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HEARINGS OFFICE



OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of)	PCH-96-3
)	
PRC PUBLIC SECTOR, INC.,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND DECISION
)	
vs.)	
)	
COUNTY OF HAWAII,)	
DEPARTMENT OF FINANCE,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

This matter was initiated on the basis of a written request by the Petitioner (dated February 5, 1996) for an administrative hearing to review the solicitation of proposals, their evaluation/selection, and the subsequent award of a contract for an automated police/fire information system pursuant to the Respondent's Request For Proposal No. 1541. The Petitioner's request was forwarded to the Office of Administrative Hearings by a cover letter from the Respondent dated February 7, 1996, and a Notice of Hearing and Pre-Hearing Conference was filed on February 9, 1996.

The pre-hearing conference was held on February 21, 1996 and was attended by Daniel A. Bent, Esq. and Timothy Lui-Kwan, Esq. on behalf of the Petitioner, and by Ted H.S. Hong, Esq. on behalf of the Respondent. The conference was helpful in promoting an exchange of information, as well as clarifying matters of procedure in anticipation of issues to be raised at the hearing. Thereafter, on February 28, 1996 the matter came before the undersigned Hearings Officer at the Department of Commerce and Consumer Affairs, with the Petitioner represented by Mr. Bent and with the Respondent

represented by Mr. Hong. The hearing continued on February 29, 1996, as well as on March 1, 4, 5 and 6, 1996.

At the conclusion of the Petitioner's presentation, as well as at the conclusion of the hearing, the Respondent presented brief motions for a dismissal of the proceedings and/or summary judgment, and after due consideration the motions were denied. At the conclusion of the hearing, both parties agreed to incorporate their final arguments within proposed findings of fact and conclusions of law to be submitted not later than March 22, 1996, and on that date both parties did file such post hearing pleadings.

The Hearings Officer, having considered the evidence and arguments presented during the course of the hearing as well as the parties post hearing pleadings, in light of the entire record in this matter, hereby renders the following findings of fact, conclusions of law and decision. The rather extensive and adversarial proposed findings/conclusions submitted by the parties have been substantially modified so that the actual findings/conclusions set forth below are consistent with the factual and legal proof established during the course of the proceedings.

II. FINDINGS OF FACT

Preparing the Proposal

1. In September of 1994, Hawaii County Mayor Stephen K. Yamashiro assigned Richard Onishi, a computer systems analyst with the Hawaii County Department of Finance, as project coordinator - with assistance from Layne Novak, a computer systems analyst with the Hawaii County Police Department - to initiate and develop a Request For Proposals (RFP) to acquire a highly integrated computer information system for the Hawaii County Police and Fire Departments.

2. Mr. Onishi and Ms. Novak began by reviewing a July 13, 1992 RFP for a "Joint Request for Proposal for the Provision of Automated Law Enforcement, Fire, and Emergency Medical Service Systems" which had been prepared for the Hawaii County Police and Fire Departments, but which had not resulted in the award of any contract. After discussions with both the Mayor and representatives of the Police and Fire Departments, it was decided to use the previous RFP as the core for developing a new RFP, and to schedule events on the basis of a projected selection deadline in mid January of 1995.

3. Mr. Onishi and Ms. Novak also conducted extensive "fact gathering" by interviewing potential users of the system in order to determine

their current needs regarding hardware and software, functionality, integration of applications, technical support, and operational requirements. The subsequent work product - RFP No. 1541 - closely resembled the July 13, 1992 RFP but also included a geographical information system (GIS) component at the request of the Mayor. The GIS component reflected a sophisticated state of the art computerized mapping system which had the capacity to significantly enhance other components of RFP No. 1541 (such as the computer assisted dispatch) for public safety purposes. Nevertheless, it constituted a small part of the overall requirements in RFP No. 1541 and was given a very small point value in the subsequently adopted evaluation methodology.

4. On November 23, 1994 the Respondent caused to be published a "Notice to Proposers" in state and county newspapers which read, in part, as follows:

SEALED PROPOSALS will be received on or before 4:30 p.m., Wednesday, January 25, 1995, in the Office of the Purchasing Division, Department of Finance, County of Hawaii, 25 Aupuni Street, Hilo, Hawaii, for the following:

REQUEST FOR PROPOSAL NO.
1541: PROVIDING AUTOMATED
POLICE/FIRE INFORMATION
SYSTEM FOR HAWAII COUNTY
POLICE AND FIRE DEPARTMENTS,
COUNTY OF HAWAII

Upon application, forms of proposal and specifications may be obtained from the above-named office. Notices were also mailed to a list of businesses (vendors) which had previously done computer related projects with the County of Hawaii or which had requested that they be placed on a mailing list for computer related projects.

5. At or about the same time, the Respondent prepared a two-page Special Advisory for Potential Proposers which provided a brief overview of the purpose for RFP No. 1541, the desired focus of proposals submitted in response to it, and the minimum experience requirements expected of potential proposers. This special advisory was distributed to potential proposers and included information on obtaining a copy of the complete RFP No. 1541, as well as direction on obtaining answers to questions regarding it. The special advisory stated, in part, that:

The County of Hawaii is currently soliciting proposals for a new turnkey, highly integrated computerized Police/Fire Information System. The system is required, but not limited to, providing computer aided dispatch; a geographical information system; Police records management; Fire incident reporting; emergency records management; and administrative, financial, and supplemental information functions.

Proposals are to address all facets of these systems, including hardware, software, communications, conversion, documentation, implementation, maintenance, training, etc. The system is to be comprehensive in nature, supporting 37 functional areas which are to be highly integrated.

