

PROCUREMENT POLICY BOARD MEETING

November 6, 1996

10:00 a.m.

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

Members Present

Haruo Shigezawa, Chairman
Tim Johnson, Vice Chairman
Bill Gray, Member
Robert Oyama, Member

Excused

Sam Callejo, Secretary

Others

Lloyd Unebasami, Administrator
Robert Govers, State Procurement Office
Justin Fo, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Doris Lee, State Procurement Office
Kay Fujimoto, State Procurement Office
Pat Ohara, Attorney General's Office
Duff Zwald, University of Hawaii
Craig Hopseker, State Auditor's Office
Eric Tom, Department of Education

Call to Order

The meeting was called to order at 10:00 a.m. by Chairman Haruo Shigezawa.

Minutes

Motion

A motion was made by Mr. Bill Gray, seconded by Mr. Tim Johnson, to approve the minutes of the meeting held on February 6, 1996.

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

NAYS: None

The minutes were approved as distributed.

New Business

A. For Action - Proposed Legislation to Amend the Procurement Code

Administrator Lloyd Unebasami stated that amendments to the procurement code are being proposed in the form of a legislative bill (AGS-1). The proposed bill has been submitted to the Governor's Office, Attorney General's Office, and the Department of Budget and Finance for review and comments. Previously, drafts were sent to other affected agencies for their preliminary review and comments. If the Board has any recommendations, they can be incorporated into the final draft. Mr. Unebasami asked Mr. Robert Governs to brief the Board members on the proposed bill.

Mr. Governs stated that AGS-1 amends the procurement code and related sections of the statutes to bring them into compliance with the procurement code.

1. Section 1, (Contracts with the State or counties; tax clearances, assignments). A tax clearance law was passed during the last legislative session. Section 1 adds a new section to Part III of Chapter 103D, HRS, to provide a reference to a new section in Chapter 231, HRS, to comply with tax clearance requirements for Chapter 103D contracts.
2. Section 2, (Contract retainage). Adds a new section to Part III of Chapter 103D, HRS, relating to contract retainage. The amendment increases the retainage amount from five percent to ten percent. This increase in the retainage percentage should provide some incentive to primary contractors to close contracts since they are currently withholding 10 percent from the subcontractors' funds.
3. Section 3 (Preference to bidders on state agency contracts) also adds a new section relating to in-state preferences to Chapter 103D, HRS, which is currently found in another section of the statutes. In subsection (c) the filing time for taxes is reduced from four to two years and the preference percentage is decreased from fifteen to seven percent. In subsection (d) the filing time for taxes is reduced from eight to four years and the preference percentage is also decreased from fifteen to seven percent. The reduction of time requirements will afford newer companies

the preference when bidding on state contracts and the decrease in preference percentages will decrease the State's averages costs for public works contracts.

Mr. Robert Oyama questioned the reason for using the word "or" in Section 3(c), on page 2, line 25 of the proposed bill, whereas the present language in that particular section of the statutes has the word "and." The section in question of the proposed bill reads:

(c) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed State of Hawaii employment, general excise, or income tax returns and has paid all amounts owing on such returns for two successive years prior to submitting the bid; provided that the amount of that bid is not more than seven per cent higher than the amount bid by any competing contractor who has not filed nor paid State of Hawaii taxes as specified, and the amount of the bid by the state tax paying bidder is \$5,000,000 or less.

Mr. Governors acknowledged this oversight and noted that the correction will be made.

Mr. Oyama then inquired about the process of proposing changes to the procurement law. Mr. Unebasami explained that the intent of the procurement law is to have the Procurement Policy Board make all recommendations for amendments to the procurement law. However, there may be times when amendments are proposed by external entities and passed by the Legislature, as it happened during the last legislative session. In these situations, the Administrator of the State Procurement Office will monitor the proposed amendments and will keep the Board members informed.

Regarding the reduction of the preference percentage to 7%, Mr. Tim Johnson inquired whether a study was done to arrive at this reduced figure. Mr. Governors explained that this figure was arrived at by staff members of the Department of Accounting and General Services and the Attorney General's Office. No rationale was given for arriving at the 7% figure.

4. Section 4 (Contracts with the state or counties; tax clearances, assignments. This new section amends and clarifies the application of the tax clearance provisions pursuant to Act 314, HSL 1996. This amendment also provides for the Director of Taxation to adopt rules pursuant to Chapter 91, HRS.

Mr. Bill Gray suggested that "final payment" be defined in subsection (c) and that a final payment amount be set; e.g., a specific percentage of the contract.

