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BONNIE KAHAKUI
ADMINISTRATOR

PROCUREMENT POLICY
BOARD
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STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
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Procurement Policy Board

Minutes of Meeting

Date/Time: Friday, February 28, 2025, 9:30 a.m.

Locations: State Procurement Office Bid Room
Kalanimoku Building, Room 416
1151 Punchbowl Street
Honolulu, Hawaii 96813

Virtual Meeting Using Interactive Conference Technology – Zoom

Members Present: Rick Heltzel
Lance Inouye
Lisa Maruyama

Members Excused: Keith Regan

Deputy Attorney General
Excused: Stella Kam

State Procurement Office: Bonnie Kahakui, Administrator
Christopher Amandi
Ruth Baker (in public location)
Jacob Chang
Matthew Chow
Fai Goya
Stacey Kauleinamoku-Murakami
Jittima Laurita

Chan Lee
Kelli Nekomoto
Carey Ann Sasaki
Keari Shibuya
Donn Tsuruda-Kashiwabara
Alan Yeh

University of Hawaii: Sarah Allen

City & County of Honolulu: Paula Youngling

Guests: Tim Lyons
Pane Meatoga III

I. Call to Order, Public Notice

Chair Lisa Maruyama called the Procurement Policy Board (PPB) meeting to order at 9:32 a.m. held on Zoom and in-person at the physical location. The meeting was recorded.

II. Roll Call, Quorum

Roll call was taken of the Procurement Policy Board members; there was quorum.
Staff of the State Procurement Office (SPO) introduced themselves.

III. Consideration and Approval of Minutes of February 14 Meeting

The minutes of the February 14, 2025, were reviewed and corrected for clarity. Member Inouye requested a correction to the minutes under Agenda Item VI. Review and Possible Approval of Proposed Amendments to Hawaii Administrative Rules Chapter 3-122 – Source Selection and Contract Formation > 2. Subchapter 4 – Methods of Source Selection and General Guidance, §3-122-16.03 – Public notice – Amend subsections (b), (c), and (d). The correction is in the recommended language for “(b)(7)” for clarity (underlined for emphasis) on page 8 of the minutes:

Recommendation: The Board recommended that (b)(7) be revised to read “A copy of the solicitation shall be made available electronically and/or may be picked up at the respective issuing office.”

Member Rick Heltzel made a motion to approve the corrected minutes and Member Lance Inouye seconded the motion. The members voted to approve the minutes as corrected.

Chair Maruyama requested that any corrections made to meeting minutes be documented in the subsequent minutes for the record.

IV. Public Testimony

Chair Maruyama announced that public testimony will be taken on all items as those items occur during the meeting, and that remote testifiers will be given the option of being on-camera via the Zoom link in this agenda or similar option for remote testimony.

V. Administrator’s Presentation on 2025 Legislation Related to Procurement (For Information Only)

In accordance with the Sunshine Law, the Board Packet includes a list of procurement legislation, the State Procurement Office’s position, the position of other entities, and the status of the legislation.

Written testimony: None

Oral testimony: None

Administrator Bonnie Kahakui provided an update on the status of various bills:

- House Bill 381 – Increases small purchase threshold – Amended
- Senate Bill 382 – Clarifies disclosure of competing offerors’ proposals – Amended
- House Bill 1155 – Exempts from the Hawai’i Public Procurement Code contracts by government bodies to procure certain construction projects – Amended
- House Bill 1297 – Places a cap on protests and removes language – Amended
- House Bill 1414 – Allows agencies to select a bidder who is not the lowest responsible and responsive bidder, if the head of the procuring agency determines that the award is most beneficial - Amended
- Senate Bill 383 – Increases the small purchase threshold – Amended

- Senate Bill 1057 - Clarifies bid incentive given to bidders for public works construction projects who utilize apprenticeable trades – Amended
- Senate Bill 1255 – Amends the Uniform Information Practices Act to require agencies to disclose information – Deferred
- Senate Bill 1543 – Requires each purchasing agency to provide justification for hiring external consultants – Amended

Administrator Kahakui presented an update on Senate Bill 1175, which added information to the Past Performance Database. She reported that unless this bill comes out of the Senate Ways and Means Committee the First Decking deadline of February 28, 2025, the bill dies; there is no companion bill.

There were no questions from the public.