6. The Respondent chose to proceed by competitive sealed proposals rather than competitive sealed bids as a result of following its standard practice of purchasing computer systems through that procedure. The Chief Procurement Officer for the County, William Gray, did not make a determination in writing that the use of competitive sealed bids was impractical or disadvantageous, and neither did the Mayor, the Director of Finance, or the Police or Fire Chiefs. Furthermore, none of the language in the Notice to Proposers, the Special Advisory, or RFP No. 1541 itself constituted such a written determination.

7. RFP No. 1541 was a massive document which included the Notice to Proposers and the Special Advisory, as well as major topic headings entitled General Information, Introduction, Proposal Format and Instruction, Mandatory Requirements, Technical/Operational Requirements, Functional Requirements, Support Requirements, Business Requirements, Conversion, and Other Costs. The text consisted of 429 pages and was accompanied by 11 separate appendices and a 12 page section on Special Provisions.

8. The General Information section of RFP No. 1541 included a statement that the Respondent reserved "the right to negotiate with one or more proposers and request best and final offers", as well as a statement that the Director of Finance (then Harry A. Takahashi) would be "the sole judge in the selection of the Proposer whose proposal will best accomplish the needs of the County and [sic] in accordance to the availability of funds."

9. The Introduction section of RFP No. 1541 included a schedule of events which was set out as follows:

<u>Activity</u>	<u>Start Date</u>	<u>End Date</u>
RFP Available	11/23/94	
Vendor's Questions Due		12/07/94
Bidders' Conf/Site Walkthru	12/21/94	
Final Questions Due	01/11/95	
Proposal Submission Deadline	01/25/95	
Evaluation of Proposals/ Demonstrations	01/26/95	02/22/95
Site Visits	02/23/95	03/01/95
Selection of Vendor	03/02/95	03/08/95

and provided that:

The Hawaii County Police Department reserves the right to alter this schedule at any time. Such revisions will be in writing, will constitute an official addendum to the RFP, and will be mailed to vendors that have submitted a notice of intent to respond.

10. The Introduction section of RFP No. 1541 also contained language with respect to "Site Visits" and "Negotiations", and specifically stated that:

The HCPD and HCFD may, at their option, elect to visit and inspect one or more sites where the finalist vendors' [plural] product(s) are installed and operating in a production environment that is similar in size and nature to that of Hawaii County[.]

and,

The County of Hawaii reserves the right to negotiate with more than one vendor. If negotiations cannot be completed, the departments may select other vendors for negotiations or may terminate the procurement process altogether if deemed to be in the best interest of the County.

11. Furthermore, the language in the Introduction section of RFP No. 1541 entitled "Method of Evaluation" listed seven evaluation factors - General Area Requirements - and stated, in relevant part, that:

All proposals complying with the requirements of this RFP will be evaluated based upon, but not limited to, the responsiveness to the following areas

listed below, not necessarily in the order of importance or weight:

Technical/Operational Requirements
Growth Potential
Application Area Requirements
Connectivity/Interface Requirements
Support Requirements
Business Requirements
Cost

The RFP and proposal format provide for a high degree of objectivity in the evaluation process. However, a number of subjective factors will be considered and incorporated into the evaluation results.

The subjective factors were identified as including various experience and performance related criteria, as well as the reasonableness of approach, timetable, and staffing for the project. RFP No. 1541 did not assign any numerical values to the seven evaluation areas, however, nor did it establish what their relative importance would be in scoring any proposals that might be received.

12. Shortly after November 23, 1994, the Respondent began to receive numerous requests for copies of RFP No. 1541 and subsequently proceeded to distribute copies of the same to approximately 70 interested parties.

Initial Committee Activities

13. On or about November 28, 1994 the Respondent formed an RFP No. 1541 Evaluation Committee ("the RFP Committee") to review and evaluate the proposals which it anticipated receiving in response to RFP No. 1541. In addition to Mr. Onishi, who served as Chairperson/Coordinator, and Ms. Novak, who served as Recording Secretary, the RFP Committee consisted of Sharon Perreira, Linda Andrade, Sherrie Okamoto, and Lawrence Mahuna as representatives of the Hawaii County Police Department, and Garfield Arakaki as a representative of the Hawaii County Fire Department.

14. On December 13, 1994, and again on December 20, 1994 the RFP Committee met to discuss various general concerns about its role and responsibilities and to received briefings by Mr. Gray from his background/prospective as the Respondent's Chief Procurement Officer. In

addressing the topic of Method of Evaluation Mr. Gray expressed his opinion that the weight assigned by the RFP Committee to the seven evaluation factors - General Area Requirements - did not need to be revealed to prospective proposers. He also opined that due to the large sum of money involved and the detailed nature of RFP No. 1541 the selection process might be challenged. Accordingly, he cautioned the committee members to adhere to the proper procedures and to document all of their activities.

15. By memorandum dated December 19, 1994, Mr. Onishi reminded the Mayor of the upcoming Pre-Proposal Conference and identified "Extension of the proposal deadline for the Police/Fire Information System RFP" and "GIS Data - Request for satellite island coverage" as topics to be discussed. Mr. Onishi recommended a 30 day extension of the January 25, 1995 submission deadline for proposals to allow participation by more businesses (vendors) without significantly effecting the target completion date for the project, and provided a chronological comparison of activities under the current and proposed deadlines.

16. On December 21, 1994 a Pre-Proposal Conference was held at the Hawaii County Police Department for the benefit of persons interested in responding to RFP No. 1541. It was attended by approximately 25 representatives of various companies or organizations, including the Petitioner. The meeting was conducted by Mr. Onishi and generally followed a question and answer format covering a broad range of topics. The attendees were informed that the Mayor wanted the system to be at least partially operational by June of 1995, and that extensions of time to submit proposals would not be granted to Unisys, AT&T, IBM, Intergraph or any others.

17. The attendees at the Pre-Proposal Conference were also told, inter alia, that the amount budgeted for the project, as well as the evaluation methodology (weights and percentages) for scoring proposals would not be divulged; and, that the focus of the GIS component would be basic information to enhance/support the computer assisted dispatch (CAD) system for police and fire services. Finally, the participants were reminded that Mr. Onishi was to be their sole contact with respect to any questions, comments, proposals or other aspects of RFP No. 1541.

