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Special Investigative Committee Packet Timeline
(entire folder)

Hydrogen Fund Timeline & Summary

- **June 26, 2006** ACT 240 SLH 2006 Regular Session **(Tab 1)**
SB 2957 A Bill for an Act Relating to Energy
Legislature creates a renewable hydrogen program within DBEDT.
Legislature creates Hydrogen investment capital special fund and appropriates \$10 million.
- **February 20, 2007** RFP-07-11-SID Issued
DBEDT issues RFP to manage \$8.7 million in the Hydrogen investment capital special fund.
- **March 30, 2007** Original submittal deadline for RFP-07-11-SID
H2 Energy incorporated April 11, 2007
DBEDT extends the RFP closing to April 16, 2007 because of lack of bidders.
- **April 16, 2007** BID closes for RFP-07-11-SID
- **April 30, 2007** Affidavits and 1st round of evaluations due **(Tab 2)**
Affidavit of Non-Governmental and Governmental Employee Serving on an Evaluation, Review, or Selection Committee. (Affidavit attesting that evaluators have no personal, business, or any other relationships that will influence the evaluator's decision. Agreement of non-disclosure.)
Summary score sheet of the 1st round of evaluations which include 5 bidders 2 of the 5 are eliminated leaving 3 qualified bidders to go to Best And Final Offer (BAFO)
- **July 13, 2007** 2nd Round of evaluations on BAFO **(Tab 2)**
Summary score sheet of evaluators' scores which show that Kolohala was ranked by all evaluators highest in every category.
- **July 31, 2007** Letter M. Kaya to director DBEDT Evaluation Committee Findings **(Tab 3)**
This letter clearly states that utilizing the criteria specified in the RFP, the committee ranks the proposers in the following order Kolohala Holdings LLP, Enterprise Honolulu and H2Energy LLC.
This letter has a line for the director's selection which has never been done in any other DBEDT RFP selection committee findings memo. (DVD Chapter 10, minute 56)

- **July 31, 2007** Director meets with evaluation committee and writes a justification memo for award to H2Energy using 3 point must system dated August 6, 2007
(Tab 4)

This memo was used by DBEDT to justify the director picking the third ranked bidder. This 3 point must system has never been used before. (DVD Chapter 11, hour 1 minute 3). The memo was not part of the procurement file when staff went to retrieve RFP documents, memo was later faxed to Senator Kim's office (DVD Chapter 11, hour 1 minute 5).

- **August 10, 2007** Letter to H2Energy notifying of award and letters to other bidders by the director notifying of non-award **(Tab 5)**

The director signing and sending letters of award and non-award to bidders has not been done before. (DVD Chapter 12, hour 1 minute 14) The usual practice is the contracts officer signs the letter.

- **August 31, 2007** Letter from State's Chief Procurement Officer to DBEDT director to stop any further action on RFP-07-11-SID **(Tab 6)**
- **September 4, 2007** TSG holds investigative hearing. (See DVD of hearing)
- **September 17, 2007** Letter from DBEDT director to CPO outlining his understanding of the RFP process **(Tab 7)**
- **September 25, 2007** Letter from CPO to DBEDT director "Administrator's Final Review and Determination on Hydrogen RFP "*Corrected Actions Directives*" **(Tab 8)**

In this letter the CPO determined that:

1. *DBEDT director shall rescind award memo and non-award memos.*
 2. *DBEDT director shall rescind Director's Selection portion of July 31, 2007 memo from Maurice H. Kaya.*
 3. *DBEDT director shall validate the evaluation committee's ranking.*
- **October 11, 2007** TSG holds 2nd investigative hearing.
 - **November 13, 2007** Memo from DBEDT director to CPO regarding "Flawed Procurement Process, Independence of EC and Change of Circumstance." **(Tab 9)**

In this letter the DBEDT director is asking for permission from the SPO to cancel the RFP based on the fact that he now believes that the procurement process was flawed, that evaluators on the committee had a conflict of interest

despite their signed affidavits and that a change of circumstance has occurred where the RFP was no longer needed.

- **December 11, 2007** Letter from CPO to DBEDT director responding to November 13, 2007 memo. **(Tab 10)**

This letter is the CPO's response to the DBEDT director's memo asking to cancel the RFP. The CPO states that in regards to the procurement process being flawed the EC members need to submit to the SPO a written statement how their deliberations would have been impacted by the change in the assumption that the ultimate selection was to be made by the director. In regards to independence of the EC all members signed the BED-0100 affidavit and that the director needs to submit to the SPO a written statement that the EC members falsely signed their affidavits.

- **December 28, 2007** Letter from DBEDT director to Senator Kim outlining actions taken by DBEDT to address CPO Corrected Actions Directive. **(Tab 11)**
- **January 7, 2008** Letter DBEDT director to CPO outlining corrective actions taken as of 1/7/08 **(Tab 12)**
- **January 15, 2008** E-mail DBEDT director to CPO describing "change of circumstance" **(Tab 13)**

This letter describes the director's "Change of Circumstance" reason to cancel the RFP. In the e-mail he describes the US Department of Energy's MOU with the State of Hawaii.

- **January 22, 2008** Letter CPO to DBEDT director requiring the director take the corrective action pursuant to CPO's memo dated September 25, 2007 by January 31, 2008. **(Tab 14)**
- **February 14, 2008** Letter CPO to DBEDT director stating that the director award the contract by February 29, 2008. **(Tab 15)**

In this letter the CPO states that the director's attempt to only partially award the RFP cannot be done and that the MOU is not justification enough for the cancelling of the RFP. MOU/SIP is a non-binding agreement and that there is no guarantee that the purpose of ACT 240 SLH 2006 will be accomplished by the MOU and that the RFP will meet the purpose of Act 240.

- **February 22, 2008** Letter DBEDT director to Joelle Simonpietri notification of award. **(Tab 16)**

Letter states that the contract will be negotiated as soon as the new SID administrator is in place.

A Bill for an Act Relating to Energy.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for about ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel negatively impacts the environment. At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature also finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

Over the years, the legislature has worked steadily to encourage the deployment of renewable energy resources and energy efficiency initiatives. This includes:

- (1) Establishing a net energy metering program, interconnection standards, and renewable energy tax credits;
- (2) Establishing greenhouse gas and energy consumption reduction goals for state facilities and requiring the use of energy efficient products in state facilities; and
- (3) Providing incentives for the deployment of solar energy devices.

The legislature also established an enforceable renewable energy portfolio standard under which twenty per cent of Hawaii's electricity is to be generated from renewable resources by the end of 2020.

There now exists an unprecedented, historical opportunity for Hawaii to emerge as a leader in the hydrogen economy.

Hydrogen technology development is already attracting billions of dollars in investment capital not only in the United States, but also in other countries in Europe, and Japan. On a national level, federal initiatives are resulting in the development of hydrogen and fuel cell technologies in

partnership with automakers and major energy companies. Analysts predict that these initiatives, along with efforts in other countries, will lead to the development of markets for hydrogen and supportive hydrogen fuel cell technologies and infrastructure. The question is no longer "if", but "when."

Locally, the historic confluence of the State's desire for energy self-sufficiency through development of renewable energy with the global opportunity of the emerging hydrogen economy calls for a major, far-sighted initiative, sustainable over the long-term, to develop Hawaii's renewable energy resources and, ultimately, to transition Hawaii to an indigenous-resource-based energy economy.

Right now, the greatest immediate opportunity to achieve this vision resides on the island of Hawaii.

On the island of Hawaii, more electricity is produced from renewable resources than can currently be used. Several wind projects are expected to be completed in the near term, exacerbating this problem. Furthermore, the Puna geothermal project is planning to increase its energy contribution only if the electric utility can take and use the energy. This provides an opportunity to use excess geothermal and other renewable energy resources to produce hydrogen using water electrolysis. This clean, renewable hydrogen would then be used as an energy carrier for stationary power and transportation fuels, making the island self-sufficient.

