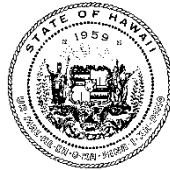


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

BONNIE KAHAKUI
ACTING ADMINISTRATOR



**PROCUREMENT POLICY
BOARD**

RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
DIANE NAKAGAWA
KEITH REGAN

**STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
PROCUREMENT POLICY BOARD**

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Procurement Policy Board

Minutes of Meeting

Date/Time: Thursday, February 16, 2023, 1:30 p.m.

Location: Comptroller's Conference Room
Kalanimoku Building, Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Virtual Meeting Using Interactive Conference Technology – Zoom

Members Present: Rick Heltzel
Lance Inouye
Lisa Maruyama
Diane Nakagawa
Keith Regan

Department of
the Attorney General: Stella Kam, Deputy Attorney General

State Procurement
Office Staff: Bonnie Kahakui, Acting Administrator
Christopher Amandi
Ruth Baker
Matthew Chow
Stacey Kauleinamoku
Jittima Laurita
Shannon Ota
Cynthia Sato
Kevin Takaesu

Other State Staff: Chris Butt, Department of Education
Lois Mow, Department of Education

Guests: Malcolm Barcarse
Christopher Delaunay, Pacific Resource Partnership

I. Call to Order, Public Notice

As Chair Protem, Keith Regan called the Procurement Policy Board (PPB) meeting to order at 1:30 pm.

II. Roll Call, Quorum

The PPB members introduced themselves as part of roll call.

- Keith Regan
- Rick Heltzel
- Lance Inouye
- Lisa Maruyama
- Diane Nakagawa

SPO

- SPO Acting Administrator Bonnie Kahakui
- Kevin Takaesu
- Stacey Kauleinamoku
- Ruth Baker

Other Introductions were made:

- Deputy AG Stella Kam

III. Election of Board Officers (Chair, Vice Chair, and Secretary)

Pursuant to Hawaii Revised Statutes 103D-201(3)(e), the members held an election for the position of chairperson, vice-chair and secretary. Chair Protem Regan opened the floor for nominations or volunteers.

Rick Heltzel nominated Lance Inouye as Chair. Mr. Inouye made the motion to nominate Lisa Maruyama as Chair and Mr. Heltzel as Vice Chair. Diane Nakagawa volunteered to serve as Secretary.

Mr. Heltzel withdrew his nomination of Mr. Inouye as Chair, then Mr. Inouye made the motion to officially nominate Ms. Maruyama as Chair, Mr. Heltzel as Vice Chair, and Ms. Nakagawa and Secretary, and Mr. Heltzel seconded the motion.

Mr. Inouye made the motion to accept the slate of nominees, and Ms. Nakagawa seconded the motion. The motion passed unanimously.

IV. 2023 Legislation

Chair Maruyama took over as Chair of the PPB and recognized the staff of the State Procurement Office. The staff provided an update of 2023 Legislation, which did not require any Board action.

A. State Procurement Office Legislation

Bonnie Kahakui, Acting Administrator of the State Procurement Office, Introduced Purchasing Specialist Christopher Amandi, who provided a summary of legislation.

- i. House Bill 977 / Senate Bill 1275, "RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES," Abolishes the Community Council on purchase of health and human services.
- ii. House Bill 978 / Senate Bill 1276, "RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES," Authorizes heads of purchasing agencies to issue requests for statements of qualification and to establish lists of qualified providers for treatment

purchase of services. Increases the small purchase threshold for health and human services.

B. Other Legislation that May Affect Hawaii Administrative Rules Related to Chapters 103D and 103F, Hawaii Revised Statutes

Ms. Kahakui provided a list of legislation that may affect the Hawaii Administrative Rules related to Chapters 103D and 103F of the Hawaii Revised Statutes and may require Board action in the future.

- i. House Bill 536, "RELATING TO PROCUREMENT," Amends the competitive sealed bidding process for construction projects to require joint contractors and subcontractors to submit their bids to a bid depository established under DCCA. Authorizes joint contractors and subcontractors to submit different bids to different general contractors bidding on the project.
- ii. House Bill 816 / Senate Bill 1441, "RELATING TO PUBLIC PROCUREMENT," Clarifies the deadline for submitting written protests that are based on the content of a solicitation.
- iii. House Bill 1164 / Senate Bill 1135, "RELATING TO PROCUREMENT," Requires cash or protest bonds to be returned to the initiating parties, minus administrative costs, except in cases where the appeal was frivolous or made in bad faith.
- iv. House Bill 1184 / Senate Bill 1465, "RELATING TO PROCUREMENT," Allows agencies to rank fewer than three persons for professional services when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

V. Update of State Procurement Office Initiatives

- A. Procurement Consolidation Working Group Interim Report (attached), pursuant to Act 282, Session Laws of Hawaii 2022, "A Bill for An Act Relating to Procurement," establishing a working group to develop a plan for the phased-in consolidation of procurement services and staff within executive branch agencies within a five-year timespan and requiring the working group to make recommendations for attracting high-quality procurement professionals to the State.

Ms. Kahakui provided a summary of the work of the Working Group, which included all Executive Branch Departments and the Department of Education. With the assistance of a hired consultant, the Group's work in 2022 included an assessment of departments' staffing that handled purchasing, the percentage of time staff handled procurement, a discussion of various procurement models, and the creation of an interim report on the Group's findings.

