



Mark E Recktenwald
01/27/2006 09:27 AM

To: CableDO
cc:
Subject: Fw: RFP for PEG

----- Forwarded by Mark E Recktenwald/DCCA on 01/27/2006 09:27 AM -----



"John Morales"
<jonvideoguy@lycos.com>
01/26/2006 08:56 PM

To: aaron.fujioka@hawaii.gov
cc: mrecktenwald@dcca.hawaii.gov, "Governor Linda Lingle"
<gov@hawaii.gov>
Subject: RFP for PEG

Chief Procurement Officer/State Procurement Office Administrator Fujioka,
Please reject the DCCA's request for exemption from state procurement law
request (06-20-J) for the following reasons:

It is time that the DCCA be mandated to follow Hawaii State law regarding the
awarding of a 'FREE SPEECH' activity to a private non-profit agency.
I had been a long time Producer of programming on the Big Island's Na Leo O
Hawaii PEG access center. DCCA's designation of PEG centers as 'private
non-profit' agencies essentially shuts the public out of many important
decisions regarding content programming, rules, ownership of copy rights and
more importantly FREE SPEECH violations by these DCCA created PEGS.

I had filed a Federal lawsuit (Pro Se) in early 2004 to address the
consistant Free Speech violations by Na Leo O Hawaii and DCCA's duplicity in
this manner. I argued that PEG agencies are 'State Actors' I even cited State
Office of Information Practices opinion that PEGS are indeed 'State Actors'.
They are 'publicly funded, are supposed to provide training and equipment to
the public for the production and cable casting of programs FREE OF CENSORSHIP
Na Leo O Hawaii, through its support and duplicity by DCCA, has created its
own by laws(without public input) and agency rules that essentially provide
them with carte blanche to violate the publics FREE SPEECH rights and control
of Program content.

Public access programming is supposed to be free of editorial control and
censorship. Yet I have a copy of a letter from Na Leo's Executive Director ,
in response to a viewer complaint, that this viewer send in more letters
collected from other like minded viewers and the Executive Director can take
my program off the air. Which they did, citing that I violated 'their rules'
on copyright violations.

HOW CAN AN AGENCY THAT DOESNT OWN THE COPYRIGHTS TO MUSIC OR PROGRAM CONTENT
BE ALLOWED TO PRACTICE EDITORIAL CONTROL, CENSORSHIP AND CITE THE PRODUCER FOR
TRESPASSING WHEN SAME PRODUCER IS ON THE PROPERTY AQUIRING COPIES OF
DOCUMENTS, PER O.I.P.(Office of informaiton Act) ACT, FOR EVIDENCE AS PART OF
A LAWSUIT??

Na Leo just doesnt like Pesky Producers and members of the Public asking
legitimate questions regarding HOW MUCH POWER DCCA HAS GRANTED THEM.

This has got to stop NOW. All Peg agencies should be disbanded and the process
begun anew with RFP going out and granted to credible, trustworthy PUBLICLY
designated agencies that will allow Hawaii's public to produce programming
free of censorship and editorial control.
THE DCCA HAS DONE NOTHING ON THE PUBLICS BEHALF WHEN THESE VIOLATIONS HAVE
OCCURED AND HAVE BEEN POINTED OUT TO THEM.

I was on the planning committee for the creation of PEG agencies in
Hawaii, and was a member of the Na Leo planning committee on Hawaii Island way

back in 1992 when Former DCCA Director Robert Alm appointed me to represent the public. The State hired an outside mainland "consultant" to help set up the PEG centers for each island.

I ARGUED THEN, AND NOW THAT HAWAII SHOULD NOT CREATE PRIVATE NON PROFITS FOR PEG AGENCIES!. I saw the writing on the wall, but my concerns were not heeded by the rest of the planning committee which included state, county and University of Hawaii Hilo-Kona interests.

The PUBLIC of Public Access Television should be included in this process, and be empowered to create and manage a facility that has the PUBLIC'S interest in mind, and not the greedy, self centered staff, Executive Directors and Board of Directors that dont give a rip about the public.

Mahalo, respectfully
John Morales

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http://r.lycos.com/r/yp_emailfooter/http://yellowpages.lycos.com/default.asp?SRC=lycos10



Randy S K J Compton <rcompton@hawaii.edu> on 01/31/2006 12:58:06 PM

To: cabletv@dcca.hawaii.gov
cc:

Subject: testimony for public broadcasting

Aloha,

My name is Randy Compton. I am a student at both UH-Hilo and Hawaii Community College campuses. I have just recently completed the video production training from Na Leo o Hawaii. It is a wonderful gift to have an education channel, government channel, and a community access channel. All three channels are a great service to us and are all equally important. It would be a shame if one of these channels was done away with, especially the community access channel, 54. I greatly support public broadcasting and all the channels that it encompasses. Please continue to allow the community to access a public channel.

Mahalo,
Randy Compton

Office of the
CC
2006 FEB - 1 A 10: 29
A
FILE



Khandita Devi <khandita9@yahoo.com> on 02/01/2006 02:48:02 PM

COMMUNICATION
CC: [unclear]

2006 FEB -2 A 8: 35

To: cabletv@dcca.hawaii.gov
cc:

A _____
FILE _____

Subject: 5pam:Public Access Channel 54

Feb. 1, 2005

To Public Access Channel Conference:

Personally, I would like to express my strong support of the Na Leo 'O Hawaii Public Access cable TV channel 54 and the First Amendment freedom of speech and expression it allows. It is a wonderful opportunity for the general public to be able to express their views through a visual and audio format to people in general. At very little cost, any one person can be trained to use a camera and the editing facilities at Na Leo, and the programs produced can be aired on cable for free!