Hydrogen could also be exported to Oahu and other islands as the clean fuel of choice for power generation and transportation fuels, achieving greater self-sufficiency for the State of Hawaii.

To shape Hawaii's energy future and achieve the goal of energy self-sufficiency for the State of Hawaii, our efforts must continue on all fronts, integrating new and evolving technologies, seizing upon economic opportunities to become more energy efficient and economically diversified, and providing incentives and assistance to address barriers.

The purpose of this Act is to provide a one¹ segment of a larger comprehensive approach to achieving energy self-sufficiency for the State by:

- (1) Increasing the renewable energy technologies income tax credit for certain solar-thermal, wind-powered, and photovoltaic energy systems and removing the tax credits' 2008 sunset date;
- (2) Establishing a program and strategy for increased hydrogen and biofuel research and use in the State;
- (3) Establishing state support for achieving alternate fuels standards; and

- (4) Establishing the pay as you save pilot project to provide a financing mechanism to make purchases of residential solar hot water heater systems more affordable.

PART II

RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT

SECTION 2. Section 235-12.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) When the requirements of subsection (c) are met, each individual or corporate resident taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service by a taxpayer during the taxable year. This credit shall be available for systems installed and placed in service after June 30, 2003.

The tax credit may be claimed as follows:

- (1) Solar thermal energy systems for:
 - (A) Single-family residential property: thirty-five per cent of the actual cost or [~~\$1,750,~~] \$2,250, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
 - (C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less;
- (2) Wind-powered energy systems for:
 - (A) Single-family residential property: twenty per cent of the actual cost or \$1,500, whichever is less;
 - (B) Multi-family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and
 - (C) Commercial property: twenty per cent of the actual cost or [~~\$250,000,~~] \$500,000, whichever is less; and
- (3) Photovoltaic energy systems for:
 - (A) Single-family residential property: thirty-five per cent of the actual cost or [~~\$1,750,~~] \$5,000, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and

(C) Commercial property: thirty-five per cent of the actual cost or [~~\$250,000~~] \$500,000, whichever is less;

provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a)."

2. By amending subsection (c) to read:

"(c) ~~[The]~~ For taxable years beginning after December 31, 2005, the dollar amount of [any new federal energy tax credit similar to the credit provided in this section that is established after June 30, 2003, and] any utility rebate[~~]~~ shall be deducted from the cost of the qualifying system and its installation before applying the state tax credit."

SECTION 3. Act 207, Session Laws of Hawaii 2003, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect on July 1, 2003[~~and shall be repealed January 1, 2008~~]."

PART III

RENEWABLE ENERGY RESEARCH AND DEVELOPMENT AND TRANSITION INTO A RENEWABLE HYDROGEN ECONOMY

SECTION 4. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§103D- **Biofuel preference.** (a) Notwithstanding any other law to the contrary, contracts for the purchase of diesel fuel or boiler fuel shall be awarded to the lowest responsible and responsive bidders, with preference given to bids for biofuels or blends of biofuel and petroleum fuel.

(b) When purchasing fuel for use in diesel engines, the preference shall be five cents per gallon of one hundred per cent biodiesel. For blends containing both biodiesel and petroleum-based diesel, the preference shall be applied only to the biodiesel portion of the blend.

(c) When purchasing fuel for use in boilers, the preference shall be five cents per gallon of one hundred per cent biofuel. For blends containing both biofuel and petroleum based boiler fuel, the preference shall be applied only to the biofuel portion of the blend.

(d) As used in this section, "biodiesel" means a vegetable oil-based fuel that meets ASTM International standard D6751,

"Standard Specification for Biodiesel (B100) Fuel Blend Stock for Distillate Fuels", as amended.

(e) As used in this section, "biofuel" means fuel from non-petroleum plant or animal based sources that can be used for the generation of heat or power."

SECTION 5. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§196-A State support for achieving alternate fuels standards. The State shall facilitate the development of alternate fuels and support the attainment of a statewide alternate fuel standard of ten per cent of highway fuel demand to be provided by alternate fuels by 2010, fifteen per cent by 2015, and twenty per cent by 2020. For purposes of the alternate fuels standard, ethanol produced from cellulosic materials shall be considered the equivalent of 2.5 gallons of noncellulosic ethanol. "Alternate fuels" shall have the same meaning as contained in 10 Code of Federal Regulations Part 490; provided that it shall also include liquid or gaseous fuels produced from renewable feedstocks such as organic wastes, or from water using electricity from renewable energy sources."

SECTION 6. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§196-B Hawaii renewable hydrogen program. There is established, within the department of business, economic development, and tourism, a Hawaii renewable hydrogen program to manage the State's transition to a renewable hydrogen economy. The program shall design, implement, and administer activities that include:

- (1) Strategic partnerships for the research, development, testing, and deployment of renewable hydrogen technologies;
- (2) Engineering and economic evaluations of Hawaii's potential for renewable hydrogen use and near-term project opportunities for the State's renewable energy resources;
- (3) Electric grid reliability and security projects that will enable the integration of a substantial increase of electricity from renewable energy resources on the island of Hawaii;
- (4) Hydrogen demonstration projects, including infrastructure for the production, storage, and refueling of hydrogen vehicles;
- (5) A statewide hydrogen economy public education and outreach plan focusing on the island of Hawaii, to be

- developed in coordination with Hawaii's public education institutions;
- (6) Promotion of Hawaii's renewable hydrogen resources to potential partners and investors;
 - (7) A plan, for implementation during the years 2007 to 2010, to more fully deploy hydrogen technologies and infrastructure capable of supporting the island of Hawaii's energy needs, including:
 - (A) Expanded installation of hydrogen production facilities;
 - (B) Development of integrated energy systems, including hydrogen vehicles;
 - (C) Construction of additional hydrogen refueling stations; and
 - (D) Promotion of building design and construction that fully incorporates clean energy assets, including reliance on hydrogen-fueled energy generation;
 - (8) A plan, for implementation during the years 2010 to 2020, to transition the island of Hawaii to a hydrogen-fueled economy and to extend the application of the plan throughout the State; and
 - (9) Evaluation of policy recommendations to:
 - (A) Encourage the adoption of hydrogen-fueled vehicles;
 - (B) Continually fund the hydrogen investment capital special fund; and
 - (C) Support investment in hydrogen infrastructure, including production, storage, and dispensing facilities."

SECTION 7. Chapter 211F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§211F- Hydrogen investment capital special fund. (a) There shall be established the hydrogen investment capital special fund, into which shall be deposited:

- (1) Appropriations made by the legislature to the fund;
 - (2) All contributions from public or private partners;
 - (3) All interest earned on or accrued to moneys deposited in the special fund; and
 - (4) Any other moneys made available to the special fund from other sources.
- (b) Moneys in the fund shall be used to:
- (1) 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-B; and

- (2) For any other purpose deemed necessary to carry out the purposes of section 196-B."

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2006-2007, to conduct a statewide multi-fuel biofuels production assessment of potential feedstocks and technologies, the economics of the various renewable fuels pathways, and the potential for ethanol, biodiesel, and renewable hydrogen production to contribute to Hawaii's near-, mid-, and long-term energy needs.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this section.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2006-2007, to provide assistance to the agricultural community interested in developing energy projects, especially for the production of biodiesel from energy crops and cellulosic ethanol from agricultural waste streams, and to seek funding that may be available from the United States Departments of Agriculture and Energy, and other external sources.

The sum appropriated shall be expended by the department of agriculture for the purposes of this section.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, to be deposited into the hydrogen investment capital special fund.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of section 211F- (b), Hawaii Revised Statutes.

SECTION 11. There is appropriated out of the hydrogen investment capital special fund the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, to be used for the purposes of the hydrogen investment capital special fund established pursuant to section 211F- , Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of section 211F- (b), Hawaii Revised Statutes.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the Hawaii natural energy institute to hire one full-time hydrogen system program manager position.