VI. Review and Possible Approval of Proposed Amendments to Hawaii Administrative Rules Chapter 3-122 – Source Selection and Contract Formation

Chair Maruyama introduced the discussion on the proposed amendments to Hawaii Administrative Rules (HAR) Chapter 3-122 – Source Selection and Contract Formation. The proposed rules are included in the board packet and may also be viewed online and in person at the State Procurement Office, located at 1151 Punchbowl Street, Room 416.

Written testimony: None

Oral testimony: None

Chair Maruyama turned the floor over to the SPO Staff.

Carey Ann Sasaki, Purchasing Specialist of the Policy and Compliance Section of the State Procurement Office, explained that the proposed amendments to HAR Chapter 3-122, parts of subchapter 2 and subchapters 4 and 4.5 are related to and will implement the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes (HRS). The purpose of the Code is to promote economy, efficiency, effectiveness, and consistency in all procurements by the State and several counties. She reiterated that the proposed rule amendments are available and may be viewed in person and online.

1. Subchapter 2 – General Provisions

§3-122-9 – Use of electronic communication.

Purchasing Specialist Sasaki noted that on February 14, 2025, the Procurement Policy Board discussed and concurred with the proposed amendments to HAR §3-122-9 (c)(2)(E) and §3-122-9 (c)(2)(F).

§3-122-9.01 – Disclosure of information.

She requested that the Board defer discussion on HAR §3-122-9.01 regarding disclosure of information until after the end of the legislation session, as the 2025 Legislature is considering Senate Bill 382 and House Bill 988, which would authorize the disclosure of proposals and selection committee names public only after contract execution; it would be prudent to wait for the outcome of these measures. She reported that Deputy Attorney General Stella Kam conferred with a Deputy Corporation Counsel with the City & County of Honolulu, and learned that it is the City's practice to make the proposals available upon award, and that the City was unaware that the State makes the proposals and selection committee names public only after contract execution.

Member Lance Inouye asked that the Deputy Attorney General provide clarification regarding disclosure in Hawaii Administrative Rules subsections §3-122-58, §3-122-60, and §3-122-63(b). Purchasing and Contracts Administrator Paula Youngling, of the City & County of Honolulu's Department of Budget and Fiscal Services Division of Purchasing, said she also conferred with the Deputy Corporation Counsel about the City's interpretation of those rules, and that the City also concurs deferring discussion on §3-122-9.01.

The SPO presented the following proposed amendments.

2. Subchapter 4 – Methods of Source Selection and General Guidance

Purchasing Specialist Stacey Kauleinamoku-Murakami explained the proposed amendments to Subchapter 4 – Methods of Source Selection and General Guidance.

§3-122-16.03 – Public notice.

She noted that the proposed amendment to §3-122-16.03(b)(7), as corrected in the meeting minutes for February 14, 2025, must also be corrected for the February 28, 2025, Agenda Item VI.2.a. (page 11 of the agenda), and read as follows:

- §3-122-16.03 – Public notice. – Amend subsections (b), (c), and (d).
 - a. Addition of "if any" to subsection (b)(4) and addition of new subsection (b)(7) to read:
"(7) A copy of the solicitation may be made available electronically and may be picked up at the respective issuing office."

She stated that on February 14, 2025, the Board concurred with this language.

Purchasing Specialist Kauleinamoku-Murakami continued to explain the following proposed amendments.

- §3-122-16.03 – Public Notice
 - a. Proposed addition of "include the requested professional class or category and shall" to subsection (c) .

(c) Public notice for professional services pursuant to section 103D-304, HRS, and subchapter 7 shall include the requested professional class or category and shall invite persons to submit statements of qualifications that ~~[may include but not be limited to]~~ includes:

Justification: This amendment mandates that offerors are required to include the relevant professional class or category in their submissions for professional services. This clarification benefits both the agencies and contractors by ensuring clear identification of services provided by engineers, architects, surveyors, and landscape artists.

Member Inouye asked if "professional class or category" is defined in statute. Purchasing Specialist Kauleinamoku-Murakami referenced that Procurement Circular 2014-16, Amendment 1, lists the types of professional services that must use the professional services method of procurement. Administrator Kahakui added that "professional services" is defined in §103D-104 - Definitions, HRS, which references the United States Office of Personnel Management's Qualifications Standards Handbook. She explained that the amendment seeks to align the definition with the HRS and Handbook, and noted that the SPO generally does not point the rules to procurement circulars, which are subject to change, but can reference §103D-104, HRS.

