing Director, Allegis Capital
Chairman, DragonBridge Merchant Bank

-----Original Message-----
From: Dawn Okuhama <DOkuhama@dbedt.hawaii.gov>
To: Weinman, Barry
Sent: Mon Aug 07 17:31:28 2006
Subject: Re: Hawaii Energy Initiative

Hi Barry,

Can we call you on Wednesday at 2:30? If so, what's the best number?

Thank you,
Dawn

Dawn M.T. Okuhama
Assistant to the Director
DBEDT
P.O. Box 2359
Honolulu, Hawaii, USA 96804
phone: 808-586-2355
fax: 808-586-2377

SCHEDULING NOTE: Please be advised that the Director's schedule may change unexpectedly. On those occasions, we will attempt to provide maximum notification and schedule alternate arrangements that accommodates everyone's schedule.

"Weinman, Barry" <Weinman@allegiscapital.com>

08/07/2006 02:25 PM

To
<DOkuhama@dbedt.hawaii.gov>

cc

Subject
Re: Hawaii Energy Initiative

010178

Dawn... I am open 10:30 to 12 and after 2PM

I can't change the other meetings.

Sent without Spelcheka
Barry Weinman
Managing Director, Allegis Capital
Chairman, DragonBridge Merchant Bank

-----Original Message-----

From: Dawn Okuhama <DOkuhama@dbedt.hawaii.gov>
To: Weinman, Barry
Sent: Mon Aug 07 16:41:05 2006
Subject: Fw: Hawaii Energy Initiative

Hi Barry,

How does your Wednesday look?

Dawn

Dawn M.T. Okuhama
Assistant to the Director
DBEDT
P.O. Box 2359
Honolulu, Hawaii, USA 96804
phone: 808-586-2355
fax: 808-586-2377

SCHEDULING NOTE: Please be advised that the Director's schedule may change unexpectedly. On those occasions, we will attempt to provide maximum notification and schedule alternate arrangements that accommodates everyone's schedule.

----- Forwarded by Dawn Okuhama/DBEDT on 08/07/2006 01:38 PM -----

Theodore E Liu/DBEDT

08/07/2006 11:28 AM

To

Dawn Okuhama/DBEDT@DBEDT

cc

Subject

Fw: Hawaii Energy Initiative

Let's find a time.

----- Forwarded by Theodore E Liu/DBEDT on 08/07/2006 11:26 AM -----

010179

"Weinman, Barry" <Weinman@allegiscapital.com>

08/07/2006 09:37 AM

To

"Theodore E Liu" <TLiu@dbedt.hawaii.gov>

cc

Subject

RE: Hawaii Energy Initiative

Ted ... sounds like a good start.

I am on the Allegis Capital Monday partners conf call until 10:30. I am then at my home office until 12:30 (737.2991) and then tied up most of the day. I am fully booked on Tuesday but am open on Thursday from 10-12 and after 2:30.

bw

From: Theodore E Liu [mailto:TLiu@dbedt.hawaii.gov]
Sent: Monday, August 07, 2006 12:21 PM
To: Weinman, Barry
Subject: Re: Hawaii Energy Initiative

Barry,

First off, thank you for seeing Chris and Ryan. They found the session with you incredibly helpful.

Your email is very timely; I was thinking of emailing you on the same topic.

I am responsible for the implementation of the Governor's energy package, as I was responsible for pulling it together and getting it through the legislature. Governor has said that the energy package is likely the most significant accomplishment of her 1st 4 years. Maurice Kaya, well respected nationally on energy matters, and his team support me on this. Governor has also assemble a cabinet-level group of directors (Lead-by-Example group) to support us on permitting, approvals, land-use, water allocation, and the other key issues.

As the result of this initiative, we are getting a significant amount of real inquiries and actual proposals. This is very fulfilling. I have a very professional and knowledgeable staff of energy industry analysts, led by Maurice Kaya. This team is recognized nationally by their peers as very competent in this area.

However, we need to come up with a better system for us to handle and be responsive to this level of interest.

010180

Here is one thought, on which I would most appreciate your feedback:

We have a \$10 million fund that is intended as local "cost-match" for federal and other grants and as capital to seed IP and/or projects in Hawaii. This is not much, but a start.

The target of the fund is "renewables to hydrogen". Thus, we are not getting into a debate over the future of hydrogen. Our approach is to base any hydrogen development on the development of renewable energy technologies and projects in Hawaii (solar-to-hydrogen; geothermal to hydrogen; biofuels-to-hydrogen). This "no regrets" approach means that even if hydrogen does not develop into a viable alternative, our investment in renewable technologies will still pay-off for the state.

The fund is placed within Hawaii Strategic Development Corporation (HSDC). I would like to establish a subcommittee of the HSDC board to specifically to review, assess and make decisions on energy projects that are seeking funding or other support from the state (could be in the form of facilitating permitting and approvals, land-use, funding from HTDC SBIR, etc.). I note that many of the proposals will come from major corporations. We've already had several very productive meetings with General Electric Corporation and Chevron Renewable Technologies.

Subcommittees of the HSDC board can have outside members and these need not go through the entire Senate confirmation process and disclosure requirements do not apply. I envision a subcommittee of 5, with 2 from the HSDC board and 3 private sector members with experience in assessing business plans and proposals.

My staff will provide staffing and all technical and back-office assistance, as will several outside consultants we have hired (Hawaii Natural Energy Institute, Booz Allen and others). However, the decisions on what to fund, where to refer a project, etc., will be made by this subcommittee.

While this subcommittee may evolve into THE "point-of-contact" for energy project inquiries, proposals, and information, initially I expect it will be one of several points on contact as we develop the implementation plan.

I welcome your reaction to this idea, and to any you may have. Do you have a few minutes to discuss?

Thanks,

Ted

"Weinman, Barry" <Weinman@allegiscapital.com>

08/07/2006 07:28 AM

To <tliu@dbedt.hawaii.gov>

cc

Subject Hawaii Energy Initiative

010181

Ted ... I have been approached informally by some of the energy VCs on the mainland about some of the alternate energy programs they have heard about in Hawaii.

One question they ask---who is the person in charge or the point person they can go to for information on opportunities. Is there such a person? I hope it is not you---this could become big for Hawaii over time and I have heard you have a full time job already. Also---these people tend to get turned off if their only interface is someone from government---present company excluded.

I wonder if there is someone like the woman who runs the Hawaii film Initiatives for alternative energy initiatives. I don't think much of Enterprise Honolulu and would never recommend them to anyone that I know. It would be cool to have a ----sorry for the terrible title---"Energy Tsar ". That person would have access to government and to industry and could facilitate investment and everything needed to get projects up and running. Is there anyone like that?

Hope Chris found our session worth while---we were a bit tough on him, but tried to be constructive....

Best

barry

4a

Priscilla Thompson/DBEDT
08/08/2007 12:22 PM

To kkitamura@dbedt.hawaii.gov
cc jtantlin@dbedt.hawaii.gov (John Tantlinger),
mkaya@dbedt.hawaii.gov (Maurice Kaya)
bcc
Subject Fw: Hydrogen Selection

Ken:

Louise Mott just called asking if ASO/Con is supposed to do the award letter. I told her that Maurice had sent the memo below, and that I would go through you for a response to her question, but that TEL had requested SID to prepare the selection letters. Please advise ASO/Con that SID has been instructed to prepare the letters. We will provide signed copies for ASO/Con file.

Also, for consideration by yourself, John and Maurice, Louise mentioned that the selection for award is not consistent with the evaluation committee's recommendation. She asked who will be handling any protests or briefings that may result.

Thanks,
Priscilla

Priscilla C. Thompson
Dept. of Business, Economic Development & Tourism
Strategic Industries Division
235 S. Beretania St., 5th Floor, Honolulu, HI 96813

Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Phone: (808) 586-2353 Fax: (808) 586-2536

www.hawaii.gov/dbedt/ert/

— Forwarded by Priscilla Thompson/DBEDT on 08/08/2007 12:14 PM —

Maurice Kaya/DBEDT

4b

08/01/2007 04:20 PM

To kkitamura@dbedt.hawaii.gov
cc John Tantlinger/DBEDT@DBEDT, Priscilla
Thompson/DBEDT@DBEDT
Subject Hydrogen Selection

Ken,

We will be completing the paperwork and returning all to ASO. Ted has instructed me to help him draft future selection and non-selection letter, which SID will do. I will copy ASO.

We have completed a evaluation committee report memo to him for his decision.

Thank you for your continuing counsel and assistance.

We will be returning all evaluation committee materials to ASO as is normal.

020118

Exhibit 4

Date: Wed, 23 May 2007 11:33:12 -1000
From: Theodore E Liu [mailto:TLiu@dbedt.hawaii.gov] Sent: Thursday, May 24, 2007 9:58 AM
To: Michael Pfeffer
Subject: Re: Important

Mike,

There are no attacks on you or your company. Nor am I "attacking Rob". My goodness, can anyone have a rational discussion without these types of allegations? I called Rob to ask the basis for his statement that it "turned out to be not exactly the truth". To a rational thinking person hearing such a statement, can it be reasonably inferred that he is stating that the administration was lying? And how did it "turn out" that way, is what I wanted to know. This is especially so after I had gone out of my way to explain why it was important for me, and by implication, the administration (as I do not write those types of letters on my own) to support his re-appointment.

Mike, this is not personal. I appreciate and I am sure the Governor appreciates your support. I have known for many years and respected your commitment to Hawaii and its desired future. Believe me when I say we are in good faith working very hard toward improving that future. But when someone of Rob's stature makes such a statement, it gets attention.

It was part of "taking a deep breath" that called Rob and asked for an explanation. No one has -- yet -- reacted in a knee-jerk fashion. I was seeking answers and Rob provided me one. And, just to be clear for the record, nothing about the hydrogen fund or anything close was mentioned in our conversation.

To: "Jay M. Fidell" <fidell@lava.net>
From: "Robert J. Robinson" <Rob.Robinson@hawaii.edu> Subject: ThinkTech
X-Attachments: :523463:Ted Liu 1.1.pdf:

Hi Jay

So sorry, I was finalizing a term sheet with someone. Now I'm stuck in our conference here in San Diego for the next several hours (thank goodness for wireless connections).

Please keep this email confidential: don't forward to anyone, especially before we talk.

I'll call you later, but basically Ted called me Tuesday morning. He told me that Neal Milner had directed him to the ThinkTech website for the archive of the show, and that I had called him and the Governor liars, because I said that "The administration had been less than truthful about not attacking Act 221".

I didn't recall that comment, and I told him that I would review the archive, but that I certainly hadn't called the administration liars. Ted then threatened to: 1) Call Vance Roley (CBA Dean) and complain; 2) Withdraw the letter of support he

40026

wrote for my Weinman Chair renewal; 3) Make sure that Kolohala didn't get awarded the Hydrogen Fund that we had bid on.

He also made various other nasty and negative statements. I thought this was all quite bizarre and heavy handed, but I didn't want to escalate until I heard the archive, so I just said I would get back to him.

I listened to the archive, and I did NOT say what he accused me of saying. I attach a pdf of my partner's Mike note to Ted this morning, rather than repeating this all here. Ted was way off base, and also way inappropriate.

I also called Neal Milner, who was astonished, and said he did not tell Ted about the program. I think it is possible that Ted might have meant Chad Blair, which makes more sense. If so, I am a bit ticked off with him too, especially since whoever contacted Ted seems to have egged him on.

Anyhow, so here you have it. By the way, I can't seem to log in to the account you set up with me, something is wrong with the user name or password ...

I'm interested in your thoughts, we'll talk soon.

Best,
Rob.

--

Robert J. Robinson
Shidler College of Business, University of Hawaii at Manoa

To: "Jay M. Fidell" <fidell@lava.net>
From: "Robert J. Robinson" <Rob@Kolohala.com> Subject: Breaking news ...

Ted denies everything ... again, please keep confidential.

Best,
Rob.

From: "Michael Pfeffer" <michael@kolohala.com> To: "'Robert J. Robinson'" <Rob@Kolohala.com> Subject: FW: Important

Date: Wed, 23 May 2007 11:33:12 -1000
Thread-index: AceeP+GxOBctesu9S6i3cGhz7mWoQQAvf83Q

40027

Ted,

As you know, I am attending the FiRe conference in San Diego and am representing Hawaii as a great place to do business with strong government support for the high tech sector. You know that I have tried to maintain an open and honest relationship with you. I am very disheartened to hear that there seems to be some sort of problem with comments that Rob made on a recent post-radio show interview. I have listened to the show and my take away impression was that the entire show was actually supportive of you and the Governor and what you have been trying to do. During the show, Rob repeatedly criticized the Legislature, NOT the Administration (as did the other panelists) for blocking the innovation initiative, and playing politics to the detriment of the economy. I think that the issue of whether or not comments were made that were critical of the level of support for Act 221 and the tech community's impression of the current administration's support or lack thereof, of Act 221 were not meant to be an attack on you or the Governor, but were part of the larger context of the discussion, which was focused on the difficulties that the administration has had with the Democratically dominated Legislature. If you and/or the Governor haven't listened to the entire show, I urge you to do so.

I should also remind you that Rob specifically wrote testimony for you and the Governor to the ERS this session, supporting the notion of the innovation fund, (HB 1279 etc.) and the greater innovation economy. He also wrote a strong letter of support for you in your re-nomination. In addition, he has been a staunch supporter of helping to stimulate the tech industry in Hawaii and has not been a virulent detractor of you or the Governor.

Now, the alleged comment that you took offense at was:

1) In response to a direct question as to whether the Governor's lack of support for Act 221 adversely affected the support of the tech community for her innovation initiative;

- 2) Not that "the administration had been less than truthful" as you told Rob, but was that "for many of us, this turned out to be not exactly the truth", which is a very different statement embedded in a longer answer. Since you are attacking Rob on his words, then exact words matter;
- 3) Not made in an angry or accusatory tone, but merely documented the widely held beliefs of the tech community. This Administration has to accept some responsibility for being perceived (rightly or wrongly) as negative toward Act 221, it's not Rob's fault that this is the prevailing view.
- 4) Not during the actual broadcast, but was during the post-show, which is NOT broadcast;

To hear that you and the Governor have threatened to withdraw support of Rob's renewal at the university, and more disturbingly, that you have threatened to deny Kolohala a fair chance at the State's Hydrogen Fund, is both alarming and disheartening in the extreme. I have been a long time supporter of the Governor; I donated the maximum to her campaign and have voted for her twice. I have been a supporter of yours in both your renewal as the head of DBEDT and as a defender of your reputation in the Tech Community. I did these things because I believed that you and the Governor are good for Hawaii and that your administration would not follow the past, but would be instrumental in helping to forge a new future for Hawaii. I have committed more than a million dollars of my own money to helping to grow the technology industry in Hawaii, I have committed my reputation to building a strong venture firm to help Hawaii achieve its stated goal of becoming a technology center in the Pacific, and I have tried to forge a professional bridge between all of the parties involved in growing the tech industry in Hawaii. To have all of my hard work and support for you and the Governor threatened because of an innocuous comment, taken out of context, about the complexities of trying to build a tech industry in a partisan matrix with all of the issues that Hawaii faces is not only unacceptable to me, but truly causes me to rethink my support of this process, of you, and of the Governor.

It is also worth noting that Rob was not interviewed as the Weinman Chair at the University of Hawaii, but was rather introduced as a member of the tech and VC community, a founder of Hawaii Angels, a professor at UH, and a member of a number of other organizations. This is the context in which he made his comments.

I do not want this situation, which to me should not even be an issue, to get out of hand. I would urge you and the Governor to take a deep breath, defer any rash judgment and action, and find time to meet with me and Rob to discuss this face to face. I am confident that we will find that we are on the same side in this and that we will not have to take this alarming and potentially catastrophic issue any further. I look forward to hearing from you on this ASAP.

Again, I am disheartened at the threats that you have made to my company and to my business partner and I am dismayed that you did not call me directly to discuss the situation with me. You know that I have always called you when something comes up in the tech community that concerns you and I would hope that you would do the same for me. We need to work together to be successful!

As I mentioned, I am presenting at the FiRe conference this week, so email is probably the easiest way to get to me, or on my cell, 808-371-9895. I return to Hawaii this coming Saturday and will be back in the office on the 28th.

Aloha,

Michael Pfeffer
Managing Partner
Kolohala Ventures



January 14th, 2008

Mr. Aaron S. Fujioka
Administrator
State of Hawaii
State Procurement Office
PO Box 119
Honolulu HI 96810

Visfos
? What is required
Time frame for response
Any info to validate w/ DBEDT

Dear Mr. Fujioka,

We submit this letter in complaint against the handling of Solicitation No. RFP-07-11-SID, the Renewable Hydrogen Fund, by the Department of Business, Economic Development & Tourism Director Theodore E. Liu.

To put our complaint into context, let us revisit these facts:

- o March 2007 – RFP 07-11-SID is opened for bids
- o April 16 – Proposals are submitted
- o May 1 – Four committee members sign affidavits, and each independently ranks our consortium as the highest-ranked bidder.
- o June 15 – The three top-ranked bidders are notified of selection as priority-listed offerors and are scheduled to meet with the DBEDT evaluation committee for a Best and Final Offer
- o July 31 – The evaluation committee completes its review of the Best and Final Offers and releases its findings to Director Liu, where our proposal is again ranked highest.
- o Aug 6 – Director Liu selects the lowest-ranked of the three bidders for award of the contract, and appends a decision matrix using selection criteria that differ from those laid out in the RFP.

30120



- Aug 10 – Rejection letters are sent to the #1 and #2-ranked bidders. Director Liu calls each of the three teams personally; he tells me that our bid “was not competitive.”
- Aug 29 – A Senate committee and the Honolulu Advertiser publicly question the selection of the lowest-ranked bidder. Liu states to the press that he considers the selection process to be “strong.” We file a protest and submit testimony for the Senate clarifying several issues that seem to have led the Director to make his erroneous selection.
- Sep 4 – Senate hearing on DBEDT procurement. The Director again justifies the selection of the lowest-ranked bidder and testifies that he considers the evaluation process to be valid.
- Sep 25 – Your letter to Liu informs him that his selection violates procurement code, and directs corrective action, to include making the award to the highest-ranked bidder if he determines that the committee performed its duties properly.
- Oct 11 – Senate hearing on multiple DBEDT procurement issues is held. Liu testifies that no action has been taken on your Sep 25 directives, due to illness. He further states “this matter requires my personal attention.”
- Oct 29 – DBEDT notifies the bidders that the selection/rejection notices are rescinded.
- Nov 13 – Liu sends you a letter requesting to cancel the procurement entirely, on the grounds that the committee would have ranked the bidders differently if they had known that they were the ultimate selection authority, that the committee members had conflicts of interest, and because the entrant of a third party provides a change in circumstances.
- Dec 11 – Your response to Liu requests written statements from the committee members that they falsely signed their affidavits, that they would have ranked the bidders differently, and did allow conflicts to influence their selection. You also request written documentation of the reasons for a change in circumstances.
- Jan 9 2008 – Liu requests the Senate approve a reduction in the Hydrogen Fund contract amount.

Renewable Hydrogen Program (RHP)

RHP Organizational Meeting -- 9/8/06, 3:30 p.m., TEL, MHK, JT
JT's PDA Notes.

TEL -- Want to discuss structural options for RHP implementation.

DBEDT could have 3rd-party *partner**; e.g., High Beam (Barry Weiman sp?), do a hybrid outsourcing of the RHP program management in the form of a partnership arrangement with DBEDT.

Concept: Establish RHP Executive Management Committee (3-5 individuals: State-DBEDT (MHK), Federal-USDOE (B. Parks), Private Sector-Investment (Barry Weiman), others?); hire Executive Director; execute/administer other procurement; e.g., technical assistance contracts, etc.; hire other staff (?); provide general "overhead"-type services & support functions, AND perform more specialized functions tailored to RHP program needs (TBD); e.g., marketing & development, other requirements (?).

Also need Investment Advisory Committee to vet proposals.

*"Partners." In this case means they use their own resources, and DBEDT-RHP leverages partner's (or partners') resources.

MHK -- How would partnership arrangement be consummated?

TEL -- Via prospective partner proposal to HSDC, which is exempt from procurement. To keep it competitive and transparent, maybe HSDC could do an open solicitation for the RHP Partnership.

2008-1

Rachel.... Ted Liu would like to have an exploratory meeting to discuss the energy related project I briefly mentioned to you.

I am in China until Sunday Sept 17th. I am in Hawaii the 18-23 and then in NY.

I suggest you, Eric (HiObeam Chair), and me meet with Ted during the week of Spt 18th. I also suggest that you and Eric and I meet on Monday afternoon on the 18th first so I can get us up to speed.

I have copied Ted's assistant, Dawn, so that you can coordinate time that Ted is available.

I am open for a meeting with Ted:
Tues 19th 11:30 to 2:30
Wed all day
Thurs 11:30 - rest of day.

I am open on Monday for our meeting anytime after 11

Sent without Spelcheka
Barry Weinman
Managing Director, Allegis Capital
Chairman, DragonBridge Merchant Bank

--
Rachel Ogdie
Executive Director, HiBEAM
rachel@hibeam.org
808.265.3966
www.hibeam.org

400280

Theodore E Liu/DBEDT
09/25/2006 02:30 PM

To mkaya@dbedt.hawaii.gov, "John Chock"
<jchock@dbedt.hawaii.gov>

cc

bcc

Subject Solicitation for hydrogen fund manager

Maurice: Why don't you try your hand at the contents of a solicitation for the hydrogen fund manager? I don't know when John Chock will be back.

John: We are interested in putting out a solicitation for proposals for a hydrogen fund manager to partner with the state. I have in mind a simple 2 - 3 pager, with what we are looking for in general terms. Not a complicated full fledged REP. I understand that HSDC can solicit managers without a procurement requirement. We want to do a more simple and straightforward one. Several pages and see what proposals we get. I sense that we do not have much time before people start to ask what we are doing with the fund. Also, I want something in place with some activity before the next legislative session. Remember, the Leg can take what it gives.

Ted



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

20660



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

STATEMENT OF

THEODORE E. LIU
**Director, Department of Business,
Economic Development & Tourism**

before the

SENATE COMMITTEE ON TOURISM AND GOVERNMENT OPERATIONS

Tuesday, September 4, 2007

Chair Nishihara, Vice Chair Mercado-Kim and members of the Senate Committee on Tourism and Government Operations, with regard to the Committee's inquiry on procurement procedures followed for the request for proposals relating to the Hydrogen Investment Capital fund and renewable hydrogen Program Management Services (the "RFP"), the Department of Business, Economic Development & Tourism (DBEDT) respectfully submits the following comments:

1. The RFP was handled pursuant to the "competitive sealed proposals" sections of the Hawaii Administrative Rules, HAR Section 3-122-41 to Section 3-122-60 (the "Rules").

2. DBEDT's interpretation of the Rules and its practice in effect for several administrations has been that the departmental procurement officer may select an independent evaluation committee to evaluate the proposals. If selected, an evaluation committee conducts its evaluation in accordance with HAR Section 3-122-45.01 ("Evaluation committee"), HAR Section 3-122-52 ("Evaluation of proposals"), HAR Section 3-122-53 ("Discussions with offerors"), HAR Section 3-122-54 (Best and final offers"), and any other applicable rule.

3. In the subject RFP, as the departmental procurement officer, I appointed in writing an independent evaluation committee, consisting of Mr. Maurice Kaya, Division Administrator and Chief Technology Officer, DBEDT; Dr. John Tantlinger, Branch Chief, DBEDT; Mr. William Parks, a United States Department of Energy official on temporary assignment to DBEDT; and Mr. Jonathan Kobayashi, Esq., Chairman of the Board of Hawaii Strategic Development Corporation. Mr. Kobayashi resigned from the committee due to his relocation from the State.

4. DBEDT's interpretation and practice under the above-mentioned rules, explicitly reserves for the departmental procurement officer the authority to award the contract to "the responsible offeror whose proposal is determined in writing to provide the best value to the State taking into consideration price and the evaluation criteria in the request for proposals..." (HAR Section 3-122-57 (a)).

5. In the subject RFP, this reservation of the authority to make the procurement decision and award of contract was explicitly reserved in the DBEDT Director, as the departmental procurement officer. This explicit reservation was acknowledged by the evaluation committee and was contained in the RFP documents and communications to potential bidders.

6. The interpretation and practice in points 4 and 5 above requires the departmental procurement officer to take into consideration the evaluation committee's recommendation, including its numerical scores, but does not bind the departmental procurement officer. Should the departmental procurement officer not concur with a recommendation of an evaluation committee, his/her reasons must be in writing, be based on the evaluation criteria in the relevant request for proposal and be included in the contract file as is required by HAR Section 3-122-57 (a). In all instances, the department procurement officer is bound by the duty to act in a fair, independent and impartial manner.

7. In the subject RFP, the evaluation committee and the departmental administrative services officer met with me on July 31, 2007, to formally report on the result of the subject RFP process. The evaluation committee as a whole and each individual member of the evaluation committee did not have a recommendation of a proposal whose overall quality was measurably higher than that of the other proposals. I spent a significant amount of time probing and discussing this position of the evaluation committee.