The sum appropriated shall be expended by the University of Hawaii through a contract with the Hawaii natural energy institute for the purposes of this part.

PART IV

SOLAR WATER HEATING PAY AS YOU SAVE

SECTION 13. **Solar water heating pay as you save program; purpose; establishment; tariff filing.** (a) Solar water heating systems are a renewable energy technology that uses solar collectors placed on roofs to heat water. These systems decrease reliance on imported oil used to generate electricity to heat water because they use less energy than the electric hot water heating systems replaced.

The legislature finds that the up-front cost of installation is a barrier preventing many Hawaii residents from installing solar water heating systems. The legislature further finds that the renewable energy technologies income tax credit and electric utility rebates have not been enough of an incentive to overcome these up-front costs, especially for rental housing and homes in need of retrofit for these important energy-saving devices.

The purpose of this section is to authorize the public utilities commission to implement a pilot project to be called the "solar water heating pay as you save program".

(b) The public utilities commission shall implement a pilot project to be called the "solar water heating pay as you save program", which shall:

- (1) Allow a residential electric utility customer to purchase a solar water heating system:
 - (A) With no upfront payments; and
 - (B) By paying the cost of the system over time on the customer's electricity bill;

provided that the estimated life cycle electricity savings from the solar water heating system exceeds the cost of the system;

- (2) Provide for billing and payment of the solar water heating system on the utility bill;
- (3) Provide for disconnection of utility service for non-payment of solar water heating system pay as you save payments; and
- (4) Allow for assignment of system repayment costs attached to the meter location.

(c) The public utilities commission shall determine the time frame of the pilot program and shall gather and analyze information to evaluate the pilot program.

(d) No later than June 30, 2007, each electric utility shall implement by tariff a pay as you save model system program for residential consumers that is consistent with this section.

Each utility shall provide at least six months prior notice of its proposed tariff to the public utilities commission as prescribed in section 269-12(b), Hawaii Revised Statutes. Within the prescribed notice period, the public utilities commission shall review the proposed tariff and after a hearing may require modifications to the proposed tariff as necessary to comply with or effectuate the purposes of this section.

(e) The commission shall ensure that all reasonable costs incurred by electric utilities to start up and implement the pay as you save model system are recovered as part of the utility's revenue requirement, including necessary billing system adjustments and any costs for pay as you save model system efficiency measures that are not recovered via participating residential consumers' pay as you save model system bill payments or otherwise.

PART V

MISCELLANEOUS PROVISIONS

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 15. In codifying the new sections added by this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 17. This Act shall take effect upon its approval; provided that section 2 of this Act shall apply to taxable years beginning after December 31, 2005; provided further that the increased tax credits established in section 2 of this Act shall be available only to eligible renewable energy technology systems installed after July 1, 2006; and provided further that sections 8, 9, 10, 11, and 12 shall take effect on July 1, 2006.

(Approved June 26, 2006.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

RFP-07-11-SID

Eval Committee	Kolohala Holding	H2 Energy	Enterprise Honolulu	Invencor	Cristophe Energy Group LLC
M. Kaya	76	68	65	NOT Recommend 29	NOT Recommend 10
W. Parks	92	81	85	NOT Recommend 61	Non Responsive 0
J. Tantlinger	79	73.5	66.5	NOT Recommend 22	NOT Recommend 15.5
J. Kobayashi	95	93	85	56	48
TOTAL	342	315.5	301.5	Non Responsive 168	Non Responsive 73.5

BEST + FINAL

Eval Cmte	Kolohala Holdings	Enterprise Honolulu	H2Energy LLC
Park	89	89	83
Kaya	85	84	76
Tantlinger	81	70	75.5
TOTAL ➞	255	243	234.5

**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.

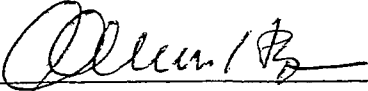
07-11-SID (Reference HAR §3-122-45.01)

- ☐ 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

**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, William P. Parks Jr., 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.

Wm P Parks Jr
Signature

4/23/07
Date

**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.
RFP-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, John Tentlinger, 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.

John Tentlinger
Signature

4/30/07
Date

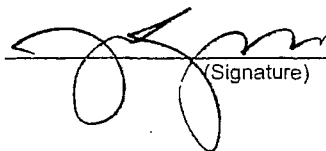
**AFFIDAVIT OF NONGOVERNMENTAL EMPLOYEE
SERVING ON AN EVALUATION, REVIEW, OR SELECTION COMMITTEE**

Purpose of committee: (check ✓ one)

- ☒ Evaluation committee to evaluate Request for Proposals No.
RFP-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, JON LOBAYAZHI, 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)

5.01.07
(Date)



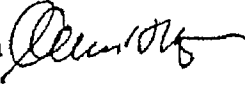
DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

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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.

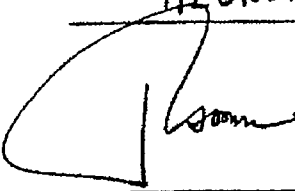
Utilizing the criteria specified in the RFP, the committee ranked the proposers in the following order:

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


Theodore E. Liu

8/7/2007
Date

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.

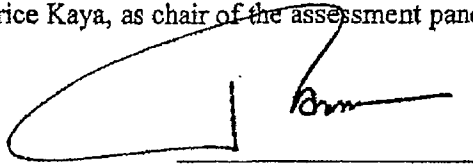
Director decided and panel agreed on the critical importance delivery of services and impact on projects and/or companies in the renewable energy and hydrogen sectors in Hawaii, including support and incubation services, to be made available to Hawaii entities locally. Enterprise Honolulu has a record 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.

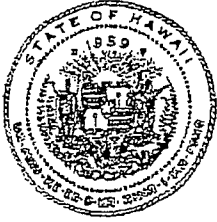
Matching funds, primarily from federal sources such as the U.S. Department of Energy, was another driver of the decision. Enterprise Honolulu's mainland-based consultant was known to one of the panelists. The Director's preference is for an entity with institutional relationships and a track record with 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. To the left of the signature is a large, stylized, handwritten mark that resembles a large "C" or a checkmark.

August 6, 2007



DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

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

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

August 10, 2007

Ms. Rachel Ogdie
Executive Director, HiBEAM
H2Energy LLC
1099 Alakea Street, Suite 1800
Honolulu, Hawaii 96813

Subject: Solicitation No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program
Management Services

Dear Ms. Ogdie:

I am pleased to notify you that H2Energy's proposal has been selected to provide the services pursuant to the subject solicitation above. This was a highly competitive solicitation and the process and time spent thereon reflected the challenge of selecting the best proposal. We extend our congratulations to you and your team, and look forward to working with you toward a clean energy future for Hawaii.

You will be contacted in the near future by Maurice H. Kaya, Chief Technology Officer, regarding negotiation of the contract for the requested services. We look forward to working with you to achieve our shared goals.

Sincerely,

Theodore E. Liu

DATE NOTICE POSTED

from this date: 8/17/07
to this date: 8/17/07

Exhibit C
Page 1 of 1



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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GOVERNOR
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DEPUTY DIRECTOR

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Fax: (808) 586-2371

August 10, 2007

Mr. Michael T. Pfeffer
Managing Partner
Kolohala Holdings LLP
Pioneer Plaza, Suite 1800
900 Fort Street Mall
Honolulu, Hawaii 96816

Subject: Solicitation No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program
Management Services

Dear Mr. Pfeffer:

We regret to inform you that the Kolohala Holdings team was not selected as the service provider for the above solicitation. This was a highly competitive solicitation, with multiple proposals of the highest quality. The process undertaken and the time spent thereon reflected the challenge of selecting the best proposal.