WHAT A WONDERFUL OPPORTUNITY THIS IS! One does not need to be a big corporation or company with lots of money or well funded university to exercise one's freedom of speech and create a show or express views. Maybe not all of the shows produced are of the highest quality, but the OPPORTUNITY exists at least to create a first rate and very original show, and this should NOT be taken away from the general public. Other channels all have their paid advertizers and the financial ability to influence others, and the University of Hawaii already has its own channel, therefore I think it is imperative the general public be allowed to have a channel of its own, reserved only for them to allow for the freedom to express their ideas and speech, no matter if the producer has a lot of money or very little and is poor.

Please do NOT take away this Public Access Channel from the people!

Thanks.

Sincerely yours,

Khandita Devi

(I can be reached at: Khandita9@yahoo.com)

your servant,
[IMAGE] Khandita devi dasi

Bring words and photos together (easily) with
PhotoMail - it's free and works with Yahoo! Mail.



"kbrett" <kbrett@hilo.net> on 02/01/2006 01:42:29 PM

CC: [unclear]
2006 FEB -2 A 8: 35
A [unclear]
FILE [unclear]

To: cabletv@dcca.hawaii.gov
cc:

Subject: 5pam:Na Leo 'O Hawaii

Feb. 1, 2005 - Wed.

To State and Cable TV Officials:

I am unable to personally attend the State Office Building public meeting conference today at 4:00 pm, but I would like my voice and opinion heard from this email letter.

Personally, I would like to express my strong support of the Na Leo 'O Hawaii Public Access cable TV channel 54 and the First Amendment freedom of speech and expression it allows. It is a wonderful opportunity for the general public to be able to express their views through a visual and audio format to people in general. At very little cost, any one person can be trained to use a camera and the editing facilities at Na Leo, and the programs produced can be aired on cable for free!

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Please do NOT take away this Public Access Channel from the people!

Thanks.

Sincerely yours,

Kristen A. Brett

(I can be reached at: kbrett@hilo.net
or
P.O. Box 970
Pepeekeo, HI 96783)



"kbrett" <kbrett@hilo.net> on 02/01/2006 02:50:30 PM

COMMUNICATION
CC: [REDACTED]

To: cabletv@dcca.hawaii.gov
cc:

2006 FEB -2 A 8: 35

Subject: 5pam:Na Leo 'O Hawaii

A _____
FILE _____

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Thanks.

Sincerely yours,

Kristen A. Brett

(I can be reached at: kbrett@hilo.net
or
P.O. Box 970
Pepeekeo, HI 96783)

AMANDA RAMSEY

CABLE DIVISION
COMMUNICATIONS AND
CC _____ RS

February 2, 2006

2006 FEB -7 A 8: 28

_____E_____P_____S_____

FILE_____

Cable Television Division
Department of Commerce and Consumer Affairs
P.O. Box 541
Honolulu, Hawai'i 96809

Na Leo 'O Hawai'i, The Voice of Hawai'i Public Access Facility for the Big Island

Aloha,

In this time of tumultuous growth on the Big Island, Na Leo 'O Hawai'i stands as the only "voice" available to all members of the community, addressing issues from agricultural concerns, Hawaiian sovereignty, tourism, education, entertainment, drug abuse and unbridled residential development as well as the personal vision of audio visual artists.

Na Leo 'O Hawai'i should not be sold or transferred to the City and County of Hawai'i or to the University of Hawai'i systems for the simple reason that both of those entities currently have facilities in place as well as the opportunity to use Na Leo 'O Hawai'i. However, were either the County or University systems to acquire Na Leo the public would be excluded from the facility and the Big Island would lose its only independent television broadcast studio.

Without Na Leo 'O Hawai'i to serve as a non-profit, unbiased entity a valuable platform for the freedom of speech would be lost. Example: There is currently a revived movement to split the Big Island into two counties; the only venue capable of presenting this volatile issue in a neutral manner would be the uniquely poised, Public Access facility of Na Leo 'O Hawai'i.

The Department of Commerce and Consumer Affairs has requested comments concerning the services provided by Na Leo 'O Hawai'i, so here are mine summed up in a single word, excellent!

The Na Leo staff is comprised of some of the hardest working people I have ever encountered, each is knowledgeable and at all times deeply committed to providing the tools and guidance necessary to each client.

I would like to see an expansion of facilities particularly in Studios A and B: lighting gels, microphones and a raised platform (stage) area would enhance the production values considerably as well as the addition of a sound/ voice over booth. If these

February 2, 2006

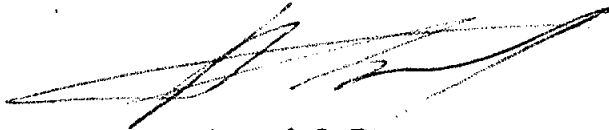
additions were in place, it is feasible that Na Leo could "rent out" these spaces from time to time; the fees received would defray the cost of acquisition. Such improvements would increase the Public Access Producers ability to attain underwriting financial and in-kind support.

"Na Leo 'O Hawaii" means "The Voice of Hawai'i".

As a retired newscaster from O'ahu and a resident of the Big Island for more than a decade, it is my ardent hope that the Public Access facility of Na Leo 'O Hawai'i will flourish and continue to be an asset to our community.