18. A summary of the discussion at this Pre-Proposal Conference was distributed to the attendees as Addendum No. 1, to RFP No. 1541 on January 11, 1995. Additionally, Addendum No. 2 (which consisted of a response to additional questions) was distributed on January 18, 1995, and Addendum No. 3 (which consisted of an additional page to Exhibit K) was distributed on January 20, 1995.

19. On January 23, 1995 Ms. Novak sent a memorandum to the committee members which enclosed explanatory material regarding the evaluation methodology that had previously been developed for use with the July 13, 1992 RFP. This was done in an effort to have the committee members prepared to discuss and adopt a procedure for scoring RFP No. 1541. The material set out a four step process which involved: 1) screening of proposals to determine compliance with minimum mandatory requirements, 2) evaluation and scoring of the qualifying written proposals, 3) verification of these proposals based upon user/client reference calls and system demonstrations, and 4) visits to existing user sites and support centers operated by each of the proposers considered to be finalists.

20. The material which Ms. Novak provided to the committee members also addressed the numerical scoring of the seven evaluation factors - General Area Weights - as well as their subcomponents - Topic Weights - and included the following information regarding the scoring of the July 13, 1992 RFP:

Vendors were required to respond to requirements in the RFP that were categorized into the following general areas. Weights--expressed as percentages--were assigned as indicated. The weights are a reflection of the relative value of each area as determined by the departments. These weights were developed in advance and are included in the RFP for the vendors' information.

<u>AREA</u>	<u>PERCENT</u>
Technical/Operational Requirements	23
Growth Potential	4
Application Area Requirements	30
Connectivity/Interface Requirements	10
Support Requirements	18
Business Requirements	5
Cost--Five Year	<u>10</u>
Total Possible Score	100

21. The Respondent received a total of four proposals in response to RFP No. 1541 prior to the January 25, 1995 deadline for such submissions. The proposers (vendors) were: 1) the Petitioner, PRC Public Sector, Inc., 2) HFSI/Wang Federal, 3) Tiburon, and 4) Information Spectrum, Inc.. Each of these proposers had various other vendors/subcontractors associated with them in support of their anticipated performance if selected as the successful proposer.

Screening Proposals and Adopting Evaluation Methodology

22. On January 26, 1995, the sealed proposals were opened by Mr. Gray in the presence of Mr. Onishi and Ms. Novak for the purpose of conducting an initial screening to determine whether each proposal met the mandatory requirements of RFP No. 1541. At that time, Mr. Gray completed one page Initial Proposal Evaluation Sheets which contained basic information - including the respective costs - for each of the proposals. The costs were recorded as follows: PRC Public Sector, Inc. - \$3,944,637, HFSI/Wang Federal - \$4,772,186, Tiburon - \$4,409,790, and Information Spectrum, Inc. - \$1,938,602. The information contained on each of these sheets was shared with Mr. Onishi and Ms. Novak at the time that the sheets were prepared, and both of them were subsequently provided with copies of the sheets.

23. During the course of this initial screening by Mr. Gray, it was determined that the proposal submitted by Information Spectrum, Inc. had not responded affirmatively to all of the mandatory requirements in RFP No. 1541 and therefore it appeared to be disqualified from further evaluation. Nevertheless, it was decided to refer this matter to the RFP Committee for review and final determination. The other three proposals were found to have responded affirmatively to all of the mandatory requirements and therefore were qualified for further consideration. One copy of each proposal was retained by Mr. Gray and the other four copies were transported to the Police Department for the RFP Committee to use in making its evaluations.

24. On the morning of January 30, 1995, the RFP Committee met for a final briefing by Mr. Gray. After stressing that proposals were to be treated as confidential, and that Mr. Onishi was to be the only contact with the proposers, he stressed that the evaluation be based strictly on the requirements established in RFP No. 1541, and that the committee members should adopt an evaluation methodology for scoring the proposals before actually beginning evaluations. In a memorandum presented to the RFP Committee at that time, Mr. Gray specifically commented on the award process as follows:

- a. If award, go directly to contract negotiation (assuming funds are available).
- b. If further negotiation: (1) Do not inform any proposer about any other proposal or response to negotiation; (2) Written requests through Richard may be made for more references, description of service, lower price, expanded service, etc.; (3) Keep written record of all negotiations, which will become public; (4) Ask

for "Best and Final Offers" from each proposer still in the running.

25. During the course of their January 30, 1995 meeting, the committee members were also informed by Mr. Gray and/or Mr. Onishi that the Mayor would only be approving site visits for verification purposes for the highest ranked proposal - rather than approving pre-selection site visits for each of the proposals. The Committee members generally felt that site visits should be included in the evaluation of each proposal, but Mr. Onishi opined that limiting site visits to only the highest ranked proposer would be acceptable because the Mayor had indicated that subsequent site visits to another proposer's locations could be made if a contract was not actually awarded to the highest ranked proposer.

26. The RFP Committee then decided to adopt the evaluation methodology which had been used to evaluate the July 13, 1992 RFP - with one minor addition and with one major change. The minor addition was the inclusion of a point value for the GIS as a subcomponent within the evaluation factor designated as Application Area Requirements. Accordingly, the RFP Committee assigned it a point value of fifteen - or approximately .05 percent of the maximum possible value assigned to Application Area Requirements - which itself carried a weight of thirty (out of a total score of 100).