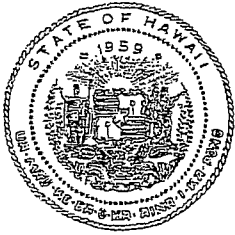
We extend our sincere appreciation to you and your team for your interest in working with the State on this initiative. As reflected by its inclusion in the best and final offer process, your proposal was highly rated by the interview panel. The selection was made from among three proposals all ranked within an extremely tight range on technical merit. We considered all of the factors and information available to us. My final decision was based who I thought would be best able to deliver the complete range of services requested by the RFP. This was a difficult decision, but it had to be made.

While Kolohala's team was not selected, we encourage you to work with the selected offeror, when announced. We intend that there be opportunities for this type of collaboration on the shared goals and will communicate this to the selected offeror.

We value and appreciate your team's keen interest in and commitment to a clean energy future for Hawaii.

Sincerely,

Theodore E. Liu



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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

Telephone: (808) 586-235
Fax: (808) 586-237

August 10, 2007

Mr. Michael T. Fitzgerald
President & CEO
Enterprise Honolulu/Ventana
Capital Management, LLC
737 Bishop Street, Suite 2040
Honolulu, Hawaii 96813

Subject: Solicitation No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program
Management Services

Dear Mr. Fitzgerald:

We regret to inform you that the Enterprise Honolulu/Ventana Capital Management team was not selected as the service provider for the above solicitation. This was a highly competitive solicitation, with multiple proposals of the highest quality. The process undertaken and the time spent thereon reflected the challenge of selecting the best proposal.

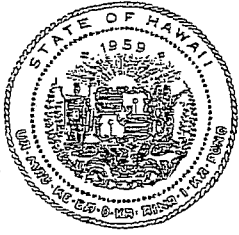
We extend our sincere appreciation to you and your team for your interest in working with the State on this initiative. As reflected by its inclusion in the best and final offer process, your proposal was highly rated by the interview panel. The selection was made from among three proposals all ranked within an extremely tight range on technical merit. We considered all of the factors and information available to us. My final decision was based who I thought would be best able to deliver the complete range of services requested by the RFP. This was a difficult decision, but it had to be made.

While Enterprise Honolulu/Ventana Capital Management's team was not selected, we encourage you to work with the selected offeror, when announced. We intend that there be opportunities for this type of collaboration on the shared goals and will communicate this to the selected offeror.

We value and appreciate your team's keen interest in and commitment to a clean energy future for Hawaii.

Sincerely,

Theodore E. Liu



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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August 10, 2007

Mr. Ronald W. Parkhurst
President
Pacific Isle Publishing Company dba
Christofer Energy Group Hawaii
P.O. Box 827
Makawao, Hawaii 96768

Subject: Solicitation No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program
Management Services

Dear Mr. Parkhurst:

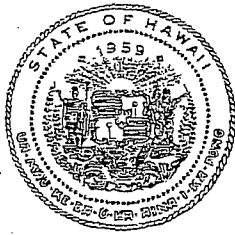
We regret to inform you that Pacific Isle Publishing Company dba Christofer Energy Group Hawaii was not selected as the service provider for the above solicitation. This was a highly competitive solicitation, with multiple proposals of the highest quality. The process undertaken and the time spent thereon reflected the challenge of selecting the best proposal.

We extend our sincere appreciation to you and your team for your interest in working with the State on this initiative. We value and appreciate your team's keen interest in and commitment to a clean energy future for Hawaii.

Sincerely,

A handwritten signature in black ink, appearing to read "Theodore E. Liu", written over a large, stylized, handwritten "L" or "P" shape.

Theodore E. Liu



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Fax: (808) 586-2377

August 10, 2007

Ms. Debra R. Guerin Beresini
Chief Executive Officer
invencor, inc.
1685 Los Carneros Avenue
Napa, California 94559

Subject: Solicitation No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program
Management Services

Dear Ms. Guerin Beresini:

We regret to inform you that invencor, inc. was not selected as the service provider for the above solicitation. This was a highly competitive solicitation, with multiple proposals of the highest quality. The process undertaken and the time spent thereon reflected the challenge of selecting the best proposal.

We extend our sincere appreciation to you and your team for your interest in working with the State on this initiative. We value and appreciate your team's keen interest in and commitment to a clean energy future for Hawaii.

Sincerely,

Theodore E. Liu

LINDA LINGLE
GOVERNORPROCUREMENT POLICY BOARD
DARRYL W. BARBUSCH
LESLIE S. CHINEN
CARLYLE ANN MO
GREGORY L. KING
RUSSELL K. SAITO
PAMELA A. TORRESAARON S. FUJIOKA
ADMINISTRATORSTATE OF HAWAII
STATE PROCUREMENT OFFICEP.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 *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.

The Honorable Theodore E. Liu, Director
August 31, 2007
Page 2

SPO 08-0056

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.

The Honorable Theodore E. Liu, Director
August 31, 2007
Page 3

SPO 08-0056

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 Procurement Officer, to act in any other capacity.

We would appreciate by September 11, 2007, any written comments, concerns, or corrections to our statements before our final written determination. Your office will then be notified of our determinations and will be advised accordingly. Thank you for your cooperation in this matter. If you have any questions, please call me at 587-4700.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM


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

September 17, 2007

TO: Aaron Fujioka
Administrator, State Procurement Office

FROM: Theodore E. Liu 
Director and Procurement Officer

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

This memorandum sets-out certain understandings with regard to the process for selection of offeror and award of contract pursuant to the Sealed Competitive Proposals section of the State's procurement code, HAR Sections 3-122-41 to 3-122-60. This memorandum also proposes certain corrective actions with regard to current procurement practices of the Department of Business, Economic Development & Tourism (the "Department") and with regard to "Request for Proposals No. RFP-07-11-SID for Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program Management Services" (the "RFP").

I set out these understandings and propose these corrective actions in my capacity as the Department's Procurement Officer, having been delegated procurement authority from the Chief Procurement Officer of the State of Hawaii.

Pursuant to point 5 of the Memorandum, dated August 31, 2007, from the State Procurement Office (SPO), and to our further discussions with the Chief Procurement Officer, the Department now understands the following to be the SPO's interpretation of the State's procurement statute and rules and the SPO's practice advised across all procurement jurisdictions of the State: That, in the event that a departmental Procurement Officer elects to appoint, in writing, an evaluation committee pursuant to HAR Section 3-122-45.01, the numerical ranking evaluation by such evaluation committee shall result in the selection of the highest rated offeror, based on the evaluation criteria in the relevant request for proposal. Pursuant to the Memorandum and to our further discussions, the Department also now understands that the SPO interprets the State's procurement law and statute and advises that a departmental Procurement Officer shall review such a numerical ranking on whether the members of the evaluation committee were fair, independent and impartial; on whether the proposals were evaluated in accordance with the proposal evaluation criteria established in the relevant request for proposals; and on whether the solicitation was conducted in accordance with all rules and statutes.

Memo to Aaron Fujioka
September 17, 2007
Page 2

Based on the foregoing understanding and until advised otherwise, the Department will revise its current general procurement procedures on sealed competitive proposals to provide that:

1. In the event that the departmental Procurement Officer elects to appoint, in writing, an evaluation committee pursuant to HAR Section 3-122-45.01, the numerical ranking evaluation by such evaluation committee shall result in the selection of the highest rated offeror, based on the evaluation criteria in the relevant request for proposal.
2. Such numerical ranking by an evaluation committee shall be reviewed by the departmental Procurement Officer on whether (i) the members of the evaluation committee were fair, independent and impartial; (ii) the proposals were evaluated in accordance with the proposal evaluation criteria established in the relevant request for proposals; and (iii) the solicitation was conducted in accordance with all rules and statutes.

