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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.

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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.

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