

Special Committee on the State of Hawaii Procurement (SCP)

Wednesday, August 4, 2021, 2:00 PM

State Procurement Office (SPO), Department of Accounting and General Resources (DAGS), and Public Works Division (PWD). Interim State Procurement Officer Bonnie Kahakui, SPO Chief Policy and Compliance Officer Kevin Takaesu, State Comptroller Curt Otaguro, Deputy Comptroller Audrey Hidano, Public Works Administrator Christine Kinimaka, Staff Services Office Program Manager Gordon Wood, Technical Services Office Branch Chief Randal Hiraki, Planning Branch Chief Joseph Earing, Project Management Branch Chief Eric Nishimoto, Construction Management Branch Chief Gordon Chen, and Leasing Services Branch Chief Thomas Backman.

Summary Comments

DAGS was present to brief the SCP on their procurement and bid protest procedures, the challenges that they face, and suggested recommendations to address their challenges. DAGS began with a presentation by the SPO of an overview on how procurement authority is delegated in the State. DAGS concluded with a presentation by the PWD on their procurement practices.

General Points (DAGS)

SPO's presentation includes a breakdown of the different types of procurement officers within DAGS and the training offered/taken. SPO also detailed certain procurement policies that all executive departments and agencies must follow. SPO concluded their portion of the presentation by recommending the formation of a centralized procurement unit within each department and a procurement certification program to resolve issues due to a lack of qualified resources, retention of qualified employees, and recruitment of new employees.

Upon questioning by the members, SPO confirmed that:

- There is currently not enough employees who have been given procurement authority to form a centralized procurement unit within each department as most employees who have been delegated procurement authority have other primary responsibilities and are not dedicated to procurement.
- Although they do offer online training on procurement, other states have more rigorous certification standards and recertification requirements.

SPO agreed to report back to the SCP with a comparison of the procurement certification programs of other states. The Comptroller also stated that incorporating the practice of evaluating the performance of their procurement officers into their processes would also be helpful.

General Points (PWD)

PWD's presentation began with an outline of the hierarchy and staffing of their division, emphasizing their vacancies and potential vacancy rate for the EOY 2021. PWD confirmed that there is a hardship to hire licensed engineers to fill their positions.

Upon questioning, PWD: confirmed that:

- Licensed Engineers: 30 out of 37 authorized licensed engineer positions are filled within their department. These licensed engineers are like project managers that oversee PWD projects cradle to grave. Licensed engineers are needed for these positions as they are more capable and trained to manage the large CIP projects that PWD directs, especially with the current workload of the Division and the difficulty of providing hands-on training.
- Procured Consultants: Consultants do not manage the project but provide technical expertise needed as PWD staff is unable to do so. Construction management consultants are hired for a specific phase of a specialized project that may need more oversight (e.g., a hospital or corrections facility).
 - Construction management engineers (16% vacancy) check the jobs in the field as they are in progress with project management engineers to assist as necessary, depending on the level of staffing and complexity of the job.
- All engineers and architects hired must fulfill the basic DHRD licensing requirements for a project manager/coordinator position, while consultants have more regulatory/industry experience requirements, depending on the nature of the job.
 - Amending the existing licensure requirement of the project manager/coordinator may be a solution to fill vacancies.
- The construction management branch covers the technical design of a project while the project management branch oversees the execution of the project. In the past, PWD did in-house design branch that specialized in small DOE projects (e.g., installing a sidewalk).
 - Requiring the same licensed engineer who designed a project to oversee the construction of the project was a suggested option.
 - PWD later confirmed that the same team handles a project cradle to grave.
 - PWD stated that although other agencies such as the HPHA and DOT-A also do cradle to grave projects, the scope between those and PWD projects differ.

PWD explained that they uniquely procure for a wide range of projects on behalf of other state agencies, including CIP projects, and the scope of their projects vary widely in type and

complexity, especially with their new PPP ventures. PWD confirmed that although they provide some training for their architects and engineers on their CIP projects under [Act 241 \(SLH 2016\)](#), there's no procurement certification metrics/process within DAGS or the State.

