MEMORANDUM

TO: The Honorable William Paty
    Mr. Susumu Ono
    Mr. Leslie Matsubara

FROM: Roger A. Ulveling

SUBJECT: State Role in the Contracting for the Geothermal/Cable Development Project

October 26, 1989

Attached is Counsel's recommended structure for State involvement in the RFP process for the subject project. Mr. Sumida's issue paper is consistent with our discussions on October 20, and I concur with his recommendation.

Please provide your comments, if any, to Maurice Kaya by October 30, 1989. If there are no substantive comments or concerns, I suggest we take this position to a Steering Committee meeting to be scheduled to decide on the State's role in response to HECO's request for an agreement of this role.

cc: Mr. Gerald Sumida
    Mr. Maurice Kaya
October 25, 1989

Mr. Maurice H. Kaya  
Energy Program Administrator  
Department of Business and Economic Development  
335 Merchant Street  
Room 108  
Honolulu, Hawaii 96813

Dear Maurice:

Geothermal/Cable Project

Pursuant to our recent meeting on the above matter, I am enclosing for your review an issues paper on "HECO/State Roles in the RFP Process". This seeks to identify the joint and individual interest of HECO and the State in the RFP process, outline the mode of full and joint participation by HECO and the State in the remainder of the RFP process, and set forth the basic elements of the Joint Development Agreement to be entered into by HECO, the State and the successful consortium bidder (which shall be a companion agreement to the HECO-consortium bidder PPA).

As we discussed, I believe that this approach should accommodate both HECO’s and the State’s interests and roles, in the RFP process.
Please call me after you have had a chance to review the enclosed and I would be happy to discuss the same with you further. With warm regards,

Sincerely yours,

[Signature]

Gerald A. Sumida
Attorney at Law
A Law Corporation

GAS:clh
Enclosure
GEOTHERMAL/CABLE PROJECT
HECO/State Roles in the RFP Process

I. Objective: To fashion an overall arrangement to accommodate the interests of the State and HECO in the RFP Process.

II. Interests Involved:

A. Joint State/HECO Interests:

To fulfill stated commitment of the State and HECO successfully to complete, on a full joint participating basis, the RFP Process as the initial phase of the Geothermal/Cable Project.

B. HECO’s Interests:

To negotiate and conclude a PPA (that meets HECO’s applicable PPA requirements as outlined in the RFP and otherwise) with the successful consortium bidder.

C. State’s Interests:

To ensure that the best consortium bidder (meeting applicable technical and financial qualifications as outlined in the RFP and otherwise) is selected, and that any requests of such consortium bidder for State assistance (monetary and non-monetary) are within the parameters that the State deems appropriate.

III. Mode of Operations:

A. The State and HECO shall participate fully and jointly in the RFP Process to ensure that their joint interests and their respective individual interests are fully accommodated.

B. This shall be accomplished through the RFP Steering Committee, as it may be appropriately augmented by the State and HECO.
C. The State and HECO and each consortium bidder shall enter into a joint confidentiality agreement, as necessary and desirable, covering the matters to be reviewed during the RFP Process.

IV. Proposed RFP Process Arrangement, Including Ultimate Contractual Arrangements

A. The RFP Steering Committee, as appropriately augmented, shall continue to be the primary State/HECO vehicle to complete the RFP Process.

B. Once the successful consortium bidder has been selected, the parties shall enter into the following basic contractual agreements (which shall contain, among other provisions, the following basic elements):

1. Joint Development Agreement. HECO, the State and the consortium bidder shall enter into a Joint Development Agreement (which shall be a relatively short agreement), setting forth:
   
   (a) The description of the project scope;
   
   (b) The total project cost and project financing approach;
   
   (c) A specific reference to the HECO-consortium bidder PPA as a related agreement;
   
   (d) The project’s general reference milestone dates;
   
   (e) The nature, manner and timing of any assistance (monetary and/or non-monetary, as applicable) to be provided by the State to the consortium bidder; and
   
   (f) The general arrangements for consultations and communications among the parties during the project’s development phase through the commencement of commercial operations phase.

2. HECO-Consortium Bidder PPA. HECO and the consortium bidder shall concurrently enter into the PPA.