

EXHIBIT

13



KOLOHALA HOLDINGS

January 14th, 2008

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

1/15/08
? 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
Exhibit B



KOLOHALA HOLDINGS

- 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.



Unchanged Circumstances

Director Liu's 13 Nov 2007 memorandum to you provided a third justification for canceling the procurement under the topic "Change in Circumstances". He stated a "third party" grantor is considering establishing a significant renewable energy funding presence in Hawaii, and this "third party expects the State matching moneys would come from the Hydrogen Fund" and therefore "it is in the State's best interest to keep the funds in the Hydrogen Fund available and unencumbered."

The express purpose of this RFP was to contract with a bidder who would perform the identification, solicitation, selection, and monitoring of cost share grants and seed and venture investments from the Hydrogen Fund on behalf of DBEDT and the State. In the RFP, the DBEDT Director also reserved the right to approve or veto cost share grants recommended for funding by the contractor. Our proposal, as required by the RFP, includes specific processes, evaluation teams, and methods for evaluating and monitoring these cost share contracts.

The eleventh hour arrival of a new potential cost share partner is not a "change in circumstance," because it does not remove the need for a selected DBEDT contractor to identify, select, and monitor any contract which receives Hydrogen Fund moneys on behalf of the state.

Cancellation of this procurement is not required to make the funds available for cost share to this "third party." As the most active venture capital firm in the renewable energy sector in this state, we have, in good faith, been working with many "third parties" to attract co-investment since submitting our bid in April 2007 and in anticipation of eventually being awarded the contract since September 2007. We are dismayed that our proactive stance, in preparation for and alongside our eventual management of the Hydrogen Fund, could be used as grounds to deny us the contract to manage the fund.



In short, nothing Liu offers in the way of "changed circumstances" in any way demonstrates that, since bids were solicited on this procurement, anything has changed. In addition, "changed circumstances" is a particularly inapt reason for terminating a solicitation for services procurement, as opposed to a requirements solicitation.

If Liu's position were correct, virtually any procurement could be cancelled if the procurement officer simply engaged in endless delays. Less credence should be given to Liu's avowed reasons, when in context his delay tactics appear to be a post-hoc justification for Liu's illegal selection of his personal choice for management of the Hydrogen Fund.

Inappropriate request for confidentiality

In this same memo to your office --- a memo that is a matter of public record --- the Director requests that the Department's dealings with the new third party be kept in strict confidence and notes that "premature leakage of this information could cause this third party to withdraw." While we consider it patently unfair that we must even address the issue of the Director's new "secret partner" in a procurement process that should be transparent to the public, we must ask this question: If the third party's commitment is so tenuous at this point that mere mention of their name could cause them to withdraw, can these "high-level" negotiations really be considered a substantive new development and justification for canceling a procurement? Moreover, responsibility falls squarely on the Director's shoulders if this "third party" ends up withdrawing, either because their interest was prematurely publicized by the Director or because the Director was willing to hijack their good intentions and drag them into this controversial procurement to serve his own goals.

Inconsistent invalidation of committee rankings

Director Liu's 13 Nov 2007 memorandum to you states that the evaluation committee would have ranked the bidders differently if they had known that



KOLOHALA HOLDINGS

they were the ultimate selection authority. This memorandum also states that the committee members had conflicts of interest. We draw your attention to the Director's many statements to the press and Senate committee on Aug 29 and Sep 4, where he was comfortable with the committee's findings that all three priority-listed offerors were in the competitive range and therefore was able to select the third-ranked offeror from that group. Candidly, it seems he was comfortable with the committee's work as long as his preferred bidder won the contract.

If what the Director states is true, that it is the "Department's long-standing interpretation and practice" and an "explicit understanding and assumption" that the ultimate authority for final selection resided with Director and not the EC, then every DBEDT evaluation committee for every DBEDT procurement has been acting in a purely advisory role and not in the manner called for in the state procurement code. If this is grounds to cancel this one procurement, then all current and past DBEDT procurements that have used an evaluation committee must be reviewed for potential cancellation as well.

Lack of fiduciary care

We draw your attention to HRS §211F-5.7 establishing this Fund, which specifically calls for the Fund to provide "seed capital for and venture capital investments in private sector and federal projects for research, development, testing, and implementation of the Hawaii renewable hydrogen program, as set forth in section 196-10." We question whether a 100% allocation of the Fund moneys to the one party desired by Director Liu in his memorandum, and all to cost share at the exclusion of seed and venture investment, meets the letter or spirit of the law that established this fund. Indeed, we question whether such an investment would be in the best interests of the state.

Inconsistent request to reduce the amount of the contract

We understand Director Liu requested on 09 Jan 2008 to the Senate that the State consider a significant budget reduction in the Hydrogen Fund award.



KOLOHALA HOLDINGS

We hope you will find this as logically contradictory as all of the Director's other communications regarding this RFP—if the justification to cancel the procurement is “keep the funds in the Hydrogen Fund available and unencumbered” for cost match to a third party grantor, then would it not also be necessary to keep those funds at the level originally appropriated by the Legislature?

No assurance of good faith negotiation by the Director

Director Liu has had five months to bring this contract into compliance with the law and award the contract to us, as the highest-ranked and lowest-cost bidder. Instead, he has publicly given several different, conflicting and unconvincing reasons to try to avoid awarding the contract to our consortium.

We are shocked that Director Liu is willing to accuse his own staff of perjury in order to justify not awarding us this contract. In the face of this lack of good faith by the procurement officer, we ask that you remove the delegation of contract authority from DBEDT for this specific RFP and directly award the contract to our consortium, as the highest-ranked and lowest-cost bidder, within 20 days.

The Senate and media scrutiny of this RFP has now made this particular procurement a personal issue for Director Liu. We have no confidence that even when we are eventually awarded the contract, he will be able to negotiate the contract with us in good faith. In light of this conflict, as well as the Director's demonstrated lack of understanding of Hawai'i procurement law, we repeat the above request that your office remove your delegation of contract authority from DBEDT for this specific RFP.

Other parties have been unfairly implicated

In the course of the many investigations into this procurement, the actions and intentions of the DBEDT and USDOE members of the evaluation committee, the DBEDT contracts office, and the other bidders competing for



KOLOHALA HOLDINGS

this award, have been questioned. In our view, all of these people conducted their business professionally and with the true interests of the state in mind.

We have been meeting our promises to the state

In the five months that have passed since our proposal was ranked highest by the evaluation committee and should have been selected for the award, we have raised and placed over \$6 million into four Hawai'i renewable energy companies. These investments attracted an additional \$20 million in co-investment from private parties outside the state. We have already begun to meet and exceed the promises we made to the State in our proposal. We ask that the State start meeting its obligations to us.

While we are dismayed by Director Liu's continued efforts to disrupt the state's established procurement process, we have no doubt that your office will act in the best interests of the State of Hawai'i and see to it that this matter is corrected quickly.

Respectfully,

Michael T. Pfeffer
Managing Partner
Kolohala Holdings LLP

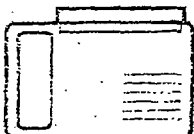
F A X

Kolohala Holdings

900 Fort Street Mall, Suite 1800

Honolulu, HI 96813

(808)546-4325

www.kolohala.com

To: Aaron S. Fujioka

Fax number: (808)587-4703

From: Michael Pfeffer

Fax number: (808)546-4325

Date: 1/14/2008

Regarding:
ProcurementPhone number for follow-up:
(808)447-9248**8 pages including this page.**30127
Exhibit 13-8