

PROCUREMENT POLICY BOARD MEETING

November 7, 1995

2:00 p.m.

Comptroller's Conference Room
1151 Punchbowl Street, Room 410
Honolulu, Hawaii 96813

Members Present

Tim Johnson, Vice Chairman
Sam Callejo, Secretary
Bill Gray, Member
Robert Oyama, Member

Excused

Haruo Shigezawa, Chairman

Others

Lloyd Unebasami, Administrator
Robert Governs, State Procurement Office
Doris Lee, State Procurement Office
Justin Fo, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Kay Fujimoto, State Procurement Office
Pat Ohara, Deputy Attorney General
Eric Tom, DOE Procurement Office
Duff Zwald, University of Hawaii
Clayton Wong, Honolulu City Council

Call to Order

In the absence of the Chairman, the meeting was called to order at 2:00 p.m. by Vice Chairman Tim Johnson.

Minutes

Motion

A motion was made by Mr. Bill Gray, seconded by Mr. Sam Callejo, to approve the minutes of the meeting held on September 5, 1995.

AYES: Mr. Tim Johnson
Mr. Sam Callejo
Mr. Bill Gray
Mr. Robert Oyama

NAYS: None

The minutes were approved as distributed.

New Business

Mr. Unebasami asked Mr. Bob Governs to present the staff's responses to written comments and testimonies received on the adoption of the rules.

Mr. Governs reported as follows:

- A. The State Attorney General's Office and the Judiciary suggested that the following qualifying clause be added to the end of item 14 of the list of exemptions permitted by §103D-102(b)(4), HRS, as amended by Act 178, 1995 Haw. Sess. Laws:

"14. Services of legal counsel, guardian ad-litem, interpreters, psychiatrists, and psychologists in criminal and civil proceedings when required by court order or by the Rules of Court;"

Staff recommended that the Board approve the requested amendment. The Board members concurred with staff's recommendation.

- B. A discrepancy exists between §103D-703, HRS, and §§3-126-28 and 3-126-31, HAR, regarding the time period allowed to resolve controversies (ninety days vs. one hundred twenty days).

Staff recommended that changes be made to both §§3-126-28 and 3-126-31 to correspond with the time period noted in the statutes. The Board members concurred with staff's recommendation.

- C. Testimony received from Mr. Douglas Meller questions the merits of item 11 of the list of exemptions permitted by §103D-102(b)(4), HRS, as amended by Act 178, 1995 Haw. Sess. Laws:

"11. Subgrants and subcontracts to organizations directed by the funding agency;"

Staff conducted research on this matter and held discussions with members of the University of Hawaii and DAGS Administrative Services Office and concluded that no change be made in this matter.

The Board members accepted staff's recommendation.

D. Staff reviewed the comments received from the Hawaii Chapter of the National Association of Purchasing Managers (NAPM-HI).

1. Discusses the exemption of opponents for athletic competition which may be applicable only to the University of Hawaii and that a statewide exemption could be a target for potential abuse. Staff responded that the Department of Education and the Aloha Stadium are other agencies which may utilize this exemption.

Another example cited was the exemption of services for lecturers and public speakers which could be used as a guise to hire consultants for training programs. Staff stated that expenditures for consultants for training programs would not be approved under the exemption for lecturers and public speakers.

Staff is recommending that no change be made. The Board members accepted staff's recommendation.

2. Supports statewide procurement orientation training programs. Staff concurs with NAPM-HI's emphasis on training; no changes are recommended. The Board members also concurred.
3. NAPM-HI recommends that procurement authority be delegated to qualified procurement personnel rather than to a department head or deputy who may have no procurement knowledge. Staff recommended that no change be made as many departments do not have qualified procurement personnel. The Board members accepted staff's recommendation.
4. Recommends that the Procurement Policy Board establish an advisory board to include professional procurement personnel from each agency. Staff reported that Subchapter 4, Chapter 3-121, HAR, allows for councils and advisory groups, therefore, no change is recommended. The Board members accepted staff's recommendation.

5. Recommends that facsimile offers be allowed for any dollar amount (current rules allow facsimile offers under \$25,000). Staff recommends the following revision to §3-122-9(c):

“(c) An offer transmitted via facsimile machine shall be acceptable only [if the offer is under \$25,000] when specifically allowed in the invitation for bids or request for proposals; provided:”

The Board members accepted staff's recommendation.

6. Discusses the one time legal advertisement to establish a list of professionals from which agencies could select to fulfill their needs for professional services. The NAPM-HI feels this method is inadequate. Staff recommended that no change be made as this is a requirement of Chapter 103D, HRS.

The Board members accepted staff's recommendation.

7. Recommends that cost savings be included as justification for sole source procurement. Staff recommended no change as competitive sealed bidding or proposals would determine whether there are any cost savings.

The Board members accepted staff's recommendation.

8. Recommends that the names of offerors be made public at the time of the opening of proposals. Staff recommended no change as the current rules are a reflection of the ABA's recommended regulation for the model procurement code.

The Board members accepted staff's recommendation.

- E. Pacific Resource Partnership (PRP) commented on various areas of the requirement for public notice of solicitations; e.g., maximizing public notification, “broadest possible relevant,” and availability of solicitation for public inspection. The staff basically agreed with the comments offered but felt that much of the discretion should be left to the chief procurement officers.

