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

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**PROCUREMENT POLICY
BOARD**
RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
DIANE NAKAGAWA
KEITH REGAN

Procurement Policy Board

Minutes of Meeting

Date/Time: Monday, June 5, 2023, 1:30 p.m.

Locations: 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
Ruth Baker
Stacey Kauleinamoku
Shannon Ota
Carey Ann Sasaki
Donn Tsuruda-Kashiwabara
Kevin Takaesu

Other State Staff: Chris Butt, Department of Education
Eric Nishimoto, Department of Accounting and General Services - Public Works Division
Lois Mow, Department of Education
Jolie Yee, Department of Accounting and General Services - Public Works Division

County Staff: Reid Goto, City & County of Honolulu
Paula Youngling, City & County of Honolulu Purchasing Administrator

Guests: Tim Lyons, Subcontractors Association of Hawaii
Ryan Sakuda
Gregg Serikaku, PAMCA

I. Call to Order, Public Notice

Chair Lisa Maruyama called the Procurement Policy Board (Board) meeting to order at 1:38 p.m. held on Zoom and in-person in Room 410 of 1151 Punchbowl Street. The meeting was recorded.

II. Roll Call, Quorum

Roll call was taken of the Procurement Policy Board members. There was quorum.

The Deputy Attorney General assigned to DAGS and staff of the State Procurement Office (SPO) were introduced.

III. Approval of Minutes of April 20, 2023, and May 18, 2023, Meeting

The minutes of the April 20, 2023, meeting were revised per the discussion at the May 18, 2023, Board meeting. Rick Heltzel made a motion and Keith Regan seconded the motion to accept the revised minutes as presented. Since there were no objections, the minutes were approved.

The minutes of the May 18, 2023, meeting were corrected. Diane Nakagawa made a motion and Keith Regan seconded the motion to accept the corrected minutes. Since there were no objections, the minutes were approved.

IV. Past Performance Assessment – Survey of Stakeholders

SPO Acting Administrator Bonnie Kahakui reported that on May 24, 2023, the SPO issued a procurement circular to explain Act 188, Session Laws of Hawaii 2021, and the requirement for the SPO to establish a Past Performance Database and Assessment and requested feedback on the proposed Hawaii Administrative Rules (HAR) and the Assessment Form. The procurement circular and request for feedback were distributed to the Office of the Governor, Office of the Lt. Governor, all State Executive Branch Departments, the Hawaii State Library System, Department of Education, University of Hawaii, Office of Hawaiian Affairs, Hawaii Health System Corporation, Hawaii State Judiciary, State Senate, State House of Representatives, and all Chief Procurement Officers of other jurisdictions and counties. The SPO also issued an announcement through the Hawaii Awards & Notices Data System to 994 buyers, 110 department administrators, and 24,555 vendors with a few duplicates within respective organizations. An email was about the Past Performance Database and Assessment was sent to members of the Past Performance Working Group, vendors who participated in the 2019 SPOCon event, the General Contractors Association of Hawaii, the Subcontractors Association of Hawaii, the Building Industry Association, and government agencies who manage contracts. Feedback was requested to be submitted by June 16, 2023. As of June 5, 2023, the SPO received a handful of responses, most of which questioned or did not understand what this request for feedback was about.

Chair Maruyama asked who was on the Past Performance Working Group and if the Board will be able to review the feedback received. Ms. Kahakui responded that the Working Group consisted of stakeholders, including those representing contractors and state/county agencies, and that the SPO intends to present to the Board at the July 11, 2023, meeting the feedback, concerns, and questions received.

Mr. Inouye asked that the SPO provide the Board a distribution list. Ms. Kahakui said the SPO can do so, noting that the distribution list is very large, includes old contact information, and resulted in a number of undeliverable emails to Past Performance Task Force members.

V. Proposed Amendments to Hawaii Administrative Rules (HAR) Section 3-122 – Source Selection and Contract Formation

The SPO staff presented answers to Board members' questions.

- There are several subchapters in HAR 3-122 that need to be revised.
- After voting to approve any of the interim rules, the Board can go back to modify those rules.
- The interim rules are still subject to public hearing.

Chair Maruyama proposed that the Board vote to approve each section as they are being presented.

Mr. Inouye asked about the process for rule changes. Ms. Kahakui explained that the SPO reviewed and revised/updated the rules for HAR Chapter 3-122 and now seeks Board approval on the proposed amendments as interim rules. The SPO will refine and revise the HAR during the interim period, then hold a public hearing on the rules. While the HAR Chapter 3-122 rules are not tied into Past Performance, the SPO's goal is to have the proposed Past Performance rules follow the same process.

i. Subchapter 2 – General Provisions

SPO Staff Carey Ann Sasaki summarized the proposed amendments to HAR Subchapter 2, General Provisions.

- In §3-122-3, Extension of time on contracts, Subsection (4)(b) is amended by adding “and provided the prices are fair and reasonable.” If a contract extension with the contractor cannot be done, this would allow alternative procurement with another party, conditioned that it will be up to 180 calendar days and that prices are fair and reasonable.

This implements a best practice; a reminder that agencies are required to conduct the analyses for sole source and for request for proposals \$100K and more. This also ensures that any extension of contracts are made with the condition that prices are fair and reasonable.