Based on the above understanding, the Department proposes the following corrective actions with regard to the subject RFP:

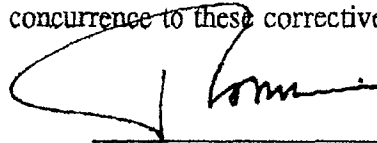
1. Based on the attached letter from H2Energy, the undersigned, as the Procurement Officer of the subject RFP, shall withdraw and cancel the evaluation committee's Memorandum, dated July 31, 2007, which resulted in the undersigned's selection of H2Energy, on August 7, 2007, and withdraw and cancel the three letters of notification dated August 10, 2007, to the RFP's final offerors.
2. The undersigned, as the Departmental Procurement Officer, shall request the evaluation committee for the subject RFP to reconvene and to make a numerically ranked recommendation, in writing, of the highest rated offeror, together with numerical scores for all offerors, based solely on the RFP contract record existing as of July 31, 2007.
4. The Procurement Officer for the subject RFP, shall review the recommendation of the evaluation committee for whether the members of the evaluation committee were fair, independent and impartial; on whether the proposals were evaluated in accordance with the evaluation criteria established in the RFP; and on whether the solicitation was conducted in accordance with all rules and statutes.
5. Should the review be in the affirmative, the Procurement Officer shall make the award of contract pursuant to HRS Section 3-122-57 to the evaluation committee's highest rated offeror.

Memo to Aaron Fujioka
September 17, 2007
Page 3

We trust that these corrective actions bring the Department's practice in-line with the SPO's interpretation of the State's procurement statute and rules and the SPO's practice advised across all procurement jurisdictions of the State.

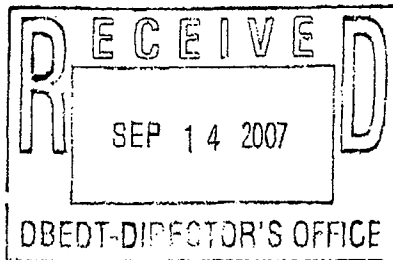
This Memorandum supersedes my Memorandum to the SPO dated September 4, 2007, on the subject RFP.

We request your review and concurrence to these corrective actions.



Theodore E. Liu
Director and Procurement Officer

Attachment: Letter from H2Energy



hibeam@hibeam.org

VIA FACSIMILE AND U.S. MAIL

Theodore E. Liu
Director, Department of Business, Economic Development & Tourism
250 South Hotel Street, 5th Floor
Honolulu, HI 96813

September 11, 2007

Dear Director Liu:

On April 14, 2007, H2Energy (H2E) submitted a proposal to manage the State of Hawaii's Hydrogen Fund in response to a DBEDT Request For Proposal (RFP-07-11-SID). On August 13, 2007, H2E was informed it had been selected to negotiate a contract to manage the Hydrogen Fund.

In the ensuing weeks, a challenge to the DBEDT decision was launched by Kolohala Ventures, another RFP respondent. We are gratified that you chose H2E on its merits and we remain convinced that the H2E approach is best and that we can do the job.

H2E is a partnership between HiBEAM, LLC and Sennet Capital, LLC. An important part of H2E's proposal included working with Sentech, Inc. an affiliated consultancy based in Washington D.C. with a presence in Hawaii. Sentech is a well respected energy consultancy with expertise in renewable energy and hydrogen technology and has performed prior services for the State of Hawaii.

Recently, HiBEAM, the Managing Member of H2E, and some of its individual members have been singled out in the press and at the Senate hearings. HiBEAM was founded in 2000 in Honolulu and has operated as a not-for-profit organization whose volunteer members give of their time to mentor and assist local technology companies to raise capital and grow professionally. Members are entrepreneurs, lawyers, accountants, venture capitalists, bankers and other successful executives who want to give back to the community. Over the last 7 years HiBEAM volunteers have mentored, worked on strategic issues, and helped raise over \$100 Million for Hawaii companies, including Hoku Scientific, Hoana Medical, Nanopoint, AssistGuide, Hawaii Biotech and others.

HiBEAM maintains an office at the John A. Burns School of Medicine at UH. Our volunteers work with the University of Hawaii Office of Technology Transfer (OTTED) to coach UH faculty and students on commercializing their research and technology. This year HiBEAM has committed \$100,000 to support OTTED activities.

During HiBEAM's first 3 years of start-up operation, volunteers donated the capital to fund activities. In return for mentoring and helping companies network and raise capital, HiBEAM receives 1 to 2 percent of the company's equity. In recent years, thanks to Hoku's public offering, those proceeds have funded internal operations, seminars and conference sponsorships to expose Hawaii companies and technology to mainland and local investors. None of HiBEAM's members have been compensated one penny for their efforts. Only Rachel Ogdie, Executive Director receives modest compensation.

As to qualifications to manage the Hydrogen Fund, H2E offers these facts:

- 1) H2E team members have over 50 years of senior venture capital experience dating to 1980.
- 2) H2E team members belong to the two principal US venture capital organizations: National Venture Capital Association (Washington D.C.) and the Western Association of Venture Capital (Menlo Park, CA). These are the major networking groups in the US where venture capitalists meet to share deal flow, discuss technology and regulation trends, draft best practices for corporate governance, and work on co-investment opportunities.
- 3) H2E team members have collectively raised over \$700 million of capital for their venture capital funds and have been involved in syndicates that have raised billions of dollars for their portfolio companies and have returned a multiple of those billions of dollars to their investors. They have the credibility and contacts to introduce Hawaii technology companies to their previous co-investors.
- 4) H2E team members funded many companies that have become public on the New York Stock exchange (NYSE), and the NASDAQ. H2E team members have been Chief Executives, Presidents, and Board members of numerous public companies. Many of those have billions of dollars in sales and market capitalizations including some of Hawaii's largest companies.

To our knowledge, none of the final RFP responders can match H2E's experience, affiliations, and qualifications.

H2E and HiBEAM have never supported any political candidate, party, or political agenda, and have worked diligently to avoid conflict in the spirit of Hawaii. We believe H2E is the best choice to manage the Hydrogen Fund and Program. However, out of respect for and sensitivity to the concerns surrounding the selection process, H2E has reluctantly decided to rescind our proposal and offer, and we will not be a candidate to manage the Hydrogen Fund.

We thank you Director Liu for the confidence you have shown in selecting H2E and the courage of your convictions. While there can be many ways of scoring and comparing candidates to manage the Hydrogen Fund, we firmly believe the paramount aspect should be direct experience managing venture capital funds and the relationships with large corporations and well-established venture capital funds in the U.S. and internationally. H2E's major assets are the reputations and networks of its members. We thank you for recognizing this and for supporting us in the process.

We wish DBEDT and the State of Hawaii great success in this very important and challenging initiative.

Sincerely,

H2 Energy
H2E

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
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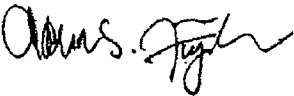
**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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

SPO 08-0068

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.

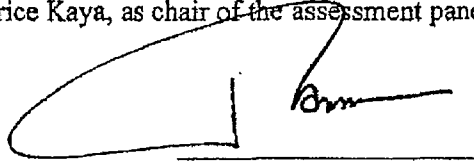
Director decided and panel agreed on the critical importance delivery of services and impact on projects and/or companies in the renewable energy and hydrogen sectors in Hawaii, including support and incubation services, to be made available to Hawaii entities locally. Enterprise Honolulu has a record 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.

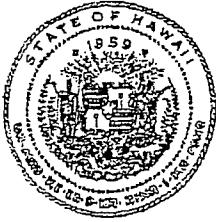
Matching funds, primarily from federal sources such as the U.S. Department of Energy, was another driver of the decision. Enterprise Honolulu's mainland-based consultant was known to one of the panelists. The Director's preference is for an entity with institutional relationships and a track record with 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 with a large, sweeping initial letter.

