

PROCUREMENT POLICY BOARD MEETING  
January 10, 1995  
2:00 p.m.  
Comptroller's Conference Room  
1151 Punchbowl Street, Room 410  
Honolulu, Hawaii 96813

Members Present

Haruo Shigezawa, Chairman  
Timothy Johnson, Vice Chairman  
Eugene Imai, Comptroller  
Bill Gray, Member  
Robert Oyama, Member

Others

Lloyd Unebasami, Interim Administrator  
Robert Governs, State Procurement Office  
Ruth Yamaguchi, State Procurement Office  
Justin Fo, State Procurement Office  
Kay Fujimoto, State Procurement Office  
Eric Tom, DOE Procurement Office  
Clayton Wong, City Council  
Gwen Won, University of Hawaii  
Claire Motoda, Department of Public Safety

**Call to Order**

The meeting was called to order at 2:00 p.m. by Chairman Haruo Shigezawa.

**Minutes**

Motion

A motion was made by Mr. Bill Gray, seconded by Mr. Robert Oyama, to approve the minutes of the meeting held on December 6, 1994.

AYES: Mr. Haruo Shigezawa  
Mr. Timothy Johnson  
Mr. Eugene Imai  
Mr. Bill Gray  
Mr. Robert Oyama

NAYES: None

Chairman Shigezawa requested that the Administrator's Report be given before the discussion of New Business.

### **Administrator's Report**

Mr. Lloyd Unebasami introduced Ms. Marion Higa, State Auditor, who graciously consented to present the results of her staff's recent audit on the Department of Education's (DOE) administration of personal services contracts. Mr. Unebasami explained that this report is a legislative audit and not a procurement audit although there were findings on procurement.

Ms. Higa stated that Mr. Unebasami is correct, that under the new procurement law her office has a procurement audit function which is already in process. However, the audit on DOE is not part of the procurement audit function.

Ms. Higa explained that she would point out the major parts of the audit which may be useful to the Procurement Board and staff in drafting rules and developing procedures. A summary of her comments follows:

All audit reports include a one-sheet pull out overview which summarizes the context of the report. Approximately 3 weeks before publication, an exit conference is scheduled with the agency to discuss the findings; then a preliminary draft copy of the report (which is stamped with numbers) is sent to the agency. This allows the agency an opportunity to respond to the findings of the audit and the agency's comments, if any, are included in the final report.

Usually, Chapter 1 of the audit reports would highlight the background of the agency, along with the standards and methodology of the audit process.

The DOE audit was initiated by the Auditor because it seemed that the DOE had a lot of money but no one could say how much. Also, the Senate Ways and Means Committee had some difficulty in getting from the DOE a list of the contracts within the department. Eventually, the Committee was given two lists of different lengths and different contents supposedly for the same year. The general conclusions were two major ones as summarized in Chapter 2, page 5 of the Audit Report.

The first conclusion questions whether the expenditures furthered the DOE's educational mission. The report estimates that \$4 to \$10 million were involved, but

verification is difficult because the DOE does not have a way of tracking the expenditures, partly because of their inconsistent methods of spending. Data on personal services contracts indicate that expenditures were through contracts and purchase orders.

The second conclusion relates to the direct management of the contracts, more specifically:

- a. There are no clear responsibilities.
- b. The policies and procedures are outdated. Procedural manuals do not recognize, among other things, a 1986 flexibility legislation and the 1993 procurement law, resulting in inconsistencies on who initiates an action, who approves it, and why approval is needed.
- c. Regarding DOE employees who are also awarded personal services contracts, closer scrutiny is recommended to determine whether the employees are getting paid double and whether the work contracted for should be done as part of their regular work assignments.
- d. The possibility of parceling is another major concern due to the number of contracts which were just below the fixed threshold. Examples given were contracts at \$3,900 when the threshold was \$4,000; contracts for \$7,900 when the threshold was \$8,000, etc. Also, the DOE could not provide reasonable justification for some of the contracts.
- e. Policies on open competition seems to be a problem in DOE and a number of their contracts are going to the same people repeatedly--retirees, current employees, and recently departed employees.

Although there are other areas of concern, the major concern is the large amount of money involved and the lack of an adequate system in place for tracking the expenditures.

SCBM is in place but the department needs to make an assessment of what is needed for SCBM to work. Clear direction should be disseminated from the top as to what type of information should flow back and forth to ensure that proper procedures are followed.