Please, keep Na Leo 'O Hawai'i, The Voice of Hawai'i, alive.

Mahalo Nui Loa,

A handwritten signature in black ink, appearing to read "Amanda L. Ramsey". The signature is stylized with long, sweeping horizontal strokes and some vertical lines.

Amanda L. Ramsey
Na Leo 'O Hawai'i Public Access Producer

Cc: Juergen Denecke, GM. Na Leo 'O Hawai'i



Butch_Hughes/KEALAKEH/HIDOE@notes.k12.hi.us on 02/21/2006 11:28:52 AM

CABLE DIVISION
COMMERCE AND
CONSUMER AFFAIRS

2006 FEB 22 A 10: 49

To: cabletv@dcca.hawaii.gov
cc:

A _____ P _____ S _____

FILE _____

Subject: Na Leo O Hawaii, Inc

I am writing this short note to express our appreciation of the organization and staff at Na Leo O Hawaii here in Kona. We, at Kealakehe High School, produce a 30 minute program daily for our parents and the wider community of Kona. This "Citizenship" program allows our school to keep in touch with our parents. Our information is up-to-date and informative. Our parents are involved and very appreciative of this daily broadcast. . . Of course this would not be possible without the great assistance we receive from the fine people at Na Leo O Hawaii. Verle Hughes



"wainani lee" <wainanilee@hotmail.com> on 02/22/2006 10:38:55 PM

CABLE DIVISION
COMMERCE AND
CONSUMER AFFAIRS

2006 FEB 23 A 7:53

To: cabletv@dcca.hawaii.gov
cc:

A___E___P___S___

Subject: "Testimony regarding RFP for PEG providers"

FILE_____

Feb 23, 2006

Mr. Sonobe,

It is without a doubt an unwelcome surprise that the DCCA should want to take so much interest in Public Access Television at this time and in the manner that has developed. I have been a certified producer with Na Leo O Hawaii for the past couple of years and have also utilized neighbor island facilities for the purpose of airing a variety of programs I have produced. Most of the programs help to create awareness about various non-profit organizations operating in Hawaii and are meant to assist in much needed outreach that is done best with the assistance of otherwise expensive television media.

I do not support the DCCA's efforts to introduce or place into effect previously unrecognized procurement laws or the RFP process being entertained. My greatest fear is that the essence of public access could potentially be lost and ultimately not made available to programs that are not conducive to development and basically subject to censorship of some degree.

I do support Public Access Television of Hawaii Island and the manner of which programs are delivered. I am requesting that the DCCA's exempt Na Leo O Hawaii and other PEG programs from procurement laws. I do not support the current administration/management of the Hawaii Island office and would like to be contacted regarding this matter.

Sincere Regards,

❖Wainani Lee❖ Teixeira
808.989.3606

Feb 23, 2006

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Sincere Regards,

Wainani Lee Teixeira
808.989.3606

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"Lynn Avatar" <squishdogmedia@gmail.com> on 02/23/2006 09:54:08 AM

To: cabletv@dcca.hawaii.gov
cc:

Subject: Public access TV up for bid.

Feb.23.2006

Dear Sir or Madam,

I wish to make myself heard on the matter of Public access as it now represented here in our state of Hawaii.

I attended the open meeting earlier this month here in Hilo Hawai'i at the state building.

My name is Ms. Linn Avattar.

I am a producer at the Na Leo O Hawai'i public access TV station here in Hilo. I produced over 30 programs for the station for 2005.

So I feel I do have a working knowledge of what goes on at the facility and with the people that work to run and maintain the operation there.

Let me say this, I don't see that changing anything at the present time will do anything to improve what already exists now at Na Leo O Hawai'i.

If it ain't broke don't fix it seems to apply well here with what we have going for us.

Opening up the process to bid, not knowing what we will be getting is not in anyway a good thing. As it was stated at the meeting by the DCCA representative, no other state in our country has done this. It has reverberated accross the land as a moot point. Why then should we here in Hawaii be any different?

I would like to say this, I am against doing a policy where we open the station up to bid and get who knows what coming in and redirecting the efforts of the station and quite possibly doing a real disservice to our community. Lot's of people here watch and enjoy public access Tv.

Just two days ago i was filming a special up at the new planetarium here with the director Gloria Chun Ho. She told me how much she enjoyed Public Access here in Hilo and opened up the entire facility for me to film. I was able to get great footage, and terrific interviews with not only Gloria but with others working at the new venue as well.

I find everyone here, whenever i shoot in and around hilo and the island always open to Public access TV and everything that we are doing here

at Na Leo O Hawai'i Ch. 54.

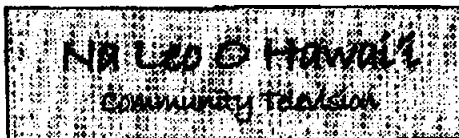
Let's just keep it that way. Don't you think that is a good idea? I do.

Sincerely,

Ms. Linn Avattar.



74-5580 Eho Street, Ste. 115, Kailua-Kona, HI 98740
Tel: (808) 329-9617 Fax: (808) 329-9630



Fax

To: Mark Reckterwald, DCCA Director

From: Na Leo O Hawaii

Fax: 808-588-2656

Pages: 13

Phone:

Date: 2-10-06

Re: Copy of Follow-Up Letter & Written Testimony

to February 1, 2006 Public Information Meeting

Sponsored by DCCA in Hilo

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

Aloha, Mr. Reckterwald:

Attached for your review is a copy of the Follow-up Letter (written testimony) to the February 1, 2006 Public Information Meeting sponsored by DCCA in Hilo. Enclosures: Questions Submitted for DCCA Response and DCCA Fact Sheet dated February 8, 2006.

