

Special Committee on the State of Hawaii Procurement (SCP)

Tuesday, August 12, 2021 1:00 PM

State Procurement Office and the Department of Education (DOE). State Procurement Officer Bonnie Kahakui. Interim State Superintendent Keith Hayashi; Deputy Superintendent Phyllis Unebasami; Chief Financial Officer and Assistant Superintendent (Office of Fiscal Services or "OFS") Brian Hallett; Assistant Superintendent (Office of Facilitates and Operations or "OFO") Randall Tanaka; Procurement and Contracts Branch Director (OFS) Lois Mow; and Procurement and Distribution Specialist Christian Butt (OFO).

Documents Received

- Spreadsheet of DOE Non-OFO Contracts
- Spreadsheet of DOE OFO Contracts
- Spreadsheet of DOE Bid Protests FY 2021

General Points (OFO)

- OFO is more focused on construction as it is a large part of DOE's procurement budget.
 - Planning and project management is guided by their Project Control Section under their Auxiliary Services Branch (OFO).
 - This section covers DOE construction projects, whereas the Procurement and Contracts Branch (OFS) handles the procurement of goods and services.
- OFO is guided by the State Procurement Code.
 - OFO is also guided by their workflow reviews which consider the project as it moves through the planning, project management, and construction management departments.
 - This is not a cradle to grave approach as each of the three departments have their own specialization.
 - Construction manager/inspector is critical to the project.
 - OFO Projects: Project Control Section within the Auxiliary Services Branch oversees the project at the procurement stage. The Facility Development branch then oversees the construction of the project.
 - DOE will have 700+ projects next year and having one team to carry a project cradle to grave is possible with current staff.

- OFO performs training on an ongoing basis.
 - Christian Butt handles the procurement training, along with their Personnel Development Branch within the Office of Talent Management.
- OFO has a multistep authorization process to approve their procurement.
- OFO also focuses on how to facilitate the procurement process, specifically looking at protests, staffing load, consultants, and change orders.
 - OFO uses the CPT (CIP Project Tracker) system to promote transparency in the procurement process.
 - Two ways that OFO has reduced the number of change orders by utilizing forms of IDIQ contracts. Specifically,
 - Job Ordering Contracting (JOC), where a pre-qualified list of contractors can be immediately sent to the job site; and
 - MATOC (Multiple Award Task Order Contract) for larger projects, which is currently under development.
 - OFO has nearly 700 projects performed using JOC. These master contracts are not constrained by any small purchase procurement methodology. The scope of these jobs are limited to roofing, plumbing, electrical, and fencing, work that does not require permitting or design drawings. The length of JOC contracts is two years. The pre-approved contractors who do not perform are dropped from the list.
 - OFO has been in discussions with the City and County of Honolulu to see how JOC can apply to their projects.
- OFO's issues with their bus contracts stems from a lack of drivers.
 - Due to coronavirus disease 2019 (COVID-19) pandemic, these workers have found other employment. When schools began reopening, some former workers have let their licenses lapse. Currently, the Big Island are down 10 to 12 drivers and has about 16 drivers going through the administrative process, and therefore the DOE has adjusted the routes on the Big Island to temporarily offset the shortage.
 - Federal rules also mandate drivers for SPED. SPED buses require a special conditional driver's license (CDL) and require both a driver and an attendant on board. Again, some of these attendants have let their certifications lapse, which limited the SPED drivers.

- OFO plans to discuss with the Big Island Fire Department or Big Island Mayor to see if their firefighters can help because many firefighters hold CDLs.
- OFO established a COVID-19 protocol for the buses last March with guidance from the CDC and State DOH.
- OFO bus contracts have been extended for one year only. The challenge for the drivers/company is that these buses need to be retired soon.
- OFO will be going out to contract this year to recontract everyone.
- OFO has someone looking at closing out completed projects. DOE states that the contractors have an incentive for these contracts to close as well so that their bond money is released.
- OFO rarely sees projects with additional cost overruns but has seen overruns on time.
 - One instance of a delayed project's closing occurs where the subcontractor, and therefore, the general contractor has not certified their work. The general contractor is placed on a "B" list of contractors considered for future work until the issue is resolved.
 - OFO is trying to incentivize the contractor to complete their work in a timely manner.
- Last year OFO bid out \$498M in projects, however there is the challenge of whether the DOE has received the full value of the contracts, given the increased costs of construction resulting from the COVID-19 pandemic.
- OFS handles the procurement for behavioral services.
- OFO does not have many change orders that expand the scope of the project as they are architectural issues that should be addressed in the initial stages of the procurement (planning).
 - OFO limits its scope change as much as possible as architectural changes are significant to the look and cost of the project.
 - Going forward scope changes need to be reviewed and approved by the procurement officer.
 - Scoping falls into project management because there is a consultant selection process to flesh out the scope.
 - OFO will have a stronger accountability path for consultants.

