

SB 1537

RELATING TO HAWAII PUBLIC PROCUREMENT CODE.

Requires competitive bidding on small purchases of construction contracts for drilling and soil testing.

NEIL ABERCROMBIE
GOVERNOR



AARON S. FUJIOKA
ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

February 12, 2011

10:00 AM

SB 1537

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

Chair Espero, Vice Chair Kidani and committee members, thank you for the opportunity to testify on SB 1537. The purpose of Section 103D-305 on the small purchases procurement method is to provide the process, currently for less than \$100,000 for goods and services, or \$250,000 for construction.

Section 103D-305 does not limit a procurement officer from conducting a competitive bidding process for a construction project. That determination is the responsibility of the procurement officer, in consultation with the project engineer because of the coordination effort that must be expended and the need to meet construction deadlines to prevent costly delays.

Drilling and soil testing work are typically an integral component that licensed geotechnical engineering firms need to conduct to ensure their analysis/determination on soil stability considerations are conducted properly, and may impact liability issues. If, statutorily, drilling and soil-testing work is handled separately from the overall construction project, there will likely be an adverse affect to the cost as well as the timely completion of construction projects.

The State Procurement Office recommends this bill be held. Thank you.

NEIL ABERCROMBIE
GOVERNOR



BRUCE A. COPPA
Comptroller

RYAN OKAHARA
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
ON
February 12, 2011

S.B. 1537

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE

Chair Espero and members of the Committee, thank you for the opportunity to testify on S.B. 1537.

The Department of Accounting and General Services (DAGS) opposes passage of S.B. 1537 because it would prevent the State from procuring its services in the most effective manner.

The bill requires the drilling and soil testing of less than \$50,000 to be procured separately from the geotechnical engineering work. The drilling for soils borings and testing of soil materials in an integral and critical part of preparing a geotechnical report (a.k.a. soils report), which is prepared by a licensed professional engineer. The responsibility and coordination for the quality and quantity of the boring samples and testing of soil materials

should be with the geotechnical engineer because they prepare and stamp or place their professional engineer's seal on the geotechnical report.

In addition, requiring a separate procurement will require additional state resources, delay or require additional time on a project's design schedule which negatively affects the initiative to expedite the procurement and starting of construction, and may increase the overall cost of a project. This bill would be disadvantageous to the State and prevent its efficient operation.

Thank you for the opportunity to testify on this matter.



SB 1537
RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE
Senate Committee on Public Safety,
Government Operations, and Military Affairs

February 12, 2011

10:00 a.m.

Room 229

Aloha Chair Espero, Vice-Chair Kidani and members of the Committee. My name is Rowena Akana, and I am an at-large Trustee of the Office of Hawaiian Affairs.

I strongly **SUPPORT SB 1537**, which would require competitive bidding on small purchases of construction contracts for drilling and soil testing.

I believe that this legislation, once passed into law, will level the playing field for our local companies by improving transparency and protecting against unfair practices. It will also ensure that quality products are available at the best possible price in this challenging economic environment.

For these reasons, I urge the committee to pass SB 1537.

Mahalo for the opportunity to provide this testimony.

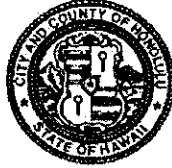
DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

PETER B. CARLISLE
MAYOR

COLLINS D LAM, P.E.
DIRECTOR

LORJ M. KAHIKINA, P.E.
DEPUTY DIRECTOR



February 8, 2011

The Honorable Will Espero, Chair
and Members
Public Safety, Government Operations, and Military Affairs Committee
State Capitol
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

Subject: Senate Bill No.1537, Relating to the Hawaii Public Procurement Code

The Department of Design and Construction (DDC) respectfully **opposes** SB1537. The bill would require the City to contract drilling work and soil testing for construction procurements of less than \$50,000, separately from the engineering work on the same project. Typically, drilling and soil testing work can occur at two distinct phases of a construction project, during the engineering design phase and during construction.

Soil investigations for the engineering design phase, of which drilling and soil testing are components, are typically included in the contract for engineering design. Many aspects of project design depend on the data acquired by the soils investigation and the recommendations of the geotechnical engineer, so it is in the best interest of the City to include these services in the design contract so that the designer is responsible for the scope and adequacy of the soils investigation. If the City contracted the drilling and soil testing separately, the designer could claim that design problems were due to inadequate soils data for which the City would be liable.