Mahalo for your consideration regarding this matter.

Na Leo O Hawaii Staff, Producers, and Community Supporters

CABLE DIVISION
 COMMERCE AND
 CONSUMER AFFAIRS
 2006 FEB 10 P 2:58
 A-E-P-S
 FILE

This FAX contains 13 page(s) including this cover sheet. If this transmission is incomplete or unreadable, please call me at 808-329-9609 for re-transmission. Mahalo!

DATE: February 9, 2006
Fax Transmission: (808) 556-2625

MEMORANDUM TO: Mr. Clyde Sonobe, Administrator
 Cable Television Division
 Department of Commerce and Consumer Affairs

FROM: Na Leo staff, producers, and community supporters

SUBJECT: Follow-up letter (written testimony) to February 1, 2006 public information meeting sponsored by DCCA in Hilo. Enclosure: Questions submitted for DCCA response and DCCA Fact Sheet dated February 8, 2006

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2006 FEB 10 P 2:58

CABLE DIVISION
COMMERCE AND
CONSUMER AFFAIRS

We wish to extend our gratitude to you and to your Department's attorney, Ms. Lauren Wong, for participating in a question and answer session at the February 1 public comment meeting sponsored by the Department of Commerce and Consumer Affairs (DCCA) in Hilo.

The question and answer format helped everyone gain a better understanding of the process and its components.

Most of those attending DCCA's first public comment meeting had not seen the public meeting notice. You noted that written testimony was requested by DCCA in its published meeting notice. This explains why there was no written testimony submitted.

We were surprised to notice that DCCA was not recording the meeting or taking any notes to memorialize the input you received from the meeting. Na Leo's staff did forward a video of the meeting to DCCA Director, Mark Recktenwald.

Those who provided oral testimony, or sought answers from you to their questions, did so in order to better understand a) the events that led DCCA to determine that Na Leo is subject to the state procurement laws, b) the purpose of the public comment meeting, and c) how people can best interact with DCCA going forward to enhanced DCCA's understanding of, and its support for, perpetuating the current operations of Na Leo and the excellent community services and unique opportunities our non-profit organization provides our island residents.

You heard unanimous consent among those testifying that the quality and consistency of the access and training services Na Leo affords our community are excellent, unbiased and consistent.

No one at the meeting voiced any support for these services to a competitive bid process. To the contrary, many supported DCCA seeking an exemption from the state procurement office. If an exemption is granted, our community will be spared the disruptive consequences and fiscal inefficiencies that are likely to result from a competitive bid process should a new operator be awarded the bid contract.

Memo to Clyde Sonobe

February 9, 2006

Page 2

To the best of our recollection, those testifying or asking questions expressed the following:

- **They were supportive of Na Leo and highly satisfied with the quality and friendly learning atmosphere provided by Na Leo's management and staff.**
- **They expressed approval for the quality and consistency of the way Na Leo has provided public, education and government (PEG) access services to our community.**
- **There were concerns expressed about DCCA Director Mr. Recktenwald not attending the meeting after learning a) that his actions initiated the competitive bid evaluation process we are currently being asked to go through, and b) that he is the person who will decide where the process proceeds from here.**
- **There was no support for subjecting Na Leo's community services to a competitive bid process.**
- **Concerns were expressed that a competitive bid process would allow the University of Hawaii, another state agency or a for-profit corporation to bid and possibly take over Na Leo's seasoned commitment and service to our community. People were concerned that if the University, or another state agency or a for-profit company takes over Na Leo, the new access service provider may have other designs for the public's unrestricted, reasonable usage of Na Leo's new building and its state of the art quality production facilities, or the new operator may want to amend the way in which Na Leo provides its access and training services for the benefit of our all members of our community irrespective of their income, educational or other irrelevant qualifications that may be applied by a new operator serving a different agenda or mission.**
- **Many who attended the meeting voiced support for DCCA seeking a permanent exemption from the state procurement office on the grounds that the competitive bid process a) would be disruptive to the community services Na Leo provides, b) would create hardships for the dedicated employees and management at Na Leo, who like everyone else, need job security to protect their families, c) would make it difficult to hire qualified new employees and management absent of an in-house long-term employment security plan and d) would result in wasting limited financial resources on non-productive bid preparation and transitioning costs if a new operator wins the contract. And all these factors, plus others, would result in a process being created that either is "not practicable" or "not advantageous" to the State.**

Those attending the February 1 public meeting asked many questions. We have included a list of some of those questions. Additional questions are also included on the enclosed list. These questions arose from information received after the meeting, including the attached DCCA Fact

**Memo to Clyde Sonobe
February 9, 2006
Page 3**

Sheet dated February 8, 2006. You indicated to those attending the meeting that you would respond to the questions.

At your earliest convenience, please email your responses to the enclosed questions to Na Leo at the following address: naleo0001@hawaii.rr.com. We will distribute the information tour staff, the producers, those who attended the February 1 meeting and to others who are following this process with interest.

DCCA's Fact Sheet would have been helpful to have at the Hilo meeting.

We learned that DCCA decided to hold a meeting on Molokai even though Molokai was not scheduled on DCCA's original notice promoting its statewide public comment meetings. The scheduling adjustment for Molokai is good because it expands the scope of the public's important role in the process.

