

PROCUREMENT POLICY BOARD MEETING

May 29, 2003

2:00 p.m.

Conference Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Members Present

Phyllis Koike, Chair
Gregory King, Vice Chair
Russ Saito, Secretary
Gordon Ing, member
Claire Motoda, member
Winifred Odo, member
Myron Tong, member

Others

Aaron Fujioka, State Procurement Office
Robert Governs, State Procurement Office
Doris Lee, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Justin Fo, State Procurement Office
Mara Smith, State Procurement Office
Cheryl Oho, State Procurement Office
Pat Ohara, Attorney General's Office
Charles Katsuyoshi, City and County of Honolulu
Kathi Thomason, Department of Accounting and General Services
Rae Loui, Department of Education
Al Kanno, Safety Systems
Roger McKeague, Office of the Governor
Christian Butt, Department of Education
Eric Tsugawa, Case, Bigelow, Lombardi
Clifford Higa, Safety Systems
Terry Thomason, Carlsmith, Ball, LLP

Call to Order

Chair Phyllis Koike called the meeting to order at 2:00 p.m.

Minutes

Motion

Mr. Gordon Ing made a motion; seconded by Mr. Myron Tong to approve the minutes of the meeting held on October 31, 2002.

The minutes were approved as distributed.

New Business

Mr. Aaron Fujioka apologized to the Board for not being able to provide an advance copy of the proposed rule changes being discussed today.

For Information – Act 52 (SB 1262, CD1), Proposed Interim Rules

Section 2 (Subchapter 5, Chapter 3-122 Competitive Sealed Bidding, HAR)

Ms. Ruth Yamaguchi informed the Board that this bill amends and creates a new section in Chapter 103D requiring a pre-bid conference for construction or design-build projects solicited through invitations for bids when the total cost of the contract amount is \$500,000 or more, and for construction and design-build projects solicited through requests for proposals, when the contract is \$100,000 or more.

Section 3-122-21 is amended to add reference to the pre-bid conference as an example of special information to be included in the invitation for bid. Section 3-122-22, multi-step sealed bidding, is amended to include reference to the statutory requirement for a pre-bid conference for certain construction and design-build projects. Section 3-122-23, bidding time, is amended to add language that the date of the pre-bid conference is to be a minimum of fifteen days prior to the date set for the receipt of bids as required by statute for certain construction and design-build projects. Section 3-122-24, public notice, is amended to add reference to the pre-bid conference as an example of appropriate information to be included in the public notice.

Section 3-122-26, pre-bid conferences, is amended by adding the statutory requirement of a pre-bid conference for certain construction and design-build projects. During the presentation for this section questions were raised regarding the summary of the conference. The Board had concerns about the time frame for supplying the summary to the prospective bidders. After a lengthy discussion, it was decided to add similar language from §3-122-26 (2) to the ending of the last sentence of §3-122-26 (4) referring to the summary being provided “but sufficiently before bid opening to allow consideration of the summary results.”

The last amendments are to Subchapter 6, Competitive Sealed Proposals, §3-122-46, preparing a request for proposals, to add reference to the statutory requirement that the date of the pre-proposal conference is to be a minimum of fifteen days prior to the date set for the receipt of proposals for certain construction and design-build projects.

Section 4 (Subchapter 6, Chapter 3-122 Competitive Sealed Proposals, HAR)

Ms. Doris Lee explained that this new section will allow a nonselected offeror under competitive sealed proposals to request a debriefing and requires the head of the purchasing agency to provide a debriefing promptly per rules adopted by the Board. It also states that a protest following a debriefing must be filed within five days.

In §3-122-60 (a)(1), the Board wanted the word “written” added so that a request for a debriefing should be a written request.

For §3-122-60 (a)(2), the Board felt the wording for the scheduling of the debriefing could be interpreted in different ways. The discussion that followed considered the importance of just setting a date for the debriefing within seven days, or conducting the debriefing within seven days. Chair Koike offered to provide a copy of the federal government’s procedure for their debriefings. After further discussion the wording for this section was agreed upon as follows: “Debriefing shall be held, to the maximum extent practicable, within seven working days; provided the procurement officer may determine whether to conduct individual or combined debriefings.”

For §3-122-60 (b) the Board felt that since this is a new section, the time for filing a protest should be stated in days along with the reference to the statutory section.

Section 5 (Subchapter 7, Chapter 3-122 Procurement of Professional Services, HAR)

Mr. Justin Fo explained that for §3-122-63 general provisions, a new section (b) was added to conform with Act 52’s requirement that offerors be informed in writing of additional criteria prior to their submission of statements of qualifications. Section 3-122-67, small purchases of professional services, added the statutory subsections governing the selection of design professional services. Deputy Attorney General Pat Ohara requested that the citation delete reference to the subsections of 103D-304 and insert reference to 103D-307.

