

PROCUREMENT POLICY BOARD MEETING

April 5, 2007

1:00 pm

Conference Room 410

1151 Punchbowl Street

Honolulu, Hawaii 96813

Members Present

Gregory King, Chair
Russ Saito, Secretary
Leslie Chinen, member
Daryle Ann Ho, member

Others

Pat Ohara, Attorney General's Office
Aaron Fujioka, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Jay April, Akaku: Maui Community Television
Lance D. Collins, Attorney for Akaku: Maui Community Television
Gerry Silva, Olelo Community Television
Clyde Sonobe, Department of Commerce and Consumer Affairs

Call to Order

Chair Greg King called the meeting to order at 1:16 p.m.

Minutes

Mr. Les Chinen made a motion, seconded by Mr. Russ Saito, to approve the minutes of the December 21, 2006 meeting which was reconvened on January 18, 2007.

The motion was unanimously carried.

Agenda Item III

Mr. Aaron Fujioka stated that at the time this item was placed on the agenda, there were 5 board members and if the Chair was not available there could still be quorum whereby the Vice Chair could conduct the meeting. With the resignation of Pamela Torres, there are only 4 board members and the Chair would need to attend for quorum, therefore the board may defer electing a Vice Chair.

Mr. Saito made a motion seconded by Ms. Daryle Ann Ho to defer the election of officers. The motion was unanimously carried.

Agenda Items IV, V and VI were all executive session matters and Ms. Ho made a motion, seconded by Mr. Saito to address all 3 items in executive session. The motion was unanimously carried.

The Board went into executive session pursuant to HRS §92-5(a)(4) to consult with the Board's attorney at 1:20 pm.

Chair King called the meeting back to order at 1:38 pm.

Agenda Item VI

Mr. Lance Collins addressed the board regarding the Petition stating that the Petition was filed to clear up the public's confusion on whether cable franchises under HRS chapter 440G are subject to procurement and to bring clarity to the issue.

Mr. Jay April testified that the bureaucracy has gotten hold of an issue that does not have to be addressed.

Chair King requested that the board members take a few minutes to read the written testimony submitted by Mr. Gerry Silva, because he was not present.

Mr. Clyde Sonobe explained that HRS chapter 440G is a review and approval process for applications for cable franchises.

A lengthy discussion followed on the three questions that were raised in the Petition. The Board considered the responses of Mr. Sonobe and Ms. Ohara, as well as those of Mr. Collins and Mr. April, to the Board's questions. The Board determined that the issuance of cable franchises granted pursuant to HRS chapter 440G and those cable franchises are not subject to HRS chapter 103D because cable franchises are governed by HRS chapter 440G and HRS chapter 440G does not include mention of HRS chapter 103D. The conclusion is that the legislature did not intend for cable franchises to be subject to HRS chapter 103D. The Board also determined that contracts entered into by cable franchises with businesses as required by the enfranchisement decision and order that benefit the state, in-kind or otherwise, are not subject to HRS chapter 103D because the cable franchises (such as Time Warner) are not governmental bodies subject to HRS chapter 103D. Finally, the Board determined that PEG access services are subject to HRS chapter 103D because the contracts for PEG access services were entered into by the Department of Commerce and Consumer Affairs ("DCCA"), which is subject to HRS chapter 103D, and the contracts were not exempted by HRS chapter 103D, the Chief Procurement Officer, or the Board. Mr. Collins requested that the decision of the board be in writing.

Mr. Silva also requested that a written determination be given to Olelo on their Petition.

Mr. Saito made a motion, seconded by Ms. Ho that the Deputy Attorney General respond in writing for the board and that the response reflect that for Petition no. 3 (a) the answer is no, for Petition no. 3 (b) the answer is no, and for Petition no. 3 (c) the answer is yes, for the reasons that were previously discussed. The motion was unanimously carried.

Agenda Item VII

Mr. Fujioka gave the board an update on legislative matters, particularly S.B. 1929 that would allow the board to establish rules to allow chief procurement officers to impose administrative fines for violating the procurement code. He also reported that there were 3 bills that would in effect exempt PEG access services from being subject to the procurement code. The bills did not receive a hearing and are basically dead for this session. A resolution requesting the Legislative Reference Bureau to study the legality and applicability of the procurement code on PEG access services is alive.

Ms. Ho is unavailable for the next scheduled board meeting on April 19th. Mr. Chinen stated that he is unavailable for the May 17th meeting. SPO will survey the members for the next board meeting.

Adjournment

Mr. Chinen made a motion, seconded by Mr. Saito, to adjourn the meeting. The motion was unanimously carried. The meeting was adjourned at 3:06 p.m.

Respectfully submitted,

5/4/07
Date

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