It is always best to hear live testimony as opposed to reading written testimony in a vacuum. Being present to absorb live testimony is more effective because it provides a venue in which DCCA is able to interact with testifiers to clarify or expand on testimonies as they are given.

In the end, such a procedure allows DCCA representatives to make more informed decisions as the process plays out. Such decision will include, among others, decisions on whether or not to a) apply for an a permanent exemption from the state procurement law, or b) move forward with the preparation of a competitive bid proposal, or c) request the state procurement office for more time to further interact with the public and others regarding this complex process.

We urge DCCA to consider holding a public comment meeting in Kona. The distance from Kona to Hilo is greater than the distance between most islands. No one from the Kona side attended the Hilo meeting. It seems unreasonable to have expected employees at Na Leo's Kona office or the residents of Kona and surrounding communities to drive all the way to Hilo for DCCA's February 1 public comment meeting.

DCCA's decision could adversely impact many people in rural communities throughout our state. Residents in these areas have come to trust and rely on those involved with the access organizations statewide, who have unselfishly, and with pure intentions, worked diligently to develop these existing non-profit access service organizations into valuable community resources.

These beneficial community media resource centers could be severely compromised by having to adhere to the state procurement law, especially if things are rushed through in order to meet what seems to be an unreasonable deadline of June 30.

The Hilo meeting was the first of five scheduled public comment meetings in a process that deals with an extremely complex issue. How it plays out statewide will impact many. As such, it seems

Memo to Clyde Sonobe

February 9, 2006

Page 4

more time is needed, at least beyond June 30, for DCCA to conduct meaningful due diligence on behalf of the public and to legislate the most appropriate action to insure that the public's best interest is served.

Several of those testifying at the meeting were suspect of how this process evolved and where the process is going. They expressed concern about the fast approaching June 30 deadline. From what we have been able to gather from information received at the meeting, and subsequent to the meeting, there appears to be some play in the June 30 deadline date, so long as DCCA is moving forward in good faith and trying to do its best to do the right thing and make the right decision for the people.

If DCCA truly has the public's best interest at heart, it seems the process needs to be slowed down a bit. Extending the timeframe for the process will provide DCCA with opportunities to have more extended interaction with the public and the non-profit organizations currently providing access services statewide. At the February 1 meeting, you heard that the process did not "seem right". It was not "pono".

You mentioned that DCCA was not experienced in preparing competitive bid documents, which are described in DCCA's public meeting notice as "request for proposals". It's curious that DCCA is seeking input on what should go into a request for proposal from members of the public, who like DCCA have little experience in dealing with such issues. The average person attending your public comment meetings will have little or no knowledge of the complex components involved in operating a successful business statewide. These are components that need to be included in a competitive bid proposal.

It seems the most productive information regarding competitive bid proposals, or the impacts of those proposals that may make the competitive bid process not practicable or advantageous to the State, would best be obtained by DCCA through extensive interaction with the staff and management of Na Leo and the other non-profit PEG access operations elsewhere in the state. DCCA must first make a sincere attempt to understand the complexities of developing, sustaining and expanding the efficiencies of these access organizations before it can hope to develop a balanced competitive bid proposal that will insure the excellent access services being enjoyed by communities statewide will continue uninterrupted at the same level of service.

Each County in our state has unique access requirements and strategies based on a) available funding ('Olelo on Oahu receives over \$4,000,000 in cable fees verses only \$ \$692,000 received by Na Leo, and even less, \$335,000, going to Ho'ike in Kauai), b) logistics (Akaku serves three islands: Maui, Molokai and Lanai) and c) other distinctive criteria ('Olelo operates six community media resource centers in rural communities such Waianae and Kuhuku).

Should the access providers in each County end up being subjected to a competitive bid process, it may be necessary for DCCA to develop a separate competitive bid proposal for each County in order to account properly for their diverse operating and funding challenges.

Memo to Clyde Sonobe

February 9, 2006

Page 5

We hope that DCCA intends to interact with Na Leo and the other access organizations more extensively than relying solely on written testimony DCCA receives from these organizations during the short public comment notice period, which runs for less than 30 days (February 1 thru February 24)

Please consider the strong sentiments expressed by those attending the first public comment meeting in Hilo. You learned about the good work being done by Na Leo for our community, and you heard the public urge DCCA to support the consistency of Na Leo's community service successes by seeking an exemption for Na Leo from the state procurement law.

DCCA hopefully will decide to seek an exemption and make a strong case to convince the State Chief Procurement Officer to grant the exemption. These suggested actions are consistent with Mr. Recktenwald's message on the DCCA website in which he pledges that the staff at DCCA is "helping to fulfill the pledge of the Lingle-Aiona administration to foster a business friendly climate in Hawaii...and to empower Hawaii's business community to become successful." Na Leo and the other non-profit PEG organizations are existing successful businesses that have been in the sole business of serving communities around the state before the procurement law even came into existence. Over the years these community service businesses have grown their respective community services into high quality, efficient operations through partnering with other local entities that also have missions dedicated to community service.

Mahalo for you time and your interaction with our Hilo community.