For Action: Although the members concur with the amendment after discussion, the Chair requested that the SPO verify the addition of the definition of “professional class or category” with the Deputy Attorney General and present proposed language at the next Board meeting.

Purchasing Specialist Kauleinamoku-Murakami continued to explain the following proposed amendments.

b. Remove “or provider” in subsection (d)(1).

(d) The public notice under subsections (b) and (c) shall be publicized as follows:

(1) At a minimum, statewide and countywide public notices shall be publicized on a purchasing agency ~~[or provider]~~ internet site;

Justification: This amendment enhances clarity, consistency, and style by specifying that public notices shall, at a minimum, be published on a purchasing agency’s website. It also clarifies that notices may be sent by mail or electronically to individuals on relevant mailing lists, ensuring that the purchasing agency remains responsible for public notifications. Additionally, it notes that “Provider,” as defined in §103F-102, HRS, refers to an organization or individual contracted by a state agency to provide health or human services to the public on its behalf; the definition does not mention goods and services or construction.

c. Revise (d)(2)(B) for clarity and consistency that a notice may be sent by mail or electronically to persons on any applicable mailing list by the state agency.

(B) Notice by mail~~[, electronic mail, or facsimile transmission]~~ or electronically to persons on any applicable bidders mailing list, if any; and

The Board concurs with the proposed amendments to subsections 3-122-16.03(d)(1) and (d)(2)(B).

o §3-122-16.05 – Pre-bid or pre-proposal conference – Amend subsections (a), (b), and (f).

a. The proposal is to delete the entire subsection (b):

~~[(b) If conference attendance is mandatory for submission of an offer, the requirement:—
(1) Shall be stated in the public notice issued pursuant to section 3-122-16.03; and
(2) Prominently in the solicitation or if the decision to hold a mandatory pre-bid or pre-proposal conference is made after the issuance of the solicitation, the mandatory requirement shall be announced in an addendum.]~~

Explanation: Subsection (b) has been invalidated by the Department of Commerce and Consumer Affairs (DCCA) Office of Administrative Hearings (OAH) in *Greenleaf Distribution Services, Inc. v. City and County of Honolulu*; PCH-2004-7, September 2, 2004. In this case, the DCCA hearing officer

reasoned that regardless of a bidder's non-attendance at a site visit, submitting a bid after being given the opportunity to visit the job site signifies the bidders' commitment to performing the work at a stated price. The bidder assumes the risk of an unforeseen cost increases due to observable site conditions. The ruling determined that failure to attend a pre-bid conference does not constitute a valid basis for non-responsiveness.

- b. As a result of deleting subsection (b), subsection (a)(1) is amended for clarity, consistency, and style to reflect that attendance at pre-offer conferences are optional. This subsection will read:

(1) An agency may hold a pre-bid or pre-proposal conference ~~[and require or not require attendance by all prospective bidders as a condition for submitting an offer for solicitations that have special or unusual requirements, e.g., requiring physical inspection]~~.

(2) For construction, including design-build projects, pursuant to section 103D-303.5, HRS, an agency ~~[shall]~~ may hold a pre-bid or pre-proposal conference and invite all interested parties to attend.

Explanation: Purchasing Specialist Kauleinamoku-Murakami referenced §103D-303.5 - Pre-bid conference, Hawaii Revised Statutes, which states that the Procurement Policy Board shall adopt rules to effectuate this section. She also noted that the DCCA OAH ruling referenced *Starcom Builders, Inc. V. Board of Water Supply*; PCH-2003-18 (October 18, 2003).

The members discussed the disadvantage faced by companies that do not attend a mandatory meeting and thus did not have the privilege to learn about the risks involved in a project, and that the purchasing agency should be given the flexibility to decide whether a pre-bid conference is mandatory.

Purchasing and Contracts Administrator Youngling offered the perspective of the City & County of Honolulu, citing case law *Starcom Builders, Inc. V. Board of Water Supply*, and noted that purchasing agencies, especially those handling design and construction, prefer to make pre-bid conferences mandatory to avoid potential bid protests if a bid is not awarded to the low bidder based on non-attendance.

Member Heltzel suggested that the SPO survey the agencies on making pre bid meetings mandatory and explore the feasibility of introducing legislation.