PRP also recommended that the §3-122-110 be amended by deleting the word “collected and to reflect “most current information available” to allow the procurement officer broad discretion in determining responsibility. Staff recommended that the section be amended for clarity:

“§3-122-110 Determination of responsibility. (a) The procurement officer shall determine, on the basis of available information [collected], the responsibility or nonresponsibility of a prospective bidder.”

The Board members accepted staff's recommendation.

F. The Consulting Engineers Council of Hawaii (CECH) offered the following:

1. Recommends adopting the “AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector,” for design-build projects. Staff acknowledged that it may be good reference material but would not recommend it as a statewide guide until it can be studied more thoroughly.

The Board members concurred.

2. Recommends deletion of the word “professional” before the word “engineering” in §3-122-62 Definition. Staff recommended that no change be made since Chapter 103D, HRS, lists “professional engineering.”

The Board members concurred.

3. Recommends modifying §3-122-64(b) to reflect the recent changes to the code. Staff recommended that the section be amended as follows:

“(b) Additional public notices inviting persons engaged in providing professional services may be made if the response to the initial notice is not adequate, the response to the initial notice does not result in an adequate representation of available sources, or previously unanticipated needs for professional services arise.”

The Board members accepted staff's recommendation.

4. Recommended deletion of §3-122-64(c) which allows the professional services list of qualified persons to be interchangeable between agencies. Staff recommended that no change be made at the present time; however, this matter can be reviewed at a later date.

The Board members accepted staff's recommendation.

5. Recommended changes to §3-122-65 to reflect recent changes to the code. Staff suggested the following changes which reflect CECH's recommendations:

“§3-122-65 Procedures for procurement of professional services. (a) [At least annually, the] The head of the [each] purchasing agency[,] shall designate a review committee [of at least three employees] to evaluate statements of qualifications and related information submitted to that purchasing agency for the purpose of compiling a list of qualified persons to provide particular types of professional services. The review committee shall consist of at least three employees from the agency or from another governmental body with sufficient education, training, and licenses or credentials for each type of professional service which may be required.

- (b) If the purchasing agency identifies a need to procure professional services pursuant to section 103D-304(d), HRS, it shall proceed as follows:
- (1) Establish a screening committee of at least three employees of the purchasing agency with sufficient education, training, and licenses or credentials in the area of the services required. If the purchasing agency and the using agency are different, at least one qualified employee shall be from the using agency, appointed by the head of the using agency. Employees of other agencies may be designated to serve on the committee only if qualified employees from the purchasing and using agencies are not available.
 - (2) The screening committee shall establish criteria for the selection of the names of three persons from the subsection (a) list of qualified persons who the committee concludes are the most qualified to provide the services required.
 - (3) The screening committee [who] shall evaluate the submissions of subsection (a) list of qualified persons against the criteria established for selection. The committee may conduct confidential discussions with any person on the subsection (a) list of qualified persons regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors:
 - (4) The screening committee shall provide [and submit] the head of the purchasing agency with the names of the three persons that have been determined to be the most qualified, together with a summary of their qualifications[, to the head of the purchasing agency];
- ~~[(2)]~~(5) The head of the purchasing agency shall evaluate the summary of qualifications of the three persons [designated] provided by the screening committee and may conduct discussions with any of the

three persons. He shall rank each person [by] in order of preference;

~~[(3)](6)~~ The head of the purchasing agency shall [thereafter seek to] negotiate a [fair and reasonable] contract [price with the first ranked person] that is established in writing and based upon the estimated value, scope, complexity, and nature of the services to be rendered, including the rate of compensation which is fair and reasonable, as follows:

(A) Negotiation shall be conducted with the first person:

(B) If a satisfactory contract cannot be negotiated with the first [first-ranked] person, [such] negotiations with that person shall be formally terminated and negotiations with the second person [other persons in order of their rankings] shall commence;

(C) If negotiations fail with the second person, negotiations with the last person shall commence; and

~~[(4)](D)~~ If a contract at a fair and reasonable price cannot be negotiated, the screening committee may be asked to submit the names of three additional [names] persons for [to] the head of the purchasing agency to rank, and [to then] resume negotiations in the same manner [as] provided in this subsection.

~~[(5)](6)~~ [All negotiations] Negotiations shall be conducted confidentially.”

The Board members accepted staff's recommendation.

6. Recommended that “vendor” in §3-122-65(c) be more clearly defined. Staff recommended the following amendment:

“(c) Pursuant to subchapter 15, cost or pricing data shall be submitted to the head of the purchasing agency [by the vendor] for any contract expected to exceed \$100,000. This requirement may be waived only under the provisions of section 3-122-124.”

7. Recommends the correction of the sequencing of §3-122-65(e) and deletion of the reference in subsection (e) of a non-existent subsection 3-122-59(d). Staff concurs with this recommendation as follows:

“~~[(e)](d)~~ After the contract is signed by all parties, the list of qualified persons and the award, except those portions for which a qualified person has made a written request for confidentiality subject to [subsections] subsection 3-122-59(c) [and (d)], shall be open to public inspection.
[Eff] (Auth: HRS §103D-304) (Imp: HRS §103D-304)”

The Board members accepted staff's recommendation.

8. Recommends that the list of qualified persons, the award, and other pertinent information be made available for public inspection seven days after the award. Staff recommended that no changes be made because the disclosure of such information before the signing of a contract may not be in the best interest of the State.

