

PROCUREMENT POLICY BOARD MEETING

September 24, 2003

2:00 p.m.

Conference Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Members Present

Phyllis Koike, Chair
Gregory King, Vice-Chair
Russ Saito, Secretary
Gordon Ing, member
Claire Motoda, member
Myron Tong, member

Members Excused

Winifred Odo

Others

Aaron Fujioka, State Procurement Office
Robert Governs, State Procurement Office
Doris Lee, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Justin Fo, State Procurement Office
Mara Smith, State Procurement Office
Cheryl Oho, State Procurement Office
Pat Ohara, Attorney General's Office
Charles Katsuyoshi, City and County of Honolulu
Michael Hiu, City and County of Honolulu
Clayton Wong, Honolulu City Council
Keoki Kerr, KITV 4 News
Daniel Chun, American Institute of Architects
Robert Watada, Campaign Spending Commission
Tony Baldomero, Campaign Spending Commission
Francis Kagawa, Department of Labor and Industrial Relations
Gary Yamamoto, American Council of Engineering Companies of Hawaii
Roy Yamashiro, American Council of Engineering Companies of Hawaii
Kristyne Tanaka, Department of Commerce and Consumer Affairs, Business Registration
Katherine Thomason, Department of Accounting and General Services
Steve Hirano, PMCI Hawaii
Steven Hisaka, Hisaka, Stone, Goto
Carl Varady, Attorney at Law
Rick Daysog, Honolulu Star-Bulletin
Carilyn Shon, Department of Business, Economic Development & Tourism, Energy

Call to Order

Chair Phyllis Koike called the meeting to order at 2:07 p.m.

Minutes

Motion

Mr. Gordon Ing made a motion; seconded by Mr. Myron Tong to approve the minutes of the meeting held on September 4, 2003.

The minutes were approved as distributed.

New Business

For Action

Item No. 1. Interim Rule § 3-122-112. Mr. Bob Governs stated that §3-122-112 was being brought back to the Board to confirm that all the Board amendments are incorporated. He explained he would cover what the rule does and also will point out what the rule does not address. Subsection (a) requires certificates for awards under §§103D-302 sealed bids, 103D-303 requests for proposals, 103D-304 professional services, and 103D-306 sole source. Subsection (b) states the certificates may be requested for purchases under \$25,000. Subsection (c) is the final payment requirement and provides for self-certification for compliance with the laws and a tax clearance.

Mr. Governs further explained that the rule does not address the requirement of a business being registered and establishing a branch or division in the State. However, DCCA statutes do provide exceptions that will need to be reviewed for application under §103D-310, HRS.

Chair Koike inquired on the status of the meeting with Senator Cal Kawamoto. Her intention was to meet with him prior to the Board adopting §3-122-112. Mr. Aaron Fujioka explained that Senator Kawamoto is out of town and not expected back until Friday, September 26, 2003 at which time he will try to contact Senator Kawamoto. Mr. Fujioka further explained that in his previous conversation with Senator Kawamoto, the Senator's concern was the application of the law to all purchases, not just to those \$25,000 and greater.

After a lengthy discussion, the Board requested a change in the wording to "For small purchase awards made pursuant to the 2 sections (103D-304 and -305), the offeror shall provide only upon request of the purchasing agency the certificates identified in subsection (a) (1), (2) and (3)." In amending the rule, the Board and Mr. Fujioka felt that Senator Kawamoto's concerns had been addressed and Mr. Fujioka will still meet with the Senator to update him on the outcome of today's meeting.

Mr. Russ Saito made a motion to adopt with amendments agreed upon by the Board and Mr. Gregory King seconded. The motion was passed.

Item No. 2. Procurement Directive for Interim Rule §3-122-112. Mr. Governors explained the draft procurement directive would be issued when the rule is returned from the Lieutenant Governor's Office. The directive will provide implementation guidance to the departments to comply with the law. It will also note the costs associated with registering and obtaining a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, notify the departments of the additional "Certification of Compliance for Final Payment" that is required for final payment, as well as providing samples of the various forms needed. Mr. Gordon Ing made a motion to adopt with amendments and Mr. Myron Tong seconded. The motion was passed.

Item No. 3. Interim Rule §3-126-11.01, "Other causes for debarment or suspension." Mr. Fujioka explained that 6 comments/testimonies were presented to the State Procurement Office and the Board and the common concerns were: 1) the proposed rule not be retroactive; 2) the rule does not allow due process; and 3) the Board does not have the authority to adopt these rules. In response, Mr. Fujioka stated 1) it is not retroactive; 2) this proposed rule is part of Chapter 3-126, HAR which provides for due process; and 3) Section 103D-702(b)(5), HRS, authorizes the Board to identify specific causes for debarment.