The spending patterns of various school districts were evaluated and the Honolulu District seemed to have a disproportionate high number of contracts and dollar amounts relative to the number of schools and students in the

district, whereas the numbers for the Central and Leeward districts were disproportionately low. The Leeward District did not seem to have any cases of parceling which may be due to a good computerized logging system which is in place.

The DOE has a policy which forbids the use of purchase orders to acquire personal services; however, this practice continues. In practicality, there are many instances where the purchases of personal services are small and it would make sense to use purchase orders for this type of procurement. The DOE was asked if this policy was reconsidered to allow the use of purchase orders for small personal services purchases. The DOE's response is that any time personal services are acquired, terms and conditions should be specified in a contract which may not be possible through the use of the purchase order method.

In summary, Ms. Higa stated that the DOE should make better use of its available resources.

Chairman Shigezawa asked Ms. Higa about the impact of the new law on the procurement of personal services. Ms. Higa replied that the Superintendent indicated that the new law is more burdensome but she did not know what types of adjustments have been made.

Mr. Eric Tom of the DOE's Procurement Office commented about the difficulties they've encountered in fulfilling the requirements of the law relating to the procurement of personal services. As required by the law, an advertisement was placed for psychologists; 26 psychologists were needed but only 6 applicants responded. The DOE is presently requesting assistance and/or suggestions on getting the required services fulfilled.

Ms. Higa stated that it may take a while for the public to get educated enough to respond to RFP's. Many of the smaller firms do not yet have the experience or the resources to respond to RFP's on a timely basis.

Mr. Tim Johnson inquired if the Auditor's Office schedules follow up visits to agencies which have been audited. According to Ms. Higa, each October her office sends letters to those agencies audited in the previous year requesting information on the actions taken, if any, on the recommendations made to that agency. The recommendations and responses are then summarized for inclusion in an annual report. However, due to new legislation, follow up audits will be conducted on selected prior audits to see whether the representations made by the agencies are being carried out. A report on these follow up visits will be made to the Legislature.

Ms. Higa reported that the audit on the procurement law should be completed within the next month. A draft of the report will be sent for a response before final publication. Chairman Shigezawa stated that one of the goals of the Procurement Policy Board is to assist, whenever and wherever possible, in the implementation of the law. The findings of the audit will be indicative of the areas where assistance can be focused.

Ms. Higa concluded her presentation, stating that she looks forward to continuing to work with the Board. Chairman Shigezawa thanked her for her fine presentation.

## **New Business**

### Legislative Proposals

Mr. Lloyd Unebasami, Interim Administrator, led the discussion. There are three major amendments in the legislative proposal (AGS-03(95)):

1. The first major amendment is in section 1. This proposal adds research and reference materials in the items excluded from chapter 103D, HRS, and provides the Administrator of the State Procurement Office with the authority to waive chapter 103D, HRS, in the public's or State's best interest.

Many of the concerns expressed by the University of Hawaii will be addressed and the Administrator will be granted the authority, through the administrative rules, to waive chapter 103D, HRS, for 3 types of procurement: (a) on a case-by-case basis for which prior to procurement a valid justification is presented for the exemption which would be in the best interest of the State (e.g., covert operations); (b) a procurement transaction which was finalized in good faith and in the best interest of the State, but did not fit within the parameters of any of the approved methods; and (c) on a daily basis and with the approval of the Board, waiver authority for transactions that do not fit within the parameters of any of the approved methods because of the cumbersome nature of the sole source process (e.g., membership fees, etc.).

It is recommended that the Board give annual blanket approvals for the above exemption powers and that each

exemption granted be reported to the Legislature on an annual basis.

Chairman Shigezawa commented that he would be agreeable to any amendments to allow for more flexibility for the procurement staff in the field. Mr. Tim Johnson agreed with allowing for more flexibility but expressed concerns about ensuring consistency in procurement practices throughout the State, and also, ensuring that other people's actions do not jeopardize the Administrator's flexibility.

Mr. Unebasami responded that each case must be reviewed and a determination be made based on the facts presented for each case. If two similar requests are received, one may be approved and the other denied due to timeliness or some other situation of the request. Mr. Unebasami further emphasized that the Administrator would be the individual giving approvals and that he or she would need to ensure the consistency.

Mr. Robert Oyama's concern is whether the Board should be involved in granting exemptions because as he understands, the Board's role is in policy decisions rather than administrative duties. It was the consensus of the Board that flexibility be granted to the Administrator, and that an annual report be submitted to the Legislature.

2. The second major amendment is in section 3, page 5. This item proposes interim rules on any changes to the law. The interim rules would be effective for not more than 18 months.

