



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

August 11, 2021

MEMORANDUM

TO: David Lassner, President
University of Hawaii

FROM: Senator Sharon Y. Moriwaki, Chair
Senate Special Committee on Procurement (SCP)

SUBJECT: Senate Special Accountability Committee on Procurement Informational Briefing Follow-Up Questions

Thank you for your presentation at the August 11 Senate Special Committee's informational briefing on your department's procurement and contracting policies and procedures. A number of questions and requests for further information arose from the briefing. Below are requests for further information.

We ask that you submit responses by **COB on October 4th** to Committee Clerk Kaley Vatalaro at k.vatalaro@capitol.hawaii.gov.

Thank you for your attention to this matter.

Attachment.

cc: Senator Donovan M. Dela Cruz
Senator Michelle N. Kidani
Senator Donna Mercado Kim
Senator Kurt Fevella
Jan Gouveia
Bonnie Kahakui

2021 SCP Informational Briefing Follow-Up Questions

Requested documents:

1. Please provide us with position descriptions of your project manager and construction manager description and where these positions belong in their respective organizational chart.
2. Please provide a flowchart of the UH procurement process starting from the advertisement of the IFB/RFP, including the average number of days for the process.
3. Please provide an organizational chart on the management of contracts.
4. Please provide a description for the original scope of work for the PBS building/Sinclair Library project.
5. Please provide copies of the 38 change orders on the PBS building/Sinclair Library project and the 33 change orders for the floor renovation of Sinclair Library.

List of Questions:

1. Do UH contracts go through a legal review, particularly for large change orders?
2. Because Jan's staff only handles goods, services, and construction over \$25,000 and the smaller amounts are handled by the respective schools/programs—do these people have procurement delegation and training?
3. Can you determine a common theme for protests (i.e., subcontractors listing, licenses, etc.)?
4. Does UH monitor the performances of their contractors and if so, what criteria do they use or recommend be used?
5. Does UH have detailed information on its change orders, such as how many change orders they have per project and the costs of the change order?
6. How many licensed engineers and project managers does UH have outside of the procurement team?
7. What analysis does UH perform to determine whether to accept or request change order, especially those that amend or add to the scope of the project?

Questions Relating to HAR

HAR §3-122-8 Purchase of items separately from construction contract.

The chief procurement officer or the head of a purchasing agency is authorized to determine whether a good item or group of good items shall be included as part of, or procured separately from, any contract for, construction.

1. The Hawaii Administrative Rules gives the head of a purchasing agency the authority to determine whether a good item or group of good items shall be included as part of, or procured separately from, any contract for, construction.

Question: What is the UH process in bringing this up to the head of the purchasing agency?

Question: When this occurs how does the UH document this provision? Please provide a sample of the documentation.

§3-125-11 Differing site conditions for construction contracts.

Paragraph (1) or similar statements expressing the same intent, shall be included in all construction contracts in which the procurement officer determines that the contractor should not accept the risk of differing site conditions. Where the procurement officer determines that a contractor must accept the risk of differing site conditions, the clause in paragraph (2), or similar statement expressing the intent of the clause, shall be included.

- “Differing site conditions – price adjustments.
 - Notification. The contractor shall promptly, and before such conditions are disturbed, notify the procurement officer of:
 - Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or
 - Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
 - Adjustments of price or time for performance. After receipt of the notice, the procurement officer shall promptly investigate the site, and if it is found that the conditions do materially so differ and cause an increase in the contractor’s cost of, or the time required for, performance of any part of the work under this

contract, whether or not changed as a result of the conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

- Timeliness of claim. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause: provided, however, that the time prescribed therefore may be extended by the procurement officer in writing.
- No claim after final payment. No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.
- Knowledge. Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids.”
- “Differing site conditions – contractor’s responsibility. The contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor’s own cost and expense, anything in this contract to the contrary notwithstanding.”

Question: Is the UH procurement officer or head of the purchasing agency involved in reviewing all change order requests? What is the process?

Question: As required in the above section, when presented with a change order does the UH procurement officer or head of the purchasing agency investigate the site? How is this documented?

Question: does the UH procurement officer or head of the purchasing agency sign off on change orders? How is this documented? Please provide a sample.