

PROCUREMENT POLICY BOARD MEETING

October 27, 2006

1:00 p.m.

Conference Room 322B

1151 Punchbowl Street

Honolulu, Hawaii 96813

Members Present

Gregory King, Chair
Russ Saito, Secretary
Richard Totten, member
Leslie Chinen, member
Daryle Ann Ho, member
Wendy Imamura, member
Pamela Torres, member

Others

Pat Ohara, Deputy Attorney General
Aaron Fujioka, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Justin Fo, State Procurement Office
Mara Smith, State Procurement Office
Terry E. Thomason, Alston, Hunt, Floyd & Ing for Hawaii Procurement Institute
Jessica M. Horiuchi, Alston, Hunt, Floyd & Ing for Hawaii Procurement Institute
Dennis Ling, Department of Business, Economic Development & Tourism
Chris Nasu, Mele & Associates

Call to Order

Chair Greg King called the meeting to order at 1:00 p.m.

Mr. Aaron Fujioka introduced the two new board members, Wendy Imamura and Pamela Torres and requested a motion to allow an executive session for the board to consult with Deputy Attorney General Pat Ohara on an issue pertaining to the board's powers, duties, and liabilities. Mr. Richard Totten made a motion, seconded by Ms. Daryle Ann Ho, that the board go into executive session. The motion was unanimously carried, and the executive session started at 1:05 pm.

Chair King called the meeting back to order at 1:20 pm.

Mr. Russ Saito summarized the executive session stating the Board was informed that the State Procurement Office (SPO) just learned on October 20, 2006 that the two new board members, Wendy Imamura and Pamela Torres, were appointed on an interim basis effective September 29, 2006. Due to this appointment, the reconvened meeting of the Board that was held on October 5, 2006 lacked quorum. In discussion with Deputy AG Ohara, the Board has decided to reconsider all of its actions taken on October 5th at the next board meeting. Mr. Saito stated that since the record is clear on public sentiment, no new testimony would be allowed.

Minutes

Mr. Saito made a motion, seconded by Mr. Totten, to approve the minutes of the September 22 meeting, and the record of what transpired at the October 5, 2006 "meeting."

The motion was unanimously carried.

Agenda Item III.

Mr. Fujioka informed the board that Hawaii Health Systems Corporation had submitted a letter to the SPO withdrawing its request for additional exemptions to Chapter 103D. A copy of the letter was given to each board member.

Agenda Item IV.

Mr. Fujioka stated that the statute requires the chair to be elected annually by the Board. The one limitation is the State Comptroller shall not be eligible to serve as chair.

Mr. Totten made a motion, seconded by Ms. Ho, to re-nominate Greg King as chair. Ms. Ho made a motion, seconded by Mr. Saito, to have Mr. Totten serve as vice-chair. Ms. Ho made a motion, seconded by Mr. Totten, to keep Mr. Saito as secretary. The three motions were consolidated into one for voting purposes and unanimously carried.

Agenda Item V.

Mr. Terry Thomason, a member of the small business roundtable and representing the Hawaii Procurement Institute (HPI), gave background information on how these rules evolved from the small business roundtable. Ms. Jessica Horiuchi, acting executive director for the HPI stated that she was available for any questions the Board may have. Mr. Dennis Ling, representing Director Ted Liu of the DBEDT, stated Director Liu is in support of the proposed rules and willing to serve as chair of the advisory council.

Mr. Fujioka provided the Board some background information that at the time Act 50 was considered by the legislature, SPO consistently testified in support of the intent of a small business assistance program, but that its lack of available resources and staffing would hinder its ability to develop and implement such a program. He also provided information on SPO's initiatives and current staff workload.

Ms. Ruth Yamaguchi also voiced her concerns on the impact of these rules on the operations of SPO. She stated that the SPO reviewed the roundtable draft, researched SBA and DOT DBE requirements, and added that it was not feasible to adopt the entire roundtable draft in its current version, as the procedures, format, and language needed to be simplified for ease of use by agencies and businesses. The roundtable draft created rules for Hawaii Administrative Rules (HAR) Chapter 3-124 on preferences, however SPO had proposed to place the proposed rules within the Small Business Assistance program (HAR Chapter 3-127), as Act 50 amended sections in the Small Business Assistance part of HRS.

Ms. Yamaguchi stated that the proposed rules as written in the petition would be an added burden to purchasing agencies and the program needed to be streamlined, and the rules simplified for use by both government and business. Upon receipt of the petition, SPO contacted HPI to get a better understanding of the proposed rules. In continuing to work on the development of the rules, SPO met with representatives of HPI, Jessica Horiuchi and Blake Oshiro, at their Alston, Hunt, Floyd & Ing (AHFI) offices. SPO also sent a draft of the proposed rules to the various purchasing jurisdictions to obtain feedback, and is working with all parties concerned and affected with these rules, to reach a workable small business program. Ms. Yamaguchi reiterated that this was not a simple program to develop and thereafter implement and maintain.