August 6, 2007



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

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

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August 10, 2007

Ms. Rachel Ogdie
Executive Director, HiBEAM
H2Energy LLC
1099 Alakea Street, Suite 1800
Honolulu, Hawaii 96813

Subject: Solicitation No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program
Management Services

Dear Ms. Ogdie:

I am pleased to notify you that H2Energy's proposal has been selected to provide the services pursuant to the subject solicitation above. This was a highly competitive solicitation and the process and time spent thereon reflected the challenge of selecting the best proposal. We extend our congratulations to you and your team, and look forward to working with you toward a clean energy future for Hawaii.

You will be contacted in the near future by Maurice H. Kaya, Chief Technology Officer, regarding negotiation of the contract for the requested services. We look forward to working with you to achieve our shared goals.

Sincerely,

Theodore E. Liu

DATE NOTICE POSTED

from this date: 8/13/07
to this date: 8/17/07

Exhibit C
Page 1 of 1




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

STRATEGIC INDUSTRIES DIVISION
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Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

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Tel: (808) 587-3812
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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.

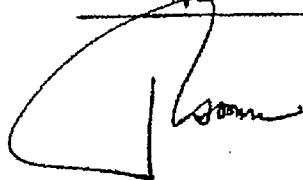
Of the five proposals, three were selected by the committee for a priority list, and priority-listed offerors were invited for discussion pursuant to Section 3-122-53, HRS. The separate discussions were held on June 26 and 28, 2007 following which each of the priority-listed offerors submitted a best 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:


Theodore E. Liu
Date 8/7/2007



COPY

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


DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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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.

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



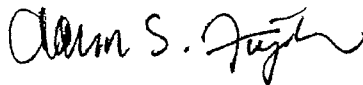
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PAMELA A. TORRES

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

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December 28, 2007

The Honorable Donna Mercado Kim
State Senator
Hawaii State Capitol, Room 231
415 South Beretania Street
Honolulu, Hawaii 96813

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

Dear Senator Kim,

This responds to your letter dated December 26, 2007, regarding the status of the above-referenced RFP.

On September 25, 2007, the State Procurement Office (SPO) issued a Final Review and Determination, containing on its final page the following required corrective actions:

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

In accordance with the foregoing, as the departmental PO, the undersigned undertook the following:

- In a memorandum to files on October 16, 2007, rescinded the August 6, 2007 "Re: Renewable Hydrogen consultant/manager selection" memo;

The Honorable Senator Donna Mercado Kim
December 28, 2007
Page 2

- In a memorandum to files on October 16, 2007, rescinded the August 7, 2007 Director's Selection portion of the July 31, 2007 DBEDT memo from Maurice H. Kaya;
- In three letters dated October 29, 2007, rescinded the August 10, 2007 award letter to H2Energy LLC, and the August 10, 2007 letters of notification to the other two offerors.
- Conducted a review of the EC's evaluation contained in the July 31, 2007 DBEDT memo from Maurice H. Kaya, to determine whether it was in compliance with applicable procurement law.

In the course of my review of the EC's evaluation, several questions arose regarding the EC evaluation process and one question arose regarding the impact of new developments on the RFP process.

After an initial conversation with the SPO regarding these questions, I summarized the same in a Memorandum dated November 13, 2007, a copy of which I have enclosed.

The SPO responded to the November 13, 2007 Memorandum with its Memorandum dated December 11, 2007, a copy of which you indicate you have.

I had requested a meeting with you to convey the background to one of the issues raised in my Memorandum of November 13, 2007, regarding a "change in circumstances", prior to delivering a copy of that document to you. However, in the interest of a timely response to your December 26, 2007, letter I have included herewith a copy of that Memorandum without the benefit of a meeting with you.

The initiative referred to in the "Change in Circumstances" section of the November 13, 2007 Memorandum would meet the State's and public's interest of a more secure, reliable, self-reliant and cost-effective energy future. It would also meet the intent legislative intent underlying the hydrogen fund of attracting outside sources of capital to support the development of Hawaii's renewable hydrogen sector and technologies.

Active discussions are still underway and the decision-making target date continues to be the first quarter of 2008. I can confirm that the points made in the "Change in Circumstances" section of the November 13, 2007 Memorandum continue to be relevant and valid. As is typical and expected under these circumstances, the principals have requested that these discussions be kept in confidence until such time as the principals are prepared to announce the initiative.

I would request your kind cooperation of preserving the confidence requested by the principals. I remain available to answer to the fullest extent I am able, any questions you may have and to provide any further information.

The Honorable Senator Donna Mercado Kim
December 28, 2007
Page 3

Should circumstances change, including any change to the intentions of the principals to enter into the relationship with Hawaii, I will notify the SPO and yourself.

Best wishes for the New Year,

Very truly yours,

A handwritten signature in black ink, appearing to read 'Theodore E. Liu', is written over a large, stylized, hand-drawn oval shape.

Theodore E. Liu

c: The Honorable Senator Clarence Nishihara
Aaron Fujioka, State Procurement Office



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January 7, 2008

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 responds to your memorandum dated December 27, 2007, regarding the status of the above-referenced RFP.

On September 25, 2007, the State Procurement Office (SPO) issued a Final Review and Determination, containing on its final page the following required corrective actions:

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

In accordance with the foregoing, we undertook the following:

- In a memorandum to files on October 16, 2007, rescinded the August 6, 2007 "Re: Renewable Hydrogen consultant/manager selection" memo;
- In a memorandum to files on October 16, 2007, rescinded the August 7, 2007 Director's Selection portion of the July 31, 2007 DBEDT memo from Maurice H. Kaya;
- In three letters dated October 29, 2007, rescinded the August 10, 2007 award letter to H2Energy LLC, and the August 10, 2007 letters of notification to the other two offerors.

Memo to Aaron Fujioka
January 7, 2008
Page 2

- Conducted a review of the EC's evaluation contained in the July 31, 2007 DBEDT memo from Maurice H. Kaya, to determine whether it was in compliance with applicable procurement law.

In the course of my review of the EC's evaluation, several questions arose regarding the EC evaluation process and one question arose regarding the impact of new developments on the RFP process. After conversations with your office regarding these questions, I summarized the same in a Memorandum dated November 13, 2007. Your office responded to the November 13, 2007 Memorandum with a Memorandum dated December 11, 2007.

My intentions in the short-term are as follows:

The initiative referred to in the "Change in Circumstances" section of the November 13, 2007 Memorandum, is expected to come to fruition within the first quarter of this year. I can again confirm that this initiative, if it comes to fruition, would meet the intent legislative intent underlying the hydrogen fund of attracting outside sources of capital to support the development of Hawaii's renewable hydrogen sector and technologies.

However, as discussed, there is no guaranty that this initiative will come to fruition. Discussions are still underway and the decision-making target date continues to be the first quarter of this year.

Should this initiative not come to fruition, my intention is to validate the evaluation committee's evaluation ranking of July 31, 2007 DBEDT memo from Maurice H. Kaya.

Should this initiative come to fruition, my intention is to review what portions of the RFP are still applicable and available and then to seek the SPO's agreement to my validation of said evaluation committee's ranking with reference to these portions.

I note that the subject RFP contemplated three distinct deliverables: hydrogen program management, solicitation of third-party grants that required state cost-match and equity investment in renewable hydrogen technologies. The RFP also contemplated the possibility of up to three separate contracts. Should this initiative come to fruition, it is expected to encompass the solicitation of third party grants requiring state cost-match.

I trust this is responsive to your question.

January 15, 2008

TO: Aaron Fujioka, Administrator
State Procurement Office

FROM: Theodore E. Liu

RE: Hydrogen Investment Capital Special Fund and Renewable Hydrogen
Program Management Services; Solicitation RFP-07-11-SID

This responds to your request for further clarification on why further action on the hydrogen fund are pending decisions by the U.S. Department of Energy regarding its proposed partnership with Hawaii. This is the "change in circumstance" referred to in my previous memoranda. As previously reported to you, every corrective action required by the State Procurement Office except for any revised award has been completed.