For §3-122-69 (1), Mr. Ing requested the words “Demonstrate they” be deleted.

State Comptroller Russ Saito had some concerns about §3-122-69 (3) regarding the selection committee members and the possible disclosure of information even after an award is made. Mr. Saito suggested the rules address the publication of the names of the selection committee members and their nondisclosure of information both prior and after awards. After further discussion, Mr. Fujioka requested with the Board’s concurrence, the State Procurement Office will meet with the Deputy Attorney General to come up with the appropriate language to address this. The Board concurred.

§3-122-70 will be amended to follow the same wording as §3-122-60.

Section 6 (Subchapter 13, Chapter 3-122 Responsibility of Bidders and Offerors, HAR)

Ms. Doris Lee stated that this section requires offerors awarded a contract, to comply with the general excise tax laws, labor laws for unemployment insurance, workers compensation, temporary disability insurance and prepaid health insurance. The offerors will also have to be incorporated or organized under Hawaii's law or be registered to do business in the state. To comply with all of this the offeror will have to produce documents to show compliance. The new section of rules establishes the compliance requirements with a suggested dollar threshold of \$5,000 for the application of this requirement. In §3-122-112(a) the Board decided to set the amount at \$25,000 or more.

Section 3-122-112(b) was amended to read in part, ". . . offeror shall furnish prior to contract execution and . . ."

In order to complete the rules for this section, SPO is still waiting for information from the Department of Labor and Industrial Relations.

Section 7 (Chapter 3-126 Legal and Contractual Remedies, HAR)

Ms. Ruth Yamaguchi said this bill amends 103D-701, HRS which pertains to protests. Section 3-126-4 is amended to require that any protest following a debriefing shall be submitted in writing within five working days after the debriefing is completed. Also amended was §3-126-5, stay of procurements during protest, clarifying that only the chief procurement officer can make the written determination to proceed with a procurement that has been stayed.

Mr. Fujioka requested the Board's permission to finalize the above rules with the changes requested and placed on the agenda for adoption at the next board meeting. The Board concurred.

A question arose regarding procurement notices that have gone out prior to July 1st, but not awarded until after July 1st. Are they grandfathered in, or do they need to comply with the new law? After much discussion, it was suggested that this be addressed by a procurement directive. After further discussion, Mr. Fujioka suggested that the SPO work with Deputy Attorney General Ohara to draft language for submittal to the Board action. The Board concurred.

Administrator's Report

Mr. Aaron Fujioka thanked Ms. Claire Motoda for her participation at the Governor's bill signing ceremony that took place a few weeks ago as the Board representative. He also thanked the Comptroller, Deputy Comptroller, Mr. Ing, and Ms. Odo for attending the Health and Human Services Conference held in January. SPO anticipates the next conference will be sometime in the summer of 2005. He will keep the Board informed.

For the eprocurement initiative, the SPO is still proceeding. There is legislation currently pending in the House Finance Committee. In the meantime, we are proceeding with the RFP on eprocurement. Demonstrations have been conducted by various vendors and we are also seeking some clarification after which time the SPO will be issuing requests for best and final offers.

Without legislation the eprocurement will be geared primarily to do small purchase quotes online.

Section 3 of Act 52 is the provision for the procurement institute with the responsibility resting with the Administrator to establish and maintain the institute in cooperation with the William S. Richardson School of Law. At this time, the SPO has begun meeting with the law school and beginning to compose a steering committee that is representative of the various parties which will help address some of the initial concerns, goals and objectives of the institute. Representation will be from unions, counties, small business, federal government, the University of Hawaii, various state agencies, general contractors association, various procurement associations and other professional associations.

SPO has sent correspondence to the heads of the Department of Education, County of Kauai, and the Hawaii Health Systems Corporation to confirm their desire to begin implementation of the pcard for their organizations. Presently, DAGS, Honolulu Board of Water Supply, County of Hawaii, and the County of Maui have implemented the pcard program. Once the pcard is successfully demonstrated by DAGS, it will be rolled out to all Executive departments.

The Board had previously given approval to allow internet posting as the primary procurement notices versus newspaper publications which will be secondary and an optional positng. We are starting the implementation, effective July 1, 2003.

Mr. Fujioka passed out to the Board members the latest handout for the SPO webpage.

At the conclusion of Mr. Fujioka's report, Ms. Winifred Odo commented that the contracts database on the website was extremely helpful in researching information needed on a project she was completing regarding maximizing federal dollars for the state and she thanked SPO for a job well done.

Next Meeting

The next meeting will be on June 16, 2003 at 2:00 pm.

Adjournment

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

6/4/03
Date

Russ K Saito
RUSS K. SAITO, Secretary
Procurement Policy Board