8. At the July 31, 2007, meeting the evaluation committee was reluctant to even provide any numerical scoring or ranking of the best and final proposals. I spent a significant amount of time probing and discussing this position of the evaluation committee. At the insistence of the departmental administrative services officer present at the meeting, the evaluation committee did provide me with a written ranking of proposals, which I received on August 7, 2007.

9. In light of this result, on the basis of the department's interpretation of HAR Section 3-122-57, as the departmental procurement officer on August 6, 2007, I made a determination of "best value to the State taking into consideration price and the evaluation criteria in the request for proposals", as required by that section. I also documented "basis of selecting the successful offeror" and required by HAR Section 3-122-57 (a).

10. DBEDT is aware that the State Procurement Office may have a different interpretation of HAR Section 3-122-45.01 ("Evaluation committee") and Section 3-122-57 ("Award of contract") as to whether the departmental procurement officer can select any offeror other than an evaluation committee's highest rated offeror.

11. As this interpretation has important and serious implications for how DBEDT has heretofore conducted its competitive sealed proposals, I have asked the Attorney General for an opinion in this matter.

12. Should the department's above-described practice be found to be based on an incorrect interpretation of the procurement rules, we shall take immediate corrective action.

13. In the meantime, I have instructed that no work proceed with the awardee of the subject RFP.

Thank you for the opportunity of making these comments.

1. Proposals shall be classified as acceptable, potentially acceptable, or unacceptable.
2. All responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list.
3. If there are numerous offers which are eligible for the priority list, the priority list may be limited to at least the three highest ranked proposals.

B. What can be discussed with the priority listed offerors?
(Anything conducted during the discussions need to be disclosed as discussions only.)

1. Promote understanding of the requirements and priority listed offerors proposal.
2. Attempts to facilitate arriving at a contract that will provide the best value to the State.
3. A request for clarification of the proposal shall be submitted in writing by the priority listed offeror.
4. If during the discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by addendum and distributed to only priority listed offerors.

C. Discussions are optional and a selection may be made without discussions.

V. Best and Final Offers

- A. ASO/C will establish a date and time for the priority listed offerors to submit their best and final offers.
- B. Unless indicated in writing, Best and Final Offers shall be submitted only once.
- C. Priority listed offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.
- D. Upon receipt of the best and final offers, the evaluation committee will conduct a final evaluation for an award of the contract.

Taken from CD dated March 7, 2007, Pre-Proposal Conference RFP-07-11-SID

The question is please describe this proposal evaluation process with respect to Terms, steps, feedback

Evaluation Process

We have a committee, an evaluation committee and upon receipt of your proposals the evaluation committee will, each member of the committee will independently evaluate the proposal based on evaluation criteria contained on page 16 of the proposal packet. We'll tabulate and we will, from, based on the, the total score we'll come up with a short list.

The evaluation will then take that short list either opt to meet with each of the companies on that short list to have clarification made as far as any issues in your proposal or any clarifications that need to be made.

We'll then at that point give you another date in which you can submit, you're made an offer to submit a best and final offer and based on that best and final offer once again it will go back to the evaluation committee for evaluation and **the Director will have the ultimate decision on whether the award will be made to the organization with the highest point total.**

02:42:08 PM



"Weinman, Barry"
<Weinman@allegiscapital.com>

03/14/2007 03:37 PM

To "Theodore E Liu" <TLiu@dbedt.hawaii.gov>

cc

bcc

Subject DBEDT Energy Fund---KS possible partner

Aloha Ted... sorry I missed the HiBEAM meeting today. I had a fund raising meeting for the DragonBridge Pearl Fund / Cisco & Fok Family partnership.

Interesting note below about KS....

Good luck on the ERS Fund...

From: John C. Bower [mailto:jbower@sennetcapital.com]

Sent: Wednesday, March 14, 2007 5:57 PM

To: weinman@dragonbridgecapital.com; rachel ogdie

Subject: KS

Kirk Belsby has agreed to support our application with a non-binding letter of interest in placing some matching funds under our management or co-investing on some deals. We will have to wait to see the form it takes.

John C. Bower
Managing Partner
Sennet Capital, LLC

737 Bishop Street, #3170
Mauka Tower at Pacific Guardian Center
Honolulu, Hawaii 96813

Cell (808) 375-2312
Direct (808) 457-1310
eFax (808) 356-0830
Email jbower@sennetcapital.com
Web www.sennetcapital.com

400319
Exhibit 37



KAMEHAMEHA SCHOOLS

April 12, 2007

Mr. John Bower
Managing Partner
Sennet Capital LLC
737 Bishop Street, Ste. 3170
Honolulu, HI 96813

Re: Hydrogen Fund

Dear Mr. Bower:

It has come to my attention that Sennet Capital, in partnership with HiBEAM and Sentech Inc., will be submitting a proposal for the management of the \$10 million State of Hawai'i Hydrogen Investment Capital Special Fund.

As you are aware, Kamehameha Schools ("KS") has allocated a portion of its endowment fund to Hawai'i Targeted Investments ("HTI"), with the objective of promoting new innovation-based business activity in Hawai'i via investment commitments to funds managed by third-party managers who are committed to examining quality investment opportunities in the islands.

To date, KS has committed a total of \$8 million to two managers that have met the investment criteria we have established for such investments, and we maintain an active interest in exploring additional opportunities consistent with the objectives of the HTI program.

We look forward to learning more about the Hawai'i Hydrogen Investment Capital Special Fund.

Very truly yours,

Kirk Belsby
Vice President for Endowment



"Weinman, Barry"
<Weinman@allegiscapital.com>
m>
08/07/2006 09:37 AM

To "Theodore E Liu" <TLiu@dbedt.hawaii.gov>
cc
bcc
Subject RE: Hawaii Energy Initiative

History: This message has been forwarded.

Ted ... sounds like a good start.

I am on the Allegis Capital Monday partners conf call until 10:30. I am then at my home office until 12:30 (737.2991) and then tied up most of the day. I am fully booked on Tuesday but am open on Thursday from 10-12 and after 2:30.

bw

From: Theodore E Liu [mailto:TLiu@dbedt.hawaii.gov]
Sent: Monday, August 07, 2006 12:21 PM
To: Weinman, Barry
Subject: Re: Hawaii Energy Initiative

Barry,

First off, thank you for seeing Chris and Ryan. They found the session with you incredibly helpful.

Your email is very timely; I was thinking of emailing you on the same topic.

I am responsible for the implementation of the Governor's energy package, as I was responsible for pulling it together and getting it through the legislature. Governor has said that the energy package is likely the most significant accomplishment of her 1st 4 years. Maurice Kaya, well respected nationally on energy matters, and his team support me on this. Governor has also assemble a cabinet-level group of directors (Lead-by-Example group) to support us on permitting, approvals, land-use, water allocation, and the other key issues.

As the result of this initiative, we are getting a significant amount of real inquiries and actual proposals. This is very fulfilling. I have a very professional and knowledgeable staff of energy industry analysts, led by Maurice Kaya. This team is recognized nationally by their peers as very competent in this area.

However, we need to come up with a better system for us to handle and be responsive to this level of interest.

Here is one thought, on which I would most appreciate your feedback:

We have a \$10 million fund that is intended as local "cost-match" for federal and other grants

400323

and as capital to seed IP and/or projects in Hawaii. This is not much, but a start.

The target of the fund is "renewables to hydrogen". Thus, we are not getting into a debate over the future of hydrogen. Our approach is to base any hydrogen development on the development of renewable energy technologies and projects in Hawaii (solar-to-hydrogen; geothermal to hydrogen; biofuels-to-hydrogen). This "no regrets" approach means that even if hydrogen does not develop into a viable alternative, our investment in renewable technologies will still pay-off for the state.

The fund is placed within Hawaii Strategic Development Corporation (HSDC). I would like to establish a subcommittee of the HSDC board to specifically to review, assess and make decisions on energy projects that are seeking funding or other support from the state (could be in the form of facilitating permitting and approvals, land-use, funding from HTDC SBIR, etc.). I note that many of the proposals will come from major corporations. We've already had several very productive meetings with General Electric Corporation and Chevron Renewable Technologies.

Subcommittees of the HSDC board can have outside members and these need not go through the entire Senate confirmation process and disclosure requirements do not apply. I envision a subcommittee of 5, with 2 from the HSDC board and 3 private sector members with experience in assessing business plans and proposals.

My staff will provide staffing and all technical and back-office assistance, as will several outside consultants we have hired (Hawaii Natural Energy Institute, Booz Allen and others). However, the decisions on what to fund, where to refer a project, etc., will be made by this subcommittee.

While this subcommittee may evolve into THE "point-of-contact" for energy project inquiries, proposals, and information, initially I expect it will be one of several points on contact as we develop the implementation plan.

I welcome your reaction to this idea, and to any you may have. Do you have a few minutes to discuss?

Thanks,

Ted



Theodore E. Liu

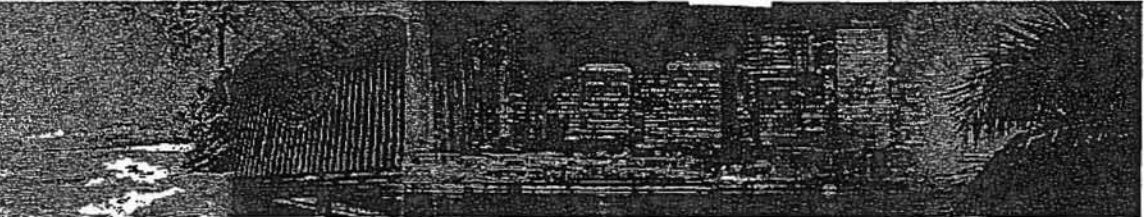
Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

400324



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Despite Criticism from Tech Association, Chinese Business Executives Were In Fact Exposed to Hawaii's Tech Industry
By Theodore E. Liu, 4/17/2006 4:28:50 PM

The 150-plus Chinese business executives accompanying Vice-Premier Madam Wu Yi to Hawaii two weeks ago arrived expecting to hear about tourism.

They left with an earful about Hawaii as a center for innovation of the Pacific. At the seminar on trade and investment in Hawaii, attended by close to 300, these executives circulated among festive display booths featuring biotechnology and life sciences, ocean sciences and energy in Hawaii. In their handouts was a brochure on technology in Hawaii – in Chinese.

The keynote Hawaii speech, delivered in Chinese, described recent developments in Hawaii biotechnology, marine sciences research, information technology and astronomy and space research and development. The other Hawaii presentation, also mostly in Chinese, reiterated these themes, with a focus on Hawaii as a place where Chinese technology companies could establish partnerships.

Hawaii Venture Capital Association President Bill Spencer authored an opinion piece in *Hawaii Reporter* entitled "Neglected Opportunity," in which he criticizing the Lingle administration for not introducing more high tech businesses to Vice-Premier. Had Mr. Spencer inquired of the Chinese guests, he would have heard that their view of Hawaii had significantly changed. Had Mr. Spencer inquired of the Hawaii technology companies present at the seminar, he would have heard of good initial contacts being made. But Mr. Spencer did not inquire; he was not there. However, Mr. Spencer will point a finger of blame anyway. Maybe the finger is pointed in the wrong direction?

Last week, Aishen, a Chinese medical device manufacturer, visited Honolulu seeking joint venture partners. Aishen, a Shanghai-based company that with an advanced technology for ablating cancer tumors, is currently in the 20,000 hospital system in China. While in Honolulu, Aishen met Hawaii life and health sciences companies to discuss partnering opportunities. It also engaged Hawaii-based legal counsel to assist them with patent and intellectual property protection.

Aishen's visit was a direct result of the agreement Governor Linda Lingle signed in Beijing during the June China Mission. The agreement is part of a broad effort to promote partnerships with Hawaii companies looking to enter the China market, which is the fastest technology growth market globally.

Hawaii-based DragonBridge Capital has been engaged by Aishen to assist in their venture capital fund raising efforts. Dr. Po Chi Wu, Managing Director, said, "The tireless efforts of the State of Hawaii, both in Beijing and Honolulu, have given DragonBridge's business model a high profile in China.

Without their sponsorship we couldn't have established a credible China presence. Hawaii has become the leader in developing economic government-to-government cooperation with China and Hawaii should be proud and recognized for its pioneering efforts."

Theodore E. Liu is the director of the state Department of Business, Economic Development and Tourism for the state of Hawaii.

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Theodore E Liu/DBEDT

01/14/2008 10:15 AM

To Loke Kim/Gov/StateHIUS@STATEHIUS

cc Dawn Okuhama/DBEDT@DBEDT, Linda
Smith/Gov/StateHIUS@StateHIUS, Margaret
Toba/Gov/StateHIUS@StateHIUS, Maurice
Kaya/DBEDT@DBEDT

bcc

Subject Re: Recommendations for this meeting

This has to do with the entire "controversy" over the hydrogen fund.

I have never been approached about a meeting and therefore have never "refused" a meeting with this group. I have refrained from contacting this group as it has expressed in its testimony before Sen. Kim's "hearings" that they have felt intimidated when in the past I have contact them.

I would be interested in any "olive branch" -- and I for one think it is appropriate for them to suggest one as they have helped instigate Sen. Kim's hearings.

As such I am very receptive to a meeting, if they would only suggest one.

Ted



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

Loke Kim/Gov/StateHIUS@STATEHIUS



**Loke
Kim/Gov/StateHIUS@STAT
EHIUS**

01/14/2008 09:14 AM

To Dawn Okuhama/DBEDT@DBEDT, Margaret
Toba/Gov/StateHIUS@StateHIUS

cc Maurice Kaya/DBEDT@DBEDT, Theodore E
Liu/DBEDT@DBEDT, Linda Smith/Gov/StateHIUS@StateHIUS

Subject Re: Recommendations for this meeting

Dawn,

Please review the request below with Ted or Maurice. I understand, a proposed meeting with Ted and this group did not take place, as Ted refused the meeting. I spoke with Joelle Simonpietri this morning who is trying to meet with Governor. She mentioned that they would be willing to meet with Linda Smith if the Governor is not available.

Can I get Ted's comments and I will pass it on to Marcia

Her comment to me was "they would like to offer an olive branch to the state" ?? Maybe Ted may have some background on what they meant.

010120

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
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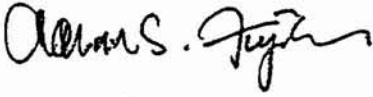
STATE OF HAWAII
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

SPO 08-0068g

February 29, 2008

TO: The Honorable Theodore E. Liu, Director
Department of Business, Economic Development & Tourism

FROM: Aaron S. Fujioka 

SUBJECT: Notice of Award - Request for Proposals No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and
Renewable Hydrogen Program Management Services

We are in receipt of the February 22, 2008 Notice of Award (Notice) to Ms. Joelle Simonpietri of Kolohala Holdings for subject RFP, and have the following comments:

- The Notice states, "Each of the above three components of the solicitation will be subject to its contract to be negotiated." In a competitive sealed proposal process, all clarifications related to the RFP are conducted during the discussion and best and final offer phase, in accordance with HAR §§3-122-53 and 3-122-54, respectively. The final results being the offer rated the highest is awarded a contract to include all terms, conditions and the final offer. There should be no contract negotiation.
- The Notice states, "As soon as the division administrator of the Strategic Industries Division is in place, he or she will contact you to negotiate these contracts." Similar to the above comments, no further negotiation is necessary, and the DBEDT should expedite the execution of the contract.
- The Notice states, "This has been a complicated solicitation in an area of critical importance to the State's energy security and self-sufficiency." This being the situation, we reiterate, the DBEDT should expedite the execution of the contract to meet this critical need.
- Although this does not invalidate the notice of award, we note that the memo was addressed to Ms. Simonpietri at her personal address. In accordance with the Kolohala proposal (page 34) and its Best and Final Offer (page 3), Mr. Michael Pfeffer is the managing partner and the designated point of contact, all correspondence should have been addressed accordingly.

Should you have any questions or require assistance on the execution of the contract, please call me at 587-4700.

Press Release: Available for Release Monday, April 17, 2006

Aishen, a Chinese Medical Device manufacturer, visited Honolulu and Silicon Valley last week seeking joint venture partners and US venture capital. Aishen is a Shanghai based company that sells High Intensity Focused Ultrasound (HIFU) equipment for ablating cancer tumors into the 20,000 Chinese hospital system. While in Honolulu they met with Hoana Medical, STI Hawaii and Pacific Health Research Institute to discuss partnering opportunities, and engaged Sharon Webb of Vantage Counsel to assist them with patent and intellectual property protection.

Aishen's visit was a direct result of the Exchange Agreement Governor Linda Lingle signed in Beijing June 14, 2005 during the Hawaii Delegation visit to China. The Hawaii Department of Business, Economic Development and Tourism (DBEDT) and High Technology Development Corporation (HTDC) had previously initiated contact with Chinese Government owned Industrial Parks in an effort to promote partnerships with Hawaii companies looking to enter the China market, which is the fastest technology growth market globally.

DragonBridge Capital, which was organized at the suggestion of Ted Liu, Director of DBEDT, and Phil Bossert, CEO of HTDC, has been engaged by Aishen to assist in their venture capital fund raising efforts. Po Chi Wu, Managing Director, and Yiping Zhu, Partner, of DragonBridge accompanied Mr. Ye He, Chairman of Aishen, on both the Hawaii and Silicon Valley portions of the visit. The Chairman indicated he found the Hawaii tech companies extremely well organized and expressed pleasure at finding so much local help and support in Hawaii. Po Chi Wu said, "The tireless efforts of Ted Liu, Phil Bossert, and the DBEDT team, both in Beijing and Honolulu, have given DragonBridge's business model a high profile in China. Without their sponsorship we couldn't have established a credible China presence. Hawaii has become the leader in developing economic and cultural Government to Government cooperation with China and Hawaii should be proud and recognized for its pioneering efforts."

About Aishen (www.aishen.com.cn): Develops and markets High Intensity Focused Ultrasound (HIFU) Tumor Ablation Technology. HIFU is the latest achievement in current heat therapeutic technology. It can heat the tumor within the HIFU zone to over 65°C in a very short time (0.1-0.5S), hence kill the tumor tissues with little damage to the tissues outside the HIFU zone.

The ultrasound equipment has been used in over 40 large or medium-sized hospitals in China. Over 7,000 patients have undertaken this therapy. The malignant and benign tumors treated include breast cancer, surface transitional cancer, celiac tumors, pelvic cavity tumors and limbs tumors.

About DragonBridge (www.dragonbridgecapital.com): DragonBridge Capital is a Honolulu, HI Merchant Bank serving China based high tech, life science and energy & environmental (CleanTech) early stage companies looking for relationships in the US. These relationships include JVs, M&A, capital formation and accessing US public markets. DragonBridge Capital has offices in Beijing's ZhongGuanCun Science Park and soon in Shanghai's Zhangjiang High Tech Park.

William Parks/DBEDT
06/28/2007 08:00 AM

To Maurice Kaya/DBEDT@DBEDT
cc Priscilla Thompson/DBEDT@DBEDT
bcc
Subject Re: Follow-up re. final decision by DBEDT Dir [E]

thanks for digging into this. It seems a good outcome.

Bill
Maurice Kaya/DBEDT

Maurice Kaya/DBEDT
06/28/2007 07:56 AM

To Priscilla Thompson/DBEDT@DBEDT
cc wparks@dbedt.hawaii.gov
Subject Re: Follow-up re. final decision by DBEDT Dir [E]

Thanks, PT. I do not have a different recollection.

Priscilla Thompson/DBEDT

06/27/2007 06:04 PM

To wparks@dbedt.hawaii.gov
cc mkaya@dbedt.hawaii.gov (Maurice Kaya)
Subject Follow-up re. final decision by DBEDT Dir

Bill:

This process has taken so long, fact and fiction have merged. After having looked at the statute again, and recalling the development of the RFP, I believe RFP guideline #5 on page 13 may have been a product of Ted Liu's efforts to assert and ensure DBEDT's overall responsibility for the fund. There is nothing in statute, that I can find, that specifically states that final decisions shall be made by the DBEDT Director. I recall that Ted extensively re-wrote the RFP, sometime in 10/06, which was initially prepared as an open solicitation outside of the traditional RFP process. I believe it was in that re-write that the condition was inserted. If that is the case, then the responses in Addendum 2 prevail, and appear to indicate that 1) a typical VC LP arrangement may be proposed, and 2) the final DBEDT decision relates to allocation.

Thus, going back to your original observation re. the Kolohala evaluation methodology flowchart which



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

“date”

“COMPANY NAME ADDRESS”

Subject: Solicitation No. _____

Dear _____:

Thank you for submitting a proposal for the subject project. Although we received many excellent proposals, we regret to inform you that your firm was not selected for the subject project.

A protest maybe submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto: provided that protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers; and further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award letter(s), if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the State Procurement Office website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Department of Business, Economic Development, and Tourism Administrative Services Office/Contracts, No. 1 Capitol District, 250 S. Hotel St., 5th Floor, Room 504, Honolulu, Hawaii 96813.

Thank you for your interest in providing services to the Department of Business, Economic Development, and Tourism.

Sincerely,

020117

Exhibit 60

Maurice Kaya/DBEDT

08/30/07 04:22 PM

To John Tantlinger/DBEDT@DBEDT

cc Priscilla Thompson/DBEDT@DBEDT, William Parks/DBEDT@DBEDT, William.Parks@hq.doe.gov

bcc

Subject Fw: hydrogen bid redo

FYI.

----- Forwarded by Maurice Kaya/DBEDT on 08/30/2007 04:22 PM -----



Mark
Anderson/FTZ/DBEDT

08/30/2007 03:48 PM

To Theodore E Liu/DBEDT@DBEDT, Maurice Kaya/DBEDT@DBEDT, Ken Kitamura/DBEDT@DBEDT

cc

Subject hydrogen bid redo

I would like to give my two cents on the hydrogen bid.

First, I think it is dangerous to have Ted go into the hearing next week upset and looking for a fight. He will be baited into making comments that will open up all our procurement actions to examination. We could have additional audits and hearings and must consider how this distraction will impact our agenda.

The central questions is does the director have the legal authority to select any bid off of a final ranked list of three. If he does how must he make his decision. This question needs to be put to our AG and SPO.

For Tuesday:

Source of funds - funds came to HSDC (exempt from procurement), program responsibility came to SID (subject to procurement). HSDC and SID entered into an agreement to effectuate the program. Assumed that because the funds will be expended by SID we must follow procurement. Choose RFP method.

Procurement method - exhaustive description of RFP method (generic), ranked list, best offer, negotiations.

Description of goods/services - description of goods and services we sought to procure.

Procurement process up to ranked list - Maurice Kaya

Ranked list to award - Ted Liu. Decision to award third ranked bidder should be made on criteria of RFP.

Where we are now - Highlight the fact that we are in dispute on this bid and have frozen it. We welcome a timely review by SPO and AGs office and will postpone award until review is completed.

We should also consider cancelling the RFP.

We have no obligation to repeat the same RFP process or even to go through an RFP process if we use HSDC as the expending agency.

JT - 355

Exhibit 73

FN
157

Draft August 7, 2006
REV August 29, 2006

Hawaii Renewable Hydrogen Program

Work Plan

I. Introduction

Hawaii faces long-term problems from overdependence on imported petroleum. There is no cleaner, lasting solution than using hydrogen as an energy carrier, derived from water electrolysis fueled by renewable energy. In the near-term, creating a renewable hydrogen program will attract investments in technology development and increased use of renewable energy that will gradually, but significantly reduce dependence on imported petroleum. In the near-term the fund can be used to cost share projects that will attract a significant amount of federal and private R and D activity to Hawaii. It can also be used to seed investments in emerging Hawaii advanced energy technology companies. Done strategically, these investments can also foster the development of renewable energy in the state, with initial prospects greatest on the Big Island. Authorized by the legislature and seeded by a \$10 million capital investment fund, SID will implement this program in the current fiscal year. Because the fund has been established within the Hawaii Strategic Development Corporation's (HSDC) revolving fund, the cooperation and support of the HSDC board is required.

II. Renewable Hydrogen Capital Investment Fund Elements

- Total capitalization: \$10 million
- Requires Separate Ledger within HSDC revolving fund
- Overall Policy for Fund Use: Act 240, SLH 2006 (see attached)
- Required Elements: (1) Program management including normal expenses for project execution and support, (2) cost share support for public-private partnerships, and (3) seed/venture investments in Hawaii emerging advanced energy companies whose profiles align with the guiding principals of the renewable hydrogen program under Act 240

III. Preliminary Budget (See Yearly Action Plan, attached)

- \$500,000 for program management (not more than 10 per cent of fund balance)
 - Technical Services Contract, \$400,000, managed for at least two years
 - Intergovernmental Personnel Agreement, \$60,000 over two years as state cost share
 - \$40,000 in Other Current Expenses such as supplies, computers and equipment, conference fees, training, and in-state and out-of-state travel

500996

Exhibit 79

- \$6,000,000 for cost share to attract public and private partnerships. These projects will be selected based on the criteria below.
- \$3,500,000 for seed/venture investments. These projects will be selected based on the criteria below.
- DBEDT reserves the right to adjust the budget between cost share and seed/venture investments depending on the response to the program solicitations and the quality and viability of project proposals in either category.