- OFO appreciates the flexibility of a broad description in the budget line item, but also appreciates closer specificity in a project description as it directs the reasonableness of a change order.
 - OFO considers whether acceptance of a change order would pass an audit of the project.
- DOE's powerpoint contains suggested recommendations.
- OFO received 19 protests last year. There is no pattern in the basis of the protest, but there is an increase of a legal approach to protests (i.e. all issues possible are raised, technical wins).
- OFO has a bucket of project completion funds to draw from when a project runs out of money.
- OFO construction manager oversees the contractor, not necessarily the contractor's employees.

General Points (OFS)

- OFS has ten people on staff. This office covers budget, accounting, payroll, vendor payment, leave management, child nutrition, and other support service procurement.
- Vacancies and staff retention have been long-standing issues.
- Delegated positions within the schools are given procurement authority for things like small purchases, use of price and vendor lists, and HRS/HAR-exempt purchases. The school then comes to the Procurement and Contracts Branch to execute the contract.
 - Those with procurement authority are required to take procurement training, which includes reading DOE guidelines and completion of DOE procurement modules.
 - The principals/procurement officers may get guidance from their school administrative services assistants (SASAs) and complex area business managers (CABMs).
 - OFS also encourages these individuals to contact them with any questions, especially for any procurement over \$25K.
 - OFS sends out email notifications of law changes and have supervisor follow up. DOE procurement guidelines are reviewed yearly and updated as necessary.
 - OFS tracks the required training of their procurement officers.

- The schools send their contracts to the Education Division within the Legal Services Division of the Department of Attorney General to review.
- OFS has only had two protests over the past two years.
- SPED funds move fluidly between payroll and non-payroll and focus on providing services aligned with their individualized education program (IEP) requirements.
 - Specifically, what is DOE doing with the unused monies from the \$40M earmarked for Health and Human Services on page 2 in Attachment A: Spreadsheet of DOE Non-OFO Contracts.
 - These amounts are spending limits and are not monies held in reserve.
 - Prior contracts stated that funding was on an as-needed basis, but under the advice of the Attorney General, they inserted a dollar amount.
 - These limits were determined with their program partners/schools.
- OFS encourages their procurement officers to undergo retraining every three years.
- OFS also has issues with vacancies and staff retention due to various reasons.
 - They currently have three ongoing vacancies.

Information/Action Requested

- OFO:
 - Updated spreadsheet of Attachment B: DOE OFO Contracts with a complete column for Project Time Period (start and end date), Number of Change Orders, and Number of Extensions
 - Standard for JOC programs nationwide, including the criteria for or descriptions of the scopes of work best used for these types of IDIQ contracts
 - Updated spreadsheets listing the schools for which the projects are for
 - Table of all staff with procurement authority and their certifications
- OFS:
 - Additional information from its program partners listed from Items 38 to 50 on page 2 in its Spreadsheet of DOE Non-OFO Contracts regarding what part, if any

of the \$40M set aside for the Health and Human Services are sitting unencumbered.

- Updated information from the Office of Information and Technology Services regarding the progress of the Hawaiian Telcom project to provide e-rate eligible network to DOE and the Hawaii State Public Library System (Page 8 in its Spreadsheet of DOE Non-OFO Contracts), specifically the description of the scope of work.

Remaining Questions

- What has been OFO's experience with projects with time/cost overruns and how do they close out these projects?
 - Also, who pays for the additional costs?
 - What are their suggestions on reducing cost-overruns and improving the timeliness of contracting while upholding procurement standards?
- What criteria or standards other than reasonableness does OFO use to approve change orders, whether material or otherwise?
- Can OFO look at clawback provisions in their contracts for consultants?