Drilling and soil testing during the construction phase may include activities such as well drilling, pre-drilling for installation of piles, soil compaction testing, and soil testing to determine if a proposed source material meets the project specifications. These activities are typically the responsibility of the construction contractor, who identifies the specific scope of drilling and testing required for the construction methods to be used. If the City contracted the drilling and soil testing separately, the contractor

The Honorable Will Espero, Chair
And Members
Public Safety, Government Operations, and Military Affairs Committee
February 8, 2011
Page 2

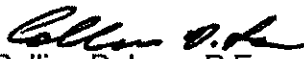
could claim that construction problems, including delays, were due to inadequate performance of the drilling and/or soil testing contractor(s) engaged by the City, thus greatly increasing the City's liability for construction problems.

SB1537 would also require the City to use competitive sealed bids for construction procurements of less than \$50,000 to contract drilling work and soil testing. Competitive bidding is an inappropriate procurement method for such work, as the quality of the work should be the primary selection criteria. Identification of appropriate drilling sites and selection and interpretation of specific soil tests require considerable engineering judgment. Using cost as the primary selection criterion for such work can lead to design and construction problems costing many times more than the price differences between competing service providers.

For both the engineering design and the construction phases, contracting drilling work and soil testing separately from the design and construction contracts by a competitive sealed bid process would delay project schedules and greatly increase the City's exposure to liability for design and construction problems without any apparent benefit. This requirement would also significantly increase the City's work load to generate and process additional small contracts for a project. Accordingly, we respectfully **oppose** SB1537.

Thank you for the opportunity to testify.

Very truly yours,


Collins D. Lam, P.E.
Director

CDL:WB:hm

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

PETER B. CARLISLE
MAYOR



MICHAEL R. HANSEN
ACTING DIRECTOR

February 10, 2011

The Honorable Will Espero, Chair
and Members
The Senate
Committee on Public Safety, Government Operations, and Military Affairs
The Twenty-Sixth State Legislature
State Capitol
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

Subject: Senate Bill No. 1537 Relating to the Hawaii Public Procurement Code,
Competitive Bidding on Construction Contracts for Drilling and Soil Testing

The City and County of Honolulu opposes this bill because it would require the separate procurement of drilling and soil testing. These services could no longer be efficiently consolidated into construction projects. This would double the number of procurements required for any construction project that requires drilling and soil testing services by requiring separate procurements, creating additional administrative processing requirements, and resultant delays.

Of great concern is that a side effect of this bill would be that it would absolve design engineering firms from the responsibility for project design faults related to soil testing and drilling. Typically, the drilling and soil testing is done by a subcontractor (i.e. subconsultant) to an engineering consultant as part of an engineering design contract with the City. The design engineer determines the proper testing requirements and obtains the soil testing and the drilling services in order to meet the obligation to properly design the project. It is the responsibility of the design engineer to ensure that the soil drilling and testing is done properly because the engineer relies on the data to correctly design the project. If we purchase soil testing and drilling separately from engineering services, as provided by the bill, we can no longer hold the design engineer accountable for proper soil testing and for problems in the design that could be attributed to the soil testing. Therefore, we stand opposed to S.B. No. 1537.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Hansen".

Michael R. Hansen, Acting Director
Budget & Fiscal Services

Kennedy/Jenks Consultants
98-1268 Kaahumanu Street, Suite 204
Pearl City, Hawaii 96782
P: 808.488.0477 F: 808.488.3776

February 11, 2011

Senate Committee on Public Safety, Government Operations, and Military Affairs
Hearing Date: Saturday, February 12, 10:00 a.m., Conference Room 229

Honorable Senators Will Espero, Chair; Michelle Kidani, Vice Chair; and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs

Subject: **SB 1537, Relating to Procurement**
TESTIMONY IN OPPOSITION

Dear Chair Espero, Vice Chair Kidani, and Committee Members,

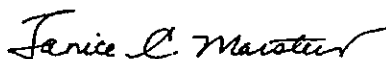
Our company strongly **opposes SB 1537, Relating to Procurement**, which would require competitive bidding for drilling and soil testing services. Drilling and soil testing are integral parts of geotechnical or environmental engineering design services. We are concerned that the bill would circumvent HRS 103D and result in other professional geotechnical/ environmental design services being competitively bid, since it is difficult to separate out one portion. This would violate the procurement code under HRS 103D-304 which requires that procurement of design professional services be based on a qualifications based selection (QBS) process and not by competitive bidding.