Formatted: Bullets and Numbering

IV. Criteria for Use of the Funds

The funds must be deployed in a manner consistent with Act 240, SLH 2006. The Legislature has decreed that the funds shall be used in a manner consistent with Chapter 211, HRS, which is HSDC's governing statute.

The program elements and policy direction described in Act 240 follow the principles outlined by Governor Linda Lingle in her Energy for Tomorrow package, which was conceived, justified, and defended by DBEDT. The legislature also established the renewable hydrogen program within DBEDT, thus concurring that DBEDT manage this program. DBEDT plans to implement this program through its Strategic Industries Division and its Chief Technology Officer, since the Administration's request for program startup funding and three personnel to manage the program were not approved by the Legislature. Accordingly, the CTO has temporarily assumed responsibility for startup with the assistance of SID staff, but will require additional support through the development of an Intergovernmental Personnel Agreement with the USDOE, and a technical support services consultant contract.

- Technical Support Contractor
 - Demonstrated technical capability in hydrogen systems development
 - Familiarity with relevant energy programs
 - Ability to assist the state with developing project prospects
 - Familiarity with Hawaii's comparative advantages in renewable hydrogen and Hawaii stakeholders
 - Proven ability to develop public-private partnerships
 - Ability to execute assignments in a timely manner with a preference for a Hawaii presence
 - Ability to develop a competitive Hawaii program based on previous relevant corporate experience
 - Greatest prospects to help the state attract a maximum of non-state funding
 - Knowledge and demonstrated proficiency with federal policies and program development to enable the state to maximize attraction of federal dollars
- Matching State Funds for R, D and D public-private partnerships
 - Minimum cost match of 3:1, with a desirable cost match of 5:1 or greater using a ratio of non-state/state funds

- Potential to sustain project activity beyond the initial proposed project, including demonstrated prospects for continued federal and private sector funding beyond the proposed project
- Commitment of the proposed team resulting in long-term Hawaii benefit
- Ability to demonstrate how the proposal enhances Hawaii's comparative advantages for renewable energy and hydrogen technologies
- Ability to demonstrate how the project will help to achieve Hawaii's goal to maximize utilization of renewable energy first on the Big Island, and ultimately, for other islands and the remainder of the state. If the project is proposed for other than Hawaii Island, the proposer must explicitly address how the project will help to develop renewable energy, maximize its use, and lead to energy independence for the island location being considered
- Ability to demonstrate linkage with inventions and innovations from Hawaii research Universities
- Prospects to bridge applied research to eventual technology commercialization
- Seed/Venture Investments in Emerging Hawaii Advanced Energy Technology Startup Companies
 - All of the above under the Matching Fund category, plus
 - Demonstrate that the proposer is a Hawaii company
 - Prospects for job creation and growth in Hawaii
 - Address intellectual property ownership and return on investment that can help in sustain the renewable hydrogen revolving fund under Chapter 211, either through equity, shared license income and royalties, etc.

V. Timetable for Matching and Investment Funds

Since the initial capitalization of the fund is contained within HSDC's revolving fund, we envision a multi-year program execution plan; say over a minimum of three years. By three years we expect that results from the first year placements will be realized. By year two, DBEDT will be able to discern whether results justify that additional request for state funds can be made of the legislature.

Accordingly, we expect to proceed with an initial allocation of \$3 million in cost match for FY07 for the R D and D cost matching program, and \$2.0 million in seed/venture placements for FY07, with a maximum of \$1.0 million in individual project awards.

VI. Advisory Committee

DBEDT envisions organizing an advisory committee, established as an investigative committee under HSDC to provide advice to DBEDT on the overall program direction, and to assist with review of project proposal. As an investigative committee under HSDC, the body will not be charged with making any decision, but will provide

recommendations to the DBEDT Director, CTO, Interim Project Manager, and HTDC Board.

This committee will number at least five individuals as follows:

- HSDC Member Director DBEDT, designee (Mark Anderson)*
- HSDC Member, appointed by HSDC Chair
 - Ed Young?
 -
- At-Large Member from Renewable/Hydrogen Technical Area (public/academia)
 - Jo-Ann Milliken, USDOE acting hydrogen program manager
 - Potential members from other state renewable public benefit funds—CA, CT, etc.
 - Representative from the National Renewable Energy Lab (NREL), Dale Gardner, George Sverdrup
- At-Large Member from Renewable/Hydrogen Technical Area (private)
 - Dr. Pat Takahashi, Director Emeritus, HNEI
 - Director of CA Fuel Cell Partnership?
 - Representative from Hydrogen or Fuel Cell company
- At-Large Member with Venture Capital Background
 - Barry Weinmann?
 - Ron Higgins?
 - Irvin Barash, RE Venture Capitalist, Vencon Management, Inc., NYC (Takahashi knows him)
 -

Deleted: , or

Deleted: Ted Liu or

The advisory committee membership will select a chair from its members. Until such time as that occurs, the HSDC-DBEDT representative will serve as interim chair. Members will serve for two years, at the "pleasure of the Director, DBEDT."

Additionally, DBEDT CTO, HSDC President, Renewable Hydrogen Interim Program Manager shall serve as resources to the committee. Appropriate out-of-pocket expenses for the members shall be reimbursed through the renewable hydrogen fund.

(Note: While it may seem advantageous to appoint a member from the University of Hawaii HNEI hydrogen program, potential conflict of interest issues are present, since UH is likely to be a recipient of these funds.)

*The Director of DBEDT will be the selecting official and contracting officer for projects funded from the special fund. To remain arms length from the solicitation, evaluation and ranking process, the Director will not be a part of the advisory committee.

Maurice Kaya/DBEDT
09/14/06 01:58 PM

To
jtantlin@dbedt.hawaii.gov
cc
pthomпсо@dbedt.hawaii.gov
Subject
Revised Renewable Hydrogen Work Plan

MK - 437

JT,
When you get a chance, need you to look at the attached to see if I captured the discussion we had with TEL. Need another pair of eyes. I plan to send on to TEL for his approval, then he can go to HiBEAM as we discussed, with this work plan in hand. mhk

MK - 438

Exhibit 80




DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

STRATEGIC INDUSTRIES DIVISION
236 S. Beretania Street, 8th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2358, Honolulu, Hawaii 96804

Tel: (808) 587-3812
Fax: (808) 588-2538

July 31, 2007

To: Theodore E. Liu
From: Maurice H. Kaya 
Subject: Evaluation Committee Findings for RFP-07-11-SID

RFP-07-11-SID solicited proposals for hydrogen investment capital special fund and renewable hydrogen program management services. Five proposals were received and evaluated by the committee based on the evaluation criteria specified in the RFP.

Of the five proposals, three were selected by the committee for a priority list, and priority-listed offerors were invited for discussion pursuant to Section 3-122-53, HRS. The separate discussions were held on June 26 and 28, 2007 following which each of the priority-listed offerors submitted a best and final offer pursuant to Section 3-122-54, HRS. The evaluation committee has completed its assignment and we find that all three offerors were within the competitive range.

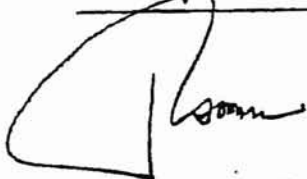
Utilizing the criteria specified in the RFP, the committee ranked the proposers in the following order:

- Kolohala Holdings LLP
- Enterprise Honolulu
- H2Energy LLC

Each of these organizations offer differing but competitive proposals. Should you have any questions regarding the committee's findings, we would be happy to meet with you.

Director's Selection:

H2ENERGY LLC



8/7/2007

Theodore E. Liu

Date

Notes from 8/16/07 H2 Fund contract meeting

In attendance: John Chock, Ken Kitamura, MHK, PT

Discussion points:

General

- MHK advised that inquiries regarding the award have been received both internal to department and from media.
- All concurred that RFP file should be complete of in light of potential media attention and any possible requests/protests that may be received.
 - Ken will check with ASO/Con to ensure all necessary documents are included.
 - He will notify TEL should decision document be needed.
- Ken agreed that ASO/Con will handle any briefings, possibly with attendance of review team member.

Encumbrance

- Should not be a problem for investment capital and costshare since HSDC is able to "encumber" funds under a Partnership Agreement without Governor's written approval.
- Program management portion of fund has been specifically approved to contract.

Contract format -- Two separate contracts will be prepared.

Program Management Services Contract

- DBEDT prepares.
- Process through ASO/Con as typical.

Partnership Agreement

- H2Energy prepares initial, for review by DBEDT and AG/GK.
- Agreement should include the following:
 - Entire fund available but include "Not more than \$ ____ will be drawn down during the period ____." or similar language due to limitation on current year allotment.
 - Cost-share provisions -- decision making structure (including DBEDT's role), continued oversight, etc.
 - Quarterly narrative and financial reports
 - Annual audits
 - Quarterly meetings (suggested but may be optional)
 - DBEDT's role on the investment committee as observer.
 - Relationship to/interface with renewable hydrogen program management services.
- May include other LPs if leverage will be provided in typical manner. If not, how will leverage be provided?
- Should also include performance measures to prevent non-action by fund manager.

Senate Special Investigatory Committee
Renewable Hydrogen Fund

Hearing, Thursday, March 6, 2008, 3:00 PM
Questions for Witnesses
Submitted by Theodore E. Liu

Questions for Eileen Harada:

1. Are Addendums to the RFP considered to become part of the terms of the RFP?
 - a. Does information in the Addendum put potential bidders on notice of certain terms of the RFP?
2. In Addendum No. 2, dated March 15, Question and Answer #16, did you as DBEDT Contracts Officer state that the "DBEDT Director will have the ultimate authority to make the final selection"?
3. Didn't that answer and position reflect the departmental understanding and practice on selection of final bidders in a competitive sealed proposal RFP?
4. To your knowledge, was it the understanding of members of this RFP's Evaluation Committee that the final selection was up to the Director?
5. To your knowledge, was that it the understanding of the DBEDT Director that the final selection in this RFP was up to him?

Question for Ken Kitamura:

1. Was it your understanding that in RFPs such as this one the DBEDT Director had the final say in selection of the winning bidder?
2. Was it the department's usual practice in RFPs such as this one that the DBEDT Director had the final decision on selection of the winning bidder?
3. Were you aware in this RFP that the Evaluation Committee was having difficulty in selecting a winning bidder?
4. When the Evaluation Committee met with the DBEDT Director on July 31, 2007, to report on its findings, did it or its members make a recommendation to the Director of a winning bidder?
5. Was it the case that at the July 31, 2007 Evaluation Committee meeting, when no formal recommendation was provided to the Director, that you insisted that the Evaluation Committee chair draft and provide a "conclusion" to the Director?
 - a. Was it the result of your insistence on a "conclusion" that the Evaluation Committee chair drafted the July 31, 2007, "Evaluation Committee Findings for RFP-07-11-SID" Memorandum?
 - b. Was that July 31, 2007, "Evaluation Committee Findings for RFP-07-11-SID" Memorandum drafted after the July

31, 2007 meeting and routed by your office to the Director on August 6, 2007?

6. Is it your understanding that the DBEDT Director believed in this RFP he had the authority to make the selection of the winning bidder?

7. Prior to his making the selection of the winning bidder in this RFP, did the Director ask you to re-confirm that he had that authority to make the selection of the winning bidder?

a. Did you do so?

Questions for Dawn Okuhama:

1. How many meetings with businesspeople does the Director typically have in a day? A week?

2. From your perspective, given the Director's meeting schedule and schedule of activities, is it surprising that he may have meet with or otherwise interacted with representatives of the bidders?

a. In your view, could it be that he had those meetings or interactions were on topics other than the renewable hydrogen fund?

Questions for Aaron Fujioka:

1. To-date, in this RFP has the SPO found a "violation" of the State Procurement Code or rules?

March 12, 2008

Ms. Lisa Ginoza
First Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Dear Ms. Ginoza:

I am writing to request immediate withdrawal of Mr. Dennis Ferm as my appointed counsel for any future sworn appearances before the Senate Committee investigating the Hydrogen Fund RFP.

Mr. Ferm's representation of me during the first hearing on March 6, 2008 was thoroughly ineffective, unprofessional, and absolutely devoid of any interest in my rights as a client. I found him to be embarrassingly ill-prepared for and completely ignorant about the proceedings. He was disrespectful to the Senate Committee members and to me.

Furthermore, throughout the more than two hours in which I testified, he repeatedly looked to Deputy Attorney General Kendall Moser for guidance. In his own words he informed the Committee that he reviewed subpoenaed documents together with Mr. William Wynhoff. These are clearly examples of a conflict of interest since Mr. Moser's client is Mr. Theodore Liu, about whom I was being questioned at the hearing.

I am enclosing a DVD copy of my testimony for your own evaluation of Mr. Ferm's conduct during the proceedings.

As a state employee and HGEA, Unit 13 member, I am entitled to fair, impartial, and professional representation, none of which Mr. Ferm displayed at the hearing.

In the event that I am re-subpoenaed to testify, I am requesting appointment of private counsel (i.e. not a deputy attorney general) to replace Mr. Ferm as soon as possible, in order to secure full protection of my rights and avoid any further prejudice towards me.

Sincerely,



Eileen K. Harada

c: Lee Matsui, HGEA (encl.)
Senator Donna Mercado Kim

14. *Q: So we could propose a longer compensated tail beyond the 3-year limit?*

A: Mr. Chock answered "yes".

Mr. Kaya added that the DBEDT director will have the final decision regarding uses of the fund.

[Note: Addendum 1 clarified that the final decision on any allocation to cost share investment shall be made by the DBEDT Director upon the recommendation of the Fund and/or Program manager(s). Further, that the final decision on any allocation to seed or venture capital investment may be made pursuant to the terms of the seed or venture capital investment agreement to be proposed between the DBEDT Director and the Fund and/or Program manager(s).]

15. *Q: If DBEDT director says "no" to all investment requests, is manager liable for failure to invest the funds? Is there an arbiter to manage possible disagreement between the two parties?*

A: Mr. Kaya first asked for clarification of this question. After clarification, Mr. Kaya explained that the \$385,000 is not used to compensate the fund manager to make investments. Instead, it is to assist DBEDT establish and run the Hawaii Renewable Energy Program. Regarding the legal issues, there are state contractual and procurement laws that address arbitration. Ms. Harada stated that the Attorney General will serve as the counsel for DBEDT if mediation or litigation is necessary.

16. *Q: Please describe the proposal evaluation process with terms, steps, feedback.*

A: Ms. Harada stated that each member of the Evaluation Committee will independently evaluate the proposals based on the criteria contained in pages 16 and 17 of the RFP. Based on the total score of each proposal, the Committee will create a short list and possibly meet each company on the list individually to get clarification. Then the Committee will offer a date for the proposers to submit a best and final offer (BAFO). Such offer will go through the evaluation process again and the DBEDT director will have the ultimate authority to make the final selection.

17. *Q: How can State be treated as limited partner in a larger fund if director has veto power over potential investments?*

A: Mr. Chock said that this question raises the possibilities of various structures for the investment portion of the fund. DBEDT is looking for flexible and creative responses from the proposers and it is possible to use existing industry standards of general partner/limited partner relationships.

Mr. Kaya added that the statute does require the DBEDT director to be responsible for this program so the State is able to monitor the investments, and the State hopes to work with the selected proposer to seek the most promising elements to start a clean technology sector in our economy.

Mr. Chock said that it is possible for the proposers to suggest a typical venture capital limited partnership arrangement, whereby the GP maintains the control of the investment

Priscilla Thompson/DBEDT
03/15/2007 12:44 PM

To Eileen Harada/DBEDT@DBEDT
cc Anna Wenz/DBEDT@DBEDT, JiaLin Sun/DBEDT@DBEDT,
John Chock/DBEDT@DBEDT, jtantlin@dbedt.hawaii.gov
(John Tantlinger), kkitamura@dbedt.hawaii.gov,
bcc

Subject Re: H2 RFP Addendum 2 to finalize 

History  This message has been forwarded

MHK:

The only person not in the loop re. Addendum 2 is TEL. I am not sure what expectation he has for review and approval.

Accordingly, please give final approval to Eileen to distribute.

Thanks,
PT


Priscilla C. Thompson
Dept. of Business, Economic Development & Tourism
Strategic Industries Division
235 S. Beretania St., 5th Floor, Honolulu, HI 96813

Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Phone: (808) 586-2353 Fax: (808) 586-2536

www.hawaii.gov/dbedt/ert/

Eileen Harada/DBEDT

Eileen Harada/DBEDT
03/15/2007 12:35 PM

To Priscilla Thompson/DBEDT@DBEDT
cc Anna Wenz/DBEDT@DBEDT, JiaLin Sun/DBEDT@DBEDT,
John Chock/DBEDT@DBEDT, jtantlin@dbedt.hawaii.gov
(John Tantlinger), kkitamura@dbedt.hawaii.gov,
mkaya@dbedt.hawaii.gov (Maurice Kaya),
stratdev@pixi.com
Subject Re: H2 RFP Addendum 2 to finalize 

Looks fine. If it is okay with everyone, we will begin processing so that it can go out this afternoon.

Priscilla Thompson/DBEDT

Priscilla Thompson/DBEDT
03/15/2007 12:00 PM

To Eileen Harada/DBEDT@DBEDT,
kkitamura@dbedt.hawaii.gov
cc John Chock/DBEDT@DBEDT, jtantlin@dbedt.hawaii.gov
(John Tantlinger), mkaya@dbedt.hawaii.gov (Maurice Kaya),

JiaLin Sun/DBEDT@DBEDT, stratdev@pixi.com, Anna
Wenz/DBEDT@DBEDT
Subject H2 RFP Addendum 2 to finalize

Eileen and Ken:

Attached is Addendum 2 (Draft) for your review and to finalize to ASO standards. It would be best to send it in final form to the recipients of this message before distribution, with a request for quick turnaround.

To all: I made an additional change to a sentence in the response to Question 3 as follows:

Original -- "The \$385,000 administrative fee is the amount that the State can set aside within the fund to support the establishment of program management."

Revised -- "The \$385,000 is the amount that the State has set aside to support Program establishment and management."

Thanks,
Priscilla



RFP ADDENDUM 2 draft 031507.doc

Priscilla C. Thompson
Dept. of Business, Economic Development & Tourism
Strategic Industries Division
235 S. Beretania St., 5th Floor, Honolulu, HI 96813


Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Phone: (808) 586-2353 Fax: (808) 586-2536

www.hawaii.gov/dbedt/ert/

22653

Exhibit 100

Eileen Harada/DBEDT
08/20/2007 01:57 PM

To Ken Kitamura/DBEDT@DBEDT
cc
bcc
Subject Re: Hydrogen File 

Ken,

We need the following items:

- 1) Affidavit of Government Employees, BED-100 signed by Priscilla Thompson, John Chock, and JiaLin Sunn (Observers).
- 2) Disqualification letter instead of non-awarded letter for two of the companies that were disqualified during the evaluation.

Ken Kitamura/DBEDT



Ken Kitamura/DBEDT
08/20/2007 07:54 AM

To Eileen Harada/DBEDT@DBEDT
cc
Subject Hydrogen File

Hello Eileen,

Other than Ted's memo to file providing rationale for H2energy selection, is the file complete? Please advise. Thanks.

Ken.

Priscilla Thompson/DBEDT
02/28/2007 03:10 PM

To Anna Wenz/DBEDT@DBEDT
cc
bcc
Subject Fw: Hydrogen Bidders Conference

fyi

----- Forwarded by Priscilla Thompson/DBEDT on 02/28/2007 03:09 PM -----

Priscilla Thompson/DBEDT
02/28/2007 03:00 PM

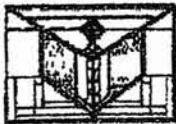
To John Tantlinger/DBEDT
cc John Chock/DBEDT@DBEDT, Maurice
Kaya/DBEDT@DBEDT, William Parks/DBEDT@DBEDT
Subject Re: Hydrogen Bidders Conference

JT:

Any clarity would be helpful.

Thanks,
PT

John Tantlinger/DBEDT



John Tantlinger/DBEDT
02/28/2007 02:55 PM

To Maurice Kaya/DBEDT@DBEDT, Priscilla
Thompson/DBEDT@DBEDT
cc John Chock/DBEDT@DBEDT, William
Parks/DBEDT@DBEDT
Subject Re: Hydrogen Bidders Conference

MHK, and PT.

I'd already (earlier today) requested Anna to obtain copy of the new contract procedures manual.

At the recent all-day, limited seating contracts class, the new manual was provided to participants, who were told it was the only way they could obtain copies. In addition, the manual was incrementally distributed to class attendees on a section by section basis, as each section was covered in the training. My understanding from one of the participants is that if an attendee left early, they were refused a copy of the sections for the training period(s) in which they were not in attendance.

By now, however, perhaps this has changed. At any rate, we have some staff who participated, and we are obtaining copies.

Notwithstanding Eileen's assurance that ASO/CON will handle the conference, I suggest that PT and I proceed with the meeting I've mentioned in separate e-mails. Rationale is that with previous procurements, we have received and responded to such written questions as alluded to in Eileen's e-mail.

502688


Maurice Kaya/DBEDT


10/19/2006 04:55 PM

To Dawn Okuhama/DBEDT@DBEDT

cc Eileen Harada/DBEDT@DBEDT, Eloise Harada/DBEDT@DBEDT, "John Chock" <jchock@dbedt.hawaii.gov>, Jessie Inazu/DBEDT@DBEDT, JiaLin Sun/DBEDT@DBEDT, Ken Kitamura/DBEDT@DBEDT, Mark Anderson/FTZ/DBEDT@DBEDT

bcc

Subject Re: Meeting on the Hydrogen Fund Solicitation 

History:  This message has been forwarded.

Dawn, okay if I invite JT and PT to also attend? They have been helping me with revisions to the RFP.

Dawn Okuhama/DBEDT




Dawn Okuhama/DBEDT

10/19/2006 02:05 PM

To Eileen Harada/DBEDT@DBEDT, "John Chock" <jchock@dbedt.hawaii.gov>, Ken Kitamura/DBEDT@DBEDT, Mark Anderson/FTZ/DBEDT@DBEDT, mkaya@dbedt.hawaii.gov

cc Eloise Harada/DBEDT@DBEDT, Jessie Inazu/DBEDT@DBEDT, JiaLin Sun/DBEDT@DBEDT

Subject Re: Meeting on the Hydrogen Fund Solicitation 

I have scheduled this meeting for tomorrow, Friday, Oct. 20, at 1:30. It is important for everyone to attend. Please confirm your attendance. Thank you.

Dawn M.T. Okuhama
Assistant to the Director
DBEDT
P.O. Box 2359
Honolulu, Hawaii, USA 96804
phone: 808-586-2355
fax: 808-586-2377

SCHEDULING NOTE: Please be advised that the Director's schedule may change unexpectedly. On those occasions, we will attempt to provide maximum notification and schedule alternate arrangements that accommodates everyone's schedule.

**Theodore E
Liu/DBEDT**

10/19/2006 02:00 PM

To Ken Kitamura/DBEDT@DBEDT, Eileen Harada/DBEDT@DBEDT, Dawn Okuhama/DBEDT@DBEDT

cc Mark Anderson/FTZ/DBEDT@DBEDT, "John Chock" <jchock@dbedt.hawaii.gov>, mkaya@dbedt.hawaii.gov

010139

Exhibit 108

Subject Meeting on the Hydrogen Fund Solicitation

Ken & Eileen,

Given the importance of the hydrogen fund solicitation, I need to schedule a meeting with you to discuss the solicitation and its process. I wish to have Maurice and John there also. Dawn will schedule something as soon as possible.

Ted



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

010140

Draft August 7, 2006
REV August 29, 2006
REV September 14, 2006
REV September 25, 2006

Hawaii Renewable Hydrogen Program

Work Plan

I. Introduction

Hawaii faces long-term problems from overdependence on imported petroleum. There is no cleaner, lasting solution than using hydrogen as an energy carrier, derived from water electrolysis fueled by renewable energy. In the near-term, creating a renewable hydrogen program will attract investments in technology development and increased use of renewable energy that will gradually, but significantly reduce dependence on imported petroleum. In the near-term the fund can be used to cost share projects that will attract a significant amount of federal and private R and D activity to Hawaii. It can also be used to seed investments in emerging Hawaii advanced energy technology companies. Done strategically, these investments can also foster the development of renewable energy in the state, with initial prospects greatest on the Big Island. Authorized by the legislature and seeded by a \$10 million capital investment fund, SID will implement this program in the current fiscal year. Because the fund has been established within the Hawaii Strategic Development Corporation's (HSDC) revolving fund, the cooperation and support of the HSDC board will be sought.