Mr. Unebasami explained that the normal rule making process may take 8-12 months, sometimes longer. If there are no interim rules in place, there would no rules to enforce the changes in the law.

3. The third major amendment is in section 4, page 6. This proposal clarifies the procurement organization within the Department of Accounting and General Services (DAGS). Presently the State Procurement Office (SPO) is assigned to the Comptroller's Office for administrative purposes. The proposal assigns the present Purchasing Division of DAGS to the SPO and establishes the entire SPO as an attached agency assigned to DAGS for administrative purposes. The amendment also allows for a secretarial position for the Administrator.

For the Board's information, Mr. Unebasami stated that, aside from the above proposed amendments, there may be others forthcoming. A meeting was held with the Hawaii Public Library System personnel who questioned whether a discrepancy existed as to who the CPO might be for the library system. Organizationally, the State Librarian and the DOE Superintendent both report to the DOE Board and one does not supervise the other. Comptroller Eugene Imai confirmed this organizational structure as correct-- both are separate entities and both report to the DOE Board. The present interpretation of the law is that the library system falls under the State CPO and that the Superintendent of Education is the CPO for the Department of Education.

Chairman Shigezawa brought up the possibility of proposing an amendment to section 103D-303, HRS, competitive sealed proposals, because there appears to be conflicting language. Mr. Unebasami stated that section 103D-304, HRS, states, "Except as authorized under sections 103D-305, 103D-306, and 103D-307, professional services shall be procured in accordance with section 103D-303, unless . . ." other conditions are met. Mr. Unebasami explained that the conditions are (1) the approval of the State CPO to use the list method procedures, or (2) the head of the agency determines that the list method be used due to time constraints and secures the State CPO's approval after the fact.

Chairman Shigezawa expressed concerns about the rigidity of the requirements for the procurement of personal services. Mr. Oyama explained that he understands that the RFP process gives the flexibility of awarding with or without negotiations. The alternative is the IFB process in which case an award can be made without any discussion.

Mr. Unebasami further explained that the procurement of professional services may be acquired using the RFP method or the qualified list method. Presently, the "alternate method" is allowed with the CPO's approval. In response to Mr. Gray's request for a definition of "professional," it was suggested that the list of professionals included in the rules be referenced.

In light of the above discussion, Ms. Claire Motoda of the Public Safety Department's Purchasing Office stated that as a user of the procurement code, she works with personal services contracts. She and her staff feel that they are hampered by the fact that they have to use the RFP method when, at times, they would prefer using the IFB method. The reason for this preference is that in many instances the specifics for the services are known and can be spelled out in an IFB. The vendors will know exactly what kind of services are being sought and the analysis of the bids would be easier. Mr. Unebasami stated that

the process desired by Ms. Motoda could also be accomplished using the RFP method. Ms. Motoda acknowledged that but said that the evaluation of the proposals in the RFP method would need to be more detailed.

Therefore, Mr. Governs recommended that section 103D-302, HRS, be also included in the amendments to address Ms. Motoda's concerns.

Mr. Unebasami requested the Board's input on a process which would allow the CPO to make a selection on a request for professional services. Chairman Shigezawa explained that there was considerable discussion on this during the Special Session in 1993 and the outcome, as is the law now, is that all professional services shall be procured through the RFP method.

The discussion continued on the many concerns involved with the use of the RFP method in the procurement of professional services. The Board agreed that the law should be amended to make the RFP method optional in the procurement of professional services and that appropriate amendments be recommended to the Legislature.

Mr. Bill Gray requested that an amendment be included in the law regarding grants for nonprofit organizations. So as to comply with the procurement law and a county's ordinance, Mr. Gray suggests that the following language be added at the end of section 103D-102(b)(1), HRS, to read:

- (1) Grants, subsidies, or purchases of service made pursuant to chapter 42D and the applicable county ordinances.

#### Motion

A motion was made by Mr. Bill Gray and seconded by Mr. Robert Oyama that the Board approve legislative amendments as written and as discussed herein to include amendments to section 103D-102, 103D-303, 103D-304, HRS.

AYES: Haruo Shigezawa  
Tim Johnson  
Eugene Imai  
Bill Gray  
Robert Oyama

NAYES: None

The motion was carried.

**Next Meeting**

Chairman Shigezawa announced that the next Procurement Policy Board meeting will be held on Tuesday, February 7, 1995 at 2:00 p.m.

**Adjournment**

There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,



FEB 6 1995

HARUO SHIGEZAWA  
Chairman of the Board