There are numerous reasons why is **not practical or desirable to separate out the integral drilling and soil testing portion of the design to bid that portion on a competitive bidding basis**. Firstly, by having the State procure drilling and soil testing services directly on a competitive bid basis, the liability for such services would be moved from the professional design firm to the State. In the past, DAGS has opposed a similar bill on this basis. Secondly, the separate procurement of drilling/ testing services by competitive bid and the later procurement of architectural/engineering design services would result in a longer construction process. Thirdly, the procurement of drilling/soil testing services separately would result in additional work burden to the procuring State agency, since they would have to prepare plans, specifications, and some preliminary design to provide the drilling/soil testing firm with sufficient information to perform their investigation. This is normally conducted as part of the design team's functions, and the geotechnical design engineer has the responsibility of determining where drilling should occur. Finally, we question the wisdom of utilizing the lowest-priced firm to conduct soils investigations, as historical knowledge indicates that low bidding can result in an inadequate soils investigation and subsequent construction complications and increased costs. We believe it is in the best interest of the State that these services be conducted under the purview of a licensed engineer as part of professional design services.

We strongly recommend that SB 1537 be held. Thank you for an opportunity to express our concerns regarding this bill.

Respectfully submitted,

Kennedy/Jenks Consultants



Janice Marsters, Ph.D., LEED™ AP
Senior Environmental Engineer

Testimony for
SB 1537

fax

586-6361

ALL
SENATOR FERGUSON

I am in support of SB 1537. This Senate bill will reinstate competitive bidding on soil test drilling. Keep it American. Keep our jobs for our American people.

THE HONORABLE SENATOR WILL EGGERS, S.O. 1537 - THIS SENATE BILL
WILL REINSTATE COMPETITIVE BIDDING ON SOIL TEST DRILLING.

Thank you for this
privilege!
Cheer up! Be



KIMO & SAM LESLIE 2008 LESLIE'S DRILLING

*114 PROTRER W/NAME W/RE 1114 PARTNER 1
W/NEEDED TO "EXEMPT" HRS 1030-304*

FROM THE HAWAII PUBLIC PROCUREMENT CODE

'I Realize The Fe

By CHARLES TURNER
Advertiser Staff Writer

"Often times I sit back to relax after a day's work or when someone I know has been killed or badly wounded in action and I imagine to myself how will his parents or wife take it. . ."

That was the way Spec. 4 Wendell W. Leslie, 25, expressed his views on war in his last letter to his parents, Mr. and Mrs. Samuel K. Leslie, Sr., of 3176 Olu St., Kapahulu.

The letter was written on April 21.

Yesterday, the Army notified the Leslies that their son had been killed in action in Vietnam. He was the 189th Isle soldier to die in the war.

The grief-stricken parents, joined by their remaining sons, Howard (former All-Star quarterback at Roosevelt High School) and Sam,



LESLIE

Jr., found some consolation in Wendell's last letter, which seems almost prophetic.

The young soldier had been wounded twice in the fighting in Vietnam since his arrival there last November.

"Concerning my new wound," he said in his last letter, "it was nothing at all.

"I simply got hit in my other knee. It is a very small wound. I rested for three or four days and went right back to the woods and rice paddies. So no sweat.

"I wanted to tell you about it before the Army did because I realize what a feeling you must experience when you see the guy approaching the house.

"You never know what they are going to tell you."

After describing his feelings on this subject, Specialist Four Leslie said:

"I can just picture how his family will take the news real badly.

"I still say, though, I am glad I came to V.N. (Vietnam). I appreciate life a lot more now.

"It's the same feeling a poverty stricken family would experience if they were given things that they themselves could never buy.

"Give a family that has lived on very little food all their lives or one that had no choice but to eat poor quality food, a good dinner of their choice, and you will see how much they appreciate it.

"That's how it is with me

190th Isle Soldier Dies

SFC Daryle W. Batt, 43, whose wife lives in Wahiawa, died of wounds Sunday in a hospital in Vietnam, the Army said yesterday.