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II. Renewable Hydrogen Capital Investment Fund Elements

- Total capitalization: \$10 million
- Requires Separate Ledger within HSDC revolving fund
- Overall Policy for Fund Use: Act 240, SLH 2006 (see attached)
- Required Elements: (1) Program management including normal expenses for project execution and support, (2) cost share support for public-private partnerships, and (3) seed/venture investments in Hawaii emerging advanced energy companies whose profiles align with the guiding principals of the renewable hydrogen program under Act 240

III. Preliminary Budget (See Yearly Action Plan, attached)

- \$500,000 for program management (not more than 10 per cent of fund balance)
 - Technical Services Contract, \$385,000, managed for at least two years, but preferably three

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- o Intergovernmental Personnel Agreement, \$75,000 over two years as state cost share
- o \$40,000 in Other Current Expenses such as supplies, computers and equipment, conference fees, training, and in-state and out-of-state travel
- \$2,800,000 for cost share to attract public and private partnerships and for seed/venture investments. These projects will be selected based on the criteria below.
- DBEDT reserves the right to adjust the budget between cost share and seed/venture investments depending on the response to the program solicitations and the quality and viability of project proposals in either category.

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Deleted: These projects will be selected based on the criteria below. \$3,500,000

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IV. Criteria for Use of the Funds

The funds are planned to be deployed in a manner consistent with Act 240, SLH 2006. The Legislature has decreed that the funds shall be used in a manner consistent with Chapter 211, HRS, which is HSDC's governing statute.

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The program elements and policy direction described in Act 240 follow the principles outlined by Governor Linda Lingle in her Energy for Tomorrow package, which was conceived, justified, and defended by DBEDT. The legislature also established the renewable hydrogen program within DBEDT, thus concurring that DBEDT manage this program. DBEDT plans to implement this program through its Strategic Industries Division and its Chief Technology Officer, since the Administration's request for program startup funding and three personnel to manage the program were not approved by the Legislature. Accordingly, the CTO has temporarily assumed responsibility for startup with the assistance of SID staff, but will require additional support through the development of an Intergovernmental Personnel Agreement with the USDOE, and a technical support services consultant contract. A description of a potential administration and program oversight organization structure is described below.

- Administration and Program Oversight

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- o DBEDT will partner with HiBEAM or other qualified NGO to develop and manage this program and its investment strategy. In so doing DBEDT hopes to increase the leverage of the state funds considerably.

- o The qualified program manager NGO will be solicited by HSDC under their current authorities.

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- o HiBEAM/NGO will retain Executive Director/Program Manager possibly utilizing their own program funds.

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- o ED will be responsible for administration, marketing, solicitation of projects, vetting of proposals, recommending project selection, follow-up, execution, and reporting to Executive Committee.

- o DBEDT/HiBEAM/NGO to establish an Executive Committee consisting of DBEDT CTO, DBEDT Senior Advisor/Principal Engineer, and representative of HiBEAM/NGO who will provide general policy

direction to and oversight of the FID, along with technical and investment advice.

DBED, HDB, AM/NGO to establish a 5 to 7 person Investment Committee who will receive evaluations and recommendations from the FID with the counsel of the Executive Committee. The members of the Executive Committee will also serve as voting, ex-officio members of the Investment Committee. The Investment Committee will make recommendations for project award to the Director, DBED, who will make the final selections for award. Upon the decision of the Director, DBED, contracts for funding will be staffed by the FID, and signed by the Director.

The FID will, upon the approval of the Executive Committee, be able to draw upon funds set aside for program execution.

With the counsel of the Executive Committee, the FID will be authorized to contract for technical consultant contract services and award project funds utilizing guidelines below. The FID, working with the Executive Committee, will be directed to further develop these guidelines, and otherwise develop and execute the renewable hydrogen program elements consistent and in compliance with Act 240.

The execution of these program activities will utilize the statutory abilities of HSDC, as authorized by the Legislature.

- **Technical Support Contractor**
 - Demonstrated technical capability in hydrogen systems development
 - Familiarity with relevant energy programs
 - Ability to assist the state with developing project prospects
 - Familiarity with Hawaii's comparative advantages in renewable hydrogen and Hawaii stakeholders
 - Proven ability to develop public-private partnerships
 - Ability to execute assignments in a timely manner with a preference for a Hawaii presence
 - Ability to develop a competitive Hawaii program based on previous relevant corporate experience
 - Greatest prospects to help the state attract a maximum of non-state funding
 - Knowledge and demonstrated proficiency with federal policies and program development to enable the state to maximize attraction of federal dollars
- **Matching State Funds for R, D and D public-private partnerships**
 - Minimum cost match of 3:1, with a desirable cost match of 5:1 or greater using a ratio of non-state/state funds. (In the solicitation of the NGO program manager, consideration will be given in selection and award to that entity who brings the greatest chance for maximum leverage.)
 - Potential to sustain project activity beyond the initial proposed project, including demonstrated prospects for continued federal and private sector funding beyond the proposed project

- Commitment of the proposed team resulting in long-term Hawaii benefit
- Ability to demonstrate how the proposal enhances Hawaii's comparative advantages for renewable energy and hydrogen technologies
- Ability to demonstrate how the project will help to achieve Hawaii's goal to maximize utilization of renewable energy first on the Big Island, and ultimately, for other islands and the remainder of the state. If the project is proposed for other than Hawaii Island, the proposer must explicitly address how the project will help to develop renewable energy, maximize its use, and lead to energy independence for the island location being considered
- Ability to demonstrate linkage with inventions and innovations from Hawaii research Universities
- Prospects to bridge applied research to eventual technology commercialization
- Seed/Venture Investments in Emerging Hawaii Advanced Energy Technology Startup Companies
 - All of the above under the Matching Fund category, plus
 - Demonstrate that the proposer is a Hawaii company
 - Demonstrate prospects for job creation and growth in Hawaii
 - Address intellectual property ownership and return on investment that can help in sustain the renewable hydrogen revolving fund under Chapter 211, either through equity, shared license income and royalties, etc.

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V. Timetable for Matching and Investment Funds

Since the initial capitalization of the fund is contained within HSDC's revolving fund, we envision a multi-year program execution plan; say over a minimum of three years. By three years we expect that results from the first year placements will be realized. By year two, DBEDT will be able to discern whether results justify that additional request for state funds can be made of the legislature.

The Executive Director, working with the Executive Committee, will be tasked with developing a spending plan consistent with the objectives outlined above.

Deleted: Accordingly, we expect to proceed with an initial allocation of \$3 million in cost match for FY07 for the R D and D cost matching program, and \$2.0 million in seed/venture placements for FY07, with a maximum of \$1.0 million in individual project awards.

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Deleted: DBEDT Director, CTO, Interim Project Manager, and HTDC Board.

Deleted: HSDC Member Director DBEDT

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Deleted: Ted Liu or

Deleted: Mark Anderson)

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VI. Investment Committee

DBEDT envisions organizing an Investment Committee, to provide advice to DBEDT ~~DBEDT~~ on the overall program direction, and to assist with review of project proposals. The body will not be charged with making any decisions, but will provide recommendations to the ~~DBEDT~~ Director for award of project funds.

This committee will number at least five individuals as follows:

- ~~DBEDT~~ CTO
- ~~DBEDT~~ Senior Advisor/Principal Engineer

- Representative from HIBFAM*
- HSDC Member, appointed by HSDC Chair,
- At-Large Member from Renewable/Hydrogen Technical Area (public/academia),
- At-Large Member from Renewable/Hydrogen Technical Area (private)
- At-Large Member with Venture Capital Background,

The Investment Committee membership will select a chair from its members. Until such time as that occurs, the DBEDT representative will serve as interim chair. Members will serve for two years, at the "pleasure of the Director, DBEDT," with the exception of the ex-officio executive committee.

(Note: While it may seem advantageous to appoint a member from the University of Hawaii HNEI hydrogen program, potential conflict of interest issues are present, since UH is likely to be a recipient of these funds.)

*Member of Executive Committee

VII. Potential Members

The following may be considered:

- HIBFAM: Barry Weinmann, Ron Higgins, Eric Clark
- HSDC: Ed Young
- Hydrogen Technical Member: Dan Arvizu, NREL, Bobbi Garrett, NREL; Brian Castelli, ASU; Carl Weinberg.
- Venture Capitalist: Irvin Barash, Dan Reicher,

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Ed Young?¶

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Jo-Ann Milliken, USDOE acting hydrogen program manager¶
Potential members from other state renewable public benefit funds - CA, CT, etc.

Deleted: ¶-//>Representative from the National Renewable Energy Lab (NREL), Dale Gardner, George Sverdrup¶

Deleted: ¶-//>Dr. Pat Takahashi, Director Emeritus, HNEI¶

¶-//>Director of CA Fuel Cell Partnership¶

¶-//>Representative from Hydrogen or Fuel Cell company¶

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Barry Weinmann?¶

Ron Higgins?¶

Irvin Barash, RE Venture Capitalist,

Vencon Management, Inc., NYC

(Takahashi knows him)¶

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Additionally, DBEDT CTO, HSDC President, Renewable Hydrogen Interim Program Manager shall serve as resources to the committee. Appropriate out-of-pocket expenses for the members shall be reimbursed through the renewable hydrogen fund.¶

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Deleted: The Director of DBEDT will be the selecting official and contracting officer for projects funded from the special fund. To remain arms length from the solicitation, evaluation and ranking process, the Director will not be a part of the advisory committee.

Maurice Kaya/DBEDT
09/25/2006 10:18 AM

To Priscilla Thompson/DBEDT@DBEDT
cc John Chock/DBEDT@DBEDT, Eloise
Harada/DBEDT@DBEDT
bcc
Subject Renewable Hydrogen

You and I are scheduled to meet tomorrow.

I have revised the draft work plan based on my latest discussion with Ted (in a meeting with Barry Weinman, Eric Clark, and Rachel Odijie of Hibeam). Hibeam has confirmed their interest in working with us on this initiative. They could possibly add value through their network here and on the mainland, helping to vet project proposals, hiring an executive director. The fund is very consistent with their desire to get more active in clean tech investments, along with life sciences. They envision possibly hiring an ED to manage the program, they are also looking to make their own investments in this type of program. They will help market the program to mainland investors and emerging tech companies.

They understand that an important component of the program is cost shared R and D, but would add the element of ROI analysis for themselves and Hawaii. Ted referred to that as the "public purpose" aspect of partnering with UH and DOE, etc.

Ted feels that the program can be organized by having HSDC go out and competitively select an NGO to run the program, at which time Hibeam will also determine how to submit a formal proposal.

Thus need to have John Chock understand this approach, offer any comments, including how to engage HSDC, issue any solicitation, and select a program manager.

mhk



Ren Hydrogen Work Plan Draft 9.25.06.doc

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Exhibit 120

A23
97-12
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Procurement Audit of the Department of Business, Economic Development and Tourism

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

STATE OF HAWAII

OCT 10 1997

LEGISLATIVE REFERENCE BUREAU

Report No. 97-12
October 1997



**THE AUDITOR
STATE OF HAWAII**

Exhibit 128

Seven agencies are attached to the department for administrative purposes. They include the Aloha Tower Development Corporation, Convention Center Authority, Hawaii Community Development Authority, Hawaii Strategic Development Corporation, High Technology Development Corporation, Land Use Commission, and Natural Energy Laboratory of Hawaii Authority.

Objectives of the Audit

The objectives of the audit were to:

1. Determine whether the department's purchases of goods and services comply with the provisions of the Hawaii Public Procurement Code.
2. Determine whether the department's contract administration process ensures the efficient and effective use of state resources.
3. Make recommendations as appropriate.

Scope and Methodology

This audit focused on purchases from July 1994 to May 1997. We sampled purchases from the four divisions and four offices of the department. We did not review purchases of the administratively attached agencies or the contracts with the Hawaii Visitors and Convention Bureau.

We selected a sample of the department's purchases of goods and services and tested them for compliance with the provisions of the Hawaii Public Procurement Code and related administrative rules. We performed specific tests to determine compliance with the provisions governing small purchases and purchases of \$10,000 or more. We examined purchases made through competitive sealed bids, competitive sealed proposals, emergency, and sole source methods. We also examined the department's purchase of professional services.

We also selected 20 contracts using a judgmental sampling method. Our sample represented about 54 percent of the total dollar value of departmental contracts. The sample was tested to determine whether the department performed adequate analyses to determine the need for contracting, developed scopes of services that were sufficiently specific to ensure expected outcomes and benefits, and developed clearly defined monitoring and evaluation procedures.

Exhibit 1.1 shows the expenditures and encumbrances for those divisions and offices covered within the scope of our audit from FY1993-94 through FY1995-96. The total amounts have declined substantially over the past three years—from \$24.0 million to \$11.7 million.

To initiate a request for contract services, a division or office submits a "Request for Project Proposal" to the ASO's contract specialist. The request outlines the objectives, goals, justification, description, and measures of effectiveness of the proposed project. The division or office also sends a request for the governor's approval, and, if appropriate, a request for sole source procurement.

The contract specialist reviews each request for adherence with the mission of the department and for compliance with the provisions of Chapter 103D, HRS. The contract specialist may then forward the request to the director with a recommendation for approval or deny the request and return it to the division or office.

If the request is approved by the director, the contract specialist oversees all steps of the procurement process to ensure compliance with Chapter 103D, HRS. The contract specialist also develops forms for the division or office to monitor and evaluate the contractor's services. The contract specialist periodically audits the contract administration of the division or office to ensure compliance with proper monitoring and evaluation procedures.

For purchases not requiring a formal contract, a requisition/purchase order is completed and must be approved by the division/office head or a designee. The purchase order and any supporting documents are then sent to the ASO's fiscal officer. The fiscal officer reviews the purchase order and documents to ensure compliance with the Hawaii Public Procurement Code and all applicable policies and rules. The purchase order may be denied and returned to the division or office for correction and reprocessing. The fiscal officer approves the purchase order when all requirements have been met. The fiscal officer retains a copy of the purchase order and returns the remaining copies to the requisitioner who then initiates the purchase.

For purchases of \$10,000 or more, or for travel and equipment purchases, the purchase order is sent back to the requisitioner after it has been reviewed by the fiscal officer and approved by the director.

Exhibit 2.1 illustrates the functions within the department for purchase approval and compliance oversight.

The department has made serious efforts to improve its contracting practices over the past two years. Also, the contract specialist has tried to enforce strict compliance with the Hawaii Public Procurement Code by working closely with the State Procurement Office and the fiscal officer.

The department was in general compliance with the tested requirements of competitive sealed bids, with one exception. The department classified an \$11,650 repair of a building's air conditioning system as construction and did not solicit bids. Department officials reasoned that this major repair constituted construction and was therefore considered a small purchase under the \$25,000 ceiling. However, we questioned whether this repair actually constituted construction. The object code used by the department on the purchase order classified the repair as "repairs and maintenance" rather than as a "fixed asset." It is reasonable to assume that all construction costs be capitalized, that is, added to the fixed asset records. Since it was not capitalized, we question whether this repair was truly construction. If it were not construction, then the expenditure exceeded the \$10,000 limit set for small purchases of goods and services and should have been subject to bid.

DBEDT complied with competitive sealed proposal requirements

Contracting through competitive sealed proposals is permitted if the head of a purchasing agency determines in writing that this method is more appropriate than competitive sealed bidding because bidding is either not practicable or not advantageous to the State. A request for competitive sealed proposals must receive proper public notice and a register of proposals must be maintained. Proposals are ranked by a formal evaluation process. The contract is awarded to the responsive, responsible offeror whose proposal is determined in writing to be the most advantageous to the State.

We assessed several proposals and the reasons given to contract through competitive sealed proposals rather than competitive sealed bidding. We compared the given reasons with those approved by Hawaii Administrative Rule 3-122-43 and found no conflicts. Department documentation showed that proper public notices of requests for proposals were given and that registers of proposals were maintained. An examination of the formal evaluation processes also showed that the contracts were awarded to the offerors whose proposals were ranked as the most advantageous. We found the department has complied with the provisions governing competitive sealed proposals.

The department complied with sole source procurement requirements

A sole source purchase may be made when there is only one available source from which a particular good or service may be obtained. Using a State Procurement Office form called a "Request For Sole Source," the heads of purchasing agencies must certify to the best of their knowledge that the form's information is true and correct before submitting it to the chief procurement officer for approval. The State Procurement Office

About half of the project managers were not using the forms to ensure contract deliverables. This resulted in poor accountability over the contractor and led to weak controls over incremental contract payments. For example, in at least one instance we found payment being made even though contractual milestones had not been reached. The Contract Administration Verification Report was developed to correct contract monitoring concerns identified in our prior report and the department should ensure that all project managers utilize the form.

Agency fails to perform sufficient contract outcome evaluation

The project manager is responsible for evaluating the outcome of a contract. A thorough evaluation upon the completion of a contract establishes whether the intended objectives of the contract were achieved and whether the fiduciary responsibility of the department to effectively and efficiently manage public resources has been fulfilled. An outcomes evaluation answers the following questions: (1) Did the State receive what it paid for? (2) Should action be taken against the contractor for substandard performance? and (3) Should the contractor be recommended for future contracting needs?

The Contract Administration Verification Report contains a section outlining the established procedures for contract evaluation. This section reiterates contract objectives, evaluates contractor performance in achieving the objectives, and provides recommendations for follow-up or future activities. However, in over 60 percent of the completed contracts we reviewed, project managers failed to evaluate contractor performance.

Problems result from the lack of a contracting manual and insufficient oversight

The department's weaknesses in contract management and evaluation may be due to the lack of a contract administration policies and procedures manual and central oversight of project managers. The department has indicated that it is in the process of developing a contract administration manual.

A high priority should be given to complete a manual. Without a manual to ensure uniform requirements and processes, improvements may be jeopardized with the loss of key personnel. As indicated earlier, improvements in contract planning and drafting, and compliance to the Hawaii Public Procurement Code have resulted through the efforts of the contract specialist. A manual and increased centralized oversight will be useful in training and encouraging project managers to monitor and evaluate contracts.

Conclusion

The department has achieved a high degree of compliance with the Hawaii Public Procurement Code through a review and approval process that is highly centralized. However, the level of compliance gained since 1995 is

put at risk by the lack of a detailed procurement manual. The department has also made progress in planning for and drafting contracts, however, weaknesses still exist in the areas of contract monitoring and outcome evaluation. Without sufficient contract management and evaluation, the efficient and effective use of state resources is not ensured.

Recommendations

1. The Department of Business, Economic Development and Tourism should develop a detailed procurement manual for use by all operating units.
2. The department should:
 - a. Develop a contracting policies and procedures manual for use by all project managers;
 - b. Ensure that all project managers are properly trained in contracting policies and procedures; and
 - c. Audit project managers for compliance with departmental contracting policies and procedures.

From: Seiji Naya [naya@hawaii.edu]
Sent: Friday, March 28, 2008 10:52 AM
To: Sen. Donna Mercado Kim
Subject: Recollection of My Days at DBEDT regarding Procurement

Dear Senator Kim,

It was so nice of you to call me and ask about the contract awarding procedure during my tenure. It has been several years since I left the DBEDT. My recollection is that we adhered to the principle of providing the lowest bidder for contracts because we felt it was the sound principle, and I'm sure it still is, although there are many other factors, such as quality, that need to be carefully considered. Greg Barber was my assistant and he is still with the DBEDT. You might check with him regarding the contract awarding practices during my time.

Regarding the case request for proposal RFP, the set criteria are spelled out and committees are formed and assigned to evaluate these criteria and make recommendations for approval. It is my understanding that directors need to follow their recommendations and can either approve or disapprove but cannot select someone else.

Thank you again. As I said, I am about to leave town and returning on April 20th, so I am sending you this email which I hope is okay.

Best regards,

Seiji Naya, PhD
Distinguished Visiting Senior Fellow
East-West Center
1601 East-West Road
Honolulu, Hawaii 96848
Phone: (808) 944-7523
Email: naya@hawaii.edu
(Professor Emeritus, University of Hawaii)

3/28/2008

Exhibit 130

\$MIMETrack: Serialize by Notes Server on WEBMAIL/DBEDT(Release 6.0.5|March 27, 2005) at 09/03/2007 07:48:15 PM,Serialize complete at 09/03/2007 07:48:15 PM,Itemize by Notes Server on WEBMAIL/DBEDT(Release 6.0.5|March 27, 2005) at 09/03/2007 07:48:15 PM,MIME-CD by Notes Client on Maurice Kaya/DBEDT(Release 7.0.3|September 26, 2007) at 01/03/2008 10:13:18 AM,MIME-CD complete at 01/03/2008 10:13:18 AM
\$Orig: A369BF123EB387210A25734C001FE24D
\$UpdatedBy: ,CN=WEBMAIL/O=DBEDT,CN=DBEDT-MAIL/O=DBEDT
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Categories:
\$Revisions:
\$MsgTrackFlags: 0
DeliveredDate: 09/03/2007 07:43:26 PM
\$MiniView:
\$PaperColor: 1

Looks that way.

Also looks like TEL and as far as I'm aware all previous DBEDT Directors for the nearly 20 years we've been here have been given erroneous advice from department's contracts office.

-----Maurice Kaya/DBEDT wrote: -----

To: jtantlin@dbedt.hawaii.gov
From: Maurice Kaya/DBEDT
Date: 9/3/2007 6:29 PM
Subject: Fw: SPO's Preliminary Review of RFP-07-11-SID

fyi. Everything up to evaluation and ranking seems to be in order, according to SPO. Under this proposed ruling, the Director must go with the ranking of the evaluation committee, regardless of whether any formal recommendation was made.

mhk

----- Forwarded by Maurice Kaya/DBEDT on 09/03/2007 06:25 PM -----

Mark Anderson/FTZ/DBEDT
08/31/2007 10:48 PM

To
Maurice Kaya/DBEDT@DBEDT
cc

Subject
FW: SPO's Preliminary Review of RFP-07-11-SID

MK - 491

Exhibit 131



Ken Kitamura/DBEDT
08/31/2007 08:17 AM

To Eileen Harada/DBEDT@DBEDT
cc
bcc
Subject Fw: Procurement briefing

Hello Eileen,

Can you round up the necessary documents? As I recall, any hardcoded document related to him being able to select from a list is non-existent. However, DBEDT's past practice is to give the Director the opportunity to make the final decision after considering the committee recommendation.

Ken.

----- Forwarded by Ken Kitamura/DBEDT on 08/31/2007 08:12 AM -----

FN #135 < Theodore E Liu/DBEDT
08/31/2007 08:06 AM

To Ken Kitamura/DBEDT@DBEDT
cc Dawn Okuhama/DBEDT@DBEDT
Subject Procurement briefing

We have a 12:00 but depending on my 8:30 meeting, I could move it up to 9:30 AM.

I just need the entire procurement code justification for my authority, including my authority to pick from a list provided by an evaluation committee. Could you also provide me with hard copies of the relevant code sections and admin rules? Thanks!

Ted

Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377



DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

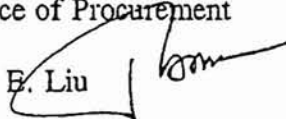
LINDA LINGLE
GOVERNOR
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DIRECTOR
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DEPUTY DIRECTOR

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Fax: (808) 506-2377

FAXED
September 4, 2007

TO: Mr. Aaron Fujioka, Administrator
State Office of Procurement

FROM: Theodore E. Liu 

RE: Requests for Proposals No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and
Renewable Hydrogen Program Management Services

I have received the Memorandum dated August 31, 2007, ("Memorandum") regarding your preliminary review of the subject request for proposals (RFP) and preliminary findings. As requested by the Memorandum, I provide the below comments with regard to points 4 and 5 therein.

In the subject RFP, I believe that I acted within applicable statutes and rules governing procurement and conducted the subject procurement accordingly. I did not, as may be the implication of the last sentence of point 5 in the Memorandum, "act in any other capacity."

It appears from the Memorandum that DBEDT and the State Procurement Office (SPO) have different interpretations of HAR Section 3-122-45.01 ("Evaluation committee") and Section 3-122-57 ("Award of contract"). To clarify this difference in interpretation, I have asked the State's Attorney General for a formal opinion on this matter.

DBEDT's interpretation and practice in effect for several administrations¹ has been that the departmental procurement officer may select an independent evaluation committee to evaluate the proposals. Once selected, an evaluation committee conducts its evaluation in accordance with HAR Section 3-122-45.01 ("Evaluation committee"), HAR Section 3-122-52 ("Evaluation of proposals"), HAR Section 3-122-53 ("Discussions with offerors"), HAR Section 3-122-54 (Best and final offers"), and any other applicable rule.

DBEDT's interpretation and practice under the above-referenced rules, explicitly reserves for the departmental procurement officer the authority to award the contract² to "the responsible offeror whose proposal is determined in writing to provide the best value to the State taking into consideration price and the evaluation criteria in the request for proposals..." (HAR Section 3-122-57 (a)). This interpretation and practice requires the departmental procurement officer to take into consideration the evaluation committee's recommendation, including its numerical scores, but does not bind the departmental procurement officer. Should the departmental procurement officer not concur with a recommendation of an evaluation

¹ DBEDT ASO and Contracts Office indicate that this has been the interpretation and practice for as long as they can remember. Contract files indicate that this has been the interpretation and practice for at least the past decade.