Copies:

Governor Linda Lingle by fax 586-0006

Mark Recktenwald, DCCA Director by fax 586-2856

Aaron Fujioka, Chief Procurement Office, State of Hawaii by fax 587-4703

Gay Porter, Hawaii Island Representative on DCCA's Cable Advisory Commission by fax 'Olelo Community Television (Oahu) by email: klonez@olelo.org

Akaku Community Television (Maui and Molokai Community Media Resource Centers) by email: iris@akaku.org

Ho'ike Community Television (Kauai) by email: jrobertson@hoike.org

Questions for DCCA

Attached to Memo to Clyde Sonobe, DCCA Cable TV Division from Na Leo staff, producers and community supporters
February 9, 2006

DCCA held a public comment meeting in Hilo on February 1, 2005. The questions below resulted from that meeting and follow-up information received subsequent to the meeting including the DCCA Fact Sheet dated February 8, 2006.

When did DCCA first become aware that Public, Education and Government (PEG) access services might be subject to the state procurement laws?

How were the PEGs allowed to operate since the mid-90s without being subject to the state procurement law?

When did DCCA Director Mark Recktenwald officially inquire about the PEGs being subject to state procurement law?

What prompted Mr. Recktenwald to inquire about the state procurement law applying to the PEGs? (i.e. public pressure, request by the PEGs, etc.)

Was Mr. Recktenwald's inquiry in the form of a written document?

DCCA represents that in October 2005 the Attorney General's Office (AG) and the State Procurement Office (SPO) informed DCCA that the PEG contracts would be subject to state procurement law. Did the AG and SPO provide their advisory comment to DCCA in the form of written documents?

Please confirm if the following is an accurate. If not, please provide a corrected scenario. At the February 1 Hilo meeting it was stated that after the statewide public comment meetings being sponsored by DCCA that Mr. Recktenwald will make one of the following decisions:

1. Submit an application to SPO requesting a permanent exemption for the PEG contracts from the state procurement laws on the grounds that such the procurement process applied to the PEGs would be either "not practicable" or "not advantageous to the State".
2. Decide not to apply for an exemption, and begin preparing a competitive bid document, which DCCA refers to as a "request for proposal" (RFP) document, or
3. Request SPO to grant DCCA more time to accomplish the due diligence needed to make sure the public's best interest is served before having to make a decision on whether to file for a permanent exemption or not. (This alternative was raised at the Hilo meeting as an option, but is not included as an option in DCCA's February 8 Fact Sheet.

Mr. Recktenwald did not attend the Hilo public comment meeting. Will he be attending any of the scheduled public comment meetings?

Why wasn't a public comment meeting scheduled in Kona?

Is it possible to schedule a Kona meeting?

What is the dollar amount of the cable franchise fees collected last year by the following:

PBS Hawaii	\$
Olelo Community TV (Oahu)	\$
Akaku Community TV (Maui County)	\$
Na Leo Community TV (Big Island)	\$
Ho'ike Community TV (Kauai)	\$

If the AG and SPO have decided that the PEGs are subject the state procurement law, why wouldn't PBS Hawaii, which we believe receives more cable franchise fees than the Big Island, Maui County and Kauai combined, be subject to the same state procurement law? Please explain specifically why PBS Hawaii is exempt and not the PEGs.

Did Mr. Recktenwald inquire to the AG of SPO if PBS Hawaii is subject to the state procurement law at the time he inquired about the PEGs or at any other time?

We understand that DCCA has a standing offer with each County to take over control of the respective PEGs. If the County takes over control will the state procurement law still apply to the PEGs? If so, will its application be the same as if DCCA maintained control of the PEGs?

At the Hilo meeting, we were advised that DCCA will be responsible for deciding what goes into the RFP bid document. Does SPO or any other government agency have approval jurisdiction over the provisions DCCA includes in its RFP? If so, please explain specifically the extent of the discretionary authority any agency has over DCCA's RFP content.

If DCCA prepared an RFP today, knowing what it does about what it takes to operate and sustain the PEG access service in each county, what items would DCCA include in the RFP document other than the examples given on DCCA's Public Comment Meeting Notice?

Will Cable Advisory Committee members be asked to provide advice to DCCA on the state procurement issue?

The PEGs were originally set up by DCCA to be private, non-profit organizations. What motivated DCCA to apply this structure to the PEG organizations?

Is there any restriction on requiring the RFP respondents to be qualified non-profits? If so, what is the source of that restriction?

If a competitive bid process (RFP) ends up being applied to the PEG service contracts, will UH Hilo have an opportunity bid for the contract?

Is DCCA able to restrict state agencies from participating in an RFP process if such a process is applied to the PEG access service contracts?

DCCA indicated it has received only one written testimony in support of an RFP process for the PEG service contracts. Has DCCA had any preliminary talks about the RFP process with anyone associated with the University of Hawaii system or any for-profit corporation?

We understand that DCCA is not audio recording or taking handwritten notes on the oral testimonies it receives at the public comment meetings. Is this true?

We understand that in its decision making process, DCCA will only give weight to written testimonies received up to until February 24, DCCA's imposed deadline. Is this true? If not, please explain.

Does DCCA plan to seek any other input (other than from the public) from state agencies or others (i.e. expert consultants) after the February 24 deadline? If so please identify the sources of the additional input, and whether or not this input will be required to be in written form with copies available to the public.

UH has use of the INET system. If UH is allowed to bid, will DCCA require the cable company to open access to the INET system up to all bidders to make the RFP fair and equitable?

Will the RFP allow a for-profit corporation to bid for the project on its own, or in conjunction with UH-Hilo?

