

PROCUREMENT POLICY BOARD MEETING

May 21, 2009

1:00 pm

Conference Room 410

1151 Punchbowl Street

Honolulu, Hawaii 96813

Members Present

Pamela Torres, Chair
Darryl Bardusch, Vice-Chair
Russ Saito, Secretary
Keith Matsumoto, member

Others

Aaron Fujioka, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Colin Tanaka, State Procurement Office
Kevin Takaesu, State Procurement Office
Russell Suzuki, Department of the Attorney General
Kathryn Kanemori, Board of Water Supply
Kealii Lopez, Olelo Community TV
Camera Operator (name unknown), Olelo Community TV
Doug Kilpatrick, Department of Education
Rod Maile, Department of Commerce and Consumer Affairs
Dori Palcovich, Department of Business, Economic Development & Tourism
Bob Shore, Department of Business, Economic Development & Tourism
Colleen Milu, Department of Business, Economic Development & Tourism

Agenda Item I - Call to Order

Chair Pamela Torres called the meeting to order at 12:58 p.m.

Agenda Item II - Minutes

Mr. Keith Matsumoto made a motion, seconded by Mr. Darryl Bardusch, to approve the minutes of the April 16, 2009 meeting. The motion was unanimously carried.

Agenda Item III

Mr. Bardusch made a motion, seconded by Mr. Matsumoto to defer agenda item III to later in the meeting. The motion was unanimously carried.

Agenda Item IV

Mr. Matsumoto made a motion, seconded by Mr. Bardusch to accept the nomination of Ms. Wendale Imamura as the alternate Council member to Rix Maurer, III, for the City and County of Honolulu on the Small Business Utilization Council. The motion was unanimously carried.

Agenda V a)

Mr. Bardusch submitted proposed changes to the rule to avoid any perception of a conflict of having the person conducting the procurement, ruling on the protest of that procurement. The protest would be referred to an employee on the same level or higher, but not involved in the procurement.

Mr. Russ Saito requested a definition on person “conducting or participating” in a procurement. He was not clear on how one would identify a person “substantially involved” in a procurement.

During the course of the discussion the board members basically agreed that there should be a separation between the person conducting the procurement and the person reviewing the protest. Ms. Kealii Lopez, Olelo Community Television presented oral testimony in support of member Bardusch’s concept of separating the responsibility of the person conducting the procurement and the person reviewing the protest.

Mr. Bardusch withdrew agenda item V a).

Agenda V b)

Mr. Bardusch explained that these rules would replace the existing rules on how the Department of Commerce and Consumer Affairs handles protests. These rules basically are word for word from the federal General Accounting Office. The administration review would be a more informal process rather than a mini court hearing.

Mr. Aaron Fujioka stated that Mr. Bardusch’s explanation on the concept of the rules, is not reflected in the proposed rules presented.

Mr. Matsumoto requested the rules in ramseyer format to make it easier for the board members and the public to view the changes being made to the rules. Mr. Fujioka will send to Mr. Bardusch the link to the Legislative Reference Bureau website that has the manual for drafting administrative rules.

Mr. Bardusch withdrew agenda item V b).

Agenda VI

Mr. Fujioka informed the Board that Mr. Lance Inouye requested that this item be deferred to a subsequent meeting.

Agenda VII

Mr. Bob Shore presented to the Board the recommendations from the Small Business Utilization Council. The list was compiled with the help of the Strategic Industry Division and the Department of Labor and Industrial Relations.

Mr. Matsumoto made a motion, seconded by Mr. Saito to adopt the list of NAICS Codes as presented for energy efficiency, but using alternative energy for energy efficiency programs. The motion was unanimously carried.

Mr. Fujioka stated that the State Procurement Office would prepare a Procurement Directive. He also provided the Board with a chronology of events of the Procurement Policy Board and the Small Business Utilization Council (SBUC) in regards to the existing interim rules for HAR 3-124. These interim rules will expire on September 2, 2009 but still require amendments that are ongoing with the SBUC. The State Procurement Office will compile subchapter 9 and at a subsequent meeting, recommend the continuation of this subchapter as interim rules to the Board.

Agenda VIII

Mr. Matsumoto made a motion seconded by Mr. Bardusch to go into an executive session. The motion was unanimously carried.

The Board went into executive session at 2:46 pm.

Chair Torres called the meeting back to order at 3:24 pm.

Mr. Saito made a motion seconded by Mr. Bardusch to defer Agenda Item III to a subsequent meeting.


Agenda IX

Mr. Fujioka announced the next board meeting is scheduled for the third Thursday, June 18, 2009 at 1:00 pm. He also passed out a summary of bills that passed this session and sent to the Governor.

Mr. Saito made a motion, seconded by Mr. Bardusch, to adjourn the meeting. The motion was unanimously carried. The meeting was adjourned at 3:31 p.m.

Respectfully submitted,

6/10/09
Date



RUSS K. SAITO, Secretary
Procurement Policy Board

Attachment: May 21, 2009 Agenda

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

Regular Meeting
May 21, 2009
1:00 pm

AGENDA
(Amended)

- I. Call to Order.
- II. Approval of Minutes – Meeting of April 16, 2009.
- III. Board’s request to discuss the process on how items are to be included on the agenda.
- IV. Communication dated May 7, 2009 from the Small Business Utilization Council regarding the nomination of Ms. Wendale Imamura as the alternate Council member to Mr. Rix Maurer, III, City and County of Honolulu.
- V. Request by Member Darryl Bardusch to:
 - a) Modify two rules (3-126-7a and 3-121-16) on protests; and
 - b) Replacing existing rules on conducting protest with new rules (3-126-42 thru 3-126-74.)
- VI. Request by Lance Inouye, General Contractors Association, regarding proposed change to HAR Section 3-125-13 (Addition to the Price Adjustment Clause in Construction Contracts).
- VII. Communication dated May 13, 2009 from the Small Business Utilization Council – HAR Chapter 3-124, Small Business Preference Rules Targeted Area for Set-Aside and/or Subcontracting – Alternate Energy.
- VIII. Executive Session:
 - a) To consult with the Board’s attorney on powers, immunities, and liabilities pursuant to HRS section 92-5(a)(4); regarding two appeals of the PPB’s Declaratory Order, in the Circuit Court of the First Circuit by Olelo Community Television and in the Circuit Court of the Second Circuit by Akaku: Maui Community Television; and
 - b) To discuss personnel matters in the recruitment for Administrator, State Procurement Office.
- IX. Announcements.
- X. Adjournment.

Agenda may be viewed at <http://hawaii.gov/spo/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, May 19, 2009. Testimonies received after the May 19, 2009 deadline will be forwarded to the board as time permits. 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., May 18, 2009 to discuss accommodation arrangements.