² See RFP Addendum No. 2, Response to Question 16.

committee, his/her reasons must be in writing, must be based on the evaluation criteria in the relevant request for proposal and must be included in the contract file, as is required by HAR Section 3-122-57 (a). In all instances, the departmental procurement officer must be bound by the duty to act in a fair, independent and impartial manner.

Point 4 of the Memorandum states that the evaluation by an evaluation committee "results in" an award of contract to the highest rated offeror. This interpretation seems to be that the determinations and award of contract, governed by HAR Section 3-122-57, vests in the evaluation committee. Point 4 further states that the procurement officer's only inquiry of such an award goes only to whether the evaluation process was "fair, independent and impartial" and whether all rules and statutes were followed.

DBEDT does not interpret any authority in Subchapter 6, Competitive Sealed Proposals, to vest in an evaluation committee the award of contract based on the requirements of HAR Section 3-122-57 or that the procurement officer's review of an evaluation committee's recommendation and/or ranking only goes to the evaluation process.

As the Memorandum's interpretation has important and serious implications for how DBEDT has conducted its competitive sealed proposals, I have asked the Attorney General for an opinion in this matter.

Should the department's above-described practice be found to be based on an incorrect interpretation of the procurement rules, we shall take immediate corrective action. In the meantime, I have instructed that no work proceed with the awardee of the subject RFP.

In conclusion, I have the following procurement policy queries for your consideration:

1. Having delegated the procurement authority to the procurement officer, does the procurement officer have the authority and flexibility to design a procurement procedure, provided it is consistent with procurement statute and rules?
2. Is the procurement policy intended to divest the procurement officer of the delegated authority to make a procurement decision merely by the appointment of an evaluation committee, absent any specific delegation of the authority to make such decisions?
3. Wouldn't a policy that answers point 2 above in the affirmative work towards discouraging the use of evaluation committees to review the technical merits of proposals?
4. Is it the procurement policy to make an evaluation committee's numerical rankings the sole determinant of "best value" for the state?

Thank you for your time and attention to this matter.

c: Joy Watari, Acting Chief of Staff
Attorney General Mark Bennett
Comptroller Russ Saito

701210



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**


LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

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Fax: (808) 586-2377

September 14, 2006

To: All Division Heads and Administrators of Attached Agencies

From: Ken N. Kitamura 
Administrative Services Officer

Subject: Request for Proposal Procedures

The Department has worked with the State Procurement Office to address a number of recurring concerns about the procedures of the Evaluation Committee on the subject above. These procedures are immediately in effect.

Please add the attached document to your Standard Operation Procedures Manual.

If you have any questions, please call Eileen Harada at 586-2441.

REQUEST FOR PROJECT PROPOSAL PROCEDURES

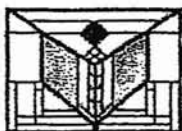
Pursuant to the Hawaii Administrative Rules (HAR) Section 3-122 Subchapter 6 *Competitive Sealed Proposals*, the following procedures shall immediately apply to all Requests for Proposals (RFPs).

- 1) Upon the opening of the RFPs, ASO/Contracts will send copies of the proposals along with scoring sheets to the members of the selection committee with a deadline in which to respond.
- 2) The selection committee members, after independently completing the evaluation shall return the scoring sheets to ASO/C.
- 3) ASO/C will tabulate all scoring sheets and send a memo with the ranking of the top five (5) bidders to each selection committee member.
- 4) Selection committee members will then meet with ASO/C to determine whether the number 1 offer is clear and responsive enough so that an award can be made on the proposal as submitted.
- 5) If the selection committee determines that an award cannot be made on the proposal submitted by the number one ranked company, then ASO/C will send letters to the top five (5) bidders indicating that they are one of the finalists and that the selection committee would like to meet with them.
- 6) Each selection committee member will submit to ASO/C a list of questions regarding each of the (top 5) proposals. These questions will be provided to the bidders at the meeting in written form. Questions shall be answered during the meeting and incorporated into the Best and Final Offer.
- 7) The top 5 bidders will be given a deadline for submittals of their Best and Final Offers to the ASO/C office. If a company opts not to submit a Best and Final Offer, we will hold their original proposal as the final offer and will base selection on the score they received on their original proposal.
- 8) The selection committee will be sent a final package with all Best and Final Offers for evaluation.
- 9) Based upon the evaluation by the selection committee on the Best and Final offers, a new ranking will be determined and an offer will be made to the number one ranked bidder.

9/14/06

700475

Exhibit 147



John Tantlinger/DBEDT

02/27/2007 01:36 PM

To Priscilla Thompson/DBEDT@DBEDT

cc Anna Wenz/DBEDT@DBEDT, Eloise Harada/DBEDT@DBEDT, Maurice Kaya/DBEDT@DBEDT
bcc

Subject Re: Bidders Conference for Hydrogen RFP

PT

WRT evaluation committee documentation, I think that Anna could help you locate previous correspondence that could be used as examples. As I recall, eval committee would be comprised of people from within DBEDT and non-DBEDT agencies, such as Bill Parks. You'll recall in our meeting with ASO, I mentioned our experience using a letter from the director to invite participation on proposal eval committee (for the Act 77 contract RFP) by non-DBEDT evaluator (Jack Suyderhoud). Ken Kitamura said that e-mail could be used for same purpose, so could take a look at that letter to Jack Suyderhoud as example for content of e-mails.

In short, by copy, I've asked Anna to locate and provide sample correspondence; e.g., memo requesting establishment of evaluation committee, invitation to serve on eval committee by non-DBEDT individual(s), memo to TEL with eval committee recommendations/request for authority to proceed to negotiate contract*, etc. I suggested to Anna several specific examples, which she has agreed to e-mail to you.

***Note:** You'll recall in our meeting with ASO, we also discussed how the eval committee recommendation memo can be written such that it provides some flexibility to avoid having to reestablish an eval committee, should the negotiations with the committee's top nominee not result in a contract; i.e., cannot come to terms after good-faith effort. Specifically, when the time comes, but for which we do not have a sample readily available, the memo could incorporate a tiered level of recommended bidders. The memo could request the director's authority to negotiate the contract with the top contender, with contingency that should a good-faith negotiation effort not result in a contract, authority would be requested/approved to negotiate, in turn, and under the same contingency condition, the listed recommended bidders in order of priority. Subject to the findings/conclusions of the evaluation committee, it is possible that this requested authority on a tiered and prioritized basis would not be inclusive of all bidders, but more likely to be limited to only the bidders found to be acceptable by the eval committee.

Let me know if you need any additional information/support.

TXVM.

jt

Priscilla Thompson/DBEDT

Priscilla Thompson/DBEDT

02/27/07 09:09 AM

To Maurice Kaya/DBEDT@DBEDT

cc Eloise Harada/DBEDT@DBEDT, John Tantlinger/DBEDT@DBEDT

Subject Re: Bidders Conference for Hydrogen RFP

MHK:

Priscilla Thompson/DBEDT
02/20/2007 12:08 PM

To: Anna Wenz/DBEDT@DBEDT
cc
bcc

Subject: Fw: Request sample and info on formation of selection and evaluation committees

FYI. I asked MLT if she had set up the selection committee for the biomass RFP. She had been trying to get info from ASO/Con. Sent another request this morning. See below.


PT

Priscilla C. Thompson
Dept. of Business, Economic Development & Tourism
Strategic Industries Division
235 S. Beretania St., 5th Floor, Honolulu, HI 96813

Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Phone: (808) 586-2353 Fax: (808) 586-2536

www.hawaii.gov/dbedt/ert/

— Forwarded by Priscilla Thompson/DBEDT on 02/20/2007 12:07 PM —

 Maria Tome/DBEDT
02/20/2007 12:01 PM

To: Priscilla Thompson/DBEDT@DBEDT
cc

Subject: Fw: Request sample and info on formation of selection and evaluation committees

FYI

— Forwarded by Maria Tome/DBEDT on 02/20/2007 12:01 PM —

 Louise Moti/DBEDT
02/20/2007 11:53 AM

To: Maria Tome/DBEDT@DBEDT, Denise
Fenn/DBEDT@DBEDT
cc: Eileen Harada/DBEDT@DBEDT

Subject: Re: Request sample and info on formation of selection and evaluation committees

Maria, please see your Secretary, Denise. Your branch just did two RFP's. Also, I have attached the RFP Procedures. Thank you for understanding. louise



RFP Procedures.doc


Maria Tome/DBEDT

502685

Priscilla Thompson/DBEDT
02/28/2007 10:38 AM

To jtantlin@dbedt.hawaii.gov (John Tantlinger)
cc Anna Wenz/DBEDT@DBEDT
bcc

Subject Hydrogen RFP process

History:  This message has been replied to.

JT:

- I should have asked you earlier -- Do you know how the pre-conference works, ie, has SID had to conduct one before? See my e-mail to John Chock below. ASO/Con is not helpful, and I have no prior experience with RFPs.
- Can we meet so that you can walk me through the steps of this RFP so that I have a clear understanding of what is required, and who is expected to do what -- ASO/Con, HSDC, SID.
- Related, HNEI (Mitch) called this morning for a status on the cost share. AW: What is the status of 1. the delegation of authority letter, 2. memo from MHK to John Chock for the costshare and approval to contract, and 3. the draft contract documents?

Thanks,
PT

----- Forwarded by Priscilla Thompson/DBEDT on 02/28/2007 10:22 AM -----

Priscilla Thompson/DBEDT
02/28/2007 10:15 AM

To John Chock/DBEDT
cc

Subject Fw: Request sample and info on formation of selection and evaluation committees

John:

This is the only written guidance we've received from ASO/Con dealing with RFP procedures. It deals with the selection procedure only. Were you able to get any guidance from Eileen on the Pre-Conference meeting -- who conducts meeting, who should attend, topics that will be covered, guidelines, etc?

Thanks,
Priscilla



RFP Procedures.doc

700474
Exhibit 157

I just spoke with John Chock who has not been advised either by ASO/Con re. any specific procedures. Eg, John also was not advised prior to advertisement of the RFP.

FYI, I have yet to get the selection/evaluation committee paperwork done, but first have to research what is needed. Nothing is easy or clear. (Per John Chock, SID has a lot more experience in these matters!)

John had not calendered the 3/7/07 pre-conference meeting, and is going over to talk with Eileen now to get any guidance. I asked him to please let us know what he finds out.

PT

Priscilla C. Thompson
Dept. of Business, Economic Development & Tourism
Strategic Industries Division
235 S. Beretania St., 5th Floor, Honolulu, HI 96813

Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Phone: (808) 586-2353 Fax: (808) 586-2536

www.hawaii.gov/dbedt/ert/

Maurice Kaya/DBEDT

Maurice Kaya/DBEDT
02/27/2007 08:31 AM

To Eloise Harada/DBEDT@DBEDT
cc Priscilla Thompson/DBEDT@DBEDT, John
Tantlinger/DBEDT@DBEDT
Subject Bidders Conference for Hydrogen RFP

Pls note that there is a 10 am bidders conference Wed March 7 for proposers for the hydrogen RFP. I may be asked to attend that so you should note in on calendar.

PT, has contracts advised as to our role, if any?

700473

Exhibit 158

Theodore E Liu/DBEDT
10/11/2006 05:41 PM

To Weinman@allegiscapital.com
cc
bcc -
Subject Fw: WSJ.com - For Chinese Tycoon, Solar Power Fuels
Overnight Wealth

Barry,

See article....

The solicitation of interest for the hydrogen fund will be out in about 10 days.

Regards,

Ted



Theodore E. Liu

Director

Dept. of Business Economic Development & Tourism

Phone: 808-586-2355

Fax: 808-586-2377

— Forwarded by Theodore E Liu/DBEDT on 10/11/2006 05:40 PM —



liukwong@hotmail.com

10/11/2006 05:17 PM

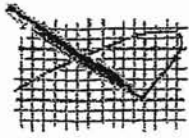
To tliu@dbedt.hawaii.gov
cc
Subject WSJ.com - For Chinese Tycoon, Solar Power Fuels
Overnight Wealth

*** Please note, the sender's email address has not been verified.**

Solar entrepreneurs in China

400751

Exhibit 169



Theodore E Liu/DBEDT

12/17/2006 07:16 AM

To "Weinman, Barry" <Weinman@allegiscapital.com>

cc

bcc

Subject Re: Kleiner Perkins Speaks On Clean Tech Interest

Barry,

Thanks.

I am embarrassed to say that due to year-end/inaugural load at B&F, the Hawaii hydrogen fund RFP has been hung up. Its been approved for the RFP and we are going to issue it in early Jaunuary, so as to avoid making this a holiday rush.

Ted

100746

Exhibit 170

§3-131-4 Civil and criminal penalties. (a)

Certain violations of chapter 103D, HRS, may be subject to civil and criminal penalties as described below:

- (1) Civil penalties. A person who contracts for, or purchases goods, services, or construction, in a manner the person knows to be contrary to the requirements of the procurement law is liable for all costs and damages to the State arising out of the violation.
- (2) Criminal penalties. A person who intentionally or knowingly contracts for or purchases goods, services, or construction, under a scheme or artifice to avoid the requirements of the procurement law shall be guilty of a misdemeanor, and in addition to any applicable criminal penalties, shall be subject to removal from office and shall be liable to the State or the appropriate county for any sum paid by it in connection with the violation, and that sum, together with interest and costs, shall be recoverable by the State or county.

(b) In order for civil penalties to apply, a person must have knowingly violated the requirements of the law. In other words, the person committing the violation must be aware that he or she is acting contrary to the requirements of the law at the time the violation occurs. Violations that are the result of administrative error or mistake, ignorance, or carelessness are usually not subject to the civil penalties. The determining factor is what the person understood the procurement requirements to be when the violation occurred, and whether or not the person believed he or she was acting in compliance with those requirements.

(c) In order for criminal penalties to apply, a person must have knowingly or intentionally engaged in a scheme or artifice to avoid the requirements of the law. The violation must have been committed in a deliberate manner, involving some calculated means, such as parceling for a single procurement, a deliberate misstatement of fact, or an after-the-fact purchase, which is purposefully designed to avoid the requirements of the law. Legally admissible documentary evidence of the wrongdoing must be



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

COLLEEN HANABUSA
RESIDENT

DONNA MERCADO KIM
VICE PRESIDENT

GARY L. HOOSER
MAJORITY LEADER

FRED HEMMINGS
MINORITY LEADER

March 26, 2008

FIRST DISTRICT
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SECOND DISTRICT
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THIRD DISTRICT
PAUL WHALEN

FOURTH DISTRICT
SHAN S. TSUTSUI

FIFTH DISTRICT
ROSALYN H. BAKER

SIXTH DISTRICT
J. KALANI ENGLISH

SEVENTH DISTRICT
GARY L. HOOSER

EIGHTH DISTRICT
SAM SLOM

NINTH DISTRICT
LES IHARA, JR.

TENTH DISTRICT
BRIAN T. TANIGUCHI

ELEVENTH DISTRICT
CAROL FUKUNAGA

TWELFTH DISTRICT
GORDON TRIMBLE

THIRTEENTH DISTRICT
SUZANNE CHUN OAKLAND

FOURTEENTH DISTRICT
DONNA MERCADO KIM

FIFTEENTH DISTRICT
NORMAN SAKAMOTO

SIXTEENTH DISTRICT
DAVID Y. IGE

SEVENTEENTH DISTRICT
RON MENOR

EIGHTEENTH DISTRICT
CLARENCE K. NISHIHARA

NINETEENTH DISTRICT
MIKE GABBARD

TWENTIETH DISTRICT
WILL ESPERO

TWENTY-FIRST DISTRICT
COLLEEN HANABUSA

TWENTY-SECOND DISTRICT
ROBERT BUNDA

TWENTY-THIRD DISTRICT
CLAYTON HEE

TWENTY-FOURTH DISTRICT
JILL N. TOKUDA

TWENTY-FIFTH DISTRICT
FRED HEMMINGS

CHIEF CLERK
CAROL TANIGUCHI

Senator Donna Kim, Chair
Senate Investigative Committee on the
Hydrogen Investment Capital Special Fund
Management Contract Award

Dear Senator Kim,

With respect to our discussions on the High Technology Development Corporation and its Hawaii Technology Innovation Corporation (HTIC) non-profit entity; I believe the following representation (Dragonbridge press release, dated April 17, 2006), "*DragonBridge Capital, which was organized at the suggestion of Ted Liu, Director of DBEDT, and Phil Bossert, CEO of HTDC, has been engaged by Aishen to assist in their venture capital fund raising efforts...*" is accurate in describing the manner in which the merchant bank was established.

In late December 2004, I attended a luncheon hosted by HTDC for Chinese officials from the Zhongguancun Tech Park in Beijing on their brief visit to Hawaii. The luncheon provided an opportunity for the Chinese tech park delegation to learn about opportunities that Hawaii's tech/life sciences industry ventures could offer. As a follow-up to the luncheon, I understood that DBEDT Director Liu was actively involved in supporting the formation of Dragonbridge.

Sincerely,

Senator Carol Fukunaga, Chair
Senate Committee on Economic Development
and Taxation

Amount	Aggregate	Last	First		Date	Name	Address	City	State	Zip	Employer	Occupation
BARRY M. WEINMAN												
\$6,000.00	\$6,000.00	LINGLE	LINDA	REPUBLICAN	05-Aug-02	Weinman Barry M	2877 Kalakaua Ave	Honolulu	HI	96815	Allegis Capital	Managing Partner
\$6,000.00	\$6,000.00	AIONA	JAMES	REPUBLICAN	11-Oct-02	Weinman Barry	975 Tournament Drive	Hillsborough	CA	94010	Allegis Capital	managing director
\$6,000.00	\$6,000.00	LINGLE	LINDA	REPUBLICAN	28-Dec-04	Weinman Barry M	4471 Kahala Ave	Honolulu	HI	96816	Allegis Capital	Managing Partner
\$2,000.00	\$2,000.00	TOM	BOB	REPUBLICAN	16-Sep-04	Weinman Barry M	4471 Kahala Ave	Honolulu	HI	96816	Weinman Trust	Investor
\$2,000.00	\$2,000.00	TOM	BOB	REPUBLICAN	29-Sep-06	Weinman Barry M	4471 Kahala Ave	Honolulu	HI	96816	Weinman Trust	Investor
	\$6,000.00	Aiona	James		May 2007							
VIRGINIA S. WEINMAN												
\$6,000.00	\$6,000.00	LINGLE	LINDA	REPUBLICAN	05-Aug-02	Weinman Virginia	2877 Kalakaua Ave	Honolulu	HI	96815	The Weinman Foundation	President
\$6,000.00	\$6,000.00	AIONA	JAMES	REPUBLICAN	01-Oct-02	Weinman Virginia	975 Tournament Drive	Hillsborough	CA	94010	allusions.com	president
\$10,000.00	\$10,000.00	HI REPUBLICAN PARTY (FEDERAL)			01-Nov-02	Weinman Virginia	975 Tournament Drive	Hillsborough	CA	94010	allusions.com	president
\$200.00	\$200.00	LINGLE	LINDA	REPUBLICAN	27-May-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816		
\$5,800.00	\$6,000.00	LINGLE	LINDA	REPUBLICAN	30-Dec-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	COFFEE	JERRY	REPUBLICAN	09-Sep-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	JORDAN	BRIAN	REPUBLICAN	16-Sep-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	LEONG	KEOKI	REPUBLICAN	17-Sep-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	PHILIPS	CAROL	REPUBLICAN	07-Sep-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	PINE	KYMBERLY	REPUBLICAN	10-Sep-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	SANBORN	WILLIAM	REPUBLICAN	16-Sep-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	WONG	COLIN	REPUBLICAN	10-Sep-04	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$10,000.00	\$10,000.00	HI REPUBLICAN PARTY (FEDERAL)			02-Feb-04	Weinman Virginia	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$5,000.00	\$5,000.00	HI REPUBLICAN PARTY (FEDERAL)			05-Jan-05	Weinman Virginia	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$1,279.00	\$6,279.00	HI REPUBLICAN PARTY (FEDERAL)			22-Apr-05	Weinman Virginia	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$10,000.00	\$16,279.00	HI REPUBLICAN PARTY (FEDERAL)			13-Jan-06	Weinman Virginia	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$2,000.00	\$2,000.00	TOM	BOB	REPUBLICAN	29-Sep-06	Weinman Virginia S	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
\$10,000.00	\$10,000.00	HI REPUBLICAN PARTY (FEDERAL)			28-Jan-07	Weinman Virginia	4471 Kahala Ave	Honolulu	HI	96816	The Weinman Foundation	President
	\$6,000.00	Aiona	James		May 2007							
WEINMAN FAMILY TRUST												
\$2,000.00	\$2,000.00	AWANA	KAREN	REPUBLICAN	10-Sep-04	Weinman Family Trust	4471 Kahala Avenue	Honolulu	HI	96816-4924		
\$2,000.00	\$2,000.00	CUMMINGS	MAMO	REPUBLICAN	29-Sep-04	Weinman Family Trust	4471 Kahala Avenue	Honolulu	HI	96816-4924		
\$2,000.00	\$2,000.00	HO	WILSON	REPUBLICAN	08-Sep-04	Weinman Family Trust	4471 Kahala Avenue	Honolulu	HI	96816-4924		

**MINUTES OF THE MEETING OF THE
HIGH TECHNOLOGY DEVELOPMENT CORPORATION (HTDC)
BOARD OF DIRECTORS
June 2, 2005
Manoa Innovation Center
2800 Woodlawn Drive, 2nd Floor Conference Room
Honolulu, Hawaii**

PRESENT

Jay Fidell, Chair
Brian Goldstein, First Vice Chair
Russell Yamane, Second Vice Chair
Sharon Wong, Secretary/Treasurer
Maurice Kaya, DBEDT Representative
Carl Simons (NELHA Representative)
Stanley Shiraki (B&F Representative; arrived
approx. 9:45 a.m. and departed 11:20 a.m.)

STAFF PRESENT

Philip Bossert
Nancy Hiraoka
Tom Quinn
Steve Sakuda
Kay Yamada

EXCUSED

Ms. Stacey Hee, Dr. Gail Honda, Dr. David
Lassner, Mr. Tony Saguibo,

GUESTS

Margaret Ahn, Deputy Attorney General
John Chock, HSDC
James LaClair, incoming Board Member
John Strom, Enterprise Honolulu
Barry Weinman, Dragon Bridge Capital LLC

1. CALL TO ORDER

The Chair, Mr. Jay Fidell, called the meeting to order at 9:35 a.m.

2. APPROVAL OF MINUTES - MAY 5, 2005 BOARD MEETING

Ms. Sharon Wong moved and Mr. Carl Simons seconded the motion to
approve the May 5, 2005 minutes. The motion passed unanimously
(6-0).

3. INTRODUCTION OF NEW BOARD MEMBER

The Chair introduced Mr. Jim LaClair. The Chair said that officially
Mr. Clair cannot vote at this meeting, but he should not restrain
himself from participating. The Executive Director said when
Mr. LaClair could find two to three hours of time, HTDC will hold an
orientation for him.

**Minutes of the HTDC
Board of Directors Meeting
June 2, 2005**

Mr. LaClair thanked the Board for the nomination and said he was excited to be part of the HTDC Board. He has been a Hawaii resident for 11 years and his wife is from Hawaii. He is currently vice president of network operations for Hawaiian Telecom, and this encompasses such areas as broadband, dial tone, wireless, and engineering functions. He has always been fond of technology and has a background of 26 to 27 years in this area. Prior to the sale of Verizon Hawaii, he handled operations in the Pacific Northwest and provided services to companies such as Microsoft, Nike, and Intel so he has a sense of the requirements for tech companies. He would like to find a niche where he could help out on the Board

The Chair suggested Mr. LaClair meet with Deputy Attorney General Margaret Ahn on the "Sunshine Law" to understand better how it affected both formal and informal discussions between HTDC board meetings.

The Chair said the Board also recognized the departure of Board member, Mr. Russell Yamane. He said Mr. Yamane had served on the Board for eight years and was a fabulous chair from whom we learned a lot. He told Russell he was inscribed forever in the book of the HTDC. The Executive Director presented Mr. Yamane with a certificate of appreciation and a small gift. Mr. Yamane was also asked if he was interested in continuing to be involved with HTDC committees as an "outside" member, and Mr. Yamane responded affirmatively.

4. INTERNATIONAL INCUBATOR PROGRAM REPORT

A. 2005 China Tech Tour Update

The Executive Director reported the 2005 DBEDT Governors Trade mission is up to 150 people with six tracks. Eighteen people are signed up for the tech track, but many delegates are already trying to jump tracks for specific events. The group is visiting three parks, which the Chair and Ms. Wong visited last year so the groundwork was laid for this trip. One of the highlights of the trip is the signing of a cooperative agreement between Zhongguancun International Incubator (ZII) and HTDC, which will give HTDC office space in the Beijing tech park and office space at an HTDC facility for ZII.

B. Beijing Office and International Incubator Program

There was no discussion on this item except as reported in the previous item.

