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PROCUREMENT POLICY BOARD

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PROCUREMENT POLICY BOARD
RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
KEITH REGAN

Procurement Policy Board

Minutes of Meeting

Date/Time: Friday, February 14, 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
Keith Regan

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

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

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

Department of Accounting and General Services
Division of Public Works Staff: Jolie Yee

City & County of Honolulu: Paula Youngling

Guests: Brian Lee – Hawaii LECET
Tim Lyons
Jeff Masatsugu
Pane Meatoga III
Frank Rogozienski
Ryan Sakuda

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) were introduced.

III. Consideration and Approval of Minutes of January 31, 2024, Meeting

The minutes of the January 31, 2024, were reviewed and revised for clarity. Member Rick Heltzel made a motion to approve the revised minutes and Member Lance Inouye seconded the motion. The members voted to approve the minutes.

Comptroller Keith Regan requested clarification on whether or not a member who was not present at a meeting can make a motion to approve the minutes of that meeting.

Member Inouye asked to confirm if the minutes of the June 27, 2024, meeting were corrected. SPO staff responded that the minutes as revised and approved will be posted on the Procurement Policy Board webpage.

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)

At the January 31, 2025, meeting, the Procurement Policy Board requested a full list of legislation that the State Procurement Office is tracking on which it is presenting testimony. That list was included in the Board Packet for the February 14, 2025, in accordance with the Sunshine Law. Administrator Bonnie Kahakui provided an overview and update on bills (as of January 31, 2025) on the bills specifically relevant to procurement.

- House Bill 381 - Small purchase threshold. Status: No hearing scheduled as of this date.
- House Bill 723 - Prioritizes purchasing from local vendors. Status: No hearing scheduled as of this date.
- House Bill 808 - Requires contractors to obtain insurance for latent defects. Status: Deferred.
- House Bill 809 - Gives bidders an additional 24 hours to clarify or correct technical information in their proposals, and requires the Procurement Policy Board to adopt rules. Status: Deferred.
- House Bill 894 – Requires the Procurement Policy Board to adopt rules to issue prequalification certificates to prospective contractors for public buildings or public works. Status: Deferred.
- House Bill 987 HD1 / Senate Bill 1306 SD1 (Gov/Admin, companion bills) – Establishes a special fund for the State Procurement Office eProcurement system. Status: Moving forward.
- House Bill 988 / Senate Bill 1307 (Gov/Admin, companion bills) – Clarifies what and when information can be disclosed during a debriefing. Status: No hearing scheduled.
- House Bill 1155 / Senate Bill 1474 (companion bills) - Exempts construction contracts from the Procurement Code with approval from the Chief Procurement Officer. House Bill 1155 Status: No hearing scheduled. Senate Bill 1474: Moving forward.
- House Bill 1187 HD1 – Restricts state departments and attached agencies from purchasing imported flowers and lei. Status: Moving forward.
- House Bill 1297 – Removes language about frivolous protests. Status: No hearing scheduled.

- House Bill 1414 – Allows agencies to award a contract to a bidder if it is the most beneficial to the state. Status: No hearing scheduled.
- Senate Bill 131 – Requires the Procurement Policy Board to adopt rules to impose mandatory fines or provide for termination of a contract for default. Status: Deferred.
- Senate Bill 254 SD1 – Increases the small purchase threshold. Status: Moving forward/
- Senate Bill 382 – Clarifies disclosure of information. Status: No hearing scheduled.
- Senate Bill 383 – Increases the small purchase threshold. Status: Moving forward
- Senate Bill 462 SD1 – Requires all performance incentive contracts to specify a pricing basis, performance goals, and a formula in calculating the contractor's profit, fees, or price decrease if the specified performance goals are exceeded or not met. Status: Moving forward.
- Senate Bill 615 – Requires agencies to consider a new contract for any change orders that increase a contract by more than 50 percent. Status: Deferred.
- Senate Bill 858 – Bid preferences. Status: No hearing.
- Senate Bill 1057 SD1 – Clarifies bid incentive for apprenticeship. Status: Moving forward.
- Senate Bill 1121 – Establishes a preference for bidders who offer higher proportion of all-electric construction vehicles for construction projects. Status: Deferred.
- Senate Bill 1175 SD1 - Adds criteria to contractor's performance assessment to be included in the past performance database and will require the Procurement Policy Board to adopt rules. Status: Moving forward.
- Senate Bill 1543 – Government accountability, requires justification of the use of external consultants. Status: Moving forward.
- Senate Bill 1587 – Allows procurement officers to hold retainage fee of 1% of total budget until completion. Status: Moving forward.