Sgt. Batt's wife, Haruyo, lives at 94-251 Kipou St. He was a member of Company A, 1st Battalion, 327th Infantry of the 101st Airborne Division. He was struck in the right side of the chest with metal fragments in a fire fight Saturday near Thua Thien. He was taken to the 22nd Surgical Hospital and died next day.

Sgt. Batt arrived in Vietnam last Nov. 2.

He was the 190th Island soldier to die in Vietnam.

John Leong

Kaimuki High School
The New Art - Gym

1977

I started Drilling in
(1967)

Me the Driller

1975

Dad Lends me
\$25,000.00 LOAN (H.S.B.)

I purchase all the Start-Up
Drilling Equipment

Paid off the LOAN ahead
of time.

STILL Drilling!

10/12/10

Kahala-Estate's Job

with SON-SAM 27 yrs Old

Good Driller

(Mom tried to discourage Da
from making the LOAN.

= But Dad said -



NORMAN MIZUGUCHI
PRESIDENT

AVERY B. CHUMBLEY
VICE PRESIDENT

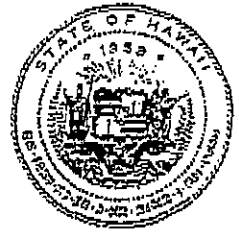
LES IHARA, JR.
MAJORITY LEADER

JONATHAN CHUN
MAJORITY FLOOR LEADER

WHITNEY T. ANDERSON
MINORITY LEADER

SAM SLOM
MINORITY FLOOR LEADER

The Senate
The Twentieth Legislature
of the
State of Hawaii
STATE CAPITOL
HONOLULU, HAWAII 96813



June 14, 2000

Mr. Robert Govens
State Procurement Office
Department of Accounting and General Services
1151 Punchbowl St.
Honolulu, HI 96813

J. A. G. S

Dear Mr. Govens:

I am writing in response to a complaint from a constituent regarding state procurement practice for small construction projects.

My understanding is that projects costing less than \$25,000 are exempted from the normal procurement process. The State need only obtain three price quotes, and then select the best quote from those obtained.

I am unclear on the method used to obtain the aforementioned quotes. My constituent has done drilling work for the state in the past, and feels that he would be competitive if allowed to bid on many drilling projects in the "small purchase" price range. It would seem to me that the current practice works against small contractors if they are not called and therefore are unable to bid on projects. Is there some way to address this concern, and open this process to a wider range of contractors. Contracts for less than \$25,000 are not that critical to the "big guys", but could make a big difference to an entrepreneur struggling to keep a business going.

I look forward to hearing your thoughts on this matter.

