

## **Special Committee on the State of Hawaii Procurement (SCP)**

Tuesday, October 12, 2021 1:00 PM

**State Procurement Office (SPO).** State Procurement Officer Bonnie Kahakui; SPO Chief Policy and Compliance Officer Kevin Takaesu; and Purchasing Supervisor Donna Tsuruda-Kashiwabara.

### **General Points**

- SPO revised its Form 043, which departments, including UH and DOE, are required to complete and submit to the SPO when they resolve a protest, to include more details. The revised form will be circulated in the week of October 12, 2021. These amendments require the departments to report:
  - The detailed reason for the protest;
  - How long it takes for the protest to be resolved;
  - Whether the protest was resolved at the department level, administrative hearings office, or court;
  - Whether the protest was resolved in favor of the department or the protestor;
  - The procurement officer of the project; and
  - Whether there was an attorney involved in the protest.
- SPO plans to review all the Forms 043 it receives every quarter to identify any trends.
- To decrease protests, SPO suggests amending 103D-302(b), HRS, to require listing only the subcontractor's name and not the proposed scope of work to be performed.
  - SPO also recommends considering legislation regarding Hawaii products preference programs and apprenticeship programs (in SL and HAR) as they were other potential protest areas. They note that past testimony on these measures stated that these programs did not provide benefits to the public nor the State, and that a previous survey on Hawaii products preference yielded low turnout/participation.
- SPO says that most departments often think that IFB is the only method of procurement, but departments must carefully consider which method of procurement they use according to the project's needs. As RFPs are now used more often, departments need to take care in how they phrase their specs.

- There will always be a chance of change orders. SPO agreed to take a closer look at the instructions on documentation, process, and procurement oversight of change orders under the Federal Acquisition Regulations (FAR).
  - SPO also agreed to further research to determine:
    - What the standard for a material change in a change order is;
    - How to strengthen the role of State Procurement Administrators to avoid ethical violations; and
    - Whether agencies should give notice to SPO regarding changes to the scope of emergency procurement projects.
- SPO is also open to looking at the terminology other states use to identify/categorize their contract modifications/change orders.
- SPO noted that the law designating the procurement officers for each department may be amended by statute and stated that they could strengthen the roles and responsibilities of the procurement administrator to take corrective action over the procurement officers that violate the State Procurement Code.
- Past performance database (Act 188 (2021)) may include midterm evaluations for vendors whose contracts may be extended.
- SPO proposed that if a department fails to get a minimum of three qualified persons for a professional service contract (mainly used for design services), the department may apply to the SPO to get permission to use an alternative procurement method.
  - There was concern as professional services includes construction management, but SPO stated that the statutory language may be drafted to address this issue.
- SPO addressed their concerns regarding the broad language to increase the scope of emergency procurement may lead to abuse (e.g. buildings have been built).
  - SPO had allowed emergency small purchase procurements, but in 2010, SPO policy compliance specialists reviewed various awards by DOT-H and noticed a trend of small purchases that were identified as emergency procurement when there was no emergency. Although no formal study was done, the department's procurement ability was temporarily revoked.
  - Emergency procurement is reviewed on a case by case basis. For example, putting up fencing or barriers to prevent immediate rockfall would fall under emergency procurement, but buttressing a hillside to prevent rockfall would not.

- SPO considers factors such as when the department knew about the cause for emergency procurement, how long has the need for procurement existed, and what was done to mitigate any issues.
- SPO was asked whether it had the technical expertise to accurately classify an emergency in certain situations.
  - SPO confirmed that before it makes its determination, it discusses with departments and asks what the departments need to do when addressing such a problem, what steps have been taken, whether it should be addressed in an alternative manner, etc. It also reaches out to the Division of Public Works and other relevant experts prior to its determinations.
- SPO notes that it usually receives notice of an emergency procurement after the fact and responds with its determination within 24 hours of the notice.
- SPO says that their training states that lack of management oversight and expiring funds are not emergencies to use emergency procurement.
- SPO noted that construction is not exempted from the Procurement Code and proposed that it be allowed to exempt construction in certain cases where the Board (which currently only has two members) determines to be practicable or advantageous to the State.
- SPO noted that it is/will continue to train departments to use IDIQ contracts.
- SPO confirmed that the \$5,000,000 needed to implement a full-service e-procurement system is not self-sustaining and would come from state funds. Alternatively, it is looking into collecting funds from an e-marketplace to create procurement automation system, which will cover mostly goods, some services, but no construction projects.
- SPO noted that the compliance audit unit within Office of Auditor, which is charged to periodically review projects for procurement compliance, has not been used to review over the past few years.
- SPO clarified that it only audits departments, not vendors or contractors.
  - SPO notes that the Past Performance Database and RFP method of procurement can help departments determine the responsiveness and responsibility of a vendor/contractor.