

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

September 20, 2006

No. 1 Capitol District Building 250 South Hotel Street – Conference Room 410

I. **CALL TO ORDER:** Vice Chair Pang called the meeting to order at 10:37 a.m., with a quorum present.

MEMBERS PRESENT:

- Sharon L. Pang
- Michael Yee
- Dorvin Leis
- Donald Dymond
- Charles Au
- George Handgis

ABSENT MEMBERS:

- Lynne Woods
- Richard Schnitzler

STAFF:

<u>DBEDT</u>	<u>Office of the Attorney General</u>
Dori Palcovich	Margaret Ahn
Leslie Kawamoto	

GUESTS:

Charles Morita, President, Taximeter Radios & Services, LLC
John Ryan, Administrator, Quality Assurance Division, Department of Agriculture (DOA)
Dale Evans, CEO, Charley's Taxi
Darci Evans, Vice President, Charley's Taxi
Karen Hong, Account Executive, Finance Insurance, Ltd.
Norman Nagamine, President, Nagamine Okawa Engineers, Inc.
Alan Matsunami, Program Specialist, Med-QUEST Division, Department of Human Services (DHS)
June Nakamura, President, Engineering Solutions
Dennis A. Kamimura, Licensing Administrator, Department of Motor Vehicles, City and County of Honolulu
Ron Boyer, Policy Analyst, Governor's Office
Janice Marsters, Principal, Masa Fujioka & Associates

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the August 23, 2006 Board meeting were approved as amended.

III. **PUBLIC TESTIMONY:** Public testimony is included with each agenda topic discussed.

IV. **OLD BUSINESS**

Re-review and discussion of August 14, 2006 facsimile transmittal from Mr. Charles Morita and January 30, 2006 letter to Mr. Charles Morita from Duane K. Okamoto, Deputy to the Chairman at the Department of Agriculture regarding the Measurement Standards (MS) Branch – Mr. John Ryan, Administrator at the Quality Assurance Division of DOA, Mr. Dennis Kamimura, Licensing Administrator at the Department of Motor Vehicle for the City and County of Honolulu, and Ms. Dale Evans, CEO and Ms. Darci Evans, Vice President, both from Charley's Taxi, discussed the issues brought forth from the August Board meeting. These include establishing rules and procedures for inspections and standards for taximeters, as well as procedures for DOA to utilize their own seal to prevent tampering and rigging of taximeters.

Mr. Ryan confirmed that, in the past, there has not been good communication between DOA and the taxi industry nor was there a formal procedure for inspecting taximeters. Although he believes the lines of communication are better than they were and that procedures are now in place, there simply isn't enough staff to cover all the areas that need assistance. Because a broad-based marketing effort has not been established to publicize the new procedures, Ms. Dale Evans suggested that a public hearing be scheduled to educate the industry. While it was noted that this type of format would not require a public hearing venue, Mr. Ryan indicated that DOA will most likely post the procedures on the agency's

website. Mr. Kamimura mentioned that there are five major taxi dispatch companies in Hawaii and 1,400 private independent taxi companies. Vice Chair Pang suggested that perhaps a “task force” be established to effectively communicate to those companies. Overall, much discussion ensued regarding these issues with no final agreed upon recommendations except that the rules should be re-reviewed and reassessed and that the industry should be effectively and regularly informed about any new procedures.

V. NEW BUSINESS

- A. Review and discussion of HAR Chapter 17-1737, “Scope and Contents of the Fee for Service Medical Assistance Program” (DHS) – Mr. Alan Matsunami, Program Specialist at the Med-QUEST Division of DHS explained that the State’s Supplemental Appropriations Act of 2006 appropriated funds for adult dental care, which is reflective in the proposed new section of the rules, by expanding the dental benefits for individuals twenty-one years of age and older. While in the past, this age group was only eligible to receive “emergency” dental services, they will now be eligible to receive preventative and restorative dental services, limited to certain services and capped at a maximum benefit of \$500 a year per individual. These individuals will also be eligible for coverage of one set of removable full or partial dentures, also limited to certain services, and capped at a maximum benefit of \$500 a year per individual. As these rules are anticipated to have a positive impact on both dental providers and the recipients, Mr. Leis recommended that the rules proceed to public hearing; the Board members unanimously agreed. Mr. Matsunami further explained that notices will be submitted to every eligible household.
- B. Review and discussion of September 6, 2006 letter regarding State of Hawaii General Terms & Conditions / Defense and Indemnity Clause from Karen Hong, Account Executive, Finance Insurance, Ltd. – Ms. Karen Hong, Account Executive at Finance Insurance, Ltd., Ms. June Nakamura, President of Engineering Solutions, Ms. Janice Marsters, Principal of Masa Fujioka & Associates, and Mr. Norman Nagamine, President of Nagamine Okawa Engineers, Inc., discussed the State of Hawaii’s general terms and conditions regarding the “defense and indemnity clause.” Specifically, they have asked that this Board determine if the Department of Transportation’s (DOT’s) procedures, discussed below, have a negative impact on small business and, if so, to provide an impact review.