Mr. Unebasami explained that this may not be of a major concern anymore

because of the new tax clearance laws whereby vendors/contractors would have to pay any outstanding general excise taxes before entering into a new contract with the State. Mr. Johnson stated that aside from the final payment, we should also be concerned about the satisfactory completion of the work.

5. Section 5, (Creation and membership of the procurement policy board). Technical changes in this section include changing references from procurement policy "office" to procurement policy "board." In subsections (d) and (e), references to compensation to the Chair and members of the board for attendance at board meetings have been deleted.

6. Section 6, (Chief procurement officers). Amendments to this section changes the chief procurement officers for the following entities:

Office of Hawaiian Affairs (OHA) - Designates the deputy administrator of operations as the chief procurement officer. Having OHA's board function as a chief procurement officer is not workable and places no one in charge. The deputy administrator as the CPO will provide for a single authority in order to ensure compliance and efficiency with the procurement code.

University of Hawaii (UH) - Designates the senior vice president for administration as the chief procurement officer.

Department of Education (DOE) - Designates the assistant superintendent of the office of business services as the chief procurement officer. Also excludes the Hawaii Public Library System (HSPLS) from the jurisdiction of the DOE, for procurement compliance purposes, and places the HSPLS under the jurisdiction of the administrator of the State Procurement Office.

Division of Community Hospitals - Repealed since the division is exempt from Chapter 103D, HRS.

7. Section 7 (Administrator of the state procurement office). Amends section 103D-204 to clarify the title of the office and that the office is administratively attached to the Department of Accounting and General Services.
8. Section 8 (Additional duties of the administrator of the state procurement office). Adds the word "state" to title of Section 103D-206 to make language consistent within the statutes.
9. Section 9 (Cancellation of invitation for bids or requests for proposals). Changes the word "council" to "board" to make language consistent within the statutes.

10. Section 10. Section 103D-309 is amended to delete the formal contract requirement for sole source awards that are one time payments. Many sole source procurements are one time payments by purchase order for such items as utility bills and membership fees. Preparing formal contracts for these types of payments is time consuming and unnecessary.
11. Section 11. Clarifies Section 103D-324 to allow the claimant to file a claim against a payment bond within two months from final settlement and not completion of contract. Completion of contract includes tax clearances, etc. and is a different date from the notice of final settlement.
12. Section 12. Amendments to Section 103D-325 allows the policy board to issue bond forms by procurement directive rather than by rules. Changes by rules are difficult and time consuming. Forms, applications, etc. should be issued by methods easily changed as required.
13. Section 13. Amends the title of Part VIII of Chapter 103D to change the word “intergovernmental” to “governmental.” Intergovernmental applies only to cooperatives between governmental units. Act 186 amended Section 103D-802 to allow for cooperatives between public and nonprofit private units. “Governmental” broadens Part VIII to reflect that change for nonprofit private procurement units and not restrict it to only public units.
14. Section 14. Amendment to Section 103D-801 revises the definitions and adds a new definition for “nonprofit private procurement units.” Act 186 allowed for cooperative purchasing between public and nonprofit private procurement units; however, the definitions were not amended at the time Act 186 was passed.

Mr. Oyama questioned the term “of the State” in the definition of “nonprofit private procurement unit” in Section 14, page 15, line 13, as it implies a limitation to those doing business in Hawaii. It was agreed that this term be deleted from the definition.

15. Section 15 (Cooperative purchasing authorized). The amendments to Section 103D-802 are technical and allow for exemption from applying preferences in cooperative purchasing arrangements.
16. Section 16 (Hawaii products). Amendments to Section 103D-1002 allows bidders to identify the Hawaii products they are offering in their bids, as well as the non-Hawaii products. All other preferences are applied by identifying the product or service for which the preference is earned. This change will make the preference application consistent. Repeals the penalty provision since Section 103D-106 now provides for penalties.

17. Section 17 (Printing, binding and stationery work). Amends Section 103D-1003 to apply the printing preference as other preferences are applied. The amendment also repeals the penalty provision since Section 103D-106 now provides for penalties.

Mr. Unebasami requested that the language in subsection (a) "contracts of \$10,000 or more for" be amended to be more specific to include all printing, binding, and stationery work.

Mr. Johnson inquired about the difference in percentages between printing related preference which is set at 15% and construction related preference which is set at 7%. He requested an explanation of how the percentages were arrived at and how best to defend the figures. Mr. Unebasami stated that the Attorney General's Office will be testifying on the rationale for the preference percentages.

