

PROCUREMENT POLICY BOARD MEETING

December 29, 2005

1:00 p.m.

Conference Room 410  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Members Present

Gregory King, Chair  
Gordon Ing, Vice-Chair  
Russ Saito, Secretary  
Winifred Odo, member  
Myron Tong, member  
Richard Totten, member

Others

Aaron Fujioka, State Procurement Office  
Ruth Yamaguchi, State Procurement Office  
Justin Fo, State Procurement Office  
Mara Smith, State Procurement Office  
Michael Matsumoto, Sicommnet

Call to Order

Chair Greg King called the meeting to order at 1:04 p.m.

**Minutes**

Prior to a motion approving the minutes of the August 11, 2005 meeting, Mr. Gordon Ing questioned the clarity of the description of the legislative bills passed last session (Old Business, section 2). In subsection (a) there was some question as to the phrase "use as subcontractors". Mr. Ing suggested rewording to "The board will need to develop rules for small business preferences, set-asides, and the use, maintenance, and compliance of small businesses as subcontractors, including maintenance and compliance." Mr. Russ Saito commented for clarity, one would need to read each separately.

Mr. Ing also pointed out that reference was made to Acts in subsections a. through d. followed by the statement that the four bills were signed by the governor; and questioned whether the reference to acts and bills interchangeably could cause confusion. After a brief discussion the board decided to leave this portion of the minutes as written.

Lastly, with regard to subsection "f.," Mr. Ing asked if the purpose of the task force should be stated more clearly and definitively. Subsection f. is amended to read:

- f. SCR 106 tasks a Legislative Task Force (both House and Senate) to review the statutory exemptions to chapter 103D, HRS, as well as administrative exemptions, for possible repeal, and recommend amendments to provisions of chapter 103D, HRS, as appropriate, to make them more compatible with the procurement code and more equitable to all state and county agencies. Several agencies requested that the legislature reinstate their exemptions, and the legislature deferred action on the requests. Instead this SCR was developed to review what can be done to amend the law.

#### Motion

Mr. Gordon Ing made a motion, seconded by Mr. Myron Tong to approve the minutes of the August 11, 2005 meeting as amended.

The minutes were approved as amended.

#### **Old Business – For Information:**

Mr. Aaron Fujioka provided an overview of the activities of the SCR106 Task Force. During the past 2 years a number of issues have arisen regarding procurement exemptions. One year ago numerous statutory exemptions were repealed. Last legislative session, agencies returned to the legislature requesting their statutory exemptions be re-established. The SPO testified on all of these measures and continues to hold to the position that no state or county agency should be statutorily exempted from the procurement code. No additional exemptions were added or repealed this past session.

Instead, the House and Senate decided to review the matter during the interim and established the Joint Legislative Task Force on Procurement. The Joint Committee had conducted 5 hearings. Obtaining input from state and county agencies, vendors, consultants, and the Hawaii Procurement Institute. The SPO and the Comptroller attended and participated in all of the hearings.

Mr. Fujioka explained that various exemptions from the procurement code are listed in both the statutes and administrative rules for Chapter 103D, HRS. Pending the outcome of the legislative session, recommendations will be presented for the board's consideration with regard to all exemptions in Section 103D-102, HRS. The SPO presented summaries for information only.

Mr. Justin Fo highlighted for the board, the proposed changes or amendments being considered by the SPO for: 1) Procurements exempt from Chapter 103D, HRS; 2) Procurements approved for competitive sealed proposals pursuant to section 3-122-45, HAR; and 3) procurements approved for sole source pursuant to section 3-122-81, HAR. Mr. Fujioka added that the “justification” column of the documents was useful for historical purposes.

- a. Mr. Fo provided a summary of each exemption from Chapter 103D, HRS and stated there were 16 existing exemptions and one exemption SPO is proposing to add.
  - On the proposed change to exemption 3, services of lecturers, speakers and trainers, Mr. Fo explained the proposed change was to make the exemption more specific so that it would not be used for services that should be competed when there are many vendors who could provide the training. Chair King commented there were times when it was useful for consistency, to contract with a trainer who had been previously contracted to provide additional training or training for new employees and how could that be addressed. Mr. Fujioka responded that the CPO exemption process could be utilized in those cases.
  - Proposing to amend the exemption for insurance by deleting the phrase “including insurance brokers.” Mr. Fujioka added that although broker services are currently exempt, SPO on behalf of DAGS Risk Management issued an RFP for insurance broker services that produced positive results.
  - Proposing an amendment to radio and television airtime to clarify the meaning of demographics. Chair King asked about print services and whether placing a notice in a particular publication to reach a certain population was included in this exemption. Mr. Fo indicated print services would be included under exemption item 11, Advertisements in specialized publications.
  - Proposing a new exemption for registration or workshop fees for conferences or training. Mr. Fujioka stated this was added because of problems encountered after the requirements for compliance documents went into effect for small purchases.
- b. Mr. Fo reviewed the list of approved procurements via RFP. Once on this listing, head of the purchasing agency determination for an RFP is not necessary. Mr. Fo summarized the recommendations and proposed changes. Mr. Saito asked if item 4, design and build projects, was necessary. Mr. Fujioka replied that it may not be necessary, but from time to time there have been questions as to where design and build projects may be done without obtaining approval from the head of the purchasing agency.
- c. Mr. Fo summarized the third document, recommendations for procurements approved for sole source without requiring approval by the CPO. Mr. Fo stated that the transcript of court proceedings was added because transcripts can only be purchased from the transcriber for the court proceeding.