Section 196-10, HRS, codifies Act 240, SLH 2006, and establishes the Hawaii renewable hydrogen program within and to be managed by DBEDT. The purposes of the program are enumerated in Sections 196-10 (1) through (9), and include the department's mandate to design, implement and activities of strategic partnerships for the research, development, testing and deployment of, the promotion of Hawaii's renewable hydrogen resources to potential partners and investors and the development of short- and long-term implementation plans. The department takes seriously its obligation of the proper management of the renewable hydrogen program to meet these overarching legislatively mandated objectives.

The hydrogen investment capital fund is established by Section 211F-5.7, HRS, and is intended to "provide seed capital and venture capital investments in private sector and federal projects ... and for any other purpose deemed necessary to carry out the purposes of Section 196-10." To deploy this fund to achieve the objectives of the renewable hydrogen program, the department decided to undertake a request for proposals (RFP) to solicit the best ideas from potential private sector partners. To be clear, the department was not obligated to seek management partners for the hydrogen investment capital fund through a RFP.¹ The department also intended that the management and deployment of the hydrogen capital investment fund was always subject to the overarching objectives of the state's renewable hydrogen program.

As stated by the terms of the RFP, the department intended that the solicitation was for "all or a portion"² of the fund, that the solicitation was for three components of

¹ The hydrogen investment capital special fund was legislatively placed within the Hawaii Strategic Development Corporation (HSDC). HSDC is not required to solicit its fund managers through RFPs. Although not required to do so, the department intentionally decided to issue a RFP to obtain the best ideas from the private sector.

² Page 4, RFP

the state's renewable hydrogen program³ and that each component would be negotiated through separate contracts⁴. Also, per the stated terms of the RFP, the three components of the solicitation are intended to be integrated to the fullest extent possible. Each of the three agreements or contracts to be negotiated depends to a large extent on the scope and content of the others. For example, the scope, including amount of the total fund dedicated thereto, of the "cost-share" component depends on the overall hydrogen program management contract which, in turn, determines the scope of the "seed or venture capital" component and amount of the total fund dedicated to it.

When the opportunity of a federal partnership arose, the department recognized that this partnership would work toward meeting many of the legislatively mandated overarching objectives of the renewable hydrogen program. Furthermore, the department determined that attracting federal renewable energy projects and funding to Hawaii was one of the legislature's intentions underlying the establishing the hydrogen capital investment fund. Therefore, the department's judgment was that the state's and the renewable hydrogen program's best interest was to await the result of this federal partnership.

The department also determined that the nature, extent and content of this federal partnership could impact all three components of the RFP intended for negotiations with the selected contractor. As an example, the scope of federal activities and funding could impact and determine the scope of the contractor's hydrogen program management contract and the amount of funding available and allocated to the contractor's cost match and seed and venture capital contracts. Again, the department's judgment was that the state's and the renewable hydrogen program's best interest was to await the result of this federal partnership.

As I stated in our most recent conversation, this decision to wait is not about one contractor or another. The emergence of the federal partnership opportunity was a "change in circumstance" that would have impacted negotiations with any potential contractor.

Upon the determination of the nature, scope and funding opportunities of the federal partnership, if it comes to fruition, the department intends to determine the scope and funding of the three components of the RFP and proceed with any award to and negotiations with the selected contractor.

As discussed, I hereby request until the **end of January, 2008** (revised from the end of the 1st quarter, as previously reported), by which time the details of the federal partnership are expected to emerge. I also attach a summary of the proposed federal partnership. I again request that you keep these communications with you as sensitive until the end of January, 2008.

³ 1. assistance to establish and manage the Hawaii Renewable Hydrogen Program; 2. to seek cost share investments to attract federal and private sector activities; and 3. to provide seed capital and investment capital for emerging Hawaii-based advanced energy technology companies.

⁴ Page 9, RFP; see also notice to H2Energy (since rescinded).

Finally, I have not seen the multiple-page complaint from one of the proposers to which you referred. As I mentioned, since the issue of my selection of the RFP contractor arose, none of the proposers has inasmuch as contacted me for a meeting or update. Had any done so, I would gladly have met and discussed, to the extent I could, the possibility of the federal partnership and its impact on the RFP process. I have felt constrained from contacting any of the proposers, given that one of the principals has indicated that past contact from me was construed as "intimidation".

I trust that this is responsive to your questions. Please feel free to let me know if I can provide any additional information.

Attachment

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

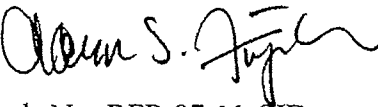
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SPO 08-0068d

January 22, 2008

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

We are in receipt of your January 7, 2008 and January 15, 2008 memoranda regarding corrective actions taken by DBEDT that was required by January 15, 2007 pursuant to my September 25, 2007 memorandum. After a review of the information, the following is provided:

1. Your January 7, 2008 memorandum indicates that you have taken the corrective action to rescind the August 7, 2007 Director's Selection portion of the July 31, 2007 DBEDT memo from Maurice H. Kaya. Please provide a copy of this memorandum to our office as soon as possible.
2. Your January 15, 2008 memorandum states that your "department decided to undertake a request for proposals (RFP) to solicit the best ideas from potential private sector partners."¹ However, Addendum No. 1 issued by the DBEDT on March 13, 2007 clearly states that "Proposals are requested for services 1) to manage the Renewable Hydrogen Program (Program Management) and 2) to manage and invest the available Fund balance (Fund Management)."² As stated throughout the RFP, the purpose was for management services of the Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program. The soliciting of best ideas from potential private sector partners is not found in the RFP.
3. Page 2 of your January 15, 2008 memorandum, states that the solicitation was for three components of the state's renewable hydrogen program and that each component would be negotiated through separate contracts³. The RFP does not state that a total of three

¹ January 15, 2008 memorandum from DBEDT to SPO, Page 1

² ADDENDUM NO. 1 dated March 13, 2007, Item No. 4a.

³ January 15, 2008 Memorandum, Page 2, 1st paragraph

contracts will be awarded for individual components. The language in the RFP describes what would be required in the case when a single offeror chooses to be responsive to both elements in their proposal (manage the fund and manage the Program)⁴. Since there is only one set of criteria in the RFP, DBEDT is not allowed to select and award separate contracts to perform different components based on the single set of criteria outlined in the RFP. Evaluation criteria to award multiple contracts to perform separate components must be described in the RFP.

4. If the proposed federal partnership was already in discussion with the partners⁵ prior to September 25, 2007, this should have been disclosed at that time, or if after, as soon as discussions were initiated. It is unfair to all parties to continue having discussions on a partnership for an unusual length of time without making a timely award of the RFP. While you have determined that a change in circumstance⁶ has delayed the award as required in my September 25, 2007 memorandum, there does not appear to be sufficient justification to support this.

Unless there is sufficient justification to prevent the awarding of the RFP based on the initial Evaluation Committee ranking, the DBEDT shall proceed with the corrective actions pursuant to my September 25, 2007 memorandum by January 31, 2008. If the DBEDT's determination that the federal partnership will result in no longer requiring the services of the RFP, then a request with sufficient justification should be submitted by the above date for my review and approval.