- In §3-122-9, references to antiquated language were updated to reflect the use of electronic communication and submission, as well as for clarify and consistency. For clarity, “contract documents” were added as documents transmitted by vendors via electronic communication. “Invitation for bids or request for proposals” is replaced with “solicitation” to include all methods of procurement.
- In §3-122-9 (d), “the complete original offer, with” is removed because this should not be mandated if electronically submitted offers with electronic signatures are accepted.
- In §3-122-9.01, Disclosure of information, subsection (a)(1) is amended to address 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 can only be made available after a purchase order or purchasing card order is completed. This amendment was made to allow agencies to disclose information sooner rather than later.
- The non-substantive amendment of §3-122-9.01 (b) is for grammar, clarity, consistency, and style. “Name of members of an evaluation committee” was changed to “names of evaluation committee members”. This amendment reads as “A purchasing agency shall not disclose the

names of the evaluation committee members established by section 3-122-45.01 prior to the posting of the award pursuant to section 3-122-57(a) for multi-step bids and competitive sealed proposals.”

Comments on the proposed changes to §3-122-9 (d) were offered.

Mr. Inouye stated that he is not comfortable with the language in §3-122-9 (d), which reads “If the offeror fails to comply with this requirement, the procurement officer has the option to reject the [~~facsimile or~~] electronically submitted offer.” The phrase “has the option to” can be subject to protest and should be changed to “shall.” He clarified that if an offeror fails to comply with the requirement in the submittal of the original bid bond within five working days, the offer should automatically be rejected.

Mr. Heltzel stated that he is comfortable with this change as applicable to the original bid bond. He suggested keeping the word “shall” and revising the receipt timeline of the original bid bonds from five working days to 10 working days.

Paula Youngling of the City & County of Honolulu expressed her support of the intent to allow electronic submission, however she is worried about mixing the time the electronic offer is submitted and removing room for discretion in the submission of the original bid bond. Eric Nishimoto of DAGS Public Works Division commented that keeping the word “shall” provides some options for government agencies.

Ms. Kahakui referenced HRS §103D-323, Bid security, which states that “(a) Unless the policy board determines otherwise by rules, bid security shall be required only for construction contracts to be awarded pursuant to sections 103D-302 and 103D-303 and when the price of the contract is estimated by the procurement officer to exceed \$25,000 or, if the contract is for goods or services, the purchasing agency secures the approval of the chief procurement officer.”

Donn Tsuruda-Kashiwabara of the SPO referenced that the rules pertaining to bid security are in HAR 3-122-223 and clarified that the proposed rule change is to allow for electronically submitted offers. She added that the purpose of the bid security is to guaranty that the offeror is serious about its bid submittal.

Deputy AG Stella Kam questioned the language “within five working days from the notification of intent to award,” which occurs after the high scorer is determined. She also pointed out that the HAR states “Unless otherwise specified in the solicitation,” so if the solicitation is not clear, the contractor needs to get the original bid bond within five/10 working days from the notification of intent to award.

Kevin Takaesu of the SPO said the proposed rules require the original bid bond after electronic submittal of the offer. Chris Butt of the Department of Education stated that insurance/assurity companies said that they feel a photocopy is sufficient. Jolie Yee of DAGS Public Works Division said the reason for the original assurity bid bond is that it would be used as a claim in the event a winning offeror ends up turning down the award. If the electronic version of the bid bond is enforceable, then the original version may not be needed. Mr. Regan said that since a contractor would be debarred if it submits a fraudulent electronic copy of a bid bond, and that electronic bid bonds are acceptable. He said that the HARs should be revised to allow electronic bid bonds. Ms. Youngling, Mr. Nishimoto, and Mr. Butt agree to allow the submission of an electronic version of a bid bond.

Ms. Nakagawa asked that Ms. Kam and the SPO do more research on HAR §3-122-9 (d) on the necessity of an original bid bond and whether an electronic bid bond would suffice.

Chair Maruyama proposed to defer the presentation/explanation of HAR Subchapters 3, 4, and 4.5 to another meeting date, and at that meeting, the Board will revisit those sections that are awaiting clarification or answers. The SPO will also provide a matrix that lists the changes and the reason for the changes. There were no objections to defer HAR Subchapters 3, 4, and 4.5.

- ii. Subchapter 3 – Specifications
This item was deferred.
- iii. Subchapter 4 – Methods of Source Selection and General Guidance
This item was deferred.
- iv. Subchapter 4.5 – Source Selection for Federal Grant
This item was deferred.

VI. Announcements

The next Procurement Policy Board meeting will be held on Tuesday, July 11, 2023, at 1:30 p.m. The meeting will be hybrid on Zoom and in person at the physical location of Room 410 at 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. Diane Nakagawa seconded the motion. There were no objections. At 3:17 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 3:27 p.m.

Chair Maruyama reported that the Board discussed recruitment for the position of Administrator of the SPO.

VIII. Adjournment

Since there was no new business, Mr. Inouye moved to adjourn the meeting; Mr. Heltzel seconded the motion. There were no objections. The meeting adjourned at 3:28 p.m.

Respectfully submitted,



Diane Nakagawa
Secretary, Procurement Policy Board