27. The major change in scoring involved a switch of the weight assigned to the evaluation factors designated as Growth Potential and Cost. After discussing this topic the committee members considered the proposed system's potential for growth to warrant a significantly higher point value, while the proposed system's cost could be assigned a significantly lower point value. Cost, which had previously carried a weight of ten (out of a total score of 100) was reassigned a weight of four, and Growth Potential, which had previously carried a weight of four (out of a total score of 100) was reassigned a weight of ten. Accordingly, after this switch the list of values for the major evaluation factors - General Area Weights - was as follows:

<u>AREA</u>	<u>PERCENT</u>
Technical/Operational Requirements	23
Growth Potential	10
Application Area Requirements	30
Connectivity/Interface Requirements	10
Support Requirements	18
Business Requirements	5
Cost--Five Year	<u>4</u>
Total Possible Score	100

This switch in the evaluation methodology took place after Mr. Onishi and Ms. Novak had become aware of the costs associated with each of the proposals during the initial opening/screening of proposals by Mr. Gray the previous week. (Since the committee members eventually gave each of the proposals the same score for Growth Potential, the switch had the singular effect of reducing the impact of Cost for each of the proposals by 60%).

28. The RFP Committee also adopted a numerical rating system to score each of the numerous individual responses within each proposal in order to measure how well they responded to the individual functional requirements within the seven evaluation areas contained in RFP No. 1541. The RFP Committee decided upon an "8-5-3-0" point system as follows:

- 8 points If the vendor [proposer] responded with a "P" which meant that it could **provide** the requirement hardware and/or software.
- 5 points If the vendor [proposer] responded with a "C" which meant that it could provide the required hardware and/or software by **customizing** a particular item.
- 3 points If the vendor [proposer] responded with a "D" which meant that it would have to **develop** the required hardware and/or software.
- 0 points If the vendor [proposer] responded with a "U" which meant that it was **unable** to provide the requested item or did not indicate a response.

Where vendors/proposers were asked "yes" or "no" questions they were given 8 points for a "Yes" response and 0 points for a "No" response. Adjustments in the "8-5-3-0" scale were made if vendors gave a narrative or explanatory response to the requirements.

29. On the afternoon of January 30, 1995, at the direction of the RFP Committee as a whole, Mr. Onishi and Ms. Novak met separately to further evaluate the proposal submitted by Information Spectrum, Inc. for the purpose of determining whether it qualified for further consideration. As a result of their technical review, they confirmed Mr. Gray's initial determination that it was unqualified and concluded that the proposal did not warrant further consideration by the RFP Committee. This information was communicated by

memorandum from Mr. Onishi to Mr. Gray, who subsequently informed Information Spectrum, Inc. that their proposal was not selected as one of the finalists. Thereafter, Mr. Gray played no role in the RFP Committee's work until, almost a year later, he sent out letters to each proposer announcing that a contract had been awarded under RFP No. 1541.

Scoring The Qualifying (Priority Listed) Proposals

30. The RFP Committee next met from February 1, 1995 to February 6, 1995 to actually evaluate the proposals from PRC, HFSI/Wang Federal and Tiburon. The Committee structured itself in the form of three teams of two persons each, which were then assigned primary responsibility for numerically scoring one of the three proposals. (Shortly before this meeting Mr. Arakaki was replaced by Steven Iwamoto as the representative of the Hawaii County Fire Department.) Mr. Onishi continued to act as Chairperson/Coordinator, and Ms. Novak (in addition to being assigned to a team) continued to act as Recording Secretary. The team assignments were as follows:

PRC - Lawrence Mahuna and Layne Novak

HFSI - Steven Iwamoto and Linda Andrade

Tiburon - Sharon Perreira and Sherrie Okamoto

Each team went through the numbered paragraphs of the proposal which they were evaluating to determine the degree to which it satisfied the requirements in the corresponding section of RFP No. 1541. Each team followed the "8-5-3-0" point system and where a narrative explanation or other response required further consideration, it was discussed by all members of the RFP Committee prior to its being assigned a value. In view of the hundreds of questions and thousands of possible points, the mechanics of actually doing the scoring became a long and tedious process - especially for Ms. Novak who was assigned to record the scores and subsequently transferred them into spreadsheet format. In addition, some of the items were not scored immediately because more information or clarification was required. These items were scored later after receipt of the clarification, and appropriate adjustments were then made to incorporate these items in the total scores.

31. During the course of scoring/recording/transferring and calculating, members of the committee noted a significant number of errors which required multiple corrections and recalculations. Eventually, however, the committee members seemed to be in agreement with the "Total Evaluation Scores" which incorporated all of the components of each of the proposals

measured against all of the components of the seven evaluation factors. Out of a total possible score of 100%, the scoring for each of the three priority listed proposers was calculated as follows:

<u>HFSI</u>	Possible Score	Weighted Percentage	Weighted Score
Tech/Oper Req.	23.00	85.13%	19.58
Growth Potential	10.00	100.00%	10.00
Application Req.	30.00	94.28%	28.28
Connect/Inter Req.	10.00	85.42%	8.54
Support Req.	18.00	93.04%	16.75
Business Req.	5.00	71.59%	3.58
Cost - Five Years	4.00	85.71%	3.43
Total Req.	100.00	90.16%	90.16

<u>PRC</u>	Possible Score	Weighted Percentage	Weighted Score
Tech/Oper Req.	23.00	84.24%	19.38
Growth Potential	10.00	100.00%	10.00
Application Req.	30.00	90.45%	27.14
Connect/Inter Req.	10.00	75.69%	7.57
Support Req.	18.00	88.92%	16.01
Business Req.	5.00	69.32%	3.47
Cost - Five Years	4.00	100.00%	4.00
Total Req.	100.00	87.55%	87.57 ¹

<u>TIBURON</u>	Possible Score	Weighted Percentage	Weighted Score
Tech/Oper Req.	23.00	85.38%	19.64
Growth Potential	10.00	100.00%	10.00
Application Req.	30.00	91.32%	27.40
Connect/Inter Req.	10.00	41.90%	4.19
Support Req.	18.00	88.29%	15.89
Business Req.	5.00	80.68%	4.03
Cost - Five Years	4.00	78.71%	3.13
Total Req.	100.00	84.30%	84.30

¹ The objective (numerical) score for the PRC proposal was apparently calculated correctly at 87.57 by the RFP Committee even though it was reported as 87.55 in the tabulation tables within the September 15, 1995 committee report. In either event the .02 difference is not a material issue in this matter.