Ms. Hong explained that the requirement to defend the State is not tied to a contractor’s negligence nor is it a requirement in the City & County of Honolulu’s or the federal government’s contracts. In the past, contractors did not feel threatened by this clause because it was rarely applied except where the contractor was clearly negligent. However, this has recently been changed as the State’s Attorney General has proclaimed that this provision will be emphatically enforced; so contractors are now asked to pay for the cost of the State’s defense based on this contractual obligation. Because architects and engineers are considered “contractors” under the State’s terms & conditions, the cost of another party’s defense comes out of their own pockets because it is not covered by insurance. Although there is coverage for their own defense as well as for losses incurred due to their own negligence, error or omission, insurance companies, insurance in general, will defend the party insured and pay for the losses of others due to their negligence. While most parties look to their own insurance for their defense, the State is contractually shifting this responsibility and cost to the firms that want to do business with them.

It was pointed out that the cost to defend the State can be very expensive and could potentially bankrupt a small business. Although the industry has lobbied the legislature for the last few years to have this specific clause removed from government contracts, it did not pass. However, the Attorney General has acknowledged that it will be up to each agency to determine whether to use the amended language or not. The Attorney General’s Office has subsequently submitted a memorandum to each agency and County reflecting this, and as a result, many of the agencies, including Department of Accounting and General Services, Department of Education and University of Hawaii have removed this provision “across the board” from their contracts.

DOT, however, has opted to decide which projects will have the revised language without the “defend” requirement and which will have the existing language; DOT published a notice in the

local newspapers (a copy of which was submitted) expressing this. It was noted that since this published notice, only one project of six on DOT's procurement website has the revised language removing the defense provision. The resulting impact of the smaller firms is to decline to take State projects where they will bear the cost of defending the State, but still face the risk of older contracts in which the language still exists. Ultimately, the impact to the State is that only those firms that are either larger or willing to absorb the cost will accept DOT projects, which may eliminate most firms that are qualified but unable to afford the potential risk. Further, the larger firms may be out-of-state and the profits will leave Hawaii, which is particularly worrisome to these impacted firms because DOT receives a substantial amount of funding from the federal government. Upon review, Ms. Pang deferred this issue until next month and requested a copy of the bill that was presented to the legislature last year for the members' review.

- C. Discuss schedule for 2007 board meetings – Vice Chair Pang indicated that the 2007 Board meetings are scheduled for the third Wednesday of each month with two exceptions; November is scheduled for the second Wednesday and December the first Wednesday. As there were no objections, Ms. Palcovich will send a memorandum outlining the 2007 schedule with conference room numbers.

VI. UPDATE AND OUTCOME OF STRATEGIC PLAN

- A. Update on the Small Business "Bill of Rights" brochure – Board members reviewed the proposed "Bill of Rights" brochure with the noted changes made by Ms. Ahn, who explained each specific change, noting that the changes were the result of the recommendations made by several agencies when the bill was presented during the past legislative sessions. As the members were pleased and amendable to the changes, Ms. Palcovich will re-submit a second draft of the brochure for the members review and discussion at the next Board meeting.

Update on 2007 budget request – Vice Chair Pang indicated that although the members had requested an increase in the Board's annual budget from \$20,000 to \$60,000 for the next fiscal year, DBEDT will present \$40,000 to the legislature. The \$20,000 increase will cover the expense for a "temporary" assistant for the Board.

Mr. Handgis will be unable to attend the October Board meeting but will be in attendance for November and December.

- VII. REPORT FROM THE CHAIR** – Nothing was reported.

- VIII. REPORT FROM COMMITTEES** – Nothing was presented.

- IX. REPORT AND UPDATE FROM BOARD MEMBERS** – Two Board members are needed from the Island of Kauai; Mr. Dymond indicated that his referral from Kauai is expected to attend the next Board meeting. Vice Chair Pang will also contact a prospect that lives in Kauai, and Mr. Handgis will refer an individual from the Island of Hawaii.

- X. ANNOUNCEMENTS** – Vice Chair Pang welcomed member George Handgis back as he has been away for several months.

- XI. NEXT MEETING** - Wednesday, October 18, 2006, No. 1 Capitol Building, Conference Room 410.

- XII. ADJOURNMENT** – Vice Chair Pang adjourned the meeting at 12:52 p.m.