The Board members concurred with staff's recommendation.

9. Recommends that the rules require an agency to conduct debriefing sessions with the unsuccessful offerors to discuss their non-selection. Staff recommended that no changes be made as they are confident that the procurement official would be willing to meet with the non-selected individuals.

The Board members accepted staff's recommendation.

10. Recommends that the documentation of the alternative procurement method selected be open for public inspection seven days after award and public notice. Staff recommended no change, as §3-122-64(c)(4) requires that this documentation be made a part of the contract file and is therefore available for public inspection after the award is made.

The Board members accepted staff's recommendation.

11. Recommends that the entire small purchase procedures contained in the code be included in §3-122-67 in lieu of referencing the code. Staff recommended that §3-122-67 be amended as follows:

“§3-122-67 Small purchases of professional services. (a) Contracts for professional services of less than \$10,000 may be [procured pursuant to section 103D-305, HRS, or pursuant to section 103D-304(f), HRS.] negotiated by the head of a purchasing agency with any two persons who appear on the list of qualified persons established pursuant to section 3-122-65(a).

“(b) Negotiations shall be conducted in the manner set forth in section 3-122-65(b)(5) but without establishing any order of preference.

[Eff _____] (Auth: HRS §§103D-304, 103D-305) (Imp: HRS §§103D-304, 103D-305)”

12. Recommends that §3-122-68 be modified to reflect recent changes to the code. Although the rules comply with the recent changes to the code, staff recommended the following modification to more completely reflect the recent changes:

“§3-122-68 Record of procurement actions. (a) Pursuant to section 103D-321, HRS, the chief procurement officer shall maintain a record by fiscal year of all procurements made under section 103D-304, HRS, for a minimum of five years. The record shall be available for public inspection.

“(b) By August 15 of each year, the chief procurement officer shall forward a copy of the record to the administrator. The record shall reflect procurement actions for the prior fiscal year and [be in the format prescribed by the administrator] shall contain at a minimum:

- (1) Each contractor’s name;
 - (2) The amount and type of each contract; and
 - (3) A listing of the goods, services, or construction procured under each contract.
- (c) The administrator shall forward a consolidated report to the legislature by October 1 and provide an information copy to the procurement policy board. [Eff _____] (Auth: HRS §103D-321) (Imp: HRS §103D-321)”

The Board members accepted staff’s recommendation.

- G. Mr. Daniel Chun, Architect, offered the following comments:

1. Recommends that unsuccessful offerors be compensated for the design portion of a proposal.

Staff recommended that no change be made as it may not be statutorily possible to pay for goods or services not received.

2. Questions the preference in the rules to use the competitive sealed proposals method in the selection of professional services that was eliminated by Act 178, HSL, 1995.

No changes recommended as the rules have been amended to include provisions of Act 178, HSL, 1995.

The Board members accepted staff's recommendations.

- H. The Hawaii State Council of The American Institute of Architects comments that the design-build method of procurement stifles competition, is unfair to the local community, and is an uneconomical method of construction. Staff acknowledged the concerns cited; however, recommends that no changes be made at this time as the design-build method has merits in certain circumstances.

The Board members accepted staff's recommendation.

- I. The General Contractors Association of Hawaii (GCA) submitted comments on behalf of its organization and the Construction Industry Legislative Organization (CILO). (Note: Inconsistencies existed in GCA's references to chapter and section numbers; all references herein have been corrected.)

1. Recommends increasing the bidding time from 10 days to 15 days between date of last advertisement and the deadline for receipt of offers. Staff recommended no change as the current rule is reasonable.

The Board members accepted staff's recommendation.

2. Recommends that §3-122-24(c)(1) be amended to require that public notices be published in both statewide and county publications. Staff recommended no change as the Procurement Policy Board has deemed it appropriate to publish a public notice in a newspaper of general circulation in the State or county pertinent to the procurement. The Board members concurred.

3. Recommends language change in §3-122-21(6). Staff reported that the language is already incorporated in the rules; no change is necessary.

The Board members concurred.

4. Recommends language change in §3-122-34(2). Staff reported that the language is already incorporated in the rules, no change is necessary.

The Board members concurred.

5. Recommends the use of the "AIA/AGC Recommended Guidelines for Procurement of Design-Build Projects in the Public Sector." As stated above, staff acknowledged that it may be good reference material but would not recommend it as a statewide guide until it can be studied more thoroughly.

The Board members concurred.

6. Recommends amending §§3-122-96 and 3-122-97 by replacing the word "may" with "shall" to eliminate any question as to when a solicitation must be canceled or a bid rejected. Staff recommended that Subchapter 11 be amended as follows:

"SUBCHAPTER 11

CANCELLATION OF SOLICITATIONS AND REJECTION
OF [BIDS AND PROPOSALS] OFFERS

§3-122-95 Cancellation of solicitations and rejection of [bids and proposals] offers. (a) An invitation for bids, a request for proposals, or any other solicitation may be canceled, or a bid, proposal, or any other offer may be rejected in whole or in part as may be specified in the solicitation, in accordance with the provisions of this section.

(b) The reasons for the cancellation or rejection shall:

(1) Include but not be limited to cogent and compelling reasons why the cancellation of the solicitation or rejection of the [solicitation] offer is in the purchasing agency's best interest; and

(2) Be made part of the contract file.