Mr. Oyama noted that in Section 103D-1003(b), page 19, line 22, the language "shall require the application of a fifteen per cent preference" may be misleading. Suggested that it be re-written for clarity.

18. Section 18. In Section 103D-1006 the term "developmental center" is changed to "development business."
19. Section 19. The amendment in this section affects numerous other sections by changing the words "policy office" to "policy board." The justification for this change can be found in Section 2 above.
20. Section 20. Repeals Section 103-32.1. See Section 2 of this proposed bill for new section and changes.
21. Section 21. Repeals Section 103-32.2. See Section 2 of this proposed bill for new section.
22. Section 22. Repeals Section 103-45.5. See section of this proposed bill for new section and changes.
23. Section 23. Repeals Section 103-53. The provisions for a tax clearance are amended into Chapter 231. See Sections 1 and 4 of this proposed bill.
24. Section 24. Repeals Section 237-45. Tax clearance provisions are moved to Chapter 231, HRS. See Section 4 of this proposed bill.

MOTION

Mr. Bill Gray made a motion to approve the draft of the proposed amendments to Chapter 103D, HRS, as presented by the staff of the State Procurement Office and commented on by the Procurement Policy Board members. The motion was seconded by Mr. Tim Johnson.

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

NAYS: None

The motion was carried by a unanimous decision.

B. For Information

1. Mr. Unebasami reported that the Attorney General's Office had requested an amendment to the law which would grant the Attorney General's Office an exemption to hire out-of-state attorneys for cases heard outside of Hawaii. It is understandable that none of the procurement methods would be practical or advantageous for the Attorney General to respond to a lawsuit in a timely manner. However, it is this office's responsibility to provide proper guidance and advice in procuring all types of goods, services, and construction. Therefore, our response was that their requests should be examined on a case-by-case basis and approval may be given by the CPO. After some historical data are on file, future consideration can be given to grant this exemption by law.

2. Rule Amendments

a. Chapter 3-120. Mr. Justin Fo reported on the following:

- (1) Section 3-120-2. The following definitions have been added: "Contractor," "Subcontractor," "Paying agent," and "Support facility providers."
- (2) Section 3-120-2. The definition for "Designee" is amended to clarify that a designee should be generic and not specifically the head of a purchasing agency. The definition for "Offeror" is revised.
- (3) Section 3-120-4. The list of procurements exempt from Chapter 103D, HRS, is revised.

- (4) Section 3-120-6. This section is amended to conform with the procurement law which does not require the chief procurement officers to report procurement exemptions to the Procurement Policy Board.
 - (5) Section 3-120 Exhibit. The list of procurements exempt from Chapter 103D, HRS, is revised. Exemption No. 6 is deleted as utility services is listed as a sole source exemption in Chapter 3-122, HAR. Exemption No. 8 is revised to read "support facility providers." A new item, listed as Exemption No. 9, is added-- Travel arrangements purchased by the University of Hawaii for its intercollegiate athletic programs.
- (b) Chapter 3-121. Ms. Ruth Yamaguchi reported on the following:
- (1) Section 3-121-2. References to "interim rules" are deleted as the interim rule authority expired on December 31, 1995.
 - (2) Section 3-121-17. The amendment to this section expands the chief procurement officer's delegation of authority to a designee to approve waivers to competitive sealed bids pursuant to §3-122-35 and competitive sealed proposals pursuant to §3-122-59.
- (c) Chapter 3-123. Ms. Ruth Yamaguchi reported on the following:
- (1) Section 3-123-1. The amendment corrects a wrong reference.
 - (2) Section 3-123-2. The Attorney General/Department of Accounting and General Services Working Group recommended that this section be amended for clarity. Recommended that the word "reasonable" be changed to "appropriate." "Appropriate" is more easily defined and defended.
 - (3) Section 3-123-3. Amendments made for consistency in language (see §3-123-2). Also added a new section (6) for determining the appropriateness of travel costs for which a contractor seeks reimbursement.
 - (4) Section 3-123-7. Additional language is inserted on specific cost contingencies. The Working Group recommended this amendment to maintain a "level playing field" among bidders/contractors.
 - (5) Section 3-123-8. Additional language is inserted for the following reasons: (a) to limit the total amount of use allowances; and (b) the

depreciation or use allowances will not be paid for items that can be purchased new or for \$1,000 or less.