Very truly yours,

ANDREW LEVIN
Senator, Third District

AL:JK
bcc: Mr. Howard Leslie

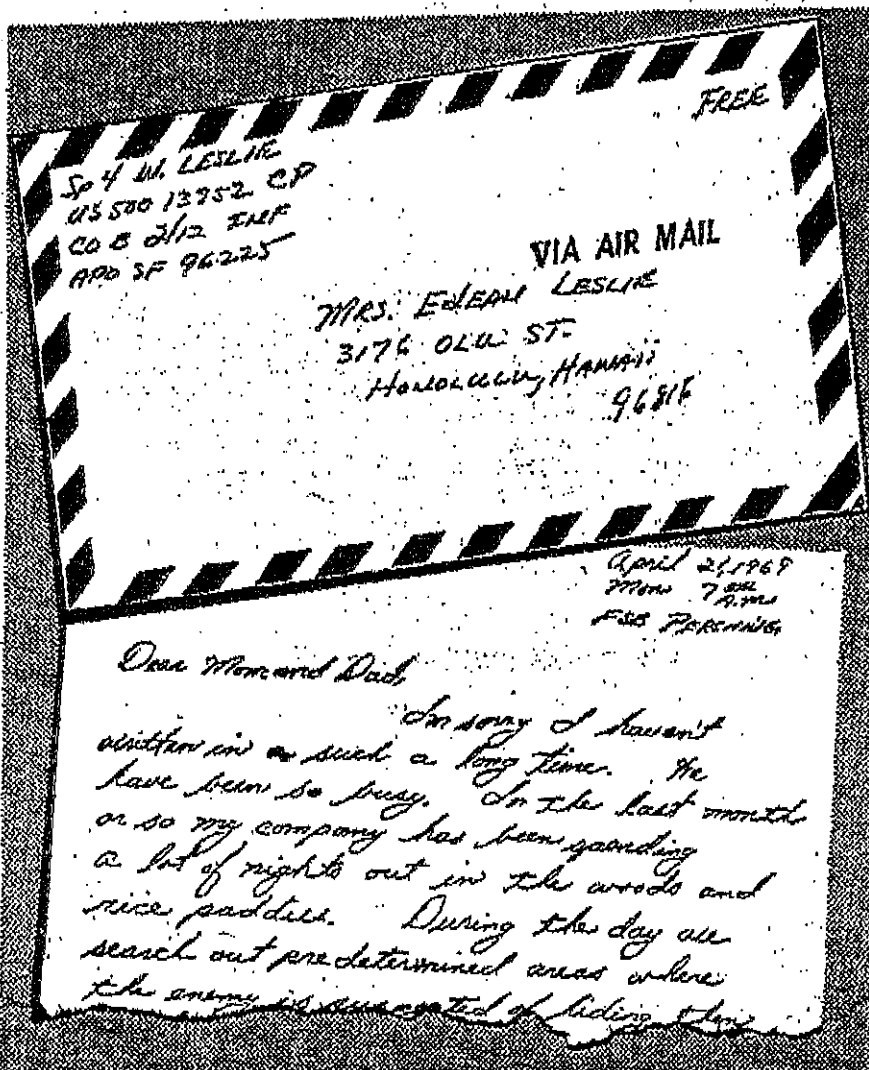
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- FIRST DISTRICT
LORRAINE R. INOUE
- SECOND DISTRICT
DAVID M. MATSUURA
- THIRD DISTRICT
ANDREW LEVIN
- FOURTH DISTRICT
JAN YAGI BUEN
- FIFTH DISTRICT
JOE TANAKA
- SIXTH DISTRICT
AVERY B. CHUMBLEY
- SEVENTH DISTRICT
JONATHAN CHUN
- EIGHTH DISTRICT
SAM SLOM
- NINTH DISTRICT
MATT MATSUNAGA
- TENTH DISTRICT
LES IHARA, JR.
- ELEVENTH DISTRICT
BRIAN TANIGUCHI
- TWELFTH DISTRICT
CAROL FUKUNAGA
- THIRTEENTH DISTRICT
ROD TANI
- FOURTEENTH DISTRICT
SUZANNE CHUN OAKLAND
- FIFTEENTH DISTRICT
NORMAN MIZUGUCHI
- SIXTEENTH DISTRICT
NORMAN SAKAMOTO
- SEVENTEENTH DISTRICT
DAVID IGE
- EIGHTEENTH DISTRICT
RANDY IWASE
- NINETEENTH DISTRICT
CAL KAWAMOTO
- TWENTY DISTRICT
BRIAN KANNO
- TWENTY FIRST DISTRICT
COLLEEN MANAOUSA
- TWENTY SECOND DISTRICT
ROBERT BUNDA
- TWENTY THIRD DISTRICT
BOB NAKATA
- TWENTY FOURTH DISTRICT
MARSHALL IGE
- TWENTY FIFTH DISTRICT
WHITNEY T. ANDERSON
- CHIEF CLERK
PAUL T. KAWAGUCHI

② I'm being victimized as the last immediate family member I don't want something that I don't deserve.

Wednesday again so

Reliving Your Experience...



"We usually go out three to six days at a time."

Recalling that he had been in Vietnam since November, the young soldier said:

"Time has gone by pretty fast here. Only six more (months) to go.

"We haven't seen much action for quite a while.

"Since the Tet Offensive came to an end, things have been real quiet."

He described how he had been promoted.

"I used to carry the platoon radio up 'til three weeks ago," he said, "when I was called upon to move up to Company RTO (radio-telephone operator).

"This simply means that I got an easier and safer job than the one I had as platoon RTO.

"The only time I will leave the perimeter now will be when my unit goes out on company size operations."

United Press International reported Sunday from Vietnam:

"... U.S. 25th Infantry Division troops reported killing 17 Communist troops in hurling back an attack on their outpost 29 miles northwest of the capital."

There was no mention of U. S. troop casualties.

