

PROCUREMENT POLICY BOARD
Meeting Minutes
Tuesday, December 18, 2018, 1:30 p.m.
Comptroller's Conference Room
Kalanimoku Building, Room 410, 1151 Punchbowl Street
Honolulu, Hawaii 96813

Members Present

Elizabeth Webb, Chair
Kathy Suzuki-Kitagawa, Vice-Chair
Roderick Becker, Secretary
Gary Kurokawa
James Mastin

Staff

Department of the Attorney General
Stella Kam, Deputy Attorney General

State Procurement Office

Sarah Allen, Administrator
Bonnie Kahakui, Acting Assistant Administrator
Ruth Baker
Stacey Kauleinamoku
Kevin Takaesu

Guests

Rick Kaponowaiwaiola Barboza, Hui Ku Maoli Ola
June Burke, Grainger
George Burnett, Department of Defense, HI-EMA
Ryan Kobayashi, Hawaii Laborers Union Local 368
Tammy Lee, Department of Transportation
Kamaile Maldonado, Office of Hawaiian Affairs
Pane Meatoga III, Hawaii Operating Engineers
Industry Stabilization Fund
Christy Martin, University of Hawaii CGAPS
Lois Mow, Hawaii Department of Education
Marie Neilson, Hawaii Department of Education
Wayne Tanaka, Office of Hawaiian Affairs
Michael Yadao, General Contractors Association

I. Call to Order, Public Notice, Quorum

Chair Elizabeth Webb called the Procurement Policy Board (PPB) meeting to order at 1:32 p.m., with a quorum present.

II. Approval of March 6, 2018, Meeting Minutes

Gary Kurokawa made a motion to accept the minutes of the March 6, 2018, meeting as presented. Kathy Suzuki-Kitagawa seconded the motion, and the PPB members unanimously approved the minutes.

III. Act 233, SLH 2015, "Relating to Hawaiian Plants"

SPO Administrator Sarah Allen stated that she met with the Comptroller and the Deputy Attorney General (AG) for the Department of Accounting and General Services (DAGS), who provided guidance on the Procurement Directive and Procurement Circular on the implementation of Act 233 (SLH 2015), "Relating to Hawaiian Plants." Based on that guidance, the Circular was revised as follows: 1) Information about Hawaiian plants was removed from the Circular. This information will be made available as training via webinar; and 2) The head of the purchasing agency ("HOPA") will make the decision on any exclusions for landscaping.

The PPB members were provided written testimony (attached) from Dr. Kamana'opono Crabbe, Chief Executive Officer of the Office of Hawaiian Affairs (OHA), in support of the approval of the proposed Procurement Directive and Procurement Circular, with amendments.

Wayne Tanaka, Senior Public Policy Advocate of OHA, provided oral testimony. He stated that OHA supports the Procurement Directive and Procurement Circular, and that OHA is required by Hawaii Revised Statutes (HRS) Chapter 10 (HRS §10-3(4)) to review other agencies' policies and practices that impact native Hawaiians, and to have those agencies collaborate with and assist OHA in improving programs for Hawaiians. He said that the Legislature passed Act 233 in 2015 because the previous language of "wherever and whenever feasible" in the statute was not effective due to the lack

of knowledge of native Hawaiian plants and their care, as well as their scarcity in the market. OHA presented to the PPB members a price comparison chart of native Hawaiian plants versus introduced plants in the market.

The draft Procurement Circular states that the HOPA would have to keep in the contract file a written memo about exclusions for those areas where Hawaiian plant species are not appropriate for the particular landscaping needs or environmental conditions of the plan or subject site. Mr. Tanaka requested that the Procurement Circular add language requiring HOPAs to send a copy of that exclusion memo for record to OHA because it is important for OHA to know how these exclusions work and to monitor the implementation of Act 233. OHA also requested that the Procurement Circular include a link to direct HOPAs to OHA's Hawaiian plants resource as guidance for solicitations. Mr. Tanaka said that in compiling this resource, OHA had contracted for training, utilized funding for educational materials, and worked with plant experts on a list of native Hawaiian plants and information their care.

Deputy Attorney General Stella Kam stated that OHA's request to add the statement "E-mail completed form to info@oha.org within ten [10] days of the Department Head's final determination" sounds more like a statutory requirement. She recommends that OHA create a process that regularly requests HOPAs to submit exclusion forms to OHA. Ms. Kam also noted that such requests to HOPAs under the Uniform Information Practices ACT (UIPA) starts the clock for the agency to respond to the request. She noted that there may be instances when OHA does not receive any memoranda on exclusions.

Roderick K. Becker asked for clarification in "Section IV. Procedures for Exclusion from Total Plant Footprint," if the HOPA's decision is final. Kamaile Maldonado of OHA stated that the intent of Act 233 (SLH 2015) was to exclude those areas in which Hawaiian plant species are not appropriate for the particular landscaping needs or environmental conditions. She reiterated that non-profit organizations collectively compiled information on native Hawaiian plants.