(c) Each solicitation issued by the purchasing agency shall state that the solicitation may be canceled or offers may be rejected in whole or in part when in the best interest of the purchasing agency as provided in this [section] subchapter. [Eff _____] (Auth: HRS §103D-308) (Imp: HRS §103D-308)

§3-122-96 Cancellation of solicitation. (a) A solicitation [may] shall be canceled [prior to or after opening] for reasons including but not limited to the following:

(1) [If canceled] Cancellation prior to opening[, the following reasons for cancellation shall apply but not be limited to]:

(A) The agency no longer requires the goods, services, or construction;

(B) The agency no longer can reasonably expect to fund the procurement; or

(C) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(2) [If canceled] Cancellation after opening but prior to award[, the following reasons for cancellation shall apply but not be limited to]:

(A) The goods, services, or construction being procured are no longer required;

(B) Ambiguous or otherwise inadequate specifications were part of the solicitation;

(C) The solicitation did not provide for consideration of all factors of significance to the agency;

- (D) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (E) All otherwise acceptable [bids or proposals] offers received are at clearly unreasonable prices; or
- (F) There is reason to believe that the [bids or proposals] offers may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(b) A notice of cancellation shall be sent to all businesses solicited and the notice shall include:

- (1) Identity of the solicitation;
- (2) Brief explanation of the reason(s) for cancellation; and
- (3) Where appropriate, an explanation that an opportunity will be given to compete on any resolicitation or any future procurements of similar goods, services, or construction.

(c) Documentation on the reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection. [Eff _____] (Auth: HRS §103D-308) (Imp: HRS §103D-308)

§3-122-97 Rejection of bids and proposals. (a) Bids [may] shall be rejected for [the following] reasons including but not limited to:

- (1) The bidder that submitted the bid is nonresponsible as determined by subchapter 13;
- (2) The bid is not responsive, that is, it does not conform in all material respects to the invitation for bids under the provisions of subchapter 13; or
- (3) The good, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids under the provisions of section 3-122-33.

(b) Proposals need not be unconditionally accepted without alteration or correction, unless the solicitation states otherwise, and the agency's stated requirements may be revised or clarified after proposals are submitted.

- (1) This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal.
- (2) Reasons for rejecting proposals include but are not limited to:
 - (A) The offeror that submitted the proposal is nonresponsible as determined under subchapter 13;
 - (B) The proposal ultimately, after any opportunity has passed for altering or clarifying the proposal, fails to meet the announced requirements of the agency in some material respect; or
 - (C) The proposed price is clearly unreasonable.

(c) Unless allowed by the solicitation, [a bid or proposal] an offer may not limit acceptance to the entire [bid or proposal] offer [offering]:

- (1) If acceptance is so limited, such [bids or proposals] offers shall be deemed to be nonresponsive.
- (2) If the [bid or proposal] offer is properly so limited, the purchasing agency shall not reject part of such [bid or proposal] offer and award on the remainder.
- (d) A notice of rejection shall be sent to the individual [bidder or] offeror advising of the reasons therefor. [Eff _____] (Auth: HRS §103D-308) (Imp: HRS §103D-308)

§3-122-98 Disposition of [bids and proposals] offers. When [bids or proposals] offers are rejected, or a solicitation canceled after [bids or proposals] offers are received:

- (1) The [bids or proposals] offers which have been opened shall be retained in the procurement file; and
- (2) The unopened [bids or proposals] offers shall be returned to the [bidders or] offerors upon request; or otherwise disposed of. [Eff _____] (Auth: HRS §103D-308) (Imp: HRS §103D-308)

§§3-122-99 to 3-122-101 (Reserved).”

The Board members accepted staff's recommendation.

7. Recommends that the questionnaire previously attached to Subchapter 13, Standard Qualification Questions for Prospective Bidders on Public Works Contract be updated, shortened and filed periodically instead of with each bid. Staff reported that this questionnaire has been removed from the rules and issuance will be by the Procurement Policy Board; therefore, no rule changes are necessary.

The Board members concurred.

8. Recommends defining “scope of work” and requests that the use of change orders be adequately addressed. Staff recommended that no changes be made.

The Board members accepted staff's recommendation.

9. Recommends change in language in §§3-125-17(d) and 3-125-18(d)(1) “unusually severe weather” to “rain or adverse conditions resulting, thereon.” Staff recommended that the language be added, as follows, instead of replaced as requested by the GCA:

“§3-125-17:

(d) “ Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the contractor has notified the procurement officer within fifteen days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes, rain or adverse conditions resulting thereon, or unusually severe weather.”

“§3-125-18(d)

- (1) The delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; rain or adverse conditions resulting thereon; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the procurement officer proof that the contractor has diligently made every effort to obtain such materials from all known sources, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and”

The Board members expressed concerns with staff's recommendations and determined that this recommendation not be adopted and that no changes be made to this section of the rules.

10. Recommends that in §3-125-18(d)(1) the following be added to the list of reasons for allowing time extensions--“other reasons beyond the contractors' control.” Staff recommended that this language be included as follows:

“§3-125-18(d)(1):

- (1) The delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; other reasons beyond the control of the contractor; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the procurement officer proof that the contractor has diligently made every effort to obtain such materials from all known sources, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and”

The Board members expressed concerns with staff's recommendation and felt that the new language was too broad. The Board determined that this recommendation not be adopted and that no changes be made to this section of the rules .