Mr. Inouye asked for clarification on what is non-delegated and delegated procurement, and noted what staff are conducting procurement. Ms. Kahakui clarified that all procurement is delegated, and any staff who conducts procurement must take training. The challenge is that some staff may conduct procurement every once in a while, or as a secondary task. The Consolidation Working Group is to come up with a plan to have staff that is fully dedicated to procurement.

Ms. Maruyama asked if there is a financial assessment of procurement consolidation. Ms. Kahakui responded that the financial implication will be a substantial component. She added that the procurement consolidation plan will need to involve the Department of Human

Resources and Development and labor union. Ms. Maruyama also asked how the financial requests will be transmitted to the Legislature. Ms. Kahakui replied that this will be an administrative request. Ms. Kahakui responded to Mr. Regan that the interim report was submitted to the State Legislature in December 2022 and is posted on the SPO website.

- B. Past Performance Database, pursuant to Act 188, Session Laws of Hawaii 2021, “A Bill for An Act Relating to Procurement,” defining past performance of contractors in Section 103D-204, HRS, requiring the State Procurement Office to establish and administer a past performance database and adopt rules regarding information and procedures associated with the past performance database, and requiring procurement officers to consider specific factors, including past performance, when available.

SPO Staff Stacey Kauleinamoku reported that the State Procurement Office is in the development of the Past Performance Database and rules, and that the Database is on schedule to be deployed by May 2023 and implemented by the end of fiscal year 2023.

Mr. Heltzel asked that in a best-value procurement format, if past performance may outweigh the price in grading the proposals, that past performance can be subjective. Ms. Kauleinamoku responded that the SPO did not get any feedback on the Past Performance Database from contractors. The formulation of Past Performance questions and rules were based on feedback from State agencies and on General Services Administration’s method of assessing contractors as satisfactory or unsatisfactory.

Ms. Maruyama asked if the SPO can provide some background and context on how some of the laws were enacted. Ms. Kahakui said that the Special Senate Committee on Procurement concluded that a Past Performance Database was needed to address low-performing contractors and give the contractors the opportunity to refute any comments. Vendors will be allowed to see only their own evaluation and assessments.

Mr. Inouye pointed out that the rating is very subjective. Ms. Kahakui said that the Past Performance statute, which says to “consider” past performance, may be vague and be open to challenges, and the SPO may ask the Legislature to clarify the language in the statute. Ms. Kauleinamoku added that it is important to launch the database early to allow vendors and government agencies to review and the database and allow for adjustments. Ms. Maruyama added that the Past Performance Database applies to HRS 103D procurement, but not HRS 103F.

- C. Small Business Initiative, pursuant to Act 168, Session Laws of Hawaii 2022, “A Bill for An Act Relating to Procurement,” establishing a five-year small business assistance initiative and providing staffing for the implementation of Part IX of the Hawaii Public Procurement Code, relating to assistance to small business.

SPO Staff Kevin Takaesu explained that Act 42 (SLH 2017) created a three-year small business office, but that initiative did not receive additional funding to continue. Small Business Assistance Initiative, established by Act 168, SLH 2022, is similar to Act 42 (SLH 2017). Solutions Pacific, which had work on previous Small Business, has shown interest in submitting a proposal to run the small business office.

Mr. Inouye stated out that the State Department of Transportation has a small business office and a small business database, but the qualifications of a small business don’t meet what is needed for large projects. Mr. Takaesu stated that the SPO has met with DOT. Ms. Kahakui stated that the Act specifies engagement of businesses owned by veterans, Native Hawaiians, and women. She added that we don’t have an accurate count of the number of small businesses. The database originally contained hundreds of small businesses, but that

number whittled down after certification of businesses. The challenge is that the initiative has funding only for year one of the five years.

Ms. Maruyama asked about the origin of the bill, how the Small Business Database differs from other databases, and whether this is a conflict of interest for the SPO. Ms. Kahakui said that the statute says that the SPO can provide assistance but not contract. Mr. Regan commented that our Deputy Attorney General is available as a resource to address any issues on the conflict of interest. Ms. Kam responded that there were concerns about the Small Business Office. It is the Legislature's prerogative to create a small business office within the SPO.

Mr. Heltzel commented why the State can't tap into the Small Business Administration database.

VI. Next Meeting:

The proposed date/time for the next Procurement Policy Board is Thursday, March 16, 2023, at 10:30 am. It will be a hybrid meeting on Zoom and in person at the physical location of Room 410 in 1151 Punchbowl Street.

VII. Executive Session: Discussion of personnel matters in the recruitment for Administrator, State Procurement Office

Mr. Regan made a motion to go into Executive Session. Ms. Nakagawa seconded the motion. There were no objections. At 2:55 p.m., the Board recessed its regular meeting and went into Executive Session pursuant to Section 92-5(a)(2) and (4), Hawaii Revised Statutes, to discuss personnel matters and to consult with the Board's attorney on questions and issues pertaining to the Board's powers and duties.

The Board reconvened its regular meeting at 3:40 p.m. Ms. Maruyama reported that the Board met in Executive Session and voted to assemble a Selection Committee, consisting of Diane Nakagawa and Lisa Maruyama, to recruit a permanent SPO Administrator for a four-year term. This Selection Committee, which is a Permitted Interaction Group, will report its findings to the Board at a later date.

VIII. Adjournment

Since there was no new business, Mr. Regan moved to adjourn the meeting; and Mr. Heltzel seconded the motion. The vote to end the meeting was unanimous. The meeting adjourned at 3:47 pm.

Respectfully submitted,



Diane Nakagawa
Secretary, Procurement Policy Board