PROCUREMENT POLICY BOARD MEETING
July 17, 2008
1:00 pm
Conference Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Members Present

Pamela Torres, Vice-Chair
Russ Saito, Secretary
Keith Matsumoto, member
Darryl Bardusch, member
Daryle Ann Ho, member
Leslie Chinen, member

Others

Aaron Fujioka, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Pat Ohara, Office of the Attorney General
Justin Fo, State Procurement Office
Colin Tanaka, State Procurement Office
Steven Kamaura, Department of Human Resources Development
Kathryn Kanemori, Honolulu Board of Water Supply
Clark Hirota, City and County of Honolulu, Human Resources
Lance M. Inouye, General Contractors Association
Ken Takenaka, General Contractors Association
Audrey Hidano, Building Industry Association
Karen Iwamoto, Building Industry Association-Hawaii
John Bustard, General Contractor Association
Karl Borgstrom, ABC
Roy Ogawa, Building Industry Association

Agenda Item I - Call to Order

Vice Chair Pamela Torres called the meeting to order at 1:02 p.m.

Agenda Item II

Mr. Darryl Bardusch made a motion, seconded by Mr. Russ Saito, to approve the minutes of the June 19, 2008 meeting. The motion was unanimously carried.

Agenda Item III

Mr. Saito made a motion, seconded by Mr. Leslie Chinen nominating Vice-Chair Torres as Chair. The motion was unanimously carried. There being no other nominations, Ms. Torres was selected as Chair.

Mr. Saito made a motion, seconded by Mr. Bardusch to open nominations for a Vice Chair. The motion was unanimously carried.

Mr. Bardusch nominated himself to be Vice Chair. Mr. Chinen made a motion, seconded by Ms. Daryle Ann Ho to close the nomination and accept Mr. Bardusch as Vice-Chair. The motion was unanimously carried.

Agenda Item IV

Ms. Patricia Ohara, explained the proposed draft rules which, pursuant to the instructions of the Board at its prior meeting, was based on the Hawaii Procurement Institute/Mr. Bardusch version and included the comments of the SPO, Building Industry Association (BIA)/General Contractors Association (GCA), and Board of Water Supply (BWS). Various color representations were used in the draft to designate the different sources: black (current rules and agreed upon deletions); blue (agreed upon additions); highlighted portion (suggested changes by SPO); and green (suggested changes by BIA/GCA and BWS).

Mr. Inouye stated that the statutes address 4 methods of payment of price adjustments. If there is no agreement and it goes to the force account method, the statute is silent in regards to time and so BIA/GCA has addressed this issue in the proposed draft rules.

Mr. Aaron Fujioka noted that the language in sections 3-125-12(a)(1)(E)(i) and (ii) and 3-125-13(a)(1)(G)(i) and (ii) is the same language as in the statutes. As an SPO policy, the rules should not repeat language already in the statutes.

Mr. Saito made a motion, seconded by Mr. Bardusch, to adopt as interim rules the proposed HAR chapter 3-125, Modifications and Terminations of Contracts, including the proposed additions and deletions in black, blue, and green, with the following amendments: #1 - pages 1 and 2, §3-125-2(b)(2), create subparagraph (A) starting with "Any adjustment in contract price. . .", create subparagraph (B) starting with "Failure of the parties to agree . . .", delete "promptly (normally", amend 10 days to 14 days, and delete "and duly" and start a new paragraph starting with "The right of the contractor. . ."; #2 - page 5, §3-125-4(2), make the same changes as in 1) above; #3 - pages 7 and 8, §3-125-12(a)(1)(E), delete subsections (i) and (ii) and reference HRS §103D-501; #4 - pages 10 and 11, §3-125-13(1)(G), delete subsections (i) and (ii) and reference HRS §103D-501; and #5 - renumber the sections and subsections accordingly. The motion was unanimously carried.

Agenda Item Va

The board discussed the various exemptions and Mr. Matsumoto noted that the Hawaii State Public Library Systems (HSPLS) did not submit supporting testimony for item 1. Mr. Fujioka explained that a few months ago, HSPLS had submitted documentation supporting the continuation of that exemption and its response to Mr. Bardusch's inquiry, and that it could be added to the "COMMENTS RECEIVED" column.