If DCCA is required to prepare an RFP, please answer yes or no if DCCA is restricted from including in its RFP each the following:

- ✓ Require RFP respondents to be organizations located in the County where the PEG services are administered.
- ✓ Require RFP respondents to be qualified non-profit organizations that have been in business for some reasonable amount of time.
- ✓ Require RFP respondents to maintain and support existing PEG operations in multiple locations (i.e. Hawaii-community media resource centers in Kona and Hilo; in Maui County-community media resource centers on Maui and Molokai; on Oahu six community media resource centers in Honolulu, Kahuku, Waianae, Palolo, Pearl City and Kaneohe)
- ✓ Require certain standards of technical qualification for employees?

- ✓ Require the winning bidder to have a Board of Directors that is appointed by the DCCA Director as is required of the current PEG access operators
- ✓ A requirement that a certain percentage of the employees have full-time status.
- ✓ A requirement that employees be provided pension/retirement plans.
- ✓ Require a specific number of community members to be trained to various levels of video proficiency/production each year.
- ✓ A requirement to raise a certain amount of income through grants, fund raising events, etc?
- ✓ Require uncensored airing of programming produced by the public.
- ✓ Require that annual video contests be sponsored.
- ✓ Require community speak out telecasts.
- ✓ A requirement that RFP respondents provide DCCA with a plan on how they plan to become economically self-sufficient if the cable franchise fee income ceases to be available.
- ✓ Require all bidders to be locally based companies.

Is there any provision in federal or state law that requires the PEGs to divide the franchise fees equally between the public, state educational agencies and state/county governments? If so, please explain the reference. If not, could DCCA make this a requirement of the RFP?

Please explain the competitive bid selection process the DCCA Director envisions following in order to determine the winning bidder, including if the DCCA Director plan to include proposal evaluation factors that will apply to the bids and how he would weigh those factors. For example, evaluating criteria may include the following at the weighted measures noted as "points": System Concepts in the areas of promotion, programming, functions and studio management (25 points); Program Implementation assuring the greatest diversified community participation in the access facilities and resources (20 points); Demonstrated performance capabilities (20 points); Organizational Structure and Management that assures the delivery of services, efficient use of resources and a prohibition of any conflicts of interest or the appearances thereof (15 points); Local company, which has been in operation at least two years prior to the issuance of the RFP and has a history of community partnering and networking to expand the efficient delivery of PEG access services (10 points); Total evaluated cost (10 points).

How would the winning bid be determined, low-bid only or would other criteria be included? If other criteria are included in the evaluation process, what might some of this other criteria include?

Prior to DCCA's first scheduled public information meeting on February 1, please describe the scope of any interaction DCCA has had with the PEGS (Na Leo-Hawaii, Akaku-Maui County, 'Olelo-Oahu; and Ho'ike-Kauai) in order to help DCCA understand the complexities of providing PEG services throughout the state so that DCCA is more informed to make decisions on the following:

- ✓ What arguments should be made to convince SPO that an permanent exemption for the PEG from the state procurement law is justifiable based on the determination that the process is either "not practicable" or "not advantageous" to the State, and/or
- ✓ What components should be included in the RFP, if DCCA is compelled to go that route, to insure the current quality of PEG services being provided will continue uninterrupted.

Does DCCA believe it understands the operating dynamics of each PEG organization well enough to prepare an RFP that will insure the public that the consistency and quality and scope of the current PEG services will be maintained statewide?

In the public meeting notice, DCCA included some suggested components that might be included in an RFP if DCCA decided to proceed with the preparation of such a document. We assume this was done to assist prospective testifiers. DCCA also requested testifiers to comment on why DCCA should seek a permanent exemption for the PEGs, but DCCA did not include any examples of what may constitute valid arguments for justifying such an exemption. What are examples of some arguments that DCCA feels might justify a permanent exemption for the PEGs from the state's competitive bidding process based on DCCA's understanding of the current PEG operations in each of the four counties?

Is DCCA able in its RFP to not allow one entity from taking over all the PEG contracts statewide?

If the state decides not to apply for an exemption or applies for an exemption and it is denied, how much time does DCCA estimate it will take to complete the preparation of an RFP document, put it out to bid, allow sufficient time for bidders to respond, process the bids, select a winning bid and implement the transition process if the winning bidder is a new operator?

The current PEG contracts are set to expire on June 30. The uncertain future Na Leo is burdened with has a negative impact on employee morale and makes running an efficient operation difficult. Based on our perception of where DCCA is at this point, it appears the June 30 deadline seems an unreasonable deadline to set for DCCA to complete its due diligence to insure the best interest of the public is served. Is DCCA considering asking SPO for an extension of the June 30 date? If not, please provide a timeline of how DCCA plans to complete its process by June 30.

DCCA has asked the public to comment on the quality and consistency of the PEG services statewide. What is DCCA's opinion regarding the quality of PEG services provided by Na Leo and each of the other PEG service providers?

According to the state procurement law, an exemption may be granted the PEG contracts if it is determined that a competitive process would not be "practicable" or "advantageous" to the state according the state procurement law. Please provide some

examples of what could be argued as being "practicable" or "advantageous" to the State if a competitive bid process were to be required for the PEG service contracts?

The procurement law references the terms "practicable" and "advantageous" relative "to the State". What is the definition of "the State" as used in this context?

Please provide a list of PEG service organizations in other jurisdictions that are subject to a competitive bid process.

Has DCCA been in contact with any of the PEG service organizations in other jurisdictions that are subject to a competitive bid procurement requirements in order to understand the level of success of each competitive bid procedure, the extent and quality of the PEG services offered in other jurisdictions compared to the excellent PEG services we currently enjoy in Hawaii, or to learn how they prepared their RFP document and what evaluation process, if any, has been used by others to select the winning bidder?