Member Heltzel asked if the Procurement Policy Board is allowed to submit testimony on any of the bills. Deputy Attorney General Stella Kam relayed guidance from the Office of Information Practices, which said that Boards wishing to submit testimony need to vote to designate a representative who will submit and present oral testimony on behalf of the Board. Additionally, the Board must vote on its position on a bill as an agenda item on a Board meeting, which will be before the bill's committee hearing. The Office of Information Practices recognizes that bills may be amended throughout the legislative session. As such, the Board's designated representative should fully understand the Board's position and be authorized to draft testimony for review/approval by the Board prior to submission.

Member Heltzel asked if the Procurement Policy Board would like to consider adding to a future agenda a discussion on submitting testimony on Senate Bill 1175, which relates to the Contractor Past Performance Database. He noted that in 2023, the Board dedicated significant time and effort, including soliciting testimony and collecting public feedback, on this issue.

Chair Maruyama asked for additional information about Senate Bill 1175. Administrator Kahakui provided the legislative timeline on Senate Bill 1175; the State Procurement Office submitted testimony in support of the bill's language to address the government's ability to identify the lowest "responsible bidder" on all projects by considering a contractor's past performance, beyond just basic information, in the procurement process. Administrator Kahakui said that the bill adds information to be included in the Past Performance Database: quality of work; schedule and timeliness of performance; cost and financial management; management, personnel, and labor; safety and security; and general comments. The State Procurement Office testified in support of the additional criteria in the Database.

Chair Maruyama asked the Board members how they felt about this issue. Member Inouye expressed his concern about the additional requirements in Senate Bill 1175, and recalled how the Procurement Policy Board examined and deliberated on the information to be included in the Past Performance assessment form. He added that he and Member Heltzel are members of the General Contractors Association, which may submit testimony on this bill.

Chair Maruyama said that in the January 31, 2025, Procurement Policy Board meeting, the members discussed the Past Performance Database and noted that as January 30, 2025, 56 past

performance forms were submitted. The Chair asked the State Procurement Office if there was a deficit of information, based on the forms that were submitted, that prevented the ability to ensure appropriate procurement, such that you would want to have additional information on the form. Administrator Kahakui said that the Legislature passed a bill that required agencies to consider past performance when making awards. Legislature then passed another bill to establish the past performance database to include the name of the contractor, the date, size, brief description, responsible persons, budget, and budget difference, and it allows for comments from the contractor. For agencies, this information does not say how a contractor performed and is not enough for an agency to make a determination of responsibility. Administrator Kahakui recalled how Representative Matayoshi explained that the intent of the bill was to allow the State Procurement Office to come up with performance criteria for the database. Senate Bill 1175 specifies the past performance criteria for agencies in considering contractors. While the contracting agency can contact other agencies on a contractor's performance, this information requires extra work, is difficult to obtain, and is not documented.

Chair Maruyama agreed that the Procurement Policy Board thoroughly explored this issue and asked what role the Board should play on this legislation. Deputy Attorney General Kam explained that the Legislature determines the scope of the Procurement Policy Board's administrative rulemaking, and reminds the Board that the Legislature creates the parameters for the Board to promulgate the administrative rules. She added that the Legislature can require the Board to add to the past performance criteria in the administrative rules, even though it is contrary to previous Board discussion. She also stated that the Board can submit testimony to the Legislature to explain the difficulties encountered during its deliberations on what the performance assessment form should include.

Chair Maruyama asked Comptroller Regan for his thoughts on this measure. He said that the State Department of Transportation's testimony on this measure provides insight into how departments feel about the past performance database in its current state. According to their testimony, the database is not as useful as a tool for determining past performance and questioned the benefit of the past performance database. Recognizing the different perspective on this issue, Comptroller Regan emphasized the need for discussion and debate among all stakeholders, and further suggested that the most efficient and expeditious approach would be for Board members to submit testimony through their respective organizations, independent of the Procurement Policy Board.

The Chair said that the remarks by Comptroller Regan and the testimony of the Department of Transportation on Senate Bill 1175 provided insight whether the lack of information on the past performance database was hindering decisions for government. Based on the Comptroller's remarks and the Department of Transportation's testimony, and due to logistical time constraints, Chair Maruyama said she is not comfortable with submitting testimony on behalf of the Procurement Policy Board. Members can express their opinions individually.

Member Heltzel appreciated knowing what the rules of engagement were on this issue. He asked if information and past performance testimony is public record, and can that information be used in testimony by members of the public. He noted that the draft past performance assessment forms contained comments from stakeholders and members of the public that would be useful information for the Legislature. The Chair reiterated that Board deliberations and minutes are public information.

Administrator Kahakui noted that currently, the database is not available for viewing by the general public; the database information on the contractor is accessible only to government agencies and that contractor. This information is subject to the Uniform Information Practices Act.

The staff provided clarification on the Legislative calendar and the measures that are similar in language. To help the Board understand the environment and perspectives, the Chair requested that the State Procurement Office's position is noted for each bill on the list of procurement bills provided to the Board. Comptroller Regan agreed, and added that it is important to also consider the positions of other departments – whether in support or opposition – on each measure. Departments provide valuable insights into challenges and other key considerations, and serve as a barometer to proposed changes to the procurement code. Additionally public testimony also reflects broader

sentiments on the issue, contributing to a more comprehensive understanding of the potential impact of legislative proposals.

