

PROCUREMENT POLICY BOARD MEETING

December 21, 2006

2:00 pm

and

reconvened on

January 18, 2007

1:00 pm

Conference Room 410

1151 Punchbowl Street

Honolulu, Hawaii 96813

Members Present

Gregory King, Chair

Russ Saito, Secretary

Leslie Chinen, member

Pamela Torres, member

Daryle Ann Ho, member (1-18-07 only)

Members Excused

Richard Totten, member

Daryle Ann Ho, member (12-21-06 only)

Others

Pat Ohara, Deputy Attorney General

Aaron Fujioka, State Procurement Office

Ruth Yamaguchi, State Procurement Office

Justin Fo, State Procurement Office

See attached list

Call to Order

Chair Greg King called the meeting to order at 2:00 p.m.

Minutes

Mr. Les Chinen made a motion, seconded by Mr. Russ Saito, to approve the minutes of the October 27 meeting.

The motion was unanimously carried.

Agenda Item III

The Board went into executive session pursuant to HRS §92-5(a)(4) to consult with the Board's attorney at 2:05 pm.

Chair King called the meeting back to order at 3:36 pm.

Agenda Item IV

Mr. Saito made a motion, seconded by Mr. Chinen, to limit each testifier to 5 minutes. The motion was unanimously carried. Chair King informed the attendees that testimony would be allowed until 4:20 pm and the meeting would need to be continued. Mr. Robert Stiver, Mr. Gerry Silva, Ms. Meredith Nichols, Mr. Terry Thomason and Mr. Jim Brewer presented testimony in favor of the petitions. The 5-minute limit per speaker was exceeded, and the Board allowed the testimony.

Mr. Saito made a motion, seconded by Ms. Pam Torres to limit oral testimony at the continuation of this meeting when it is reconvened, only to those who had signed up as of today. The motion was unanimously carried.

Chair King recessed the meeting at 4:31 pm. The meeting was reconvened on January 18, 2007 at 1:00 pm at the same location with Ms. Ho present.

Continuation of Agenda Item IV

The Board continued receiving testimony. The time limit was not strictly enforced, and all those who were present and wished to testify, regardless of whether they had signed up at the December 21 board meeting, were allowed to testify. Upon completion of the testimonies, there was a question and answer session where board members addressed questions to various attendees, including representatives of Olelo, Akaku, DCCA, and producers who use the Olelo facilities and services. Mr. Chinen asked Ms. Lopez how Olelo makes up the over \$1 million shortfall every year. Ms. Lopez replied that the shortfall has only been within the last few years and that the reserve accumulated over the past 15 years is being used. Ms. Torres noted that the services provided by the PEG service providers are part of the agreement with DCCA, but Ms. Lopez replied they do more than the basic necessities covered in the agreement.

Chair King inquired of Mr. Fujioka the status of the RFI/RFP process. Mr. Fujioka replied that the comments and recommendations that have been received from the public as a result of the RFI process are under consideration by SPO and DCCA, and may be incorporated into a new draft RFP and made publicly available through another RFI to solicit further public comment. Mr. Chinen asked whether the draft RFP will be for all services or separately by counties. Mr. Fujioka replied that the RFP would allow offerors to apply for all counties, or combination, or just one county.

Subagenda item VIII

Mr. Saito requested that the Board take the items out of order and address subagenda item VIII. A discussion followed on whether a vote on the petition for declaratory ruling needed to address both issues raised in the petition, whether the public, educational, and governmental (“PEG”) services were “utility services,” and whether the public solicitation for which was “neither practicable nor advantageous.” The consensus was that the board could vote on one aspect or the other because if the board concluded the PEG services were “utility services” then that would mean the PEG services were exempt from the procurement code, and the board would not have to reach the second issue of whether public solicitation for PEG services was “neither practical nor advantageous.” Similarly, if the board concluded it was neither practical nor advantageous to solicit, it wouldn’t need to reach the issue of whether the PEG services were “utility services.”

Mr. Saito made a motion, seconded by Mr. Chinen, to approve Olelo’s petition for declaratory ruling pursuant to HRS §91-8, stating that contracts with entities to manage and administer PEG access channels are contracts for “utility services” within the meaning of HRS §103D-102(b)(4)(F) and, for which competitive award procedures of HRS Chapter 103D are neither practicable nor advantageous to the State.

A discussion followed by board members on utility services, practicality and the advantageous issues. Mr. Saito and Mr. Chinen voted in favor of the motion, and Mr. King, Ms. Torres and Ms. Ho voted against. The motion failed.

Subagenda item VI

Mr. Saito made a motion, seconded by Mr. Chinen, to adopt Akaku, Maui Community Television’s petition for a proposed rule that states, “3-120-6 Code Not Applicable to PEG Access Provider Contracts. The State Procurement Code does not apply to Public Education Government Access Provider Contracts which direct the cable franchisees to cause payments from the cable franchise fees to the several Public Education Government Access Providers as provided by law.” A discussion followed. The motion was unanimously denied.

Subagenda item VII

Ms. Ho made a motion, seconded by Ms. Torres, to deny the Petition for the Modification of a Rule, Akaku, Maui Community Television’s petition for a proposed amendment to Hawaii Administrative Rule §3-120-4(b), Exhibit “A” by adding “Services of non-governmental non-profit corporations to provide public, educational and governmental cable access.” A discussion followed. The motion was unanimously carried.