- (6) Section 3-123-9. The format in this section was amended for clarity.
 - (7) Section 3-123-11. The format in this section was amended for clarity.
 - (8) Section 3-123-12. The amendment to this section states that interest is an unallowable cost.
 - (9) Section 3-123-13. The format in this section was amended for clarity.
 - (10) Section 3-123-14. Amendments made for consistency in language. Format is amended for clarity.
 - (11) Section 3-123-16. A correction was made in the references. Also, reference to "cost-reimbursement type contracts" was deleted as policies established should apply to all contracts.
 - (12) Section 3-123-17. Amendment is made to clarify the "start date" of a contract.
 - (13) Section 3-123-18. The format in this section is amended for clarity.
 - (14) Section 3-123-19. Typographical errors are corrected.
 - (15) Section 3-123-20. The format in this section is amended for clarity.
 - (16) Section 3-123-21. A typographical error is corrected.
 - (17) Section 3-123-22. This section is deleted as it does not establish any enforceable policy.
 - (18) Section 3-123-24. This section is amended to give the authority and responsibility of deviating from cost principles to the head of a purchasing agency.
- (d) Chapter 3-125. Mr. Justin Fo stated that the amendments in this chapter are primarily housekeeping type amendments.

- (e) Chapter 3-128. Mr. Justin Fo reported on the following:
 - (1) Section 3-128-1. Definitions are amended for clarity.
 - (2) Section 3-128-2. Amendment made to clarify that cooperative purchasing agreements are between public procurement units. Language added to clarify that an exception is needed when an external procurement activity is not in compliance with all of the requirements of Chapter 103D, HRS.
 - (3) Section 3-128-3. Language amended for clarity. Other amendments made to clarify responsibilities under cooperative purchasing agreements.

Mr. Govers stated that the staff are also working on several new chapters and amending others. The new rules which have been drafted and are in the coordination process within the administration are: Chapter 3-127, Small Business; Chapter 3-132, Value Engineering in Construction; and Chapter 3-133, Public Landscaping. Presentation of these rules will be made to the Board in the near future.

Administrator's Report

A. Purchase of Service

Mr. Unebasami reported that a new law was passed during this year's legislative session regarding health and human service type contracts by nonprofit entities which fall under Chapter 42D, HRS. Act 310, SLH 1996, transfers the responsibility for the purchase of service contracts under Chapter 42D, HRS, to Chapter 103D, HRS, effective July 1, 1998. The State Auditor's Report No. 96-1, dated January 1996, determined that Chapter 42D is basically a procurement activity therefore recommended that it be placed under Chapter 103D.

In order to meet this mandate, meetings have been held with State government officials, legislators, and various nonprofit agencies involved in the Chapter 42D process. Public informational meetings have also been held on all of the major islands which were well attended by members of the community and providers of health and human services. These meetings have been a valuable tool for information gathering purposes to enable us to properly address the concerns of all involved.

For your information, our research revealed that Chapter 42D was initially used to make grants of public funds to nonprofit agencies for health and human services contracts. Over the years, a request for proposal process was established and implemented within Chapter 42D, in addition to the grant making process which was already established. The providers feel that the award of contracts are not done in a fair and consistent manner.

Research conducted with various other states with substantial budgets in the purchase of service area revealed that many states have a separate division for Chapter 42D type procurement. Our recommendation for Hawaii will be to establish a new division within the State Procurement Office to handle all purchase of service type contracts.

As part of the mandate of Act 310, a transition plan report must be completed by December 31, 1996 and submitted to the Legislature. A legislative bill will also be drafted to enact recommended changes to the purchase of service law.

As it is now the State Procurement Office's responsibility to oversee procurement and purchase of service activities, these activities likewise fall within the purview of this Board. The Board will be kept informed of our progress.

B. Vendor Guide and Procurement Manual.

The Vendor Guide and the Procurement Manual will be printed and distributed in the near future. Training sessions will be scheduled for the Vendor Guide. The Procurement Manual will be distributed to all purchasing agencies. Training workshops for state employees have already been conducted on various topics--small purchase, sole source procurement, emergency procurement, price lists, and exemptions. Expanded training sessions will be scheduled in the future.

Chairman's Report

Chairman Haruo Shigezawa extended congratulations to Board Member Tim Johnson, C.P.M. who was recently recognized as the recipient of the Ray Garza Award for Excellence in the Purchasing Profession.

Next Meeting

The next meeting is tentatively scheduled at 2:00 p.m. on December 3, 1996.

Adjournment

There being no further business, the meeting was adjourned at 11:56 a.m.

NOV 29 1996

Date

Respectfully submitted,



HARUO SHIGEZAWA, Chairman
Procurement Policy Board