- c. Add "including questions and answers" to subsection (f), which will now be read as subsection (e).

Explanation: This amendment provides clarity and consistency and ensures fair competition by requiring that a conference summary – including questions and answers, any changes to the solicitation, and other information, shall be issued as an addendum to be provided sufficiently in advance of the receipt of offers.

Administrator Kahakui noted that the Legislature is considering House Bill 1297, which states that a protest based on the content of the solicitation must be submitted in writing at least 24 hours prior to the date and time set for the receipt of offers. She advocated for the deletion of "known to have received a solicitation," as it is difficult to determine whether prospective offers have received that information.

After discussion, the members concurred that subsection (e) be revised as follows:

~~[(f)]~~ (e) A summary of the conference, including questions and answers, in addition to any changes to the solicitation, shall be issued by addendum [and shall be supplied sufficiently] before the deadline for receipt of offers to allow consideration of the summary results and changes to all ~~[those]~~ prospective offerors ~~[known to have received a solicitation]~~.

The Board concurred with the amendments to §3-122-16.05: Deletion of subsection (b); and amendments to (a) and (e) [note that (e) is previously (f)].

- §3-122-16.06 – Amendment and clarification to solicitation – Delete subsections (c) and (d) in their entirety so there is no confusion and ambiguity on the distribution requirements of an addendum. This clarifies that it is the offeror's responsibility to read the addendum. Also, revise subsection (a) so it references the correct subsection and add "or electronic means" to new subsection (c)(1), previously subsection (e)(1).

After discussion, the Board concurred to keep subsection (c) as is and revise (d), which will read as follows:

(c) Addenda may require that offerors acknowledge receipt of the addendum issued.

(d) Addenda shall be issued to all prospective offerors ~~[known to have received a solicitation, or if issued after the deadline for submission of notice of intention to offer, to those persons who have submitted such notice]~~.

With the aforementioned amendment, the next subsection will remain as (e)(1). Purchasing Specialist Kauleinamoku-Murakami explained that the proposed amendment will align with the changes made to HAR Section 3-122-9 - Use of electronic communication, on February 14, 2025.

After discussion, the Board concurred on the following language for (e)(1):

(e) Addenda for:

(1) Amendments shall be ~~[distributed]~~ published within a reasonable time to allow prospective offerors to consider them in preparing their offers; however, if the time and date set for receipt of bids will not permit adequate time for preparation, the time shall be

increased to the extent possible in the addendum or, if necessary, ~~[by facsimile or telephone]~~ electronically and confirmed in the addendum;

- §3-122-16.07 – Pre-opening modification or withdrawal of offer - Amend for clarity, consistency, and style to reflect that an offeror's modification may be submitted electronically.

§3-122-16.07 Pre-opening modification or withdrawal of offer. (a) ~~[Bids or proposals]~~ Offers submitted pursuant to subchapters 5, 6, and 6.5 may be modified or withdrawn prior to the established due date by submitting the following [documents]:

(1) ~~[Modification]~~ For modification of [bids or proposals] the offer:

- (A) A written notice accompanying the ~~[actual]~~ offeror's modification received in the office designated in the solicitation, stating that a modification to the ~~[bid or proposal]~~ offer is submitted; or
- (B) ~~[A facsimile or]~~ An electronic notice accompanying the ~~[actual]~~ offeror's modification submitted ~~[either by facsimile machine, electronic mail, or an electronic procurement system]~~ electronically pursuant to section 3-122-9 to the office designated in the solicitation; provided if other than through an electronic system, offeror submits the actual written notice and modification within two working days of receipt of the facsimile or the electronic transmittal.

After provided the explanation, the Board had no objection to the amendments to §3-122-16.07.

- §3-122-16.08 – Late offer, late withdrawal, and late modification – Amend for clarity.

Explanation: The amendment requires written documentation for the reason late offer, withdrawal or modification is accepted by the head of the purchasing agency. The amendment to (b), is for clarity, consistency, and style, as well to replace "procurement activity" with "purchasing agency" as defined in 103D-104, HRS.