Agenda Item V

Mr. Lance Collins, attorney for Akaku presented testimony on item (1) consideration of Petition of Akaku: Maui Community Television for Declaratory Order that “funds collected and disbursed by the cable franchisees pursuant to order or rule of the Department of Commerce and Consumer Affairs are not ‘public funds’ within the meaning of Haw. Rev. Stat. 103D-102” and “the State Procurement Code does not apply to services for providing public educational and governmental cable access.” A lengthy discussion followed regarding the funding of PEG access organizations, how PEG access services could be considered part of the cable franchise, and why these fees are subject to procurement whereas capital fees are not. There was an extended question and answer session where the board asked questions of some of those attending the meeting, including representatives of Olelo, Akaku, DCCA, and producers who use the Olelo facilities and services.

Mr. Saito made a motion, seconded by Ms. Ho to deny the Petition of Akaku: Maui Community Television for Declaratory Order that “funds collected and disbursed by the cable franchisees pursuant to order or rule of the Department of Commerce and Consumer Affairs are not ‘public funds’ within the meaning of Haw. Rev. Stat. 103D-102” and “the State Procurement Code does not apply to services for providing public educational and governmental cable access.” A discussion followed. The motion was unanimously carried.

Chair King called a short recess at 4:52 pm. The meeting was reconvened at 4:57 pm.

Agenda Item VI

Mr. Fujioka explained that this item is a result of Hawaii Health Systems Corporation’s (HHSC) earlier request to the board for exemptions. Ms. Yamaguchi stated that SPO met with HHSC to discuss their concerns and later solicited comments from other jurisdictions regarding the sole source of various medical equipment services, and that these jurisdictions stated they had similar needs, but for other equipment, not medical equipment. The result is the proposed amendments presented to the board.

Discussion followed. Mr. Saito had concerns about limiting repair and maintenance services and supplies to the original equipment manufacturer and its impact on other manufacturers and whether it may be more economical and serve the same purpose to use the other manufacturers. Mr. Fujioka stated, instead of listing criteria for the sole source, it would be incorporated as part of the sole source description.

Ms. Ho made a motion, seconded by Mr. Chinen, to approve with amendments the proposed amendment to add a new item to the list for HAR Chapter 3-122, Procurement Approved for Sole Source, (1) Repair and maintenance services and supplies from the original equipment manufacturer or its designated representative when the manufacturer or its designated representative is required to perform the services to retain the manufacturer’s warranty or guarantee. The motion was unanimously carried.

Ms. Ho made a motion, seconded by Mr. Saito, to approve with amendments the proposed amendment to add a new item to the list for HAR Chapter 3-122, Procurement Approved for Sole Source, (2) Procurement of equipment upgrades for existing equipment and information technology hardware from the original manufacturer when the upgrades can only be obtained from the manufacturer. The motion was unanimously carried.

Agenda Item VII

Ms. Ho made a motion, seconded by Ms. Torres to go into executive session pursuant to HRS §92-5(a)(4) to consult with the Board's attorney on the Office of Information Practice's Correspondence regarding an "Appeal from Agency Denial of Access to Records (APPEAL 07-19) Request for Investigation (S INVES-P 07-26)". The motion was unanimously carried. The board went into executive session at 5:10 pm.

Mr. Saito made a motion, seconded by Ms. Ho to reconvene the regular meeting. The motion was unanimously carried. The meeting reconvened at 5:19 pm.

Agenda Item VIII

It was announced that Board meetings would be scheduled for the 3rd Thursday of each month at 1:00 pm, as necessary.

Adjournment

Mr. Saito made a motion, seconded by Ms. Ho, to adjourn the meeting. The motion was unanimously carried. The meeting was adjourned at 5:20 p.m.

Respectfully submitted,

2/5/07
Date



RUSS K. SAITO, Secretary
Procurement Policy Board

PROCUREMENT POLICY BOARD MEETING

December 21, 2006

Guests

Name (Please Print)	Firm or Office
Terry Thomason	Alston Hunt Floyd + Ing
Barbara Kreeg	"
Robert H. Stiver	'Olelo client
Ramsis G. LUTFY	'olelo client
Wendy Imamura	essential
Renee Ing	'olelo client
Jim Brewer	Olelo user
Jesse Tenge de Leon	client - olelo
DeGray Vanduluit	Fulepuit Producer -
Kealiki "olu'olu" Gora	'olelo Board Member
Meredith Nichols	'olelo Community Television
Michael Bailey	PLANET VIEWS Productions
Gerry Silva	Olelo Community Television
DEJNIS CALLAN	'OLELO CLIENT
Ka'imanaloa Samson	Waiānae 'Olelo Client
Steven Bergamin	"
Kaleo Keli'ikipi-Poe	"
Thorne Fontinilla	"
Bronson Garcia	"
Aloha Davis	"

PROCUREMENT POLICY BOARD MEETING

December 21, 2006

Guests

Name (Please Print)	Firm or Office
Christian Naho'opi'i - Hose	Waiānae 'Olelo Client
Nāturakē Puou	" "
Kawika Naho'opi'i	'Olelo Waiānae
Sharlette Poe Jr.	'Olelo Waiānae
Jimbo Taylor	'Olelo Waiānae
Keali S. Jolley	'Olelo

PROCUREMENT POLICY BOARD MEETING

January 18, 2007

Guests

Name (Please Print)	Firm or Office
RUTH HSU	UNIVERSITY OF HAWAII, ENGLISH;
Kawika Nalopii	OLELO COMMUNITY PRODUCER
Aloha Davis	Waianae Community Media Center
Justin Fo	Waianae High School
	Waianae Media Enrichment Program
	SPO