The Verification Process

32. Once the numerical scoring of the written responses contained in each of three proposals had been completed, the RFP Committee conducted "User Reference Calls" to existing users/clients of all three proposers which had facilities in locations that had a similar sized population to the County of Hawaii, and were using a system comprised of the same hardware and software as required in RFP No. 1541. The purpose of these calls which took place from February 7, 1995 through February 9, 1995 was to verify that the proposers could provide the required system design, installation, software functionality, hardware, maintenance, and support services, as well as to assess the user or client's general satisfaction.

33. The committee members sat around a telephone; put the user's or client's representative on speaker phone; and asked questions listed on a questionnaire which had previously been mailed to the representatives in order to help them prepare for the interview. Although no numerical scoring was involved committee members asked follow up questions as they saw fit, and Ms. Novak recorded the responses. The conversations were taped to allow members who were not able to be present at each of the user reference calls the opportunity to review the conversations. Committee members also called other users/clients to follow up on information received and gather additional data.

34. The next part of the verification process consisted of "System Demonstrations" in which each finalist was required to give a local presentation of the system detailed in its proposal for the purpose of showing that they could provide a functional system meeting the requirements of RFP No. 1541. By letter dated February 13, 1995 Mr. Onishi informed each of the three proposers that it had been selected as a "finalist" and confirmed its date for a system demonstration. The letters also stated that the training room at the Police Department had been set aside for the demonstrations and to contact Ms. Novak regarding electrical, communication or logistical needs if the proposer elected to use that location. All of the demonstrations were to be held in Hilo, Hawaii and were open to personnel from the Police and Fire Departments. In addition, personnel from the Departments of Public Works, Planning, and Finance (Real Property Tax Division) were invited since it was expected that they would be partially responsible for inputting and maintaining the GIS component of the proposed system.

35. In or about mid February of 1995, Michael R. Mase - a former employee of the Police Department and a current employee of PRC - visited the training room at the Police Department. It was unclear whether he first contacted Ms. Novak, but the purpose of the visit was purportedly to inspect

the room (which was also used on occasion by the RFP Committee) to determine if it was a suitable location for the PRC system demonstration. While there, however, he also observed the relative costs of the three RFP No. 1541 proposals by viewing data which the RFP Committee had on a blackboard within that room. He subsequently communicated this information on the status of the proposals to PRC officials.

36. At some point shortly before the demonstrations took place, David Darsch, a representative of PRC, either intentionally or mistakenly entered a secured area containing equipment and other materials of HFSI/Wang Federal. This intrusion was the subject of a police report for records purposes but the matter was not prosecuted and its occurrence had no apparent effect on the demonstrations or on other aspects of the competition between the three finalists. In addition, during the demonstrations, unauthorized representatives of Tiburon and HFSI/Wang Federal made unsolicited comments to Mr. Onishi indicating that they believed there was room for negotiation in the cost of their respective proposals. These comments were not shared by Mr. Onishi with other members of the RFP Committee, but did influence part his own later "subjective" evaluations of the three finalists. Furthermore, no attempt was made to rectify the situation by Mr. Onishi inquiring of PRC's representations whether there was also room for negotiation in the cost of its proposal.

37. The three finalists presented demonstrations of their systems on the following dates: February 16, 1995 - Tiburon; February 22, 1995 - PRC; and, February 23, 1995 - HFSI/Wang Federal. The committee members evaluated each system's general functionality, integration of data through different application modules, logical flow of data and information, screen designs, utilization of function keys within applications, usage and maintenance of code tables, information provided by help functions, flexibility and special features. Although each of the committee members tended to favor one or another of the demonstrations, the consensus was that each of three finalists had satisfactorily verified that its system could fulfill the requirements of RFP No. 1541.

The "Final Evaluation" of Proposals

38. On February 27 and 28, 1995 and March 1, 1995 the RFP Committee met to discuss their final evaluation of the proposals. Instead of simply selecting the highest rated proposal based on the objective "numerical scoring" of the proposals - since each of the finalists had satisfactorily passed both the user reference call and the system demonstrations verifications - the committee members decided to introduce a 20% "subjective factor" to their overall evaluation. This was done in an effort to allow the committee members to insert their own personal preferences into the scoring process. However,

neither this subjective factor, nor its numerical weight, was set out as an evaluative area in RFP No. 1541. Furthermore, RFP No. 1541 was never amended to include it, and no information with respect to this additional factor (which would make up one fifth of the total score) was otherwise communicated to any of the proposers.

39. The RFP Committee then went through additional mathematical calculations for the ostensible purpose of incorporating the committee members' subjective ratings with the original numerical ratings. Each of the committee members used an 8-5-3 system to subjectively rate each of the three proposals in each of the seven evaluation factors based on their belief as to whether the proposer was the best, second best, or third best in that factor. The results of this "final evaluation" were reflected in a comparative summary as follows:

Proposer	Raw Score	Comp Rank	X7 Members	Weighted Increased	Members Score	TOTALS
HFSI						
Technical/Operational	19.58	5	35	140	53	193
Growth Potential	10.00	8	56	224	56	280
Application	28.28	8	56	224	47	271
Connectivity Interface	8.54	8	56	224	50	274
Support	16.75	8	56	224	50	274
Business	3.58	5	35	140	50	190
Cost - Five Year	3.43	5	35	140	38	178
TOTALS	90.16	47	329	1316	344	1660
PRC						
Technical/Operational	19.38	3	21	84	33	117
Growth Potential	10.00	8	56	224	40	264
Application	27.14	3	21	84	45	129
Connectivity Interface	7.57	5	35	140	39	179
Support	16.01	5	35	140	42	182
Business	3.47	3	21	84	45	129
Cost - Five Year	4.00	8	56	224	53	277
TOTALS	87.57	35	245	980	297	1277
TIBURON						
Technical/Operational	19.46	8	56	224	33	257
Growth Potential	10.00	8	56	224	42	266
Application	27.40	5	35	140	35	175
Connectivity Interface	4.19	3	21	84	28	112
Support	15.89	3	21	84	33	117
Business	4.03	8	56	224	35	259
Cost - Five Year	3.15	3	21	84	21	105
TOTALS	84.12	38	266	1064	227	1291

40. Although these recalculated "final evaluation" scores did not change the first place ranking of HFSI/Wang Federal, they did result in a

change of position between the other two finalists with the result being that Tiburon moved from third to second and PRC moved from second to third. The mathematical calculations also had the effect of artificially magnifying the relatively small difference between the ratings of all three proposals as initially measured by the objective numerical scoring. Furthermore, although the committee members followed the required formula for scoring Cost during their objective evaluation, their subsequent subjective evaluation distorted this portion of their calculations.

41. On March 2, 1995 Mr. Onishi sent a memorandum to Police Chief Wayne Carvalho and Fire Chief Nelson Tsuji, as the procurement officers for those departments, entitled "Police/Fire Information System Vendor Recommendation". This two paragraph memorandum read as follows:

The selection committee has concluded its initial evaluation of the proposals for the Police/Fire Information System. After the evaluation of the vendors' proposals, the user reference calls, and the demonstrations, the committee has selected the proposal by HFSI. [Emphasis added]

The committee is requesting approval of this selection and the authority to contact HFSI to arrange for visitation of user installation sites by the selection committee. The purpose of the site visitations are to verify the functionality of the proposed system in a working user environment; to verify system response time requirements; to review operational and user procedures; to review system, application, user and operational documentation; to verify operation of the network and communication system; and to verify the integration of all components of the system being requested.

42. On March 2, 1995 Mr. Onishi also wrote a letter to Joseph Russell, an HFSI/Wang Federal representative, requesting a "best and final offer" regarding the proposal it had submitted in response to RFP No. 1541. The decision to make this request was not specifically made by the RFP Committee, which had only briefly discussed the topic of "best and final offers" before deferring to Mr. Onishi. The letter read, in part, as follows:

The proposal selection committee has reviewed the proposal submitted by HFSI and has found that it meets with the general functional requirements of the

Hawaii County Police and Fire Departments for its computer information system.

For final evaluation purposes, the County of Hawaii is asking for a best and final offer on the cost of your proposal. Please submit it in writing by March 8th, 3:00 PM. Please use the same format that was submitted with your response to the breakdown of your cost.

Mr. Onishi did not write similar letters requesting best and final offers to either PRC or Tiburon, but HFSI/Wang Federal was not aware of this fact at that time. Conversely, neither PRC nor Tiburon was then aware that a request for a "best and final offer" had been made to HFSI/Wang Federal.

43. On March 3, 1995 the members of the RFP Committee met with the Mayor and the Chiefs of the Police and Fire Departments to discuss the selection of the HFSI/Wang Federal proposal. During the course of this meeting Ms. Perreira voiced some concern about the selection, and the Mayor expressed some degree of surprise at the choice, but the Mayor and both Chiefs approved the selection and authorized the Committee to proceed with site visits to HFSI/Wang Federal locations.

44. By letter dated March 8, 1995, HFSI/Wang Federal replied to Mr. Onishi by submitting a best and final offer stating that:

The following summarizes out Best and Final price:

\$4,588,640	Initial Price
\$ 675,862	Best and Final Discount
\$3,912,778	Discounted Price
\$ 156,511	Tax @ 4%
\$4,069,289	Net Price

This discount is contingent on ordering all items and services in our offer dated Jan. 25, 1995.

We feel that our proposal reflects a very comprehensive response to the County's requirements. If selected, we look forward to negotiating a final contract with the County and working together to provide the County with an outstanding Police and Fire Automation system.

The Site Visits and Related Communications

45. During the later part of March and during much of April, 1995 the RFP Committee, through Mr. Onishi, was in contact with HFSI/Wang Federal representatives for the purpose of selecting, arranging, and coordinating site visits in Hawaii and on the Mainland. The purpose of these visits was to verify the functionality of the proposed system in an actual working environment, but none of the sites had the complete type of comprehensive system requested in RFP No. 1451. Accordingly, it was determined that site visits would be conducted to verify component parts of the proposed system that were already in operation at various locations.

46. On April 26, 1995, well after the Mayor and the Police and Fire Chiefs had approved the RFP Committee's selection of HFSI/Wang Federal's proposal, but before any of the site visits took place, PRC had delivered a letter to Harry A. Takahashi, the Director of Finance. After mentioning the system demonstrations which had been presented by the three finalists in February, the letter noted that RFP No. 1541 specified the next step in the selection process to be site visits, followed by the selection of the successful proposal. The letter stated that PRC had learned that site visits had only been scheduled at HFSI/Wang Federal user installations.

47. The April 26, 1995 PRC letter went on to state, in essence, that PRC believed it was entitled to equal treatment and requested that if no selection of a winning proposal had yet been made, PRC be contacted to schedule site visits to PRC user locations. In addition, the letter stated that PRC should be given a chance to negotiate a "best and final offer" consistent with the Respondent's right to negotiate such offers from each of the finalists as set out in RFP 1541. The letter specifically stated that: "PRC is willing to negotiate a best and final offer with the County". The remaining content of the letter was directed primarily toward promoting various aspects of the PRC proposal.