The Chair commented on the usefulness of the list of bills being tracked by the State Procurement Office, and recommended that the Board consider meeting more frequently prior to the start of and during the Legislative session if the Board wishes to weigh in on legislation.

Administrator Kahakui said that the State Procurement Office will provide an update list of bills with its position on each bill. Since the information presented is as of the date of the agenda's posting, she will provide a verbal comments/updates at the next meeting.

There were no additional questions or comments. There were no written or oral testimonies submitted.

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

State Procurement Office Purchasing Specialist Carey Ann Sasaki introduced the proposed amendments to Hawaii Administrative Rules (HAR), Chapter 3-122, parts of subchapter 2, and subchapters 4 and 4.5, that relate to the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes (HRS). She added that the proposed rule amendments are to implement the Hawaii Public Procurement Code, HRS Chapter 103D, which will be referred to as 'the Code.' The purpose of the Code is to promote economy, efficiency, effectiveness, and consistency in all procurements by the State and counties. She stated that the proposed rules were included in the board packet and may also be viewed in person at the State Procurement Office at 1151 Punchbowl Street in Room 416, and online at the SPO website.

She provided an explanation of the proposed amendments to the rules.

1. Subchapter 2 – General Provisions

- §3-122-9 (c)(2)(E) is amended to clarify that electronically submitted offers do not have to have an original signature because electronic signatures are acceptable. Therefore, "an original" regarding "original signature" is removed. The State Procurement Office also clarified that all pages of the offer, including pages with a signature, should be submitted.
- §3-122-9 (c)(2)(F) is revised by removing the extra "and" to correct the grammar and sentence structure.
- §3-122-9.01 Disclosure of information, subsection (a)(1), is amended to allow agencies to disclose information sooner rather than later. This revised subsection will state that for small purchases, a purchasing agency is not required to disclose any information until after the time and date set for receipt of quotes instead of after a purchase order is issued or a purchasing card order is placed. Pricing or information submitted electronically may be available immediately after the deadline for receipt of quotes, so there is no valid reason why quotes or information about them can only be made available after a purchase order or purchasing card order is completed.
- §3-122-9.01 (b) is amended to fix a grammatical error and changes "name of members of an evaluation committee" to "names of evaluation committee members". Also, to preserve the integrity of the procurement, the purchasing agency should not disclose the names of the evaluation committee members prior to the execution of the contract if there may be a protest and a possible ruling that offers shall be re-evaluated. There should be no undue influence on the committee members during any evaluation process. Therefore, this subsection is amended by replacing "posting of the award pursuant to section 3-122-57 (a)" with "contract execution".

Discussion: The Procurement Policy Board members, Deputy Attorney General Kam, Paula Youngling of the City & County of Honolulu, and staff of the State Procurement Office entered into a discussion on the proposed amendments Hawaii Administrative Rules §3-122.9.01 and unintended consequences.

The Chair asked that the discussion on the proposed amendments Hawaii Administrative Rules §3-122.9.01 continue and is added to the agenda for the next meeting, and asked that the State Procurement Office, Deputy Attorney General, City & County Purchasing Division, and the City Corporation Counsel meet and collaborate on this issue prior to the next Procurement Policy Board meeting.

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

State Procurement Office Purchasing Specialist Stacey Kauleinamoku presented the proposed amendments to Chapter 3-122 Subchapter 4, Methods of Source Selection and General Guidance, that corrected grammar and were non-substantive in nature.

- §3-122-16 – Methods of source selection – Addition of missing source selection methods: “Subchapter 5 – Competitive Sealed Bidding” and “Subchapter 6.5 – Multi-Step Competitive Sealed Bidding”
- §3-122-16.03 – Public notice – Amend subsections (b), (c), and (d).
 - a. Addition of “if any” to subsection (b)(4) and additional of new subsection (b)(7) “A copy of the solicitation may be made available electronically and may be picked up at the respective issuing office.”

Recommendation: The Board recommended that (a) 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.”

In the interest of time, discussion will on the proposed amendments to the Hawaii Administrative Rules will continue at the next Procurement Policy Board meeting.

There were no written or oral testimony submitted.

VII. Announcements

Chair Maruyama announced the dates of future meetings of the Procurement Policy Board:

- Friday, February 28, 2025, at 9:30 a.m.
- Friday, March 28, 2025, at 9:30 a.m.
- Friday, April 11, 2025, at 9:30 a.m.

VIII. Adjournment

Since there was no new business, Comptroller Regan moved to adjourn the meeting and Member Heltzel seconded the motion. All members voted to adjourn the meeting. The meeting adjourned at 12:03 p.m.

Respectfully submitted,

Lisa Maruyama, Chair
Procurement Policy Board