Mr. Fujioka further explained that the State Procurement Office met with Deputy Attorney General Pat Ohara to draft language, taking into consideration the concerns the Board had presented at the last meeting. Ms. Claire Motoda inquired about the public hearing process. Mr. Fujioka explained that if the Board adopts this proposed rule as an interim rule, the rule would go into effect upon signing of the rule and start the public hearing process. If the Board does not adopt it as an interim rule, but adopted for final, then the public hearing process would begin and the rule would only be effective upon the completion of the public hearing process and signed by the Governor.

Further discussions centered on the language conforming to the existing law. During this discussion, Ms. Claire Motoda requested the rule go to public hearing first and not be adopted as an interim rule to allow the public ample time to familiarize themselves. The Board had a lengthy discussion on various views and Deputy Attorney General Pat Ohara amended the draft rule to state "Debarment procedures shall be initiated for any person committing an act after the effective date of this section for which that person is subsequently assessed an administrative fine of \$5,000 or more from the Campaign Spending Commission under section 11-228, HRS, or convicted of a violation under section 11-229, HRS. Any person debarred will be debarred from consideration for award of all public contracts for a period up to 3 years."

One of the attendees at the meeting requested the Board allow comments from the attendees. Chair Koike allowed those interested to present brief comments. Mr. Gary Yamamoto requested clarification on the definition of a "person" and whether debarment of a person would affect the entire company or just the individual employee. He was concerned for the innocent people who would be affected by this rule. The Board's response was factors such

as these would be discussed during the debarment process. Mr. Daniel Chun commented that this rule should go through the normal process and not rushed out.

Mr. Russ Saito moved to adopt with the changes that counsel recommended as an interim rule and Mr. Myron Tong seconded. Chair Koike called for a vote. Mr. Russ Saito, Mr. Gregory King, Mr. Myron Tong and Mr. Gordon Ing all voted in favor of the motion. Ms. Claire Motoda abstained. Motion was carried.

Chair Koike reiterated that the language for the rule needed to reflect that this applies only to violations that are committed after the date of the interim rule, debarment is up to 3 years and done in accordance with 103D-702, HRS.

Mr. Fujioka asked Deputy Attorney General Pat Ohara whether the State Procurement Office (SPO) may now recommend that the public hearing process be initiated for the interim rule since it was not included on the agenda. Ms. Ohara replied in the affirmative, that since the Board's past practice has been to forward all interim rules for public hearing, the Board may make a motion to amend the agenda and approve the interim rule proceed to public hearing. Mr. Myron Tong so moved, and Mr. Russ Saito seconded. The motion was passed.

Item No. 4. Procurement Directive for Interim Rule §3-126-11.01. The SPO, with the Deputy Attorney General, will redraft the directive to be consistent with the amended rule. Mr. Myron Tong made a motion to adopt with amendments and Mr. Russ Saito seconded. The motion was passed.

Item No. 5. HAR chapter 3-122. Ms. Doris Lee explained item No. 5 was presented at the prior meeting where amendments and new subchapter or sections were added to chapter 3-122. In addition, it was requested that subchapter 4.5, entitled, "source selection for federal grants," be included in chapter 3-122 and adopted. Mr. Fujioka gave background information on a similar selection process under chapter 103F, HRS. This process would allow a state agency to partner with a private entity applying for federal grants when a private entity cannot submit an application on its own directly to the federal government. After the discussion, the Board requested adding similar language as §3-122-112(d) that this section shall not apply to the extent that it may jeopardize the receipt of federal funds. §3-122-60, 69 and 70 were adopted and are interim rules. SPO is recommending amendments as follows: §3-122-60 add debriefing shall be held by the procurement officer or designee; §3-122-69 added subsection (b) Deputy Director or equivalent positions shall not serve on review or selection committees; and §3-122-70 debriefing is to inform providers of professional services and debriefing shall be held by the procurement officer or designee. Mr. Saito inquired if there were other appointed positions, and if so, they should be included. The Board recommended amending §3-122-69(b) Deputy Directors and equivalent "appointed" positions shall not serve on review or selection committees and for §3-122-70 leave in (a) . . . debriefing is to inform the nonselected providers of . . . Ms. Lee also stated that SPO is recommending deletion of §3-122-117 because this subsection does not apply because it pertains to bidder's list and is addressed in another section. Mr. Gregory King made a motion to adopt §3-122 as amended and Mr. Gordon Ing seconded. The motion was passed.

Administrator's Report

Mr. Aaron Fujioka did not have anything to add since the Board meeting three weeks ago, and thanked the Board for their help.

Next Meeting

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

Adjournment

There being no further business, the meeting was adjourned at 4:05 p.m.

Respectfully submitted,

10/6/03
Date

Russ K Saito
RUSS K. SAITO, Secretary
Procurement Policy Board