

197



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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

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

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

September 17, 2007

unsigned copy

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.

400011

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.

400012

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

400013