In its efforts to date to respond to the AG and SPO position that the PEG service contracts are subject to state procurement law, has DCCA been working with any expert in the cable access field to better understand the complexities of providing efficient, quality PEG access services, which DCCA may have to account for in its RFP? If so, who are these expert sources?

Over the past year, how many complaints have been filed with DCCA regarding Na Leo's operations, and what is the number of different individuals who have submitted those complaints?

Please provide this same complaint summary for the other PEGS: Ho'ike-Kauai, 'Olelo-Oahu, and Akaku-Maui County?

Does DCCA have all the complaints submitted against the PEGs filed in one easy to access location?

On February 8, Na Leo received a Public Meeting Fact Sheet from DCCA. On that sheet it stated "Request for Proposal(RFP) not related to performance of current access organization". If this is true why did DCCA's "Notice of Public Comment Meetings" which was published in the newspaper as the public to "Please comment on the services provided by the Public, Education, and Government ("PEG") organization in your respective county: Akaku (Maui), Ho'ike (Kauai), Na Leo (Hawaii) and 'Olelo (Oahu)"?

Please submit responses to above questions to naleo0001@hawaii.rr.com and the Na Leo staff will see that they are distributed to those who attended DCCA's February 1 public comment meeting, to our producers and community supporters and to all other interested parties.

Mahalo

2/8/2006

Department of Commerce and Consumer Affairs

Public Comment Meeting

Fact Sheet – Compliance with State Procurement Code : PEG Contracts

Request for Proposal (RFP) not related to performance of current PEG access organization.

The possible RFP for PEG services is not the result of the performance or action(s) of the current PEG organizations, i.e. Akaku, Hoike, Na Leo, or Olelo. The DCCA has been informed by the Attorney General's Office (AG) that it must comply with the State's procurement laws as it relates to these contracts.

When was the DCCA informed by the AG that its PEG contracts must comply with the Procurement law?

The DCCA was informed by the AG that the PEG contracts were subject to the state procurement law HRS 103D in October 2005.

Must the DCCA's contracts with PEG organizations comply with the state procurement law?

Yes, although the procurement law includes an exemption if the State Procurement Office (SPO) concludes that it is not practicable or not advantageous to the State in any specific case. The DCCA is conducting these public comment meetings to gather public input on the services they currently receive from their PEG access organizations, how these services can possibly be improved, and if an RFP was issued, what requirements should be included in such a RFP. The DCCA is considering various options, including requesting an exemption from the procurement law. SPO would make the decision to grant or deny such a request. Another option would be to start the RFP process immediately after reviewing public input regarding what such a RFP should encompass.

Will PEG access be eliminated in my County?

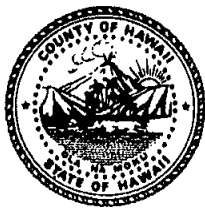
No, PEG services will continue. The RFP process will allow other organizations to bid on the management and operation of existing PEG facilities. For example, if on Oahu another organization, in addition to Olelo, submitted a response to a RFP and its response was selected, (instead of Olelo's), PEG services would continue. The new organization may have another name, besides Olelo, but PEG services will continue utilizing the same building, equipment, and facilities. If another entity was selected by the RFP process, that entity would decide how to operate, staff and manage the facilities currently managed by Olelo.

Please submit all written comments to the DCCA by Friday February 24, 2006. Written comments are requested in addition to any oral comments given at these public comment meetings. Please call 808-586-2620 if you have any questions.

Mailing address: DCCA Cable TV Division P.O. Box 541 Honolulu, Hawaii 96809

Email address: cabletv@dcca.hawaii.gov

Harry Kim
Mayor



CABLE DIVISION
COMMERCE AND
CONSUMER AFFAIRS
Dixie Kaetsu
Managing Director
Barbara Kossow
Deputy Managing Director

County of Hawai'i 2006 FEB 27 A 9:13

25 Aupuni Street, Room 215 • Hilo, Hawai'i 96720-4252 • (808) 961-8211 • Fax (808) 961-6553
KONA: 75-5706 Kuakini Highway, Suite 103 • Kailua-Kona, Hawai'i 96740
(808) 329-5226 • Fax (808) 326-5663

FILE _____

February 23, 2006

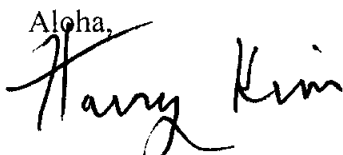
Clyde Sonobe, Administrator
Cable TV Division
Department of Commerce and Consumer Affairs
P. O. Box 541
Honolulu, Hawai'i 96809

Dear Mr. Sonobe:

This is in regards to the new requirement that Public, Education and Government (PEG) access services are subject to state procurement laws. The County of Hawai'i's relationship with Na Leo O Hawai'i is limited to utilizing its channels to broadcast various governmental programs, and also obviously as a viewer and recipient of its work product. It is in this light that we can positively say that the work product and our relationship with Na Leo O Hawai'i is quite satisfactory, and we have no negative comments to make on its professionalism.

I do understand the possibility of the DCCA looking at competitive proposals for PEG services. At this point, I'll take a bird in the hand because the Na Leo O Hawai'i product is quite good. Our working relationship with this small scale non-profit entity is excellent.

I encourage you to apply to the State Procurement Office for a permanent exemption from state procurement laws for PEG contracts. This exemption would be in the best interests of our Hawai'i Island community.

Aloha,

Harry Kim
MAYOR

cc: Na Leo O Hawai'i