Upon questioning, PWD confirmed that each department is responsible for the mandatory annual training under [Act 241 \(SLH 2016\)](#).

PWD then detailed the general project delivery sequence and timeline of their projects, based on the value of the project. PWD pointed out that there are also delays in other portions of the project (planning and design, including permitting), depending on the complexity of the project inter alia.

Upon questioning, PWD confirmed that each department has their own matrix to estimate the timelines of their own projects, which may differ based on their own internal and related federal guidelines.

- There is no entity that oversees nor ensures the standardization of these internal matrices.
 - This standardization was recommended to be included in statewide training.

Having an independent procurement specialist core that assists various departments with their projects, as DOT once had, may be helpful.
 - DAGS agreed that at times, performing smaller jobs in-house may reduce time and cost.
 - It was suggested that the standardization of these matrices may also help determine when departments should perform projects in-house.
 - DAGS pointed out that certain district offices may have trouble performing small jobs in-house due to a lack of funding and/or resources.
- The salmon ladder referenced at the end of their presentation also explores other factors that lead to inefficiencies in the procurement process.

PWD's presentation continued, stating that:

- These project delivery processes and flowcharts are covered in their internal procurement trainings.
- They follow the SPO process for receiving and processing protests as do most departments. PWD noted that the protests submitted have increasingly contained or referenced legal precedence and additionally require a Deputy AG to review the

protest, whereas previously review by the contracts engineer may have been sufficient.

PWD also emphasized that the stay that a protest evokes freezes all other action on the project, including bid and proposal evaluation. PWD then gave a breakdown of the basis of protests that they received from FY14 to FY21, along with a chart of statistics on these protests by FY, including the average value of projects and the average days to the resolution of these protests. PWD expressed their concerns with [section 2 of Act 224 \(2021\)](#).

Upon questioning, PWD confirmed that:

- They share information with DOT and DOE regarding their challenges and proposed solutions.
- Delays can stem from the counterprotest that may occur in the protest process.
- Requests for clarification made pre-award are not considered protests.
 - Requests for clarification are allowed up to fourteen days before bid opening.
- There are different levels of remedies available for various errors and omissions in the specs written by consultants.
 - On rare occasion, consultants have been assessed for gross negligence.
 - Although the State does not have this habit, the City has blackballed non-performing contractors.
 - It was noted that enforcement, not new laws, are necessary to decrease the amount of change orders to state projects, anticipated or otherwise. It was also suggested that PWD submit a proposal to SCP on how they will enforce the areas to which a law is not necessary.
- Contract engineers are the initial reviewers of protests received.

With the time remaining:

- PWD quickly highlighted its wide range of clients, including the unprogrammed offices, that they serve, along with the wide scope of responsibilities, including those for post-construction, maintenance, and emergency support.
 - These varied requirements are a challenge for one person to run a project from cradle to grave, instead of a capable team.

- PWD proposed that a solution lies within a value-added focus, where the procurement code does not need to change; instead, there needs to be an improvement of the utilization and understanding of existing strengths of the procurement code.
 - This includes support to fund and fill vacancies and recruitment and retention tools, which will decrease third-party (consultant) reliance and decrease costs to the State. (See Slides 40 to 41 of its PowerPoint.)
- PWD stated the curriculum in the UH College of Engineering is not the same as what it takes to run a project and that the capacity and significant resources it takes to train interns may be eased with a partnership with the private industry.
- PWD stated that their total percent increase in change orders is below the rate of the national average.

Final Remarks

- Sen. Moriwaki will send additional questions expected for response to DAGS and PWD.
- Sen. Kim emphasized a need for accountability and requested that PWD submit a detailed summary of the areas to which a law is not necessary, why the area has not been addressed, and what is needed to facilitate the implementation of necessary policies/practices.
- PWD stated that they do not say how much money they dedicate to a project, but most contractors figure out the cost of a project by looking at the appropriations bill.