- J. Comments received from the Hawaii Section-American Society of Civil Engineers were in full support of the quality based selection process.
- K. The Hawaii Society of Professional Engineers also commented on the positive aspects of the quality based selection process for securing professional services.
- L. No testimony was received for new rules in Chapters 3-123, 3-124, 3-126, 3-128, 3-129, 3-130, and 3-131 and for the rules to be repealed in Chapters 3-60, 3-61, and 3-62.

Motion

Mr. Sam Callejo made a motion, seconded by Mr. Bill Gray, to adopt the rules as drafted, Chapters 3-120, 3-121, 3-122, 3-123, 3-124, 3-125, 3-126, 3-128, 3-129, 3-130, and 3-131, with staff's recommendations for revisions and amendments, with the exception of item I.9 (relating to §§ 3-125-17(4) and 3-125-18(4)(A)) and item I.10 (relating to §3-125-18(4)(A)) above.

AYES: Tim Johnson
 Sam Callejo
 Bill Gray
 Bob Oyama

NAYS: None

Motion

Mr. Bill Gray motioned, seconded by Mr. Sam Callejo, to repeal Chapters 3-60, 3-61, and 3-62.

AYES: Tim Johnson
Sam Callejo
Bill Gray
Bob Oyama

NAYS: None

Administrator's Report

Mr. Unebasami reported that the State Procurement Office has contracted with consultants from the National Association of State Purchasing Officials (NASPO) to develop a procurement manual and a vendors' guide for use in Hawaii. The consultants will be in town from November 12-20, 1995. During this period, they will be meeting with representatives from the various jurisdictions and departments of the executive branch to receive input on the procurement law from the users' perspective. Trips to the neighbor islands are also planned. The target date for the completion of the manual and the vendors' guide is late summer or early fall of 1996.

In addition to the manual and the vendors' guide, a training package will also be developed which will include various types of purchasing processes on a computer diskette. It is envisioned that users will be able to "walk through" the various processes to better understand the requirements of the law.

In answer to Mr. Callejo's question regarding the various counties' compliance with the procurement law, Mr. Unebasami replied that each county may adopt their own rules and/or ordinances as long as they are consistent with the State's procurement rules.

Mr. Unebasami also reported that the State Procurement Office is participating in a pilot project in getting bid notices on-line with the state's computer system. Information will be entered from early December and the target date to be on-line is January 3, 1996.

Mr. Unebasami thanked staff for their fine efforts in completing the rules in a very short time frame. He noted that they did an excellent job on the rules and still maintained their high level of performance on their other duties. Mr. Johnson, speaking for the Procurement Policy Board, also thanked staff for their excellent support.

Next Meeting

Tuesday, February 6, 1996, at 2:00 p.m.

Mr. Unebasami recommended that the next Board meeting be held on Tuesday, February 6, 1996 at 2:00 p.m. since staff will be concentrating on finalizing the rules and securing the necessary approvals for the issuance of the rules in final form. He suggested that the Board consider meeting quarterly thereafter.

Adjournment

There being no further business, the meeting was adjourned at 3:08 p.m.

Respectfully submitted,

11-22-95

Date



Sam Callejo, Secretary

- A

LIST OF RULE CHANGES

Chapter 3-120 (Justin Fo)

1. Section 3-120-6 Record of Procurement Action. Reporting to PPB. See Section 3-122-211(c) and memorandum from Senate President dated 12/12/95. (Attachment 1)
2. Exhibit to Chapter 3-120. Should exemption number 6 be on sole source list in chapter 3-122? What are support facilities in exemption number 9?

Chapter 3-121 (Ruth Yamaguchi)

1. Section 3-121-2(a)(3). Amend to delete interim rule authority.

Chapter 3-122 (Doris Lee)

1. DAGS (PWD) Work Group has proposed numerous changes to the chapter.
2. Section 3-122-1 Definitions. Clarify "Final Settlement".

3. Section 3-122-9.1 (New) Disclosure of names of potential offers. Clarify when names may be made available to the public.
4. Section 3-122-21 Preparing a competitive sealed bid. Add reference to section 3-122-27 in (b).
5. Section 3-122-22 Multi-step sealed bidding. Correct (k) to (j) in (i).
6. Section 3-122-33 Bid evaluation and award. Correct typo in (c).
7. Section 3-122-45 Determinations. List software and telecom consultants per AG's recommendation and ICSD (B&F) concurrence. Rewrite (a) so it refers to "exhibit" and not "list". (Attachment 2)
8. Section 3-122-48 Amendments to request for proposals. Correct (g) to (f).
9. Section 3-122-54 Best and final offers. Revise (b) to conform with rules format.
10. Section 3-122-58 Public inspection. Correct (b)(1) to read 3-122-51.

11. Section 3-122-65 Procedures for procurement of professional services. Clarify wording in 3-122-65(b)(2).
12. Section 3-122-67 Small purchases of professional services. Add reference to "and (6)" in (b).
13. Section 3-122-74 Conditions for use. Change HRS reference to HAR 3-122-67 in (b).
14. Section 3-122-81 Conditions for use. Add sole source for utility companies to exhibit attached to chapter 3-122. See last paragraph of section.
15. Section 3-122-108 Qualification of bidders and offerors. In (a) change word "faxed" to "a facsimile". Revise the sample questionnaire referred to in (b).
16. Section 3-122-110 Determination of responsibility. Add (f) to clarify amount of time allowed to file an administrative appeal.
17. Section 3-122-211 Record of procurement actions. Review reporting requirements in (c). Refer to memo from Senate dated 12/12/95.
18. Section 3-122-227 Payment claims against the bond. Include

criteria for publication of final settlement. See language in definitions in section 3-122-1 to place here. Revise wording in (c).