The Board members had various questions for Mr. Thomason, Ms. Horiuchi, Mr. Fujioka and Ms. Yamaguchi. Ms. Torres and Ms. Imamura had concerns on the additional workload these rules would create for departmental staff. During the discussion Mr. Saito reiterated to the Board members that the Board is required by law to adopt rules for small business assistance and added that after these rules are adopted, amendments can be made to refine and improve the rules. Mr. Saito also stated that he did not feel that the proposed rules would be unduly burdensome for the SPO. Most of the analysis in creating the set asides would be done by the advisory council. In addition, most of the staff support would be provided by the Departments, especially the chair's department, DBEDT. Finally there is full support on the proposed rules and its control feature, the advisory council, by the council's chair (DBEDT) and co-chair (DAGS). Ms. Imamura suggested starting a pilot program for one department to basically test the rules.

Chair King recessed the meeting at 3:00 pm and reconvened the meeting at 3:06 pm.

After a lengthy discussion, Mr. Saito made a motion, seconded by Mr. Totten, to adopt the proposed rules as presented by HPI as interim rules.

Ms. Yamaguchi stated that the proposed rules were not in the correct HAR format and that it would need to be redone, if the board adopted the petition as interim rules. Ms. Torres stated that she would prefer rules establishing just the advisory council for now, and with the input of the advisory council, develop the remainder of the rules. She also wanted to know if it was possible to get a breakdown of the rules on where the responsibility for each part of the rule resides and whom, it would impact. Mr. Saito felt it was this Board's responsibility to develop the rules and not just the advisory council.

Ms. Horiuchi stated that she and Mr. Thomason would convert the petition into proper formatted rules.

Mr. Totten, Mr. Saito, Mr. Chinen and Ms. Ho voted in favor of the motion, and Mr. King, Ms. Torres and Ms. Imamura voted against. The motion was carried.

Mr. Fujioka asked for a motion to allow the Board to go into executive session to address an issue pertaining to the board's powers, duties, and liabilities. Mr. Totten made a motion, seconded by Mr. Saito, for a board executive session. The motion was unanimously carried, and the executive session started at 3:40 pm.

Chair King called the meeting back to order at 3:50 pm.

Agenda Item VI.

Mr. Thomason testified and submitted changes to the proposed rule amendments before the Board. Specifically, his clients had concerns with submitting petitions to the Administrator of SPO who would have the authority to reject petitions if not in the proper form, and urged that the Comptroller as a Board member would be the more appropriate individual to receive these petitions.

Mr. Fujioka commented that SPO would abide by the Board's wishes but wanted it noted that SPO has processed all requests submitted on a timely basis, has not rejected any requests, and that by changing the submission to the Comptroller, the Board would basically add another layer of bureaucracy to the process. He stated that should the decision be made that petitions be submitted to the Comptroller, those petitions should be required to be forwarded to SPO in a timely manner.

At this time Mr. Chinen and Ms. Ho were excused from the meeting.

During the discussion Mr. Fujioka suggested deleting the language authorizing the administrator to reject petitions not in proper form. Deputy AG Ohara suggested including language requiring the Administrator to provide a copy of any petition to each board member upon receipt. The Board concurred with allowing the Administrator to receive petitions.

Mr. Saito made a motion, seconded by Ms. Imamura, to adopt the amendments and compilation of the proposed rules with the amended changes as interim rules. The motion was unanimously carried.

Agenda Item VII.

Mr. Fujioka said this amendment was prompted because there have been inquiries on whether agencies may join or use a contract procured by another state or entity after the contract has been awarded. He believes the amended language will clarify how an agency may participate in these types of contracts.

Mr. Saito made a motion, seconded by Mr. Totten, to adopt the proposed amendments and interim rules. The motion was unanimously carried.

Agenda Item VIII.

Mr. Fujioka provided the Board members with the latest handout on SPO's webpage information.

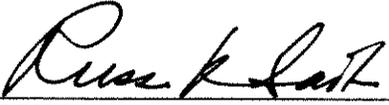
The Board expressed it would like to have a regular meeting date set. Mr. Saito suggested the 4th Friday of every month. Mr. Fujioka said SPO will poll the members for a date.

Adjournment

Mr. Saito made a motion, seconded by Mr. Totten, to adjourn the meeting. The motion was unanimously carried. The meeting was adjourned at 5:00 p.m.

Respectfully submitted,

12/8/06
Date



RUSS K. SAITO, Secretary
Procurement Policy Board