## **New Business**

### **For Action**

1. Mr. Fujioka indicated the next item was the adoption of interim rule amendments to Chapter 3-122, HAR. Ms. Ruth Yamaguchi stated the amendments are for housekeeping purposes, due to statutory amendments of Act 211/2004, that removed the requirement for compliance documents for small purchases.

After a brief discussion, Chair King called for a motion to adopt interim rule for Chapter 3-122, HAR. Mr. Ing moved for approval and Ms. Odo seconded the motion. The motion was unanimously approved.

2. Mr. Fujioka stated the next item for action was approval of the proposed changes to administrative rules for chapters 3-140 to 147 and 3-149 for health and human services. On November 30, 2005, the SPO conducted a statewide public hearing on these amended rules via videoconference.

Mr. Fujioka thanked Chair King and Mr. Saito for their assistance and attendance.

No written comments regarding the amendments were received. One individual asked several clarifying questions on the evaluation of proposals, penalties and protests. The individual appeared satisfied with the responses provided at the hearing, and no further testimony was received from that individual.

Chair King called for a motion to adopt the proposed changes to Chapters 3-140 to 3-147, and 3-149, HAR. Mr. Ing made the motion and Ms. Odo seconded. The motion was passed unanimously.

Mr. Richard Totten indicated he had the impression that the intent of the proposed changes was to make the process more open and fair. He asked why the definition of 'advantageous' in chapter 3-140 had been modified as it seemed somewhat less specific than the original. Ms. Mara Smith stated that 'advantageous' was used throughout the rules in a number of different contexts and with regard to different methods of procurement (source selection). The original definition was only applicable to the competitive purchase of service method of procurement. Mr. Totten asked if there was a "competition advocate" or ombudsman in the state system. Mr. Fujioka stated there was an ombudsman but that office did not generally take up procurement issues. Such issues are addressed by the SPO. Mr. Fujioka added that the state comptroller has been a strong advocate for open competition.

## **Administrators Report:**

Mr. Fujioka expressed his thank you and appreciation to the Board for their support.

## **pCard Update**

Currently there are 3,086 pCards issued to state and county agencies. For the period 11/15/05 to 12/14/05 the amount transacted was over \$5.3 million, which involved 17,976 pCard transactions.

If we use the estimated savings generated based on \$100 per purchase order, that savings is over \$1.7 million for this one month period.

The current pCard mandatory use policy is for transactions under \$2,500, however as agencies become more comfortable with the pCard we expect greater savings as they use the pCard for larger dollar transactions.

Mr. Saito added there is a statutory requirement for an original invoice for purchases specifying the items purchased. However, when using the pCard, there is no such invoice so the requirement must be excused.

## **Hawaii Compliance Express**

The compliance express is the online vendor registration system that allows vendors and contractors doing business with the state and counties to easily demonstrate that they are in compliance with various state laws via the state portal.

Vendors and contractors are able to obtain a single electronic certificate of compliance, eliminating the need for a hard copy tax clearance certificate, labor compliance certificate and certificate of good standing. The compliance express was launched 5 months ago. To date we have 174 companies registered and 407 authorized purchasers using the system. Chair King stated that the system would grow over time.

## **On-line Posting of Contract Awards**

The SPO currently provides diverse procurement information on our website. With the help from administration and the comptroller, we intend to significantly add to our posting of contract awards in January 2006.

## **Update on Communications Pacific's Petition**

Mr. Fujioka stated that on November 23, 2005, the comptroller received a petition for a declaratory ruling as to the application of HRS 103D-304 and its corresponding rules (3-122-53(A)) to review a particular procurement conducted by the City and County of Honolulu.

Without going into details on the petition, based on advice of the Attorney General it was determined that neither the comptroller nor the PPB, have the authority to entertain the petition. Mr. Fujioka stated that he had earlier commented to the media that based on procurement statute; the board shall not exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto. The petitioner has since filed a lawsuit. Mr. Saito stated this was a consultant contract, and the issue was the substitution of subcontractors.

### Next Meeting

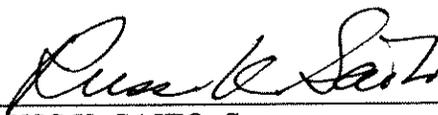
The next meeting will be at the call of the chair.

### Adjournment

A motion to adjourn was made by Mr. Ing and seconded by Ms. Odo. There being no further business, the meeting was adjourned at 2:05 p.m.

Respectfully submitted,

2/15/06  
Date

  
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RUSS K. SAITO, Secretary  
Procurement Policy Board