C. Dragon Bridge Program

The Executive Director said one of the reasons HTDC's program is exciting is because of our partner, the new Dragon Bridge Merchant

**Minutes of the HTDC
Board of Directors Meeting
June 2, 2005**

Investment Bank. Mr. Barry Weinman, who is managing director for Allegis Capital in California and very active in promoting technology in Hawaii, was present to give a presentation on Dragon Bridge.

Mr. Weinman said the Board should be proud of what they have done so far. Hawaii is ahead of everybody in the nation in working on the Chinese connections and partnerships and that the Executive Director and the Committee deserve a lot of credit.

Mr. Weinman said the merchant bank is being formed to help China companies access U.S. capital markets. Chinese companies are looking for global opportunities for Initial Public Offerings (IPO), acquisitions, joint ventures and generating capital. Companies are also going public on the NASDAQ because they are looking to keep capital and assets outside of China. Mr. Weinman covered some of the statistics of the number of Chinese companies that went public in the 4th quarter as well as last week. Dragon Bridge is targeting the tech parks like Zhongguancun Park for their potential client base. He cited that Zhongguancun has 15,000 companies, of which 6,000 are resident companies involving 25,000 Chinese returnees from the U.S. and EU. Dragon Bridge would target Chinese companies that understand the U.S., high tech, and security laws. Zhongguancun, which is 189 square miles, is like the Silicon Valley of China.

China will become a global player and Dragon Bridge will assist interested companies with venture capital, private equity, JVs, mergers and acquisitions. Dragon Bridge will leverage the Zhongguancun relationship for potential clients, as Zhongguancun has 6,000 companies with 1,500 life science companies in the park. Dragon Bridge's goal is to add five to ten quality Chinese companies in a year as clients. Dragon Bridge will focus on middle market companies in the \$10 to \$100 million sales range and those looking to raise money in capital markets. The HTDC office will screen candidates for Hawaii, and Dragon Bridge will develop a "template" on how to partner with mainland companies. Dragon Bridge will invest "sweat equity" and will only charge the Chinese companies a success fee if it goes public. They will not do a deal unless the company has IPO potential. The companies will be clean companies with no environmental issues. Mr. Weinman thinks there will be a lot of life science companies to partner with the University of Hawaii (UH) JABSOM and the Cancer Research Center.

~~In the Beijing office, Mr. Weinman said administrative help would be nice, and they will need help regarding due diligence. The Executive Director said Dragon Bridge is looking at office space between 800 to 1,000 square feet in China. It might be possible to fund approximately \$500 a month for a clerical bilingual person.~~

HTDC could help the Chinese companies with human resources, accounting and marketing for a fee. HTDC could also help Hawaii

companies and some U.S. companies enter into China through the Beijing office.

D. China Delegations in Hawaii

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
DARYLE ANN HO
GREGORY L. KING
RUSS K. SAITO
PAMELA A. TORRES

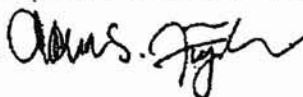
AARON S. FUJIOKA
ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

SPO 08-0068

September 25, 2007

TO: The Honorable Theodore E. Liu, Director
Department of Business, Economic Development & Tourism

FROM: Aaron S. Fujioka 

SUBJECT: Administrator's Final Review and Determinations on
Request for Proposals No. RFP-07-11-SID for
Hydrogen Investment Capital Special Fund and
Renewable Hydrogen Program Management Services

Thank you for your September 17, 2007 response to our August 31, 2007 preliminary review of the subject solicitation. Having reviewed the contract file, I hereby render the following final review and determinations.

The award of subject solicitation was brought to the attention of this office. In my capacity as Chief Procurement Officer for DBEDT, and having delegated procurement authority to the Director of DBEDT as Procurement Officer (PO) for your department, pursuant to HRS §103D-208, this review of the subject procurement conducted by DBEDT is within the authority of the State Procurement Office (SPO). These findings are based on the Hawaii Public Procurement Code, HRS Chapter 103D, and its implementing Hawaii Administrative Rules.

SUMMARY OF FINDINGS

1. March 23, 2007 memo to the PO on the "Request for Approval of Evaluation Committee for Solicitation No. RFP-07-11-SID, Hydrogen Investment Capital Special Fund and Hawaii Renewable Hydrogen Program Management Services", and the June 4, 2007 memo to the PO to revise the Evaluation Committee (EC) due to the resignation of an EC member.

Findings: PO granted approval on April 3, 2007 and June 6, 2007 respectively for the two documents requesting approval of the EC members based on the members' qualifications, expertise, and knowledge to assess and evaluate the proposals. The March 23, 2007 memo included for the PO's information, a copy of the EC rating form. Based on these documents, the PO granted approval for the EC to conduct the evaluations with full knowledge of the evaluation criteria and scoring of the proposals.

2. RFP Page 16, Evaluation Criteria states "An evaluation committee shall be appointed by the DBEDT Director. The committee shall evaluate responsive proposals in accordance with the section entitled 'Proposal Requirements' and based on the following general criteria." The criteria identified in the RFP are Quality (30 points), Approach and Capabilities (30 points), Anticipated Benefits (20 points), and Cost and Budget (20 points), totaling a possible 100 points.

Findings: This provision is in compliance with HAR §3-122-45.01 governing evaluation committees, which requires the PO to make a written determination that either the PO or an EC shall evaluate the proposals; and also HAR §3-122-52 governing the evaluation of proposals, which states that evaluation factors shall be in the RFP.

3. RFP Page 23, Evaluation of Proposals states "The evaluation will be based solely on the evaluation criteria set out in this RFP."

Findings: This provision is in compliance with HAR §3-122-52 governing the evaluation of proposals, that evaluation criteria shall be set out in the RFP and the evaluation based only on these factors. Evaluation factors not specified in the RFP may not be considered. See also, HRS §103D-303.

4. RFP Addendum No. 2, response to Question 16 states in part, "... each member of the Evaluation Committee will independently evaluate the proposals based on the criteria contained in pages 16 and 17 of the RFP."

Findings: This provision is in compliance with HAR §3-122-52 governing the evaluation of proposals, requiring that each EC member explain and document the ranking, in writing, for the procurement file; the evaluation criteria to be set out in the RFP and the evaluation based only on these factors; and a numerical rating system be used.

5. RFP Addendum No. 2, response to Question 16 states in part, "...Such offer will go through the evaluation process again and the DBEDT director will have the ultimate authority to make the final selection."

Findings: This provision may have resulted in your determination that the final selection was within your authority. Best and final offers (BAFO) from offerors shall be evaluated using the criteria stated in the RFP by the designated EC. The evaluation of the BAFO by the EC then results in an award to the highest rated offeror, based on the RFP evaluation criteria. The PO delegation is authorized to enter into and administer contracts, and make written determinations with respect to the authority granted. The PO is tasked to ensure all offers were evaluated in accordance with the proposal evaluation criteria established in the RFP. The PO may review the solicitation, including the evaluation process to determine if all EC members were fair, independent and impartial in their evaluations of the offers, and to determine that the solicitation was conducted in accordance with all rules and statutes. When the PO determines that the evaluation process was proper, the PO would proceed to make the award to the highest ranked proposal.

6. Evaluation Rating Forms of the EC members includes evaluator's comments and recommendations, with details and specific comments of the rated proposal.

Findings: The EC worksheets substantiate the EC review and analysis of the proposals based on the RFP criteria. EC comments on the proposals support the individual EC ratings of each proposal.

7. July 31, 2007 DBEDT memo (attached as Exhibit B) on subject 'Evaluation Committee Findings for RFP-07-11-SID' and its attachment (attached as Exhibit A) upon which the Director's selection is contrary to the Evaluation Committee's findings.

Findings: This action on the part of the-PO is not in compliance with HRS §103D-303 and HAR §3-122-52 governing the evaluation of proposals, which state in part, award shall be based on price "and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation" and "Evaluation factors not specified in the RFP may not be considered," respectively. The EC findings, as stated in the July 31, 2007 memo, results in a putative award, and the PO is tasked to ensure the procurement was conducted in accordance with the RFP and the rules and statutes, to enable the issuance of the Notice of Award.

Procurement delegation provided to department heads involves the responsibility to apply all applicable statutes and rules governing procurement, to conduct procurements for the department accordingly. This delegation does not authorize a department head, as the PO, to act in any other capacity.

8. September 17, 2007 DBEDT letter under your signature memorializing DBEDT's understanding of SPO's concerns regarding this RFP.

Findings: DBEDT's letter reflects SPO's interpretation of the applicable statutes and rules that when a PO appoints an evaluation committee, the conclusions of the evaluation committee control unless the PO, in the PO's review of the overall procurement process of the RFP at issue, determines that the procurement process was not conducted in accordance with the law, including actions such as, but not limited to, the evaluation was not conducted in a fair, independent, and impartial manner, or in accordance with the evaluation criteria in the RFP.

9. September 11, 2007 memo from HiBEAM attached to your September 17, 2007 memo stating in part, "H2E has reluctantly decided to rescind our proposal and offer, and we will not be a candidate to manage the Hydrogen Fund."

Findings: HiBEAM has not justified its decision to rescind its offer, and thus does not present an acceptable basis for the withdrawal of offer. The offer once made by the offeror, and accepted by the State, cannot be unilaterally withdrawn. Additionally, the HiBEAM memo is not considered to be a valid communication from HiBEAM, as it was not signed by an authorized representative of the company.

HiBEAM's offer possibly could be properly withdrawn if it claimed it committed a mistake and was able to support that claim. However, under the circumstances, HiBEAM's rescission of its offer is somewhat moot because HiBEAM is now the third ranked offeror, and would not be likely to be awarded a contract. In any event, HiBEAM's letter of rescission is unacceptable, and HiBEAM must abide by its offer.

DETERMINATIONS

Pursuant to HRS § 103D-701(f), no further action shall be taken on the RFP or the award of any contract resulting from this RFP, including the corrective action below, until the protest received from Kolohala Holdings LLP, is addressed and resolved pursuant to HRS chapter 103D, Part VII.

Based on these findings and upon review of DBEDT's proposed corrective actions described in the letter referenced in item 8 above, the following corrective action is required:

- The PO shall rescind the August 6, 2007 "Re: Renewable Hydrogen consultant/manager selection" memo (attached as Exhibit A);
- The PO shall rescind the August 7, 2007 Director's Selection portion of the July 31, 2007 DBEDT memo from Maurice H. Kaya (attached as Exhibit B);
- The PO shall rescind the August 10, 2007 award letter to H2Energy LLC (attached as Exhibit C), and the August 10, 2007 letters of notification to the other two offerors; and
- The PO shall validate the EC's initial evaluation ranking of July 31, 2007 DBEDT memo from Maurice H. Kaya (attached as Exhibit B), if the EC's evaluation is in compliance with the applicable procurement law and issue a new award based on the initial EC ranking.

Please provide the SPO with copies of all correspondences or documents when issued related to the above determinations. If you have any questions on this matter, please call me at 587-4700. Thank you for your cooperation in this matter.

attachments

RE: Renewable Hydrogen consultant/manager selection

On July 31, Director was briefed in detail by the review panel (Maurice Kaya, John Tantlinger, Bill Parks) on solicitation and review process undertaken, proposals received, presentations made and overall review of dynamics of the process. Focus was on bidders' conference, follow-up questions, initial submissions, Q&A on initial submissions, interviews and discussions of BAFO and final submissions.

The Director understands that each proposer had strength and weaknesses relative to the other proposers. Understands that the strengths and weaknesses evolved through the process, including the BAFO process. No proposer was deemed to be strongest relative to the others on all factors. Understands that each proposer was assessed by the panel to be on its own technically qualified and able to perform the requested technical services. Understands that the panel assessed that on an overall basis, taking into account strengths and weaknesses relative, to each other, all proposers were within a very tight and indistinguishable technical range of each other.

The quality and tight range of the technical proposals were a reflection of the quality of the RFP and the process undertaken.

Understands that given the above, the panel had no recommendation to Director as to a ranking of the proposals. Each or any of the proposers were qualified to undertake the work. Preference of each member of the panel for any one of the proposers varied.

Director's assessment and judgment was based primarily on the relative ability to deliver on the promises made in the proposals and the prospects of short-term positive impact on specific projects in the renewable energy and hydrogen sectors.

	Enterprise Honolulu/Ventana Capital	H2Energy (HiBEAM/Senet Capital/Sentech	Kolohala/HNEI
Strength of Point-of-Interface (POI) with the State	L	M	H
Senior executive back-up/support for POC	L	H	M
Local resources for implementation	M	H	L
Local presence	M	H	L
Federal institutional contacts	L	H	M
Delivery of additional capital	H	L	M

The above assessment was made on a "3-point must" system.

In general, the final assessment and decision was based on a judgment on ability to deliver on the promises made in the proposals and on ability of making the most positive short-term impact on companies and/or projects in the renewable energy and hydrogen sectors in Hawaii. The issue was, relative to each other, which proposer was judged to have the best prospects of delivering on the services and promises made and achieving the goals of this initiative.

Director decided and the panel agreed that the credibility and ability of delivery turned initially on the point-of-interface (POI) between the proposer and the state. EH's POI was, relative to the other proposers, the weakest. Issue also surfaced of an over-representation of renewable projects projects worked on. H2Energy's POI did not have extensive background in energy. She did possess the experience and the authority to deploy the organizations in the consortium. Kolohala's POI, was relatively unknown to the panel and but had the most substantive background. However, she seemed to have been recently brought in specifically for this proposal. Contribution during discussions was not substantive.

Director decided and panel agreed that given the strengths/weaknesses of the POIs, senior executive support and back-up for the POI was critical. In other words: Who would the state resort to should the interface with the POI need improvement? As these are consortium bids, who would back-up the POC with authority/ability to deliver on all promises made? Who would ultimately be accountable? Panel agreed that EH/Ventana's executive support was deemed the weakest, relative to the others. Despite Ventana's promise to establish a local presence, its executive authority was primarily off-shore. Panel agreed that based on the presence of and representations of the principals of both HiBEAM and Senet Capital at the BAFO, H2Energy was deemed strongest. Conversely, based on the lack of presence of Kolohala's principals at the BAFO, panel agreed that this proposer was weak relative to H2Energy's.

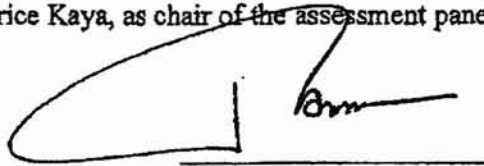
Director decided and panel agreed on the critical importance delivery of services and impact on projects and/or companies in the renewable energy and hydrogen sectors in Hawaii, including support and incubation services, to be made available to Hawaii entities locally. Enterprise Honolulu has a record of delivering services to local technology and other businesses. Ventana and the consortium's mainland based consultant promised to establish a local office, should it be awarded the contract. Questions arose as to the possible long lead-time for such an establishment and on time commitment of Ventana's principals and the consultant to be available in Hawaii. Both HiBEAM and Senet Capital had a track record of providing services, including incubation and private equity investing, locally. That structure, including their respective boards of advisors, would be made available to Hawaii projects and companies. Although very impressive, Kolohala is new in Hawaii relative to the Enterprise Honolulu and H2Energy. Kolohala's principals are well-experienced and known, but the lack of their presence at the BAFO was an issue of concern.

Capital formation was another important driver. Enterprise Honolulu's partner, Ventana Capital, has the strongest track record. Although Ventana's background is life sciences and biotechnology, it promises to raise a new \$150 million private equity fund focused on "clean tech". That fund would look at investments in Hawaii. H2Energy also referenced a 6x leverage for the state's funding. Kolohala Partners promised a \$15 million clean tech fund. Director notes that these references to capital formation are expectational in nature. Decision needs to take into account specific historical track record in actually raising and deploying capital in Hawaii.

Matching funds, primarily from federal sources such as the U.S. Department of Energy, was another driver of the decision. Enterprise Honolulu's mainland-based consultant was known to one of the panelists. The Director's preference is for an entity with institutional relationships and a track record with the federal funding sources. H2Energy's Sentech is well known to the panelists and was deemed to have the best institutional relationship with federal funding sources. Sentech has a record of past activity and commitment to Hawaii and its energy initiatives. Kolohala's partnership with HNEI posed certain initial "conflicts" issues (HNEI is both a beneficiary and a principal). The consortium did remedy the conflict, but at the expense of reducing its access to technical expertise.

On the basis of the above factors and judgments, Director's decision is to select H2Energy as the potential contractor to the state for the renewable hydrogen initiative.

Decision was communicated to Maurice Kaya, as chair of the assessment panel.

A handwritten signature in black ink, appearing to read "M. Kaya", is written over a horizontal line. The signature is stylized and somewhat cursive.

August 6, 2007



COPY

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR


**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
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Telephone: (808) 586-2355
Fax: (808) 586-2377

November 13, 2007

TO: Aaron S. Fujioka, Administrator
State Office of Procurement

FROM: Theodore E. Liu 

SUBJECT: Requests for Proposals No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and
Renewable Hydrogen Program Management Services

This Memorandum follows our meeting and discussion of Friday, November 9, 2007.

I have reviewed your September 25, 2007, Final Review and Determinations letter on the above-captioned solicitation ("Final Review"), setting out certain corrective actions, including rescinding the selection of and award letter to H2Energy LLC; reviewing the evaluation committee (EC) evaluation memorandum dated July 31, 2007; and "if the EC's evaluation is in compliance with the applicable procurement law," issuing a new award based on said memorandum.

The purpose of this memorandum is to request (i) your confirmation of my continuing authority, as the Department's Procurement Officer, to cancel said solicitation completely under section 103D-308, Hawaii Revised Statutes, and section 3-122-95, Hawaii Administrative Rules; and (ii) your confirmation of the Department's authority to adjust, change or reduce the scope of services to be sought and provided under said solicitation.

My understanding is that the Final Review required certain actions only under the circumstances that the Procurement Officer found the solicitation still desirable and in the best interests of the State, and to assure that the selection process was proper and valid under the Hawaii Procurement Code. Although not explicitly covered in the Final Review, my understanding is that, should the Procurement Officer find that this solicitation is no longer in the best interest of the State, the entire solicitation may be cancelled.

My understanding is also that, should circumstances change in the process of such solicitation or in the process of implementing any agreement or contract resulting from a solicitation, the Department can act to reduce the scope of services solicited or delivered.

To assist you in the analysis of the above confirmations, I present two procedural and one substantive reasons why I believe that this solicitation is not in the best interest of the

State and may be cancelled. The substantive reason set forth below is also the basis of why I believe the scope of services sought or delivered may be reduced.

Flawed Procurement Process

Point 5 on page 2 of your Final Review states that DBEDT's interpretation and practice of reserving the ultimate authority in the DBEDT Director for the final selection of an offeror was inconsistent with the State Procurement Office's interpretation of the State's procurement code and rules. Prior to my Memorandum dated September 17, 2007, the Department's long-standing interpretation and practice had been that such final selection authority was the Director's.

In the subject solicitation, members of the EC conducted its deliberations and made its recommendation upon the explicit understanding and assumption that the Director would make the final selection. As you may recall, a member of the EC and DBEDT's administrative services and contracting staff testified to this effect at the hearing convened by the Senate Committee on Tourism and Government Operations on September 4, 2007 (Senate Hearing).

Subsequent to receipt of the Final Review, members of the EC have stated that if this change in assumption – that the ultimate authority for final selection resided with the EC and not the Director – had been known at the time of their deliberation, it would have impacted their decision-making in the subject solicitation. I believe the fact that the subject solicitation was based upon an erroneous basic assumption and may have rendered the entire process flawed.

It may not be in the best interest of the State to abide by the result of a flawed process.

Independence of the EC

At the Senate Hearing, the impartiality and independence of the EC was called into question. The issue was raised based on the fact that one of the EC members had been referenced in submissions by one partner of the H2 Energy LLC consortium.

Paragraph 5 on page 2 of the Final Review sets-out that after the EC has made its evaluation, the Procurement Officer is charged with reviewing "the evaluation process to determine if all EC members were fair, independent and impartial in their evaluations of the offers...." It is only after that determination has been made that the Procurement Officer can "proceed to make the award to the highest ranked proposal."

Previous hereto, I have reviewed evaluation committee recommendations using a "conflicts-of-interest" standard. Based upon the guidance of the Senate Hearing and the Final Review, I have reviewed the EC process in the subject procurement using a "fairness

and impartiality” standard. Indeed, it will be the Department’s practice going forward to apply a “fairness and impartiality” standard.

On the basis of this review, I have ascertained that all three members of the EC had relationships and dealings with all three best and final offerors that rose to the level criticized at the Senate Hearing. The strongest and most direct of these relationships of the EC members is with HNEI, a partner in Kolohala consortium. Among these relationships, the most direct one is that members of the EC awarded HNEI \$800,000 for a State cost-match from the very Hydrogen Fund that is the subject of the solicitation for management. It was also understood at the time of the award that members of the EC would work with HNEI on the project that this cost-match funded.

In light of the Senate Hearing and the Final Review, I believe that these actions would constitute a relationship that may implicate the issues of independence and impartiality. The State interest may not be served by accepting the recommendation of the EC under these circumstances.

Change in Circumstances

Unknown at the time of the subject solicitation’s formulation, advertisement, or proposal evaluation, related events had been moving forward that questions if and how to continue it.

I request that you treat this issue with the strictest confidentiality, as negotiations are ongoing and the need for secrecy remains vital until the final decision is to be made in first quarter of 2008¹.

In recent weeks, Department representatives have had high-level meetings with a third party interested in renewable energy development in Hawaii. As a result of these meetings, this third party is in a decision-making process that could result in establishing an unprecedented presence in Hawaii. This decision is based on this third party’s conclusion that the United States’ national imperative to use renewable energy and develop a hydrogen economy should have Hawaii as its most natural center of technology and infrastructure testing and deployment.

The fact that this third party is in a decision-making process alone validates the initial assumption that if the State made a tangible commitment to a renewable hydrogen program, public and private sector funding would follow. This third party presence would bring with it, among other things, funding streams of up to \$15 million to \$20 million a year for up to five years. One of the fundamental rationales for the Hydrogen Fund was as a source of “cost match” to attract such third-party funding. DBEDT had projected an “optimistic

¹ Premature leakage of this information may cause this third party to withdraw. Several important processes, including budgetary, need to be completed, and premature discussions may imperil these.

scenario” of a resulting 10-times match of the State’s initial \$10 million investment. In fact, one of the tasks of the Hydrogen Fund manager was to attract such federal funding.

However, as with almost all such third-party grants, a State “cost match” would be required. Should the presence be established in Hawaii, this third party expects that State matching moneys would come from the Hydrogen Fund. In fact, the existence of this fund is one of the factors considered by this third party for the establishment of a presence in and dedicating the federal funding streams to Hawaii.

As such, until such time as this decision-making process is completed (expected to be first quarter of 2008), it is in the State’s best interest to keep the funds in the Hydrogen Fund available and unencumbered.

Request for confirmation

Based on the foregoing reasons, I would request your confirmation of my continuing authority, as the Department’s Procurement Officer, to cancel the solicitation completely under section 103D-308, Hawaii Revised Statutes; and section 3-122-95, Hawaii Administrative Rules, and that, notwithstanding your Final Review, I retain the authority to cancel the solicitation entirely should such a cancellation could be found to be in the best interests of the State.

I also request your confirmation, based on the “Change in Circumstances” discussed above, of my authority to alter, change or reduce the scope of services sought or delivered pursuant to the solicitation². Such alteration, change or reduction could take place during the process of finalizing the agreement with the awarded offeror of the solicitation or after such agreement has been executed.

Thank you for your time and attention to this matter.

² The solicitation contemplates three related, but distinct, services: (i) management of a Renewable Hydrogen Program; (ii) soliciting federal or private grants, for which a cost match would be required; and (iii) making seed or private equity investments in emerging technologies. In concept, should the third party initiative come to fruition, the solicitation of grants requiring a state cost-match may be reduced from the scope of services sought or delivered.

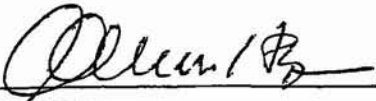
**AFFIDAVIT OF GOVERNMENTAL EMPLOYEE
SERVING ON AN EVALUATION, REVIEW, OR SELECTION COMMITTEE**

Purpose of committee: (check ✓ one)

- Evaluation committee to evaluate Request for Proposals No.
07-11-SID (Reference HAR §3-122-45.01)
- Review committee to review statements of qualifications and expression of interest from professional services providers to establish a list of qualified persons. (Reference HAR §3-122-69)
- Selection committee to evaluate the submissions of the persons on the list of qualified persons against the selection criteria. (Reference HAR §3-122-69)

I, Maurice H. Kaya, attest to the following:
(Print Name)

1. I have no personal, business, or any other relationship that will influence my decision in the applicable evaluation, review, or selection process;
2. I agree not to disclose any information on the applicable evaluation, review, or selection process; and
3. I agree that my name will become public information upon award of the contract.