During the discussion, the board concluded that for exemption items #s 5, 7, and 9, it had insufficient information to determine whether the exemption items were necessary and would like the user agencies to provide more detailed information in support of the agencies' position to retain the exemptions. Mr. Fujioka said he will send out notices to the user agencies requesting their attendance at a future board meeting to present their arguments.

Chair Torres called for a 5 minute break at 3:10 pm and the meeting was called back to order at 3:18 pm.

Mr. Matsumoto made a motion, seconded by Mr. Bardusch, to maintain the exemptions, modifying #3 by changing "individual" to "provider" and #16 changing "by" to "based on," and requesting specific follow up by users to the board for #s 5, 7, and 9. The motion was unanimously carried.

Agenda Item Vb

Mr. Matsumoto made a motion, seconded by Mr. Bardusch, to adopt as interim rules the proposed amendments to HAR chapter 3-120, General Provisions, §3-120-4(e) to read, "The procurement policy board shall review Exhibit A annually or as frequently as needed for amendments." The motion was unanimously carried.

Agenda Item VI

Mr. Saito clarified his comments made at the June 19, 2008 board meeting regarding Mr. Bardusch. Mr. Bardusch's term has expired but he remains on the board as a carryover since he was filling in for and completing the term of former board member Mr. Rick Totten and has not served the maximum 8 years, whereas, Mr. Greg King, the former Chair, could not be held over because he had served the maximum 8 years . The nominating committee needs to be formed and 3 nominees for each position must be submitted to the Governor.

Mr. Fujioka announced that the next board meeting is tentatively scheduled for August 21, 2008 at 1:00 pm. He handed out a summary of legislative bills dealing with procurement. Two bills became Act 194 and 203, and should rules be needed, SPO will draft and present proposed rules to the board.

Chair Torres requested that the board address the issue of monthly meetings and the length of the meetings at the next board meeting.

Mr. Matsumoto requested that a summary of non-exhibit A exemptions of the DBEDT, HSDC, HTDC, HTIC and NELHA be provided and placed on the agenda at the next board meeting.

Agenda Item VII

Mr. Matsumoto made a motion, seconded by Mr. Bardusch, to adjourn the meeting. The motion was unanimously carried. The meeting was adjourned at 3:35 p.m.

Respectfully submitted,

8/12/08
Date

RUSS K. SAITO, Secretary
Procurement Policy Board

Attachment: July 17, 2008 Agenda

**PROCUREMENT POLICY BOARD**
1151 Punchbowl Street
Conference Room 410
Honolulu, Hawaii 96813

Regular Meeting
July 17, 2008
1:00 pm

AGENDA

I. Call to Order.

II. Approval of Minutes – Meeting of June 19, 2008.

III. Election of Officers.

IV. Proposed rules to HAR 3-125, Modifications and Terminations of Contracts.

V. HAR Chapter 3-120, General Provisions:

a. Annual Review of Exhibit A, Procurements Exempt from HRS Chapter 103D; and

b. Proposed amendments to sections of HAR Chapter 3-120, General Provisions.

VI. Announcements.

VII. Adjournment.

Available agenda items may be viewed at www.spo.hawaii.gov/procurement-policy-board-minutes-of-meeting. Individuals may present testimony on matters on the Procurement Policy Board's agenda when the agenda item is being discussed by the Board. Individuals intending to testify should contact the State Procurement Office at (808) 587-4700 at least 48 hours before the scheduled meeting. Written testimonies will be accepted through e-mail at procurement.policy.board@hawaii.gov or faxed to (808) 587-4703 until 1:00 pm, July 15, 2008. Testimonies received after the July 15, 2008 deadline will be forwarded to the board after the July 17, 2008 meeting. Individuals submitting written testimony at the meeting and would like the written testimony distributed to the board at this meeting, are requested to provide 12 copies.

Individuals requiring special assistance or services may call (808) 587-4700 by 1:00 p.m., July 14, 2008 to discuss accommodation arrangements.