19. Exhibit - Procurements Approved for Sole Source. Add number 2 (new) for utility companies.
20. Exhibit - SURETY [BID] [PROPOSAL] BOND. Revise form (double space) so entries can be made on lines.
21. Exhibits - PERFORMANCE BOND (SURETY); LABOR AND MATERIAL PAYMENT BOND (SURETY). Revise the signature lines to allow for signatures and positions.

Chapter 3-123 (Ruth Yamaguchi)

1. DAGS (PWD) Work Group has proposed numerous changes to the chapter.

Chapter 3-124 (Justin Fo)

1. Section 3-124-5 Evaluation procedure and contract award. Clarify wording in (e).

2. Section 3-124-12 Evaluation procedure and contract award.
Review (b) and (d) for clarity.
3. Section 3-124-18 Evaluation procedure and contract award.
4. Section 3-124-25 Evaluation procedure and contract award.
Revise (b) for clarity.
5. Section 3-124-35 Evaluation procedure and contract award.
Revise (b) for clarity.

Chapter 3-125 (Justin Fo)

1. Section 3-125-6 Stop work orders for goods and services contracts. Word change in (2)(B).
2. Section 3-125-14 Novation or change of name. Paragraph references should read (2)(A) through (2)(C).
3. Section 3-125-15 Claims based on a procurement officer's actions or omissions for goods and services contracts. Word change in (1).
4. Section 3-125-19 Liquidated damages for goods and services contracts. Revise wording on top of page 125-25.

5. Section 3-125-21 Termination for convenience of goods and services contracts. In (3)(B) delete quotation mark and word change. In (4)(B) change reference to subparagraph (3). In (4)(C) change reference to subparagraph (B). Word change in (ii).

Chapter 3-126 (Ruth Yamaguchi)

1. DAGS (PWD) Work Group has proposed numerous changes to the chapter.
2. Section 3-126-16 Determination of hearings officer. Add (e) (new) to clarify time allowed to file an administrative appeal.

Chapter 3-127

1. Needs to be drafted.

Chapter 3-128 (Justin Fo)

1. Section 3-128-3 Cooperative purchasing agreements between public procurement units. Clarify (5).

Other HRS sections to review for rules:

1. Section 103-24.6(c) (Attachment 3)
2. Section 103-49 (last paragraph) (Attachment 4)

Attachments (4)

SUBCHAPTER 23

RECORD OF PROCUREMENT ACTIONS

§3-122-211 Record of procurement actions. (a)
The chief procurement officer shall maintain a record of all purchases made under sections 103D-102(b)(4), 103D-304, 103D-306, and 103D-307 for a minimum of five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each purchase; and
- (3) A listing of the goods, services, or construction procured.

(b) A copy of the record shall be submitted to the legislature on an annual basis following the close of the fiscal year. The record shall be available for

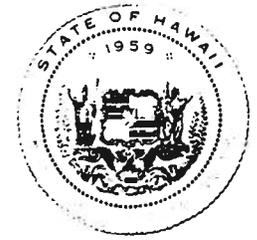
public inspection.

(c) The chief procurement officer shall submit the record to the administrator of the state procurement office by August 15 to be consolidated and forwarded to the legislature by October 1. An information copy shall also be provided to the procurement policy board. [Eff DEC 15 1995] (Auth: HRS §103D-202) (Imp: HRS §103D-321)

§§3-122-212 to 3-122-220 (Reserved).

NORMAN M. MIZUGUCHI
PRESIDENT
MIKE MCCARTNEY
VICE PRESIDENT
ROSALYN BAKER
MAJORITY LEADER
LES HARAJI JR.
MAJORITY FLOOR LEADER
BRIAN TANIGUCHI
MAJORITY WHIP
CALVIN KAWAMOTO
MAJORITY CAUCUS LEADER
MICHAEL M. F. LIU
MINORITY LEADER