Signature

4/23/07
Date

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
DARYLE ANN HO
GREGORY L. KING
KEITH T. MATSUMOTO
RUSS K. SAITO
PAMELA A. TORRES

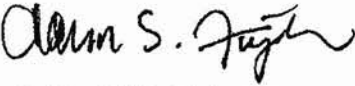
AARON S. FUJIOKA
ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

SPO 08-0068b

December 11, 2007

TO: The Honorable Theodore E. Liu, Director
Department of Business, Economic Development & Tourism

FROM: Aaron S. Fujioka 

SUBJECT: Request for Proposals No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and
Renewable Hydrogen Program Management Services

This is in response to your November 13, 2007 memo on the subject solicitation. The areas detailed in your memo on *Flawed Procurement Process, Independence of the EC*, and the *Change in Circumstances* was reviewed, and the following is provided.

Flawed Procurement Process. We refer you back to our final review and determinations memo dated September 25, 2007 where we provide specific corrective action.

In reference to the paragraph "Subsequent to receipt of the Final Review, member of the EC have stated that if this change in assumption – that the ultimate authority for final selection resided with the EC and not the Director – had been known at the time of their deliberation, it would have impacted their decision-making in the subject solicitation. . . ." the EC members need to submit to this office a written statement explaining how this would have impacted their decision-making for SPO to review.

Independence of the EC. Each EC member signed the BED-0100 form for *Affidavit of Governmental Employee Serving on an Evaluation, Review, or Selection Committee* attesting to "... no personal, business, or any other relationship that will influence my decision in the applicable evaluation". These signed statements of each EC member alleviates any "conflicts-of-interest" appearance that may have been raised. The July 31, 2007 EC findings also states that, "The evaluation committee has completed its assignment and we find that all three offerors were within the competitive range." This further provides evidence that the EC members executed their duties in a fair and impartial manner.

The Honorable Theodore E. Liu, Director
December 11, 2007
Page 2

SPO 08-0068b

If you believe the EC members falsely signed the affidavit because as stated in your memo "all three members of the EC had relationships and dealings with all three best and final offerors . . ." a written statement substantiating that the EC members falsely signed their affidavits needs to be sent to this office from the PO for SPO to review.

Change in Circumstances. On this issue, the PO needs to assess the circumstances whether to continue forward or cancel the RFP. If the requirements of the RFP are affected due to a change in circumstances, then a PO's written determination is made to document the reasons for cancellation. The determination of cancellation shall be in accordance with HAR Chapter 122 Subchapter 11 on cancellation of solicitations and rejection of offers, after the PO rescinds the award (see 9/25/07 memo, DETERMINATIONS, under corrective actions, 1st bullet point).

The SPO confirms your procurement delegation as the DBEDT Procurement Officer authorized to carry out the corrective actions stated in our memorandum dated September 25, 2007.

If you have any questions on this matter, please call me at 587-4700.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
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Fax: (808) 586-2377

STATEMENT OF

THEODORE E. LIU
Director

Department of Business, Economic Development & Tourism

before

SENATE SPECIAL INVESTIGATORY COMMITTEE
S.R. 2

Thursday, March 13, 2008
3:00 PM

Members of the Senate Special Investigatory Committee:

As set out in S.R. 2, dated January 18, 2008, I understand the scope of this Committee to be as follows:

1. "Investigate the selection of a manager for the hydrogen investment capital special fund in 2007; and
2. "Inquire into, gather, and analyze information, including other contracts, that may provide relevant information concerning procurement improprieties relating to paragraph (1)."

I will seek to address both areas of this scope in my statement and testimony before you.

First, though, I'd like to address an issue of fundamental fairness and also the issue of certain inaccuracies and misstatements in both S.R. 2 and in Special Committee Report No. 4, also dated January 18, 2008.

I believe that the testimony provided to your Committee by the Administrator of the State Procurement Office on March 6, 2008, indicates that all corrective actions have been taken.

The RFP was handled pursuant to the "competitive sealed proposals" sections of the Hawaii Administrative Rules, HAR Section 3-122-41 to Section 3-122-60 (the "Rules"). As I have consistently testified, DBEDT's interpretation of the Rules and its practice in effect for several administrations had been that, under circumstances where the departmental procurement officer convenes an independent evaluation committee to evaluate the proposals, the authority to make the final selection of the proposer is explicitly reserved in the departmental Procurement Officer. I attach my Statement to the September 4, 2007 informational hearing as "Tab 3" hereto.

On this point, you have heard consistent testimony from the departmental Administrative Services Officer and all three members of the evaluation committee that this was their assumption and their practice in the RFP. If you called all Division Administrators and Branch Chiefs in the department, you would have heard the same testimony.

In the subject RFP, this reservation of the authority to make the final selection of proposer was explicitly reserved in the DBEDT Director. This explicit reservation was acknowledged by the evaluation committee members and was contained in the RFP documents and communications to potential bidders.

In the subject RFP, the evaluation committee and the departmental Administrative Services Officer met with me on July 31, 2007, to formally report on the RFP process. The evaluation committee, as a whole, and each individual member of the evaluation committee, did not have a recommendation for the selection of a proposer whose overall technical quality

was, in their view, measurably higher than that of the other proposers. I spent a significant amount of time probing and discussing this position of the evaluation committee.

At the July 31, 2007, meeting, the evaluation committee was reluctant to even provide any numerical scoring or ranking of the best and final proposals. I spent a significant amount of time probing and discussing this position of the evaluation committee. At the insistence of Ken Kitamura, the departmental Administrative Services Officer who was present at the meeting, the evaluation committee did provide me with an "after-the-fact" evaluation committee memorandum, which I received on August 7, 2007.

In light of this result and on the basis of the department's interpretation of HAR Section 3-122-57, as the departmental procurement officer on August 6, 2007, I made the final selection of a proposer based on "best value" to the State, as required by that section. I also documented the "basis of selecting the successful offeror" as required by HAR Section 3-122-57 (a).

B. Precedence for the Selection Process Undertaken.

The Committee has asked about precedence for this process. During my tenure as Director, this is the first time an evaluation committee has not come forward with a recommendation of a selection. As such, there is no precedent that covers this situation.

The practice in effect at that time was that in all RFPs, the evaluation committee makes a formal recommendation of a selection to the Procurement Officer. The Procurement Officer must review the evaluation committee's recommended selection, including its numerical scores. Should the Procurement Officer not concur with a recommended selection of an evaluation

maximize the state's ability to achieve a viable and growing advanced energy technology sector in Hawaii..."

The factors in the August 6, 2007, memorandum's H/M/L matrix, "Strength of Point of Interface (POI) with the State;" "Senior executive back-up/support for POC;" "Local resources for implementation;" "Local presence;" "Federal institutional contacts;" and "Delivery of additional capital;" were all relevant to the ability to deliver the maximum "prospects of a viable and growing advanced energy technology sector in Hawaii" and the ability to make "short-term positive impact." A copy of my August 6, 2007, memorandum is attached as "Tab 4" hereto.

I believe the foregoing criteria-employed selection justification memorandum all have a basis in the RFP. It was, however, an intentionally different emphasis than that employed by the evaluation committee.

E. Final Selection Process Time-Line

Your Committee has inquired as to the final selection timeline, including document flows. The time-line and document flows were as follows:

On July 31, 2007, the evaluation committee, together with Ken Kitamura, met with me to report on their findings. As testified by all three members of the evaluation committee, no recommendation of a final selection was made; this selection was explicitly left with the Procurement Officer.

From July 31, 2007, to August 2, 2007, I gave much thought to the final selection.

On August 3, 2007, I had a meeting with Maurice Kaya where I advised him on my preliminary decision selecting H2Energy. See email at 400572. After that meeting on August 3, 2007, Maurice Kaya instructed staff to prepare the selection memorandum and notification letters. See email at 400572.

From August 3, 2007 to August 6, 2007, I worked on-and-off on the August 6, 2007, selection justification memorandum. Because this was my decision, I personally drafted, typed and revised the memorandum.

On August 3, 2007, pursuant to Maurice Kaya's instructions, John Tantlinger sent me drafts of the notification letters and I provided comments thereon. In the same communication with John Tantlinger, I was advised that the "evaluation committee memo" was being processed and sent to me through the departmental Contracts Office. See email at 400570.

On August 5, 2007, I received comments and feedback from Maurice Kaya to my comments on the August 3, 2007, draft of the notification letters. See email at 400593.

On August 6, 2007, I received communications from John Tantlinger that the notification letters and the "evaluation committee memo" had been finalized and were being delivered to the Director's Office. See email at 400566.

On August 6, 2007, anticipating the "evaluation committee memo," I finalized and signed the August 6, 2007, selection justification memorandum.

On August 7, 2007, I received the "evaluation committee memo" from Maurice Kaya dated July 31, 2007 (attached as "Tab 5" hereto). Please note that the inter-departmental routing slip is dated 8/6/07 and references "RFP Selection Memo." I signed said RFP Selection Memo in the "Director's

1. Debra Guerin Beresini: Hawaii Strategic Development Corporation (HSDC) entered a ten-year Limited Partnership Agreement with the International Venture Fund I, managed by Ms. Guerin-Beresini and Kirk Westbrook who are based in northern California. HSDC committed \$4 million to the fund in 2000 and increased that amount by \$500,000 in 2004.
2. Enterprise Honolulu: The department regularly co-sponsors events with Enterprise Honolulu (EH). The department also has contracts with EH pursuant to which legislative grants-in-aid (GIA) have been disbursed.
3. HiBEAM: HSDC co-sponsored HiBEAM venture capital conferences, as follows:
 - a. FY03 Silicon Valley Conference: \$5,000.
 - b. FY08 Executive Summit: \$2,500.
5. Kolohala Holdings: In 2007, HSDC invested \$75,000 in HEAVEN Fund I Series II managed by Kolohala Ventures.
6. William K. Richardson: HSDC, since 1995, has committed funds to three HMS venture capital partnerships managed by William Richardson and his partner Richard Grey. These ten-year commitments are as follows:
 - a. HMS Investments, L. P. (1995) \$2 million as the sole limited partner.
 - b. HMS Hawaii, L. P. (1999) HSDC \$2 million.
 - c. HMS III, L.P. (2004) \$360,612.
7. Barry Weinman: In 2005 HSDC invested \$50,000 in the DragonBridge Capital Merchant Bank, of which Mr. Weinman is the chairman. In 2007, the

Hawaii Technology Development Corporation entered into a lease agreement with DragonBridge for sub-leasing space at a technology incubator in Beijing, China, operated by Hawaii Technology Innovation Corporation (HTIC), a subsidiary of HTDC.

8. Ventana Capital: In 2004, HSDC invested \$500,000 in Technology Gateway Partnership II L.P., a venture capital fund managed by Ventana Capital.

With the exception of (i) EH GIAs in item 2 above, (ii) DragonBridge sub-lease in item 7 above, and (iii) the Ventana commitment in item 8 above, I did not participate in discussions or decisions relating to any of the above-mentioned contracts, including HSDC investment agreements. As DBEDT Director, I may have signed co-sponsorships agreements referred to in 2 and 3 above.

With regard to any "information" referred to in the Special Committee scope (2), I note that over 7,000 pages of emails and other documents have been submitted pursuant to this Committee's requests. Below, I highlight a few emails that may relate to principals, directors or executives from any of the RFP proposers.

1. In August, 2006, prior to the drafting and issuance of the RFP, I solicited and discussed by email, ideas regarding the management of the hydrogen fund with Mr. Barry Weinman. These ideas are clearly preliminary in nature and none of the suggestions discussed found their way into the RFP. See 400320 to 400326.
2. In September and October, 2006, I personally requested Michael Pfeffer to bid on the RFP. See 400362 to 400363.
3. On January 23, 2007, in an email to Mr. John Chock, I suggest potential proposers who should be notified about the RFP. Mr. Barry Weinman, Sennet

Capital and Hawaii Natural Energy Institute (HNEI) are listed among 15 names. See 400547.

4. On March 5, 2007, in a telephone conversation with Michael Pfeffer, I encouraged him to attend the RFP bidders conference to be held on March 7, 2007. See 400431.

There may be other "contracts" or "information" the Committee may be interested in and I would be happy to answer any questions on them.

In closing, I would hope that, unlike S.R. 2 and Special Committee Report No. 4, both dated January 18, 2008, this Special Investigatory Committee bases any of its findings on facts and not on allegations, inaccuracies and misstatements. Nor, in my view, should the Committee base its findings on mere differences of opinion or differences of recollection. More importantly, I would hope this Committee does not base its findings on mere personal animosity.

The RFP was an ambitious and complicated one. Any mistakes made are my sole responsibility. However, none of the mistakes made were intentional or malicious. There was no malfeasance or misfeasance.

Thank you for the opportunity of making these comments. I would be happy to answer any questions.

Statement of PRISCILLA THOMPSON
Before the
Senate Special Investigative Committee
on the Hydrogen Investment Capital Special Fund Management Contract Award
Saturday, March 15, 2008
1:30 PM
State Capitol, Conference Room 229

Good afternoon, Chair Mercado Kim and members of the Committee. The actions of the Strategic Industries Division (SID) and its personnel with respect to the Hydrogen Investment Capital Special Fund Request for Proposals (RFP) are important to this investigation. In this regard, I will provide you with information to clarify the roles and responsibilities of its personnel and SID's understanding of the "delegation" of procurement from the Contracts Office on May 16, 2007. I will also provide you with information to clarify the Committee's understanding of certain issues raised in earlier hearings.

I am an energy analyst in SID's Energy Planning and Policy Branch. Until his retirement at the end of December 2007, I worked under the direct supervision of Dr. John Tantlinger, Branch Manager. Dr. Tantlinger reported to Maurice Kaya, SID Program Administrator and Chief Technology Officer. Mr. Kaya reported to Director Theodore Liu. Mr. Kaya was designated by Director Liu to be Project Manager for this RFP. Dr. Tantlinger supported Mr. Kaya as Branch Manager and I supported Dr. Tantlinger as one of his Branch staff.

As assigned staff to hydrogen technology projects, I provided support from the beginning of the procurement process as a routine staff responsibility, including assistance with preparation of the draft RFP for final approval and advertisement by DBEDT's Contracts Office. I had no previous experience with an RFP other than as an Evaluation Committee member; thus, I relied heavily on the advice and guidance of the Contracts Office, supervisor reviews, and document samples from a prior RFP procurement in the Branch files.

The RFP and amendments had been completed, five proposals submitted to the Contracts Office, and Evaluation Committee scores tallied by the Contracts Office, when on May 21, 2007, Dr. Tantlinger called me into his office to inform me that the procurement had been delegated to Mr. Kaya effective immediately. Consistent with my status as Branch staff, I was not involved in any discussion or consulted regarding the "delegation" of procurement.

As I was already fully tasked with other work assignments and concerned that this delegation may impact my collegial working relationship with the Contracts Office, I reminded Dr. Tantlinger that this was my first RFP and questioned the scope of responsibility of this delegation. Dr. Tantlinger assured me that we would only be providing additional assistance to

the Contracts Office to expedite processing and that the Contracts Office would continue to provide guidance. Acknowledging that this was my first RFP, he reminded me that the Branch had considerable experience with RFPs. I was then directed to assist with the priority offeror meetings by drafting letters to the offerors and assisting with scheduling, and also to talk with the State Procurement Office to determine whether a mechanism proposed by one of the offerors for decision-making would present a conflict of interest. These tasks were to be completed and the meetings scheduled, prior to Mr. Kaya's return from vacation on June 13, 2007. I had only a short time to learn and carry out the Contracts Office's duties in this area while also handling other work priorities.

Much later, I saw a copy of a handwritten note in the Contracts Office file, dated May 16, 2007, that "All Procurement and Contracting has been turned over to the Programs per the Director." It was ~~not~~ until five days later, on May 21, 2007, that I was informed of this delegation.

Thus, as you know, on May 25, 2007, I sent an e-mail to our Contracts Office requesting a sample letter to the priority offerors "so I don't mess up too badly" consistent with my reservations expressed to Dr. Tantlinger and his assurance of Contracts Office expertise. Other e-mails of May 30, 2007 and June 13, 2007 from Dr. Tantlinger to the Contracts Office, that have been submitted to the Committee, make clear that it was SID's expectation that the Contracts Office would have continuing oversight of the procurement process and further established SID's understanding of its support role in this procurement. I have copies of those e-mails and can provide them to the Committee.

At no time was I provided with information that this understanding was not correct, or provided with any other rationale for this "delegation".

During the course of this procurement, I familiarized myself with the appropriate sections of the procurement law and rules and studied the department's Contracts Manual, after it became available to me in March 2007, in order to support this procurement in compliance with policy and procedures. Due to the unique requirements of this RFP and the lack of written procedures and sample documents for the additional tasks related to the "delegation", I sought guidance from the Contracts Office, direction from my supervisors, and consistently brought any items that I believed needed a higher level of scrutiny to the attention of my supervisors and the Contracts Office. Additionally, all significant documents were sent to the Contracts Office before being sent out.

Having heard much of the testimony presented in earlier hearings of this Committee, I would like to correct any misunderstandings by stating the following:

- I was not consulted in the decision to "delegate" this RFP to SID, and, in reality, was told by Dr. Tantlinger about the decision five days after the fact. I was given no choice.

- The date of the “delegation” was May 16, 2007, two months after the issuance of Amendment 2 of the RFP.
- The role of SID was to assist the Contracts Office. Responsibility for oversight of DBEDT’s conformance with procurement law and practices had not transferred to SID.
- In the SID chain of command, I reported directly to Dr. Tantlinger, not Mr. Kaya, and acted within the confines of Branch protocol, i.e., upon Dr. Tantlinger’s instructions and approval.
- I made it clear to Dr. Tantlinger in my e-mail of February 28, 2007 that this was my first RFP and reminded him of this during my meeting with him on May 21, 2007. Despite my lack of training and experience, I was not made aware of a February 23, 2007 procurement class offered by the Contracts Office to introduce the new Contracts Manual. As a result, I relied heavily on SID, Branch, and Contracts Office expertise.
- When I became aware of two issues raised by the Committee during earlier hearings, I brought these issues to the attention of the Contracts Office and my supervisors.
 - I was made aware of the first issue by Louise Mott on August 8, 2007, that the selection for award was not consistent with the evaluation committee’s “recommendation”. I conveyed this concern on the same day via e-mail to Mr. Kitamura, Dr. Tantlinger, and Mr. Kaya to raise this issue, and received no response.
 - The second issue was again brought to my attention by Ms. Mott who sent sample notification letters to SID, also on August 8, 2007. After reviewing the samples, I became aware of the omission of standard Contracts Office language from the notification letters that had already been signed by Director Liu, and sent an e-mail to Dr. Tantlinger suggesting that we could enclose the omitted information with the letters. Dr. Tantlinger advised me to proceed without the additional information but to seek confirmation from the Contracts Office. On August 9, 2007, in a memo transmitting the signed letters to the Contracts Office, I pointed out that the letters differed significantly from the sample letter, that necessary information may have been omitted, and to please advise me as soon as possible so that we may provide the information to the offerors. Since I received no response, I checked the RFP to confirm that the protest information had already been made available to the offerors.

Thank you for this opportunity to provide information and clarification regarding the RFP process in which I was involved. As I have previously stated, I have copies of all the documents mentioned in this statement and would be more than happy to provide them to the Committee. I welcome any questions you may have.

Hydrogen Fund

ASO/Contracts Timeline

Date	Description		
10/23/06	MEMO TO THE GOV: Received signed memo to the Governor from the Director's Office to have the memo go through proper channels; which DBEDT retracted on 1/24/07, because B&F wrote a separate memo to the Governor on 11/24/06.		
10/24/06	Received draft RFP into contracts		
10/24/06	Sent draft RFP to ASO/DO/AG for review		
10/26/06	Received draft RFP review from the Director		
10/27/06	Received draft RFP review from AG		
10/27/06	Sent draft RFP to SID for revisions		
11/1/06	Received revision from SID		
11/2/06	Sent revised draft RFP to KNK/TEL/HSDC for re-review		
11/6/06	Received re-review from KNK/TEL/HSDC		
STILL AWAITING GOVERNOR'S APPROVAL			
1/25/07	Received copy of Governor's memo dated 11/24/06 approved with revisions		
1/26/07	Received 2 nd draft RFP updated per the Governor's memo		
1/30/07	Send 2 nd draft RFP to AG's for review		
2/13/07	Email AG's will be working on the 2 nd draft RFP		
2/15/07	Received 2 nd draft RFP from the AG's		
2/20/07	Made changes to the 2 nd draft RFP		
2/20/07	Issued and Posted		
2/20/07	Emailed potential bidders about the RFP and the website to review-Email list for Hydrogen Investment Capital Special Fund Request for Proposals:		
	Steve Hauser	Jonathan Hurwich	Rachel Ogdie
	Yuka Nagashima	Ted Peck	Robert Robinson, PhD
	Bill Spencer	Debra Guerin	Barry Raleigh, PhD
	Jay Fidell	Jeffrey Au,	Rick Cho
	Ira Ehrenpreis	Eric Martinson	Lisa Gibson
	Irvin Barash	Ira Ehrenpreis	Yuka Nagashima
	Richard Lim	Eric B. Yee	Bill Spencer
	Gregory R. Kim	Irvin Barash	Jay Fidell

	Kenton Eldridge	Darren Kimura	Michael Fitzgerald
	Edgar Berkey, PhD	Rick Rocheleau	Mark McGuffie
	Barry Toyonaga	Nick Sussner	Mattie Yoshioka
	Tom Gephart	Patrick Sullivan	Jeanne Skog
	Barry Weinman	Edward Young	Paula Helfrich
	Richard G. Grey	William K. Richardson	
2/28/07	Emails strategy of the pre-proposal conference-ASO/c will handle the pre-bid conference and outline the scope of the meeting to be covered. The non-mandatory meeting was informal and taped. Note and explanation was given for questions to be in writing. Vendors will receive Addendum on March 19, 2007.		
3/1-2/07	Emails-preparation for the pre-proposal conference and issues for consideration		
3/7/07	Pre-proposal meeting sign in sheet, tape of the meeting, and written individual questions asked at the meeting		
3/10/07	Emails between TEL to MHK on his substantive changes to Addenda 1		
3/12/07	Emails between PT/EH/MHK/TEL/KNK on Addenda 1, such as approving the Addendum to "waiting for official documents, however to modify with standard template; work with PT; reviews of Addendum 1		
3/13/07	Emails between PT/EH/KNK/JT/MHK on getting AG's review or not, per Eileen typical AG's doesn't review, but the revisions in Addendum 1 appears to change the original RFP; AG's would like to have all the dates changed if one of the dates are going to be changed, to be fair; emails continued around whether to take the AG's advice or not. KNK agrees with AG to extend question and answer deadline, as well as proposal deadline.		
3/13/07	Addendum 1 was issued by fax and mail return receipt		
3/14/07	Email from LM to EH to John Chock and back with address/fax for Jupiter Group Holdings		
3/15/07	Questions came in by email from Invencor, Inc., Kirt Westbrook		
3/13/07	HSDC emails draft of pre-proposal meeting minutes to SID (MHK, JT, PT)		
3/14/07	PT deletes minutes and emails draft of Addendum 2 to John Chock, MHJK, JT (cc:KNK)		
3/15/07	MHK email not "Let's get this out ASAP"		
3/15/07	KNK email EH, "Official Notice Coming Soon"		
3/15/07	PT emails MHK to ask who is taking lead in draft of Addendum 2.		
3/15/07	Per MHK email, SID (MHJK, JT takes lead, " you (PT), me, JT, with input from John Chock and ASO as appropriate."		
3/15/07	Addenda 2 was faxed by SID branch and Contracts mailed addenda 2 letters return receipt		
3/16/07	Emails of PT/MHK/John Chock/TEL regarding finalizing Evaluation Committee Member/memo		
3/23/07	Email from PT to EH regarding draft Addenda 3, ready for review/formatting and distribution		
3/27/07	Email from EH to PT and back on the draft Addenda 3, FINAL		
3/27/07	Addenda 3 was faxed and mailed return receipt		

3/28/07	Received letter from Kolohala Holdings with their questions
3/28/07	Received Memo to the Director for approval of the Evaluation Committee (with Evaluation Rating Form and criteria attached)
3/28/07	Email to PT from EH received questions on 3/28/07 and it is up to the committee as to whether they want to respond or not. Please advise ASO/c for Friday's Addenda
3/29/07	Email from PT to EH – Decision to stay with 3/27/07 deadline. No responses to questions received received on 3/28/07
3/29/07	Received the original letter from Christopher Energy Group, Ronald Parkhurst addressed to John Chock
3/29/07	Email from EH to PT informing them of the Christopher Energy Group, Ronald Parkhurst addressed to John Chock and contracts will be sending him a notice of the posting
3/29/07	Mailed Christopher Energy Group, Ronald Parkhurst a letter with attachment of the posting and Addenda 1 (changing the original due date to 4/16/07) the other Addendums and the RFP can be downloaded from the web.
3/30/07	Sent the Evaluation Committee memo to KNK/DO for approval
4/3/07	Received approval of the evaluation committee from DO and sent a copy to branch
4/5/07	Received a letter from Kohohala Holdings of their official Notice of Intent to Offer a bid
4/16/07	LM and PT opened the proposals
4/16/07	Received 5 proposals: 1. Pacific Island Publishing Company dba Christopher Energy Group 2. Enterprise Honolulu, Inc. 3. Kolohala Holdings LLP 4. H2 Energy, LLC 5. Invencor Inc.
4/16/07	LM put the Evaluation Committee members packets together with the following documents and gave to PT to distribute: 1. Bucksip to each of the Evaluators with a due date of 4/30/07 1. Affidavit 2. HAR Rules 3-122-52 3. Proposals 4. Evaluation Sheet for each of the proposals
4/23/07	Email from MHK to EH: Is there any problem if we get together to discuss them as a group before sending score sheet to you. Per EH: "YES, proposals should be reviewed independently. After they are scored, the committee may meet to discuss. The idea is that there should not be any influencing of the committee members."
5/2/07	Email from MHK to EH: "would like to have a meeting of the panel to discuss the scores and how to proceed once you have that compiled." Suggested dates given because he will be traveling.