The Board concurred that 3-122-16.08(a) and (b) be amended as discussed and read as follows:

§3-122-16.08 Late offer, late withdrawal, and late modification. (a) Any ~~[notice of withdrawal, notice of modification of a bid or proposal with the actual modification, or any bid or proposal is late when received at the place designated for receipt and opening~~

~~of an offer after the established due date, additionally defined in section 3-122-16.06(a),] offer, withdrawal and modification submitted by hand delivery, mail, or electronically after the established due date, shall not be accepted, except when received before contract award and would have been timely but for the action or inaction of the purchasing agency's personnel, and supported by a written determination by the head of the purchasing agency [within the procurement activity].~~

(b) ~~A late bid or proposal or late modification will not be considered for award and shall be returned to the offeror unopened as soon as practicable, accompanied by a letter from the [procurement activity] purchasing agency stating the reason for its return.~~

3. Subchapter 4.5 – Source Selection for Federal Grants

- §3-122-16.30 - Purpose and §3-122-16.31 – Exception; request for interest – Replace “providers” with “contractors” for clarity, consistency, and style to reflect that providers selected for federal grants are contractors

Explanation: “Contractor” is a more accurate term because it pertains to the procurement of goods, services, or construction and defined in §103D-104, HRS, while “provider” pertains to the purchases of health and human services and is defined in §103F-104.

- §3-122-16.30 – Purpose – Remove from subsection (b) the phrase “the appropriate source selection methods in” and simply reference section 3-122-16, which lists all the methods of source selection.

Explanation: As discussed at the February 14, 2025, Board meeting, the proposed amendment to §3-122-16 adds source selection methods “Subchapter 5 – Competitive Sealed Bidding” and “Subchapter 6.5 – Multi-Step Competitive Sealed Bidding, pursuant to 103D-301, HRS, as amended by Act 239, Session Laws of Hawaii 2013.

For Action: As requested by the Board, the SPO will confer with the Deputy Attorney General if the proposed amendment in §3-122-16.30(b) is appropriate or will it limit the methods of source selection to be used, as she recommended that amendment.

The Board concurred that §3-122-16.30 be amended as discussed and read as follows:

§3-122-16.30 Purpose. (a) The purpose of this subchapter is to provide rules for the selection of [~~providers~~]contractors for federal grants.

(b) The selection of [~~providers~~]contractors for federal grants shall be in accordance with [~~the appropriate source selection methods in~~] section 3-122-16.

- §3-122-16.31 – Exception; request for interest for federal grants. – Add the phrase “when applying or after receipt of a grant” to (a).

Explanation: The amendment aims to ensure the purchasing agency exercises due diligence and retains the contractor named in the in the federal grant, rather than switching to a different one. While some grant applications require that a specific contractor be named, other applications allow for changes. Before naming a contractors on a federal grant application, the purchasing agency must follow a procurement method outlined in §3-122-16, HAR. The "request for interest for federal grants" is one procurement option that may be used either during the application process or after the grant is awarded if the purchasing agency does not have time to do a full procurement.

The Board concurred with the following amendment to §3-122-16.31:

§3-122-16.31 Exception; request for interest for federal grants. (a) "Request for interest" as used in this subchapter means all documents utilized for soliciting interest in providing goods, services, or construction under a federal grant, when applying for a grant or after receipt of a grant.

(b) Where time or economic situations preclude the use of other source selection methods in section 3-122-16, purchasing agencies may, with the approval of the head of purchasing agency, issue a request for interest to select a [~~provider or providers~~] contractor(s) for a federal grant.

VII. Announcements

1. Introduction of Small Business Procurement Coordinator

Administrator Kahakui introduced Keari Shibuya as the State Procurement Office's Small Business Procurement Coordinator, who will be drafting rules on the Small Business Initiative for consideration by the Board.

2. Next meetings

Chair Maruyama announced planned meetings of the Procurement Policy Board:

- Friday, March 28, 2025, 9:30 a.m.
- Friday, April 11, 2025, 9:30 a.m.
- Friday, April 25, 2025, 9:30 a.m.
- Friday, May 16, 2025, 9:30 a.m.

The schedule will be assessed and is subject to change. The meetings will be on Zoom and in-person at the physical location of Room 416, the Bid Room, in the State Procurement Office at 1151 Punchbowl Street.

VIII. Adjournment

The Chair asked the public if they have any questions, and there were none.

Since there was no additional new business, Member Heltzel moved to adjourn the meeting and Member Inouye seconded the motion. All members voted to adjourn the meeting. The meeting adjourned at 11:59 a.m.

Respectfully submitted,

Lisa Maruyama, Chair
Procurement Policy Board