The Senate
The Eighteenth Legislature
of the
State of Hawaii



STATE CAPITOL 95 DEC 14 AM 26
HONOLULU, HAWAII 96813

December 13, 1995
ADMINISTRATION
PROCUREMENT OFFICE
STATE OF HAWAII

FIRST DISTRICT
MALAMA SOLOMON
SECOND DISTRICT
RICHARD M. MATSUURA
THIRD DISTRICT
ANDREW LEVIN
FOURTH DISTRICT
ROSALYN BAKER
FIFTH DISTRICT
JOE TANAKA
SIXTH DISTRICT
AVERY CHUMBLEY
SEVENTH DISTRICT
LEHUA FERNANDES SALLING
EIGHTH DISTRICT
DONNA R. IKEDA
NINTH DISTRICT
MATT MATSUNAGA
TENTH DISTRICT
LES HARAJI JR.
ELEVENTH DISTRICT
BRIAN TANIGUCHI
TWELFTH DISTRICT
CAROL FUKUNAGA
THIRTEENTH DISTRICT
ROD TAM
FOURTEENTH DISTRICT
MILTON HOLT
FIFTEENTH DISTRICT
NORMAN MIZUGUCHI
SIXTEENTH DISTRICT
REY GRAULTY
SEVENTEENTH DISTRICT
DAVID IGE
EIGHTEENTH DISTRICT
RANDY IWASE
NINETEENTH DISTRICT
CALVIN KAWAMOTO
TWENTY DISTRICT
BRIAN KANNO
TWENTY-FIRST DISTRICT
JAMES AKI
TWENTY-SECOND DISTRICT
ROBERT BUNDA
TWENTY-THIRD DISTRICT
MIKE MCCARTNEY
TWENTY-FOURTH DISTRICT
MICHAEL M. F. LIU
TWENTY-FIFTH DISTRICT
WHITNEY T. ANDERSON
CHIEF CLERK
T. DAVID WOO JR.

Mr. Lloyd I. Unebasami
Administrator
State Procurement Office
Department of Accounting and General Services
Kalanimoku Building
Honolulu, Hawaii 96813

Subject: Record and Reporting of Procurement Actions

Dear Lloyd:

I was recently advised by our attorney that your office's administrative rule requiring that the Senate submit our procurement records to your office may not be consistent with our procurement law.

I have attached a brief memorandum prepared by our attorney explaining the inconsistency of the rule which requires the Senate President, as chief procurement officer, to submit procurement records to your office for submission to the Legislature. We would appreciate your reviewing the rule, and if appropriate, amending or deleting it.

Thank you for your consideration of this matter.

Sincerely,

Norman Mizuguchi
President of the Senate

NM:ay
Enc.

95 JUN -4 10:01
 STATE OF HAWAII
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

NORMAN MIZUGUCHI
PRESIDENT
MIKE MCCARTNEY
VICE PRESIDENT
ROSALYN BAKER
MAJORITY LEADER
LES IHARA JR
MAJORITY FLOOR LEADER
BRIAN TANIGUCHI
MAJORITY WHIP
CALVIN KAWAMOTO
MAJORITY CAUCUS LEADER
MICHAEL M. F. LIU
MINORITY LEADER

The Senate
The Eighteenth Legislature

of the
State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813



December 12, 1995

FIRST DISTRICT
MALAMA SOLOMON
SECOND DISTRICT
RICHARD M. MATSUURA
THIRD DISTRICT
ANDREW LEVIN
FOURTH DISTRICT
ROSALYN BAKER
FIFTH DISTRICT
JOE TANAKA
SIXTH DISTRICT
AVERY CHUMBLEY
SEVENTH DISTRICT
LEHUA FERNANDES SALLING
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MICHAEL M. F. LIU
TWENTY-FIFTH DISTRICT
WHITNEY T. ANDERSON
CHIEF CLERK
T. DAVID WOO JR.

MEMORANDUM

TO: Honorable Norman Mizuguchi
President of the Senate

FROM: Richard Y. Wada *RYW*
Senate Majority Office

RE: Record and Reporting of Procurement Actions

The Administrator of the State Procurement Office reminded all chief procurement officers of the record keeping and reporting requirements of the procurement code and administrative rules. The reminder requested that the chief procurement officers submit their purchasing records to the administrator to be consolidated and submitted to the legislature.

This memo is prepared as the administrative rule requires the Senate President, as the Senate's chief procurement officer to submit procurement records to the administrator to be resubmitted to the Legislature. The rule appears to be unnecessary and may be inconsistent with the procurement code.

Under the procurement code section (HRS §103D-321), all chief procurement officers are required to "maintain a record of all procurements [for permanent settlements, subsidies, or other claims that must be paid by law; for professional services; for sole source purchases; and for emergency services for a minimum of five years]." A copy of these records shall be submitted to the legislature each year and shall be available for public inspection.

Administrative Rule Section 3-122-211 essentially restates HRS §103D-321, but adds the following requirement:

"(c) The chief procurement officer shall submit the record to the administrator of the State procurement office...to be consolidated and forwarded to the legislature... An information copy shall also be provided to the procurement policy board."

These additional requirements are not in the procurement code, and appear to be inconsistent with the intent of the procurement code.

The code provides for a Procurement Policy Office to govern purchasing and management practices. Operational aspects of procurement would be overseen by an administrator of procurement. However, the main thrust of the procurement code is that it centralizes all procurement in independent procurement offices among the executive, judicial, legislative branches of government, Office of Hawaiian Affairs, University of Hawaii Board of Regents, Board of Education, and each County government. Except for specific exceptions, these procurement offices are given full power and authority to handle all purchases and contracting for each of their respective agencies in accordance with the procurement code and the rules on a equal footing. Each of them are answerable to vendors, and the public in the quality and quantity of their respective purchases of goods and services.

Each procurement officer is authorized to make purchases under the code and the rules without the officer's purchases being questioned or regulated by an executive agency. Each procurement office must keep public records of all purchases and submit a copy of the purchase records to the legislature. Their respective purchases of goods and services are subject to public scrutiny, but are not subject to review by the administrator.* While the policy office and the administrator may be responsible for compliance with the code and its rules, the procurement code does not authorize the administrator or the policy office to receive purchasing records of the Senate President, or any of the procurement officers.

Although the rule limits the administrator's role to consolidating and submitting the records to the Legislature, the rule confers a role on the administrator that is not in the code.