5/8/07	Email from EH to MHK acknowledging his request to schedule a evaluation committee meeting in a very tight window, however there is a more pressing issue of not receiving Jonathan Kobayashi's evaluation. Inquiring MHK (committee chairperson) about who (MHK or ASO/c) to contact Mr. Kobayashi. Note: "This is the first time that we have ever encountered a situation in which a memeber of the evaluation committee failed to comply with the time schedule set for a proposal." MHK to EH: "Since Kobayashi is HSDC's rep., have John Chock help. If this does not work we will decide if you or I should call."
5/11/07	Received Jonathan Kobayashi's Evaluation
5/15/07	Email from EH to MHK providing the scores and asking if the Evaluation Committee wants to meet: 1. Kolohala Holding score 342 2. H2 Energy score 315.5 3. Enterprise Honolulu score 301.5 Recommended 4 and 5 as non-responsive proposals: 4. Invencor score 168 5. Christopher Energy Group
5/15/07	Email from MHK to EH, yes want to meet. Bill Parks is on the mainland and won't return until June 4. Jonathan Kobayashi's involvement uncertain. I (MHK) will be on vacation from next Monday and won't return until June 14. So if we are going to do a meeting, it would have to be me (MHK) and John this week, to map out the strategies. Let me know your advice as to whether this is advisable.
5/16/07 7:59 a.m.	Email from MHK to EH requesting his scoresheets and proposals: "need to refresh memory. I intend to set up a meeting of the committee to discuss next steps. I anticipate asking the three top scorers to come in for an interview and Q and A session. Then possibly invite candidates to submit BAFO before offering a recommendation to the Director. Of course you are most welcome to sit in on any of this."
5/16/07 1:34 p.m.	Email from MHK to KNK/EH stating I am proceeding with completing the evaluation process for the proposals. "I have met with JT, (BP is on leave) to discuss next steps. . . . setting in motion the dates for a formal meeting of the committee, and establishing times for formal interviews with the three qualified applicants. On leave for three weeks starting May 21, JT will be on TA. On my behalf, he will be helping to arrange those meetings and otherwise keep the process moving. We will be keeping ASO/contracts in the loop on this process and to count on and appreciate your assistance."
5/16/07	LM had questions for EH: 1. What happened to John Kobayashi? 2. Are they (SID) going to be drafting up a letter for Priority Listing? 3. What did MHK mean by keeping us in the loop

5/16/07	EH went to talk to KNK and she came back and said "ALL PROCUREMENT AND CONTRACTING HAS BEEN TURNED OVER TO THE PROGRAMS PER THE DIRECTOR".
5/16/07	SID staff came and picked up all of the Original Evaluation Committee's score sheets and proposals
5/25/07	Email from PT to EH, I've been told that SID (that means me) will be handling procurement related to the hydrogen RFP. Want sample letters of BAFO meetings.
5/31/07	EH spoke to KNK regarding problem with one of the Evaluation Committee members, Jonathan Kobayashi (resignation from HSDC Board)
5/31/07	Email from KNK to EH fyi- his email to JT and JT's response to KNK: thanks for the guidance, requesting PT to draft memo requesting approval to continue the process with remaining three members. Prior to their departure from the office, both TEL and MHK discussed, and JT understood that TEL orally approved proceeding accordingly.
6/4-5/07	Received and sent to KNK/TEL for review and approval of the revised evaluation committee and to continue the approval of MHK/JT/BP on the committee
6/13/07	Received signed approval of the revised evaluation committee from the Director's Office even though he dated the memo 6/6/07
7/5/07	Email from PT to EH/LM stating discussions were held and expect the BAFO to come in 7/10/07
?	Received copies of the Priority Offerors Discussion letters, dated 6/15/07 requesting a meeting, someone had written EH name as the signer, but KNK signed for EH- THESE LETTERS DID NOT COME FROM CONTRACTS
7/10/07	Received BAFO from Kolohala Holdings LLP, Enterprise Honolulu, and H2 Energy LLC. PT and LM opened. LM asked PT the following questions: 1. Was a memo sent to the Director requesting his approval to go out with a BAFO? 2. When the letters were sent to the Priority Listed Offerors why weren't the questions that were going to be asked attached? 3. Where are the evaluation score sheets for the individual questions that were asked to the Offerors for the Evaluation committee? They have to be attached to each of the BAFO for the committee to evaluate. PT stated: "That she is only doing what she is told to do and she didn't know why we weren't doing this." I (LM) said it was taken out of our hands per KNK. Gave the BAFO Proposals to PT.
7/30/07	Received Evaluation Committees scores for the BAFO and informed MHK
?	Received all proposal from SID
8/6/07	Received Evaluation Committee's recommendation memo to the Director to process, but with a line stating "Director's Selection"???-EH talk to KNK or SID regarding the wording of the letter and was told by "that's the way they wanted it" to be

	process; processed and sent to KNK/DO for approval, but we attached the original yellow tablet scoring sheet LM did to the letter to make sure in our minds that we tried
8/8/07	Received original memo and the yellow tablet scoring sheet signed by the Dir, but was really surprised that the #1 ranked Offerors was not selected; EH ran to KNK and he said as long as the Director justifies it, it is OK.
8/8/07	LM asked PT who was going to drafting up the notice of award and rejection letters. PT said that they were doing the letters.
8/8/07	Email from PT to EH and back: stating they are going to draft and handle the award and rejection letters and they will provide us copies. She believed ASO/c would post the awards and what form and when will the award be posted? EH said we will post after we received copies of the signed letters
8/8/07	Email from AW to LM and back requesting sample copies of the award/reject letters and also a copy of the Directors Evaluation Committee's recommendation; samples were attached and the Director's Selection letter was scanned
8/9/07	Received copies of the signed award/rejection letters from PT, with a date of 8/10/07, stating that the format of the letters differs significantly and to advise her ASAP via email if necessary information has been omitted. "HELLO", at this point I didn't even bother because they haven't followed procurement throughout why would this be any different since the Director had already signed. LM called PT/AW and told them posting cannot be made until 8/10/07/ and they informed LM they will wait to mail the letters until the award is posted.
8/10/07	LM posted the award, received a call from AW that it hasn't shown up on the website, reviewed and posted again
8/13/07	LM went into the website and could not find the posting, so reposted and that time it showed up on the computer, SO THIS DATE WILL BE THE OFFICIAL POSTING OF THE AWARD
8/22/07	The Honolulu Advertiser, Sean Hao requested and reviewed the RFP file
8/22/07	Senator Kim's Office requested and reviewed the RFP file
8/22/07	Received a copy of the Justification sheet to go with the 7/31/07 recommendation letter
8/23/07	Senator Kim's Office requested and reviewed the RFP file
8/24/07	LM called and talked to PT and John Chock on filling out an Affidavit, BED-0100 for Observer Only since they were in on the meetings per the BAFO agendas
8/28/07	Email from KNK to EH requesting answer MHK's email from H2 Energy regarding H2Energy contract requirements on compliance documents. EH: All of the compliance documents are required by law and the applications need to be filed with all three departments whether applicable or not
8/29/07	Kolohala Holdings LLP request review of the RFP file
8/30/07	Received Protest letter from Kolohala Holdings LLP
8/30/07	Senator Nishihara emails TEL, requesting KNK and EH to attend 9/4/07 hearing on this RFP.
8/30/08	Copy of Protest sent to SPO
8/31/07	Rachel Ogdie, H2 Energy requested review of the RFP file

8/31/07	Kolohala Holding LLP requesting five items from the RFP, did not have the BAFO minutes, and EH wrote a letter to Kolohala requesting more time on item five because the appropriate personnel is not available to ask
8/31/07	LM called MHK to get the minutes of the BAFO meetings and was told minutes were not taken; each company was allowed to make a 30 minute presentation; HSDC had a tape recorder running which was later converted into a CD, but didn't know if their were individual CD or just one (either way ASO/c doesn't have a copy and will check with SPO to see does it suppose to be in the file). No significant sheets to record who was present. MHK asked LM who was advising ASO/c on how to answer questions when they came in and she responded that we were discussing all matters with you. Pursuant to HAR 3-122-53, "The procurement officer shall establish procedures and schedules for conducting discussions and keep a record of the date, place, purpose of meetings and those attending." On another note, Ted was given a copy of the Admin rules with the appropriate sections flagged.
8/30/07	Email from SPO, Ruth Yamaguchi, requesting any further documents of the RFP file be copies to SPO. Per SPO, procurement process is at "STOP."
8/31/07	EH wrote a letter to Kolohala requesting more time on item five because the appropriate (SID) personnel was not available at this time
9/4/07	Received a copy of a memo from Aaron Fujioka to TEL regarding preliminary review of the RFP file. Requesting response by 9/11/07.
9/6/07	Email from EH to KNK-All work on this procurement stops and no documents related to the public until SPO finding and determinations.
9/10/07	Received BAFO CD from JT stating all three meetings are on the CD
9/10/07	LM called Kolohala to pick up the last of their request, BAFO minutes
9/13/07	LM Emailed Kolohala, Joelle to pick up the last of their request, BAFO minutes and Email back said she will be sending Miyuki
9/14/07	Kolohala, Joelle picked-up CD of the BAFO meetings
9/21/07	Senator Kims Office, Ross Tsukenjo, requested copies and will pick up on 9/24/07
9/25/07	Received a copy of a memo from Aaron Fujioka to TED regarding rendering final review and recommendation. Also DO NOT HAVE 9/17/07 MEMO FROM TEL TO Aaron per this memo in which Aaron is thanking him for
10/16/07	Received a two lined sheet of paper (ORIGINAL) signed by the Director withdrawing and canceling the 8/6/07 "Renewable Hydrogen consultant/manager selection"
10/16/07	Received a one lined sheet of paper copy signed by the Director rescinding his "Director's Selection" portion of the 7/31/07 Evaluation Committee Findings for RFP-07-11-SID Memorandum from MHK
10/23/07	Mailed TEL response to Kolohala Holdings LLP protest letter. Protest deadline was 8/21/07. Protest received 8/29/07 would not be considered.
10/29/07	Received copies of letters signed by the Dir to the priority listed offerors rescinding the 8/10/07 notification letters

11/9/07	Fax copies to Aaron at SPO the 10/16/07 memos to withdraw and cancel selection and to rescind selection portion of Evaluation Committee 7/31/07 memo to TEL.
11/13/07	Memo from TEL to SPO (following 11/9/07 meeting) requesting confirmation of authority to: cancel solicitation completely and change scope of services, giving explanations under "Flawed Procurement Process," "Independence of Evaluation Committee," and "Change in Circumstances."
12/11/07	Copy of Memo from Aaron to TEL in response to his 11/13/07 memo-detailed detailed on Flawed Procurement Process, Independence of the EC and the Change in Circumstances
12/26/07	Copy of letter from Senator Kim to TEL, requesting copy of letters and update of actions taken in regard to the efforts to comply with SPO directives
12/28/07	Copy of letter from TEL to Senator Kim the response to the 12/26/07 letter
1/7/08	Copy of letter from TEL to Aaron responding to his 12/27/07 memo (NEVER RECEIVED A COPY IN CONTRACTS) on the status
1/10/08	Received request to access a government record by Kolohala, requesting all correspondence from DBEDT to other government agencies since 9/4/07, especially the 11/13/07 memo from TEL to Aaron
1/15/08	Received a copy of memo from TEL to Aaron in response for further clarification on why actions on the hydrogen fund are pending decisions by USDOE regarding proposed partnership with HI
1/22/07	Copy of memo from Aaron to TEL regarding what actions were done and what more need to be done
1/25/08	Received a copy of the 11/13/07 Memo from TEL to Aaron following up with the meeting they discussed on 11/9/07 in areas detailed on Flawed Procurement Process, Independence of the EC and the Change in Circumstances
1/25/08	Kolohala came by and picked up their request to access a government record dated 1/10/08
1/25/08	Received a copy of a letter from Kolohala Holdings welcoming USDOE new program to the state to hoping the state will meet the obligation to them
1/31/08	TEL email to SPO-Aaron requesting from SPO: response to justification and guidance on award issuance.
2/1/08	Received request to access a government record by Kolohala, requesting letter from Director to Aaron sent on 1/31/08
2/4/08	EH transmitted a buckslip to KNK with 2/1/07 Kolohala's request to access a government record. KNK changed response due date from 3/4/08 to 2/15/08.
2/15/08	Buckslip from KNK to TEL to ASO/c. Per instruction from KNK to EH, transmit by email to Joelle.
2/22/08	Received a copy of the Award letter to Kolohala Holdings signed by MKA for TEL
2/22/08	EH emailed MKA to tell him the contract award procedures and will wait for his approval before sending out the award and non-awarded bidders letters
2/25/08	EH sent rejection letters to KNK/TEL for approval/signature
2/26/08	Received signed rejections letters from Director's Office, signed by MA

2/26/08	POSTED, Faxed and mailed return receipt all rejections letters and mailed/faxed a copy of the award letter to Kolohala Holdings Office
2/29/08	Senator Kim's Office, Ross Tsukenjo, requested copies
2/29/08	Received memo with comments from Aaron to TEL re: Notice of Award letter to Kolohala

I am Louise Carol Mott, the LCM initials that were mentioned on emails and documents throughout this hearing.

I started working for Dr. John Tantlinger in the Energy Branch after my last month of service in the Navy in August 1991 and worked for Dr. Tantlinger for 10 years as a Clerk Typist.

After hearing his testimony, I never knew he held me in such low regard. I know that I am appreciated and well respected where I now work in ASO/Contracts.

I am disappointed with the way this proposal was handled by DBEDT Professionals, if they had relied on ASO/Contracts to do our job, we would not be here today, as the record of ASO/Contracts shows we have never had any reason to go to an "Administrative Hearing" much less a Senate Hearing.

I know the process of the IFB/RFP because I have worked in Contracts for 6 1/2 years as a Contracts Assistant.

The duties of the job as a Contracts Assistant are drafting consultant contracts and specifications and assisting in drafting engineering contracts and specifications.

- Train program staff involved in preparing, negotiating, or managing contracts regarding proper procedures.

- Assists program staff and the public in completing contract forms by providing exact information; check applications and forms for accuracy, legibility, and completeness such as registration for bids according to routine procedures.
- Serve as liaison with the Attorney General's office and the State Procurement office regarding contracts, general trouble-shooter for problems and as coordinator between the Director's Office and programs in technical aspects of contracts.
- Coordinates with legal, departmental and division staff, on contracts and documents as to form, content, adequacy, modifications, and the processing of contracts and documents.
- Initiates and coordinates the printing and assembling of plans and specifications for solicitations so they will be available at the time contracts are advertised for bids.
- Reviews and finalizes all legal notices, advertisements for bid, instructions for bidders, bid proposal, determines dates for advertising and notifies affected persons. Ensures that such advertisements are processed in time for publication.
- Issues plans, specifications and addenda to potential bidders.

- Provides information to bidders and the general public on the nature, terms and conditions of the bid's requirements, bid opening date and bid results.
- Attends bid and proposal openings and record the results.
- Established and maintains contract files for each contract which includes procurement and departmental approvals, draft contracts and any other pertinent documents.
- Etc., Etc.

When the branch got off the procurement path, I thought it would be trouble; I voiced my concerns as they were, but as Dr. Tantlinger stated I was dismissed out of hand as I am just a Clerk and not part of the selection process.

I have been offered representation, I don't think I need it -- all I can tell you about is my experience with how the IFB/RFP process has been handled by ASO/Contracts before this instance.

I don't speak lawyer, so if you ask direct questions it will help me give direct answers.

Thank you

Coleen Yoshina

From: Janice Kato [janicek@htdc.org]
Sent: Friday, June 09, 2006 10:25 AM
To: 'Theodore E Liu'; bowu@263.net; 'Bo Wu'; 'Dennis Ling'; 'Richard Bahar'; lauriea@htdc.org
Cc: brian@bgoldstein.com; Sharon Wong; 'James Laclair'; sandi@htdc.org; 'Sandy Park'; steves@htdc.org
Subject: RE: Dragonbridge

Ted,
Thank you for the China Office coordination meeting yesterday and your support in getting the office opened quickly. I'm very glad to hear that Barry is still interested in developing joint programs with HTDC—we look forward to meeting with him.

I completely agree with your thoughts about providing levels of service based upon the constraints of current resources. Over time, as we become more experienced with managing the office and understanding our clients' needs, we can add more business services.

Thank you again for your support.

--Janice

Janice S. Kato
Interim Executive Director & CEO
Manager, Federal Programs
HIGH TECHNOLOGY DEVELOPMENT CORP. (HTDC), an agency of the State of Hawaii
2800 Woodlawn Drive, Honolulu, Hawaii 96822
Tel: 808.539.3814 Fax: 808.539.3795 janicek@htdc.org
Got High Tech News? www.hitechhawaii.com

From: Theodore E Liu [mailto:TLiu@dbedt.hawaii.gov]
Sent: Friday, June 09, 2006 9:57 AM
To: bowu@263.net; Bo Wu; janicek; Dennis Ling; Richard Bahar; lauriea@htdc.org
Subject: Dragonbridge

Barry called. He is leaving tomorrow for China and cannot meet today. He will be in Beijing next week. Bo Wu:

He will be meeting with IDG on Tuesday and will try to drop by to see you either before his 11:00 AM meeting with Hugo or after it. Please be in the office, if you can, 10:30 AM to 12:30 PM on Tuesday. Barry will discuss his operational ideas with you.

Laurie: Barry is very interested in joint programs with HTDC -- outreach seminars (here and in China), etc. We'll need to speak with him when he gets back.

In reflecting on yesterday, I think we come up with some "levels" of services, based on our abilities to deliver and constraints. We may also need to stratify potential tenants, i.e., a "tech" vs. a "commercial" tenant. So, at the most basic level, we have physical office space only (i.e., no services) and for a tech company we may have a certain fee level and a non-tech/commercial company, another fee schedule. Same, I think, for a virtual office. Then on those 2 basic levels, we "layer in" additional services, each pegged to our ability (and our costs) for delivering the same.

YN - 417

3/4/2008

Exhibit 194



rachel ogdle
<rachel@hibeam.org>
09/11/2006 11:04 AM

To Eric Clark <ericc@servco.com>, Dawn Okuhama
<DOkuhama@dbedt.hawaii.gov>, "Barry M. Weinman"
<Weinman@allegiscapital.com>
cc <tliu@dbedt.hawaii.gov>

bcc

Subject Re: DBEDT - HIBEAM meeting

History This message has been replied to.

HIBEAM has a board meeting on 9/19, so how about 9/20 at 1:30?
Rachel

On 9/11/06 9:49 AM, "Eric Clark" <ericc@servco.com> wrote:

I can do any of those times.
Eric

From: Dawn Okuhama [<mailto:DOkuhama@dbedt.hawaii.gov>]
Sent: Monday, September 11, 2006 8:39 AM
To: Weinman, Barry
Cc: Eric Clark; rachel@hibeam.org; tliu@dbedt.hawaii.gov
Subject: Re: DBEDT - HIBEAM meeting

Barry, Rachel, and Eric:

Ted is also available on 9/19 between 11:30 and 2:30; and on 9/20 from 1:30 on.
He is not available on 9/21. Please confirm a date and time.

Thank you,
Dawn

Dawn M.T. Okuhama
Assistant to the Director
DBEDT
P.O. Box 2359
Honolulu, Hawaii, USA 96804
phone: 808-586-2355
fax: 808-586-2377

SCHEDULING NOTE: Please be advised that the Director's schedule may change unexpectedly. On those occasions, we will attempt to provide maximum notification and schedule alternate arrangements that accommodates everyone's schedule.

"Weinman, Barry" <Weinman@allegiscapital.com> 09/09/2006 07:58 AM
To <tliu@dbedt.hawaii.gov>, <rachel@hibeam.org>, <ericc@servco.com>
cc <DOkuhama@dbedt.hawaii.gov>
Subject DBEDT - HIBEAM meeting

400279

Exhibit 195

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHIHEN
DARVLE ANN HO
GREGORY L. KING
RUSS K. BATO
PAMELA A. TORRES

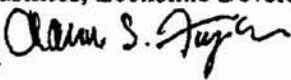
AARON S. FUJIOKA
ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

SPO 08-0056

August 31, 2007

TO: The Honorable Theodore E. Liu, Director
Department of Business, Economic Development & Tourism

FROM: Aaron S. Fujioka 

SUBJECT: Request for Proposals No. RFP-07-11-SID for
Hydrogen Investment Capital Special Fund and
Renewable Hydrogen Program Management Services

The award of subject solicitation has been brought to the attention of this office. In my capacity as Chief Procurement Officer for the executive departments, and having delegated procurement authority to the Director of DBEDT as Procurement Officer for your department, this review of the subject procurement conducted by DBEDT is within the authority of the State Procurement Office (SPO).

We ask that no further action be taken by DBEDT on this procurement until advised. In addition, be advised that the protest filed with your department on subject RFP also requires that no further action be taken until the protest is resolved.

A preliminary review of the subject request for proposals (RFP) was conducted based on the information contained in the copy of the documents provided by your contracting office. The following preliminary findings are provided for your review and comment:

1. RFP Page 16, Evaluation Criteria states "An evaluation committee shall be appointed by the DBEDT Director. The committee shall evaluate responsive proposals in accordance with the section entitled "Proposal Requirements" and based on the following general criteria." The criteria identified in the RFP are Quality (30 points), Approach and Capabilities (30 points), Anticipated Benefits (20 points), and Cost and Budget (20 points), totaling a possible 100 points.

Comments: This provision is in compliance with HAR §3-122-45.01 on evaluation committee (EC), which requires the Procurement Officer (PO) to make a written determination that either the PO or an EC shall evaluate the proposals; and also HAR §3-122-52 on evaluation of proposals, which states that evaluation factors shall be in the RFP.

30056

2. RFP Page 23, Evaluation of Proposals states "The evaluation will be based solely on the evaluation criteria set out in this RFP."

Comments: This provision is in compliance with HAR §3-122-52 on evaluation of proposals, that evaluation criteria shall be set out in the RFP and the evaluation based only on these factors. Evaluation factors not specified in the RFP may not be considered. See also, HRS §103D-303.

3. RFP Addendum No. 2, response to Question 16 states in part, "...each member of the Evaluation Committee will independently evaluate the proposals based on the criteria contained in pages 16 and 17 of the RFP."

Comments: This provision is in compliance with HAR §3-122-52 on evaluation of proposals, that each EC member shall explain and document ranking, in writing, for the procurement file. The evaluation criteria shall be set out in the RFP and the evaluation based only on these factors. A numerical rating system shall be used.

4. RFP Addendum No. 2, response to Question 16 states in part, "...Such offer will go through the evaluation process again and the DBEDT director will have the ultimate authority to make the final selection."

Comments: This provision may have resulted in your determination that the final selection was within your authority. Best and final offers (BAFO) from offerors shall be evaluated using the criteria stated in the solicitation by the designated EC. The evaluation of the BAFO by the EC then results in an award to the highest rated offeror, based on the proposal evaluation criteria. The PO is tasked to ensure all offers were evaluated in accordance with the proposal evaluation criteria established in the RFP. The PO may review the solicitation, including the evaluation process to determine if all EC members were fair, independent and impartial in their evaluations of the offers, the solicitation was conducted in accordance with all rules and statutes. When the PO determines that the evaluation process was proper, the PO would proceed to make the award to the highest ranked proposal.

5. July 31, 2007 DBEDT memo under your signature on subject 'Evaluation Committee Findings for RFP-07-11-SID' and its attachment upon which the Director's selection is contrary to the Evaluation Committee's findings.

Comments: This action on the part of the DBEDT Director is not in compliance with HRS §103D-303 and HAR §3-122-52 on evaluation of proposals, which states in part, "... and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation." and "Evaluation factors not specified in the RFP may not be considered." The EC findings, as stated in the July 31, 2007 memo, results in an award, and the PO is tasked to ensure the procurement was conducted in accordance with the RFP and the rules and statutes, to enable the issuance of the Notice of Award.

30057