Ms. Webb recommended that having links available to training on native Hawaiian plants would be more appropriate. Ms. Allen agreed with that recommendation.

Rick Kaponowawaiola Barboza, a Hawaiian plants expert contracted by OHA, stated the pricing chart provided to the PPB members is an average of cost of native and non-native plants for all Hawaiian islands, as well as a list of 30 nurseries with 170 species that other nurseries also grow. He said that he will be able to meet the demand for native Hawaiian plants and can ship Hawaiian plants to all islands. He commented that there have been cases that after an award was made, contractors would change Hawaiian plants to non-native plants in order to increase their profits.

Ms. Suzuki-Kitagawa made a motion to approve the Procurement Directive 2019-01. James Mastin seconded the motion. The PPB members unanimously approved the Procurement Directive.

IV. Small Business Registration & Database

SPO Acting Assistant Administrator Bonnie Kahakui reported that the Small Business Registration & Database had a soft launch in November 2018, and that the SPO is working with Solutions Pacific on getting the word out for small businesses to register on HANDS. Ms. Kahakui gave a demonstration of the test registration page on HANDS, in which businesses go through self-certification and input information on ownership, affiliations, commodity codes, and gross revenues. Businesses will be required to update their information every three years.

Ms. Kahakui answered a question on whether the state has a small business preference. She replied that there is a small business set-aside, and that the statute says that the Chief Procurement Officer shall set aside 20% for small businesses. Ms. Allen referred to the executive memorandum signed by then-Gov. Linda Lingle stating this requirement.

Ms. Kahakui stated that the Small Business Database does not currently tie HlePRO to vendors, but may in the future so that vendors will receive a notice of solicitation. Agencies can view the database.

V. Hawaii Administrative Rules Review

Ms. Kahakui informed the PPB that the SPO is methodically reviewing the Hawaii Administrative Rules (HAR) and is making suggestions/changes for consistency and clarity. She stated that the SPO will review the Procurements Exempt from the Code, which are listed in Exhibit A in HAR Chapter 3-120-4 and dated October 30, 2014. She added that the HAR states that the PPB are to review the rules periodically. She stated that HAR Chapter 3-120-4(e) states that the PPB shall review Exhibit A annually or more frequently as needed. HAR Chapter 3-122-81(j), regarding Sole Source Procurements, shall be reviewed by the PPB biennially and that revisions be issued as a Procurement Directive.

VI. Procurement Review – Emergency Procurement

Ms. Allen reported that the SPO receives requests to approve emergency procurement, but denies the requests that are not deemed emergency in nature. She introduced Kevin Takaesu, SPO's Compliance supervisor, who explained emergency procurement to the PPB.

Mr. Takaesu presented information on Emergency Procurement, which is governed by Hawaii Revised Statute (HRS) 103D-307 and Hawaii Administrative Rule (HAR) 3-122, subchapter 10. The SPO uses these as guidelines to determine if the request is truly an emergency. He explained that Emergency Procurements may be utilized only to purchase the immediate needs for the emergency and that small purchase requirements do not apply to Emergency Procurements. To be classified as an emergency, the situation has of an unusual or compelling urgency that creates a threat to the public. The situation must be unforeseen or unanticipated, and that approval by the Chief Procurement Officer is needed either before the emergency, if practicable, or is obtained "after the fact."

Mr. Takaesu added that a situation is deemed not an emergency are those that have been ongoing, but needs immediate attention due to a lack of proper maintenance. Other reasons are that the agency has not been responsive to correct the situation; has not budgeted for the repair, maintenance and/or upgrade; or has made procurements to use funds before the end of a fiscal year. He also noted that of the Emergency Procurement requests submitted to the SPO for review, less than 20% are disapproved. If the requesting department has a request disapproved but has already received services from a vendor, the procurement is classified as a violation. In order for the vendor to receive payment in this case, the department needs to submit a Procurement Violation form (SPO-016) to the SPO, which then obtains approval from the Comptroller.

Mr. Takaesu shared several examples of some requests for emergency procurements that are submitted to the SPO.

Ms. Allen stated that the SPO brought up the issue of emergency procurements for the PPB so that there was an interaction between the agencies and the PPB, and noted that training on emergency procurement is available on-demand online. Various state agencies took the opportunity to present oral comments on the issue of emergency procurement.

Tammy Lee of the Department of Transportation shared difficulties that Airports has, for example, the DOT felt that cracks in the fuel tank system at Lihue Airport and Daniel K. Inouye Airport were clearly emergency in nature, but that was denied.

George Burnett of the Department of Defense shared the department's challenge in getting an extension of a lapsed contract.

VII. Announcements

Ruth Baker reported that with the appointment of the fourth person to the Procurement Policy Board Nominating Committee, the Committee can be activated and review applications for positions that are currently vacant or will soon become vacant.

VIII. Next Meeting

The next PPB meeting will take place late February 2019. SPO staff will poll the members on their availability for the next meeting.

IX. Adjournment

The meeting was adjourned at 3:00 p.m.

Respectfully submitted,

Elizabeth L. Webb

Elizabeth Webb
Chair