
From: Rogers, Leslie (FTA)
To: Marler, Renee (FTA)
Sent: 5/6/2010 7:36:20 AM
Subject: FW: Honolulu may have violated law in awarding of design contracts

FYI

-----Original Message-----

From: Sukys, Raymond (FTA)
Sent: Thursday, May 06, 2010 5:51 AM
To: Rogers, Leslie (FTA)
Subject: Honolulu may have violated law in awarding of design contracts

Honolulu may have violated law in awarding of design contracts
PDF PDF: Complaint filed by attorney John McLaren

By Sean Hao
Advertiser Staff Writer

The state is looking into allegations that the city may have violated procurement law when it awarded dozens of professional design services contracts, including three related to rail.

The complaint of suspected city procurement violations was filed about two weeks ago with the state attorney general's office and the U.S. attorney's office by a local attorney, John McLaren, on behalf of former Gov. Ben Cayetano and other, unidentified, people.

The complaint has been forwarded to the state Procurement Office. It alleges that the city failed to negotiate with the first ranked respondent to numerous bid solicitations. The city also inappropriately waived requirements that awards be made from a list containing three competitors, according to the complaint.

Among the issues alleged in the complaint is whether the city mistakenly relied on an invalid rule when it waived a three bidder requirement in awarding contracts, including rail contracts with InfraConsult LLC, to provide project management oversight and with Parsons Brinckerhoff, to conduct engineering and environmental studies.

If waiving the three bidder requirement is determined to be invalid, then other city and state agencies also may have erroneously awarded contracts for more than 10 years. However, the complaint focuses only on potential procurement violations by the City and County of Honolulu.

Cayetano, who has criticized Honolulu Mayor Mufi Hannemann's handling of the rail project, said he's concerned about city procurement procedures in general and rail contract awards in particular. Cayetano declined to name the others who joined him in filing the complaint.

"We've been looking at the rail contracts and the way the city does business," said Cayetano. "The process is being abused. There's a reason the law says there should be a minimum of three (bidders). That procurement law as amended (is) to provide for greater transparency, greater objectivity."

State Procurement Office Administrator Aaron Fujioka confirmed his office was looking into the issues raised by the complaint, but declined to comment on the details of the complaint.

"An issue was recently brought to the State Procurement Office's attention and is currently under review," he wrote in an e-mail to The Advertiser.

City Budget Director and Chief Procurement Officer Rix Maurer III wasn't available for comment on Tuesday and yesterday.
copy to kobayashi

According to a copy of the complaint sent by McLaren to City Councilwoman Ann Kobayashi on April 26, the city failed to negotiate a contract with the top-ranked bidder in 72 cases over

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several years.

The complaint also alleges the city inappropriately awarded 13 contracts in cases where there were fewer than three competitors for each deal.

Three of those contracts involved the city's planned \$5.3 billion East Kapolei-to-Ala Moana rail project.

McLaren said he spent several weeks examining legislative, legal and procurement records to identify suspect cases.

However, he said, the number of suspect cases cited in the complaints is based on contract information available on the Internet.

Materials in contract folders on each deal could yield different results, he said.

One allegation in McLaren's complaints claims that Honolulu city officials waived the minimum three bidder requirement by relying on an administrative rule that has no basis in law.

The rule was adopted in December 1995, which was about six months after the Legislature eliminated a procurement law provision allowing for procurement processes to proceed even if fewer than three submissions are received, McLaren said.

In 1997 the Legislature established a minimum requirement of three bids within the state procurement code, which also applies to counties, McLaren said.

"The law appears to be not administered in the way that was intended by the Legislature," he said. "I don't think anyone was deliberately not paying attention to this; it's just one of those things that sort of crept up. It goes way back."

3 contracts cited

The complaint McLaren sent to Kobayashi cites three rail contracts that were awarded, even though there were fewer than three competing bidders. Those deals include a \$10 million 2005 contract with New York-transportation engineering firm Parsons Brinckerhoff. That was followed by an \$86 million 2007 deal with the same company. There were only two competing bids for each contract.

Similarly, InfraConsult LLC — a company formed by three former Parsons Brinckerhoff employees — received a \$36.7 million 2009 contract from the city. InfraConsult, which provided similar services under a \$11.5 million 2006 contract, was the only firm that bid on the 2009 contract.

All three rail contracts were investigated in 2009 by then city auditor Les Tanaka. His audit found that the contracts complied with procurement law.

However, the audit also highlighted concerns about why there weren't more competing bids for transit contracts.

The audit said that two unidentified contractors were reluctant to bid on projects because of the city's relationship with Parsons Brinckerhoff.

"Perceptions of contractor favoritism persist among the public and for some within the engineering industry, due to the award of two contracts to PB Americas, a firm that has been awarded city projects for several decades," the audit said. "This perception was further reinforced by the project management support consultant award to former PB Americas employees who comprise InfraConsult."

In response to the audit, city officials said that the city complied with all applicable laws when soliciting bidders for the three contracts.

Even if the rule under which waivers were provided proves invalid, it's unlikely those rail contracts would be cancelled or put out to bid again, Cayetano said.

"I don't know if the contracts could be invalidated because it's already been let out and work has been done on it," he said.

Kobayashi said she plans to introduce a resolution calling for a probe of the allegations in the letter by the state attorney general and possibly the U.S. district attorney.

"That's a lot of possible violations," she said. "I just feel as a City Council we have to do something about this.

"It's not a rail thing; it's a procurement thing."

Reach Sean Hao at shao@honoluluadvertiser.com.

Here is a copy of the complaint:

<http://www.honoluluadvertiser.com/assets/pdf/M115715855.PDF>