

PROCUREMENT POLICY BOARD MEETING

March 7, 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
Bill Gray, Member
Robert Oyama, Member

Members Excused

Eugene Imai

Others

Lloyd Unebasami, Interim Administrator
Robert Governs, State Procurement Office
Justin Fo, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Grant Turner, State Procurement Office
Kay Fujimoto, State Procurement Office
Pat Ohara, Deputy Attorney General
Steve Miwa, State Public Works Division
Gwen Won, University of Hawaii
Jack Rosenzweig, Attorney General's Office
H. Murray Hohns, Consultant
Gary Choy, Department of Transportation
Clayton Wong, Honolulu County Council

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 February 7, 1995.

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

NAYS: None

The minutes were approved as distributed.

For Information

Chapter 123, Cost Principles. Mr. Jack Rosenzweig, Supervising Attorney General, and Mr. H. Murray Hohns, Consultant, gave a presentation on proposed changes to Chapter 123. Messrs. Rosenzweig, Hohns, and staff of DAGS' Public Works Division have been meeting regularly to review sections of the interim rules on procurement as they pertain to contracts, terms and conditions, and other public works related areas.

New Business

Review and Approval of Amendments to Interim Rules.

Chapter 3-125, Modifications and Terminations of Contracts.

Chairman Shigezawa asked Mr. Robert Governs to present the proposed revisions to Chapter 3-125. Mr. Governs explained that many of the changes on this chapter have been proposed by a working group ("Group") comprised of Mr. Jack Rosenzweig, Mr. H. Murray Hohns, and staff of DAGS' Public Works Division. The Group focused its review on the rules as they relate to construction contracts and not for goods and services. The State Procurement Office staff have reviewed the proposed revisions and offer the following for the Board's consideration:

Section 3-125-1, Subsection (a). Revised to read: Subject to subsection (b), the contract clauses in this chapter are required for use in invitation for bids or requests for proposals and may be used in other contracts subject to chapter 103D, HRS.

Section 3-125-4, Subsection (a): Language on change orders clarified for purposes of efficient project control and claims management. Change orders may be made within the scope of the contract; timely written notices of claims are responsibilities of the contractor; and the price and time adjustment established by the State in the change order will be final.

Section 3-125-7, Suspension of work for construction contracts. This section has been deleted in its entirety and replaced. The new language deals exclusively with "suspensions" which are directives by the State to the contractor to stop all or part of the work.

Section 3-125-12, Price Adjustment. A new subsection (a)(3) is proposed that permits the procurement officer to make an adjustment based upon the line item breakdown submitted by the contractor before work begins. Additional subsections (b) and (c) are also proposed that set clear but fair limitations on the markup allowed for change work.

Section 3-125-14. Section is deleted in its entirety and replaced with new language which is clearer and easier to understand.

Section 125-16, Default, delay, and time extensions for construction contracts. Revision includes lessening the time granted to a contractor from 14 days to 7 days to cure its default.

Section 125-18, Liquidated damages for construction contracts. A minor terminology change was made in the proposed contract clause, indicating that liquidated damages are a matter of agreement instead of by unilateral imposition.

Section 125-20, Termination for convenience of construction contracts. Subsection (c) has been rewritten to include fixed percentage markup costs and time limitations, and avoids ambiguous words such as "fair and reasonable" with reference to time, costs or profits.

Chairman Shigezawa asked the members if there were any questions.

In reference to Section 125-4, Mr. Bob Oyama asked who is to define "minor changes." Mr. Rosenzweig replied that in the field there are numerous minor change requests and that not every change is a compensable one. There is no clear definition of a minor change vs. a compensable change and that 99% of the change requests are agreed upon by the project manager and the contractor. Mr. Hohns added that there is a provision in the general conditions for a contractor to disagree in writing with the minor change.

With reference to the amended language in section 125-4(b), Mr. Oyama inquired as to why are only direct costs covered. Mr. Rosenzweig explained that in many instances there are disagreements over costs because of overclaims and other indirect items and the State's obligation at that stage is to pay for the direct costs only as they are incurred. With the payment of direct costs, the contractor is likely to continue the work thereby allowing time for negotiations.

Mr. Oyama recommended that the 15% overhead figure in section 3-125-12 not be included in the rules. Mr. Hohns explained that this figure was included in the rules so that there would be consistency in the percentage markup for all state agencies.

In response to Mr. Oyama's question regarding section 3-125-14, Mr. Rosenzweig stated that this section sets up the procedures for payment of claims by the contractor for changes directed orally by the project engineer or superintendent.

Chairman Shigezawa asked about the form in which the general terms and conditions are presented. Mr. Rosenzweig replied that the general terms and conditions are included as part of the contract.

Motion

Mr. Bill Gray moved that the Board approve the revisions to Chapter 3-125, as discussed today. The motion was seconded by Mr. Tim Johnson.

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

NAYS: None

The motion was unanimously carried.

Administrator's Report

Mr. Lloyd Unebasami reported on the following:

1. Legislation. HB1834, HD2 was passed by the House. The bill includes:
 - a. Exemptions. (1) Contracts that were signed prior to July 1, 1994; (2) disbursement of funds for the procurement of grants, subsidies, and other non-product items; (3) inter-governmental procurement; (4) hiring of expert witnesses, purchase works of art for a museum, food items for Kalaupapa settlement, research and reference materials, etc., and also provides for the Procurement Policy Board and chief procurement officer to add to list of exempted items; (5) provides exemptions for governmental laws which conflict with this chapter, e.g., federal General Agreement on Tariffs and Trade (GATT).
 - b. An amendment to streamline the procurement process by allowing the Procurement Policy Board to establish, by administrative rule, a list of sole source procurements thereby eliminating the approval process.
 - c. Centralization vs. decentralization. The present law directs the chief procurement officer to centralize the procurement process. However, because of the current fiscal climate, it is proposed to allow the chief procurement officer the discretion to specify the goods, services, or construction activity which are to be centrally procured.

The Chairman expressed concerns if procurement is decentralized. He stated that the initial intent of the procurement code was to centralize procurement to reap the benefits of volume purchasing and to uniformly control procurement throughout the various governmental entities. He continued to state that it is his opinion that centralized purchasing should remain in the law even if the resources for full implementation are not yet available. The Legislature can be approached each year for the funding required for full implementation.

Mr. Unebasami explained that the law does state that the Procurement Policy Board is charged with establishing procurement policies.

2. For the Board's information, a concern has surfaced regarding Procurement Directive 94-01, Transitional Policies and Procedures for Implementation of Chapter 103D, HRS. The directive sets forth policies during the transitional period. Contracts solicited or entered into prior to July 1, 1994 are not affected by Chapter 103D. However, there have been difficulties in interpreting the rules regarding amendments to contracts entered into prior to July 1, 1994. Several departments have requested that the Procurement Policy Board issue a directive on such amendments. This item will be placed on the agenda at the next board meeting.

Next Meeting

Chairman Shigezawa announced that the next Procurement Policy Board meeting will be held on Tuesday, April 4, 1995 at 2:00 p.m.

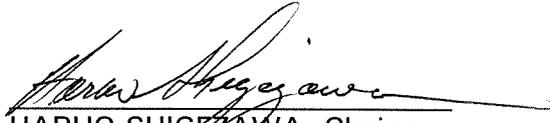
Adjournment

There being no further business, the meeting was adjourned at 4:35 p.m.

Respectfully submitted,

APR - 3 1995

Date



HARUO SHIGEZAWA, Chairman
State Procurement Office