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

⁴ RFP No. 07-11-SID, Statement of Work, Page 14, Compensation Section

⁵ January 15, 2008 Memorandum, Page 4, Attachment

⁶ January 15, 2008 Memorandum, Page 1, 1st paragraph

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



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SPO 08-0168e

February 14, 2008

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

FROM: Aaron S. Fujioka *Aaron S. Fujioka*

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

This memo is in response to your January 31, 2008 email that constituted your response and formally submits your 'DRAFT 1/27/08' memo on subject RFP. Upon review of the documents provided, including the U.S. DOE MOU/SIP and your February 6, 2006 email, the following is provided:

1. *"I hereby formally request your response on my justification to cancel the RFP, for the reasons stated in my draft Memorandum dated January 27, 2008."*

The SPO does not find sufficient justification to cancel the RFP for the following reasons:

- a. The Draft 1/27/08 memo repeatedly references the U.S. DOE MOU and its capacity to fulfill the RFP requirements such as:
 - Page 5, 3rd paragraph, states: "The DOE/Hawaii Clean Energy Initiative partnership will achieve and fulfill the state's interest as intended and stated in the RFP."
 - Page 6, 1st paragraph, states: "DOE/Hawaii Clean Energy Initiative will fulfill the state's interest and objective as intended by the RFP of "soliciting", "assessing" and "making" cost-share grants."
 - Page 6, 5th paragraph, states: "The DOE/Hawaii Clean Energy Initiative will also fulfill the state's need for management program assistance for the Hawaii renewable hydrogen program."

None of these statements qualify as justification to cancel the RFP.

- b. The U.S. DOE MOU and the SIP relates to 'renewable energy efficiency resources' and 'clean energy initiatives', which includes programs for multiple resources on geothermal, hydrogen, industrial technologies, wind and hydropower, and solar energy programs.

Hydrogen is a very small part of the MOU/SIP.

- c. The U.S. DOE MOU also specifically states:
- This MOU and the attached Appendix are strictly for internal management use of each of the parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either party.
 - This MOU and the attached Appendix in no way restrict either of the parties from participating in any activity with other public or private agencies, organizations or individuals.
 - This MOU and the attached Appendix are neither fiscal nor funds obligation documents. Nothing in this MOU authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value.
 - This MOU and the attached Appendix shall not be construed to impact procurement or financial assistance activities of either the DOE or the State of Hawaii.

The MOU/SIP is a non-binding agreement. From the above statements in the MOU, there is no guarantee that the purpose of Act 240, SLH 2006 will be accomplished. The RFP was specifically for a 'renewable hydrogen program' for management services and investment capital fund for the hydrogen program. The RFP accomplishes the purpose/goals of Act 240, SLH 2006 and will compliment the MOU/SIP in fulfilling a portion of the goals stated in the agreement.

- d. Your 2/6/08 email clearly states, "The entire relationship was independent of the RFP".

This contradicts the numerous statements made in the Draft 1/27/08 memo on the similarities and substantiates the purpose of the MOU/SIP.

2. *"I also request your guidance on issuance of an award, based on the evaluation committee's initial evaluation ranking of July 31, 2007, as follows:*

Management of the hydrogen investment capital fund (Sec. 211F-5, HRS):

- a. In the amount of \$2.7 million dollars to provide seed capital and investment capital for emerging Hawaii-based advance energy companies; and*
- b. Up to \$6 million dollars to seek cost-share investments, on a nonexclusive basis."*

The SPO finds that the RFP does not allow for a partial award for the following reasons:

- a. DRAFT 1/27/08 memo:
 - Page 3, 4th paragraph, states: "This objective was to be achieved through three separate but interrelated services that were requested through the RFP:"
 - Page 3, 5th paragraph, states: "References to substantiate that the RFP intended and requested these three separate services are repeated throughout the text of the RFP"
- b. RFP 07-11-SID, Addendum 1, item 4. Revisions are as follows, states:
 - a. Management Services and Available Fund Balance
 - 1) Proposals are requested for services 1) to manage the Renewable Hydrogen Program (Program Management) and 2) to manage and invest the available Fund balance in the amount available for cost share, seed or venture capital investment, and for costs related to Fund Management services.
 - f. Proposal Evaluation Criteria: Approach and Capabilities
 - 1) The STATE prefers approaches that integrate all elements. Should a respondent's proposal include separate entities for management of the Program and Fund, the State prefers that such proposal describe an integrated approach whereby organization and management structure maximize efficiency for and accountability to the State. In such cases, a 'lead' or 'prime contractor' structure may be considered.

- c. RFP 07-11-SID Evaluation Rating Form:
2. Approach and Capabilities
- a. Realism of program approach and methods proposed for attaining desired objectives..... the State prefers an integrated approach whereby organization and management structure maximize efficiency for an accountability to the State.
- c. Proposed management organization. Integration of all elements preferred.
- d. Offerors proposals states, in part:
- Kolohala - "... providing management services for both the State's Hydrogen Investment Capital Special Fund and the Hawaii Renewable Hydrogen Program."
 - HIBeam - "... Please accept the following integrated proposal to manage the Hydrogen Program and Fund..."
 - Enterprise Honolulu - "...to manage both Hawaii's Renewable Hydrogen Program and the remaining \$8,700,000 Hydrogen Investment Capital Special Fund..."

The RFP and offeror proposals contradict the Draft 1/27/08 memo on 'three separate but inter-related services'. The RFP required an 'integration of all elements', the evaluation committee evaluated the proposals on an integrated basis, and the offerors responded with 'integrated proposals'. Therefore portions of the RFP cannot be separated and awarded. This is a material change to the scope of the RFP, therefore award for a portion of the services is not appropriate.

Any partial award of the scope of services may be considered as prejudicial to any other potential offeror had they known that award could have been made on a portion, rather than an 'integrated proposal'.

"As we discussed, the services for managing the Hawaii Renewable Hydrogen Program (Sec. 196-10, HRS), are no longer required."

DRAFT 1/27/08 memo contains the following statements for no longer requiring the services for managing the Hawaii Renewal Hydrogen Program:

- Page 4, 2nd paragraph states: "The decision to cancel the RFP is based on the fact that the emergence of the partnership with the U.S. Department of Energy make the above requested services from a contractor no longer required."
- Page 6, 3rd paragraph states: "As such, the services of a contractor to assist the state in "assessing" cost share grants are no longer needed."
- Page 6, 4th paragraph states: "As such, the services of a contractor for the making of cost-share grants are no longer necessary."

The SPO does not find these statements sufficient justification of the services no longer being required. As stated above, the MOU/SIP is a non-binding agreement. From the statements in the MOU as stated above (1c), there is no guarantee that the purpose of Act 240, SLH 2006 will be accomplished. The RFP was specifically for a 'renewable hydrogen program' for management services and investment capital fund for the hydrogen program. The RFP accomplishes the purpose/goals of Act 240, SLH 2006 and will compliment the MOU/SIP in fulfilling a portion of the goals stated in the agreement.

For all of the above findings, the DBEDT shall award the contract by February 29, 2008.

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



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

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

MAILED
February 22, 2008

Ms. Joelle Simonpietri
555 Hahaione Street, #11A
Honolulu, Hawaii 96825

Subject: Solicitation No. RFP-07-11-SID
Hydrogen Investment Capital Special Fund and Renewable Hydrogen Program
Management Services

Dear Ms. Simonpietri:

I am pleased to notify you that Kolohala Holdings team has been selected to provide the services pursuant to the subject solicitation above. As defined in the subject solicitation documents, the selection is to provide the following services:

- Up to \$8,700,000 from the Fund balance for services in connection with soliciting, assessing and making cost share grants or investments to support increased advanced energy technology research and development in Hawaii.
- Up to \$8,700,000 from the Fund balance for services in connection with soliciting, assessing and making seed capital and venture capital investments in Hawaii-based emerging advanced energy technologies and energy companies.
- Up to \$385,000 for services in connection with managing the Renewable Hydrogen Program.

Each of the above three components of the solicitation will be subject to its contract to be negotiated. As soon as the division administrator of the Strategic Industries Division is in place, he or she will contact you to negotiate these contracts.

This has been a complicated solicitation in an area of critical importance to the State's energy security and self-sufficiency. We appreciate your understanding and patience with the process undertaken. We look forward to working with your team.

Very truly yours,


Theodore E. Liu

Copy: Eileen Harada

30059

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

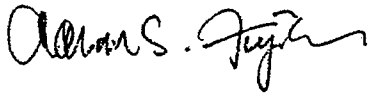
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SPO 08-0068g

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.