Based on the foregoing, it appears that a request by the administrator, and supported by a rule, that the Senate President and all other chief procurement officers submit their purchasing records to the administrator, is inconsistent with the procurement code.

RW:ay
Enc.

* 103D-206 - (L) Perform review of procurement practices of all joint bodies

BENJAMIN J. CAYETANO
GOVERNOR



MARGERY S. BRONSTER
ATTORNEY GENERAL

STEVEN S. MICHAELS
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 596-1500

95 JUL 18 P1 05

ADMINISTRATION
STATE PROCUREMENT OFFICE
STATE OF HAWAII

5
July 17, 1994

MEMORANDUM

TO: The Honorable Lloyd I. Unebasami
Chief Procurement Officer

FROM: Margery S. Bronster *MB*
Attorney General

SUBJECT: Recommendation for the Competitive Sealed Proposals List

STATE PROCUREMENT OFFICE
STATE OF HAWAII

95 JUL 19 19:49

In response to your June 16, 1995 memo, I am recommending that procurements for consulting services in the areas of software and telecommunications be included on the list of specific goods, services, or construction that may be procured by competitive sealed proposals without a determination by the head of the purchasing agency.

Applicable factors in determining that competitive sealed bidding is not practicable for software / telecommunications types of procurements include:

- o Oral and written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- o Offerors may need to be given the opportunity to revise their proposals, including price; and
- o Contract award should be based on a comparative evaluation as stated in the Request for Proposal (RFP) of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal.

A key element in determining advantageousness is the need for flexibility. Competitive sealed proposals for software / telecommunications types of procurements are advantageous since the procurement is both complex and technical. The competitive sealed proposal method allows flexibility because it permits discussions with competing offerors and allows changes in their proposals, including price. It also allows the evaluation committee to make comparative judgements when selecting from among acceptable proposals. Under competitive sealed proposals, alterations in the proposal and in prices are allowed after the proposals are opened. Another consideration regarding the type of evaluation needed involves the relative ability of offerors to perform. In order to weigh these types of values the use of comparative and judgmental evaluations is required.

Our experience with competitive sealed bids in prior years points out the shortcomings of that method of procurement for services related to software and telecommunications. Procurement by competitive sealed proposals is really in the best interest of the State for software and telecommunications consulting services.



'96 JAN 24 12:09

BENJAMIN J. CAYETANO
GOVERNOR

EARL I. ANZAI
DIRECTOR

NEAL MIYAHIRA
DEPUTY DIRECTOR

STATE PROCUREMENT OFFICE
STATE PROCUREMENT OFFICE

EMPLOYEES' RETIREMENT SYSTEM
HAWAII INC
HAWAII PUBLIC EMPLOYEES HEALTH FUND
HOUSING FINANCE AND DEVELOPMENT
CORPORATION
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION
RENTAL HOUSING TRUST FUND COMMISSION

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE

P O BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
INFORMATION AND COMMUNICATION
SERVICES DIVISION

January 19, 1996

TO: Mr. Robert Governs, Administrator
Purchasing and Supply Division
Department of Accounting and General Services

FROM: Thomas I. Yamashiro, Administrator *TIY*
Information and Communication Services Division

SUBJECT: Recommendation for the Competitive Sealed
Proposals List

The Information and Communications Services Division (ICSD) concurs with the Office of the Attorney General's recommendation that procurements for consulting services in the areas of software and telecommunications be included on the list of specific goods, services, or construction that may be procured by competitive sealed proposals without determination by the State Procurement Office.

Procurement by competitive sealed proposals (Requests for Proposals) is in the best interest of the State for information systems and telecommunications consulting services.

PMOEQRQ1574

§103-24.6 Indigenous and Polynesian introduced plants; use in public landscaping. (a) Wherever and whenever feasible, all plans, designs, and specifications for new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, or housing developed by the State with public moneys shall incorporate indigenous land plant species, as defined in section 195D-2, and plant species brought to Hawaii by Polynesians before European contact, such as the kukui, noni, and coconut; provided that suitable cultivated plants can be made available for this purpose without jeopardizing wild plants in their natural habitat; and provided further that wherever and whenever possible, indigenous land plants shall be used for landscaping on the island or islands on which the species originated.

(b) Each plant or group of plants used pursuant to subsection (a) shall be clearly identified with signs for the edification of the general public.

(c) The policy office shall adopt rules pursuant to chapter 91 to carry out the purposes of this section. [L 1992, c 73, §2; am L 1993, c 236, §1; am L Sp 1993, c 8, §8]

§103-49 Value engineering clauses; rules. The State and each of the respective counties shall insert clauses providing for value engineering incentives in all public works contracts for amounts in excess of \$100,000. The clauses shall provide:

- (1) That cost reduction proposals submitted by contractors:
 - (A) Must require, in order to be applied to the contract, a change order thereto; and
 - (B) Must result in savings to the State or county, as the case may be, by providing less costly items than those specified in the contract without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features.
- (2) That accepted cost reduction proposals shall result in an equitable adjustment of the contract price so that the contractor will share a portion of the realized cost reduction.

The policy office shall adopt, pursuant to chapter 91, such rules as may be necessary and proper to implement this section, provide adequate incentives to contractors, realize savings for the State or counties, and to otherwise carry out the purposes of this section. [L 1967, c 118, §§2, 3; HRS §103-49; am L Sp 1993, c 8. §13]