Specialist Four Leslie, who died that day, is survived by his parents and two brothers. He was a 1961 Roosevelt High School graduate and trained at Ft. Ord, Calif., before being sent to Vietnam.

He was a great-grandson of James Sutton McCandless, founder of the Shriners Hospital. His great-granduncle, Lincoln McCandless, was Hawaii's Delegate to Congress from 1932 to 1934.

Funeral arrangements are pending the return of the body to Hawaii.

and a lot of other guys here."

Young Leslie was looking forward to returning home on R&R in June.

"I found out yesterday I will be coming for R&R on June 4," he said. "I'll leave about the 9th or 10th. I'll be home for about five or six days."

But there will be no R&R trip for Wendell W. Leslie,

The Army said he was

killed Sunday while at a night defensive position when attacked by a hostile force.

He was a member of the 25th Infantry Division's Company B, 2nd Battalion, 12th Infantry.

"I'm sorry I haven't written in such a long time," he said in his last letter, which was written from a fire support base.

"In the last month or so," he said, "my company has

been spending a lot of nights out in the woods and rice paddies.

"During the day we search out predetermined areas where the enemy is suspected of hiding, then for a few hours we rest until darkness has fallen at which time we move out to our ambush site.

"Here we dig our foxholes for the night. Early the next morning, we are up and at it again.

Thank you, Mom and Dad

PATSY T. MINK
SECOND DISTRICT, HAWAII

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FAX: (202) 225-4987
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FAX: (808) 538-0233

BIG ISLAND: (808) 935-3756
MAUI: (808) 242-1818
KAUAI: (808) 245-1981

Congress of the United States
House of Representatives
Washington, DC 20515-1102
August 18, 2000

RECEIVED - DACS
DIV. OF PUBLIC WORKS
2000 AUG 28 A 11:25
COMMITTEE ON EDUCATION AND THE WORKFORCE
EARLY CHILDHOOD, YOUTH AND FAMILIES SUBCOMMITTEE
POSTSECONDARY EDUCATION, TRAINING AND LIFE LONG LEARNING SUBCOMMITTEE
COMMITTEE ON GOVERNMENT REFORM
EQUIPMENT, FORCE, DRUG POLICY AND HUMAN RESOURCES SUBCOMMITTEE, TRAINING
GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY SUBCOMMITTEE
DEMOCRATIC CAUCUS
EDUCATION TASK FORCE, Co-Chair

The Honorable Benjamin Cayetano
Governor, State of Hawaii
Executive Chambers
Hawaii State Capitol
Honolulu HI 96813

Dear Governor Cayetano:

Howard K. Leslie, owner of Leslie's Drilling on the Big Island, has provided me with the enclosed copy of your letter in response to an inquiry from Senator Daniel Inouye.

Mr. Leslie remains concerned that state taxpayers are paying too much for subsurface investigation work requiring the use of drilling contractors. He states that engineering firms will use their own rigs - at a higher cost to the taxpayer - than if the drilling effort were subcontracted to drilling contractors such as Leslie's Drilling.

Mr. Leslie has attempted to market his services to geotechnical companies, but maintains that these are the companies that have their own rigs.

Please provide Mr. Leslie with guidance on the procedures by which he can initiate a change to the current State procurement laws to reinstitute competitive bidding on these small (less than \$25,000) state contracts.

Thank you very much.

Very truly yours,

PATSY T. MINK
Member of Congress

Lei Ann

GOVERNOR'S OFFICE
DACS
2000 AUG 28 11:00

HONORABLE SENATOR WILL ESPERON (CHAIR)
 HONORABLE SENATOR MICHELLE N. (VICE CHAIR)
 PLEASE PASS SENATE BILL 1537 FOR COMPETITIVE BIDDING ON

LESLIE'S DRILLING

SUBSTRATA INVESTIGATION • GROUTING • CONTRACT DRILLING

P.O BOX 22 MT.VIEW, HI 96771

PH: 808-968-6294

EMAIL: HLESLIE@HAWAII.RR.COM

2/12/11

Aloha!
Howard Leslie

Howard K. Leslie Sr.; Leslie drilling "Owner".
 Supervising Drilling consultant and safety coordinator on sight.



Mc... 04 ... truck mounted

(Off road vehicle)
 Low boy delivering rig. on PTA base by keau service station, inc.