48. On April 27, 1995 the RFP Committee went to Oahu to look at HFSI/Wang Federal sites at the Pearl Harbor Navy Public Works Center, at the Camp Smith Pacific Command Headquarters, and at the State of Hawaii Department of Human Services. The RFP Committee was accompanied by representatives of HFSI/Wang Federal during these visits and concluded its trip at the HFSI/Wang Federal office in Kailua, Oahu. During the day HFSI/Wang Federal representatives provided general introductions for the committee members, but did not discuss or negotiate any aspects of their proposal. The members of the Committee spent the bulk of their time talking to independent employees and others at the various sites in an effort to obtain verification of HFSI/Wang Federal's ability to perform in accordance with their proposal.

49. At some point in time, shortly before the RFP Committee departed for Mainland site visits of HFSI/Wang Federal user/client locations, Timothy Lui Kwan, an attorney for PRC, together with three other PRC related individuals contacted RFP committee member Steven Iwamoto to ask if the RFP Committee would be making site visits to PRC user/client locations. Mr. Iwamoto replied that he was only a committee member and directed them to talk with Mr. Onishi.

50. From April 30, 1995 to May 5, 1995 the RFP Committee traveled across the Mainland conducting site visits to various HFSI/Wang Federal user locations. The form and content of these site visits were essentially the same as the site visits on Oahu, although they provided for much more extensive verification and included reviews of additional functional areas which had not been thoroughly covered. Once again, although the committee members were accompanied by representatives of HFSI/Wang Federal, no discussions or negotiations were conducted with respect to their proposal.

51. By letter dated May 1, 1995 PRC again wrote to Mr. Takahashi to express that it was "very concerned about the fairness of the bidding and selection process in RFP 1541." The letter noted that PRC understood that the RFP Committee had visited HFSI/Wang Federal sites on Oahu a few days earlier; was planning to visit additional HFSI/Wang Federal sites on the Mainland in the near future; and yet had not contacted PRC to request similar visits. The letter specifically asked whether the RFP Committee had made a selection/recommendation in favor of HFSI/Wang Federal, and asked for written confirmation if in fact this had occurred. In addition, the letter pointed out that PRC had invested a considerable amount of resources in responding to RFP No. 1541 and requested an opportunity to negotiate a best and final offer on the same basis extended to any of the other proposers.

52. On May 5, 1995 the RFP Committee met in Chicago, Illinois before beginning its return trip to Hawaii. At that time, each of the committee members discussed their impressions and evaluations from the site visits, and each was of the opinion that the HFSI/Wang Federal systems were functional in the actual workplace. They concluded that HFSI/Wang Federal's proposal had satisfactorily passed this verification. This meeting of the RFP Committee was their last act as a committee, although Mr. Onishi continued to act on their behalf after that time.

53. On May 8, 1995 Mr. Onishi again wrote a memorandum to the Chiefs of the Police and Fire Departments, as the procurement officers for those departments, entitled "Police/Fire Information System Vendor Recommendation" which read, in part, as follows:

The selection committee has concluded its site verification of the proposal submitted by HFSI. After the evaluation of site visits to three HFSI user sites on Oahu, two Intergraph user sites on the mainland, and a CISCO site on the mainland, the committee has concluded that the team of vendors led by HFSI has the capability to provide the County of Hawaii with the complete Police/Fire Information System that the County is seeking to develop.

...

The selection committee enthusiastically recommends the selection of the HFSI team of vendors for the development of the Police/Fire Information System.

54. By letter dated May 9, 1995 PRC's attorneys wrote to Mr. Takahashi as a follow up to PRC's May 1, 1995 letter to him. The letter reiterated the previous concerns of whether the RFP Committee would make site visits to PRC user locations, and whether PRC would be given an opportunity to negotiate a best and final offer. The letter went on to say that since no response had been received to the earlier inquiry, PRC could only conclude that a decision had already been made to award a contract to HFSI/Wang Federal as the successful proposer in response to RFP No. 1541. Accordingly, the letter went on to request access to, and copies of, various records relative to the RFP No. 1541 selection process pursuant to various provisions of state law. The letter also stated that if PRC was incorrect in its interpretation of events, it was again renewing its request that the RFP Committee conduct site visits to PRC user installations and also engage in negotiations with PRC on the subject of a best and final offer.

55. By letter dated May 18, 1995 the Respondent's attorneys replied to the May 9, 1995 letter from the Petitioner's attorneys to Mr. Takahashi. In that letter the Respondent asserted that its conduct had been in conformity with the terms, conditions and procedures set out in RFP No. 1541 and declined to comply with the request for the production of various records. The letter went on to state that a contract had not yet been awarded, and that the Respondent was permitted/required to withhold the release of information requested by PRC until after an award had been made.

56. During the later part of May, 1995 attorneys for the Petitioner and the Respondent exchanged additional letters which, in large measure, reflected the content of their earlier communications. The purpose of the Petitioner's letters was to inquire about the status of the selection process; to request that the RFP Committee make site visits to PRC user locations and

engage in negotiations for a best and final offer; and to promote its proposal as the one best meeting the needs and requirements set out in RFP No. 1541. In reply, the Respondent offered vaguely phrased comments which did not provide meaningful information on the status of the evaluation process and ignored PRC's request for further participation in that process. The Respondent also denied PRC's request to review various records relating to RFP No. 1541.

The Summer Hiatus and Autumn Award

57. On June 22, 1995 Mark Tanner, an account manager at PRC, sent a fax directly to RFP committee member Sharon Perreira containing information and a news clipping regarding marketplace developments involving Intergraph's (an HFSI/Wang subcontractor for RFP No. 1541) GIS graphic platforms. Similarly, on June 26, 1995 Mr. Mase sent a fax directly to Ms. Perreira containing a news clipping regarding purported inadequacies of an Intergraph system which had been operating in Australia. It was unclear what, if any factual merit was attributed to the content of these faxes by Ms. Perreira; they were received well after the RFP Committee had completed its work; and they did not effect the RFP No. 1541 selection process.

58. In July and August of 1995, Mr. Onishi was involved in preparing a proposed contract document (and revisions thereto) for memorializing the award of a contract to HFSI/Wang Federal under RFP No. 1541. By memorandum dated September 1, 1995, Mr. Onishi provided a revised version of the proposed contract to various members of the Mayor's administration including Police Chief Carvalho, Fire Chief Tsuji, and Finance Director Takahashi. During this time Mayor Yamashiro was considering various funding alternatives for meeting the anticipated financial commitments which would result from actually awarding a contract based on HFSI/Wang Federal's best and final offer in the amount of \$4,069,289. The original plan had called for the exclusive use of drug forfeiture money under federal guidelines, but the Police Department subsequently committed some of this money to other projects and it had become necessary to locate other funds to cover the difference.

59. On September 15, 1996 Mr. Onishi completed an "Evaluation Committee Report" which presented a detailed historical view of the RFP Committee's activities from the initiation of RFP No. 1541 to the final Committee meeting in Chicago. Thereafter, by memorandum dated September 26, 1995, Mr. Onishi provided copies of the report to the Chiefs of the Police and Fire Departments. Mr. Onishi noted that a contract was ready for discussion with HFSI/Wang Federal "as soon as the vendors [proposers] are notified of the selection thru your office", and requested such notification so that he could begin discussions with HFSI/Wang Federal.

60. By letter/memorandum dated October 11, 1995, the Chiefs of the Police and Fire Departments wrote to the Mayor regarding the selection of a proposal in response to RFP No. 1541. This three paragraph communication read as follows:

We have reviewed the final report from Richard Onishi, Committee Chairman for the acquisition of the Automated Police/Fire Information System (RE: R.F.P. No. 1541), dated September 26, 1995. The committee's report indicates that HFSI best meets the functional requirements of the Hawaii County Police and Fire Department's automated information system.

Based on the evaluation criteria, the committee recommends that HFSI be selected as the primary vendor/contractor for implementation of the system.

We concur with the committee's selection of HFSI and recommend that contract negotiations between the County of Hawaii and HFSI begin immediately. Upon finalization of the contract, it is recommended that the committee chairman, Richard Onishi, inform the other two vendors (Tiburon and PRC) that they were not selected in accordance with Chapter 103D, Public Procurement Code of the Hawaii Revised Statutes, as amended. Should a contract with HFSI and the County of Hawaii fail to be successfully negotiated, then negotiations should proceed with the next vendor in line.

61. By letter dated October 11, 1995 Mr. Onishi wrote to HFSI/Wang Federal stating that it had been selected for development of the new computer information system set out in RFP No. 1541. The letter included a contract for their review and execution, and invited calls if there were any questions with regard to the contract.

62. On or about October 17, 1995, HFSI/Wang Federal executed the contract which it had received from Mr. Onishi (and which had not yet been executed by the Respondent), and returned it to Mr. Onishi. The contract was subsequently signed by the Hawaii County Police and Fire Chiefs, as well as the Mayor on November 20, 1995.

63. On December 7, 1995 Mr. Gray sent separate, identical memoranda to PRC and Tiburon (as well as Information Spectrum, Inc.) on the

subject of RFP No. 1541. The memoranda simply stated that the selection process had been completed and that a contract had been awarded to HFSI/Wang Federal. It also thanked them for their participation and wished them well for the holiday season.

64. Each of the three finalists had expended considerable sums of money in responding to RFP No. 1541 and in participating throughout the evaluation process conducted by the Respondent. The cost incurred by PRC was calculated by James Kennedy, the PRC account manager for new business development in California and Hawaii, to be in the amount of \$53,789 (exclusive of the costs incurred in pursuing this administrative hearing).

The Events After the Award

65. By letter dated December 12, 1995, Petitioner PRC's attorneys wrote to Mr. Takahashi (attn: Mr. Onishi) regarding RFP No. 1541. The letter stated that on that date PRC had received notice that the County had awarded a contract under RFP No. 1541 to HFSI/Wang Federal, and requested all of the documentation available for public disclosure regarding the solicitation and award of proposals under RFP No. 1541. Thereafter, the Respondent began a process of collecting and providing such documentation, although there was some delay caused by the need to determine whether portions of the proposals contained nondisclosable (proprietary or other confidential) information, and by difficulties in the collection process which involved numerous individuals and entities within the County administration.

66. In early December of 1995 HFSI/Wang Federal began preliminary work pursuant to its contract with the Respondent under RFP No. 1541. This work was focused largely on planning and coordinating with subcontractors.

67. By early January of 1996, PRC confirmed its earlier suspicions that reasonable bases existed to protest the Respondent's conduct with respect to RFP No. 1541, and on January 4, 1996, PRC filed an agency level protest with Mr. Takahashi under HRS § 103D-701. The Petitioner's protest letter consisted of 16 pages detailing multiple (but frequently overlapping) allegations of wrongdoing with numerous references to the statutes and rules which allegedly had been violated. Upon receiving the Petitioner's protest the Respondent temporarily halted work on RFP No. 1541 by a verbal "Stop Order" from Mr. Onishi on instructions from Mr. Takahashi.

68. On January 30, 1996 the Respondent sent the Petitioner a brief reply to its protest. This letter consisted of two sentences stating that the selection procedures had been reviewed without finding any obvious

inconsistencies with applicable laws and that the protest was being denied. (Although this letter was based upon an extensive nineteen page letter from the Respondent's attorneys to Mr. Takahashi dated January 24, 1996, it did not convey any of this analysis or explanation to the Petitioner.) The temporary halt which had occurred while the Respondent was reviewing PRC's protest was then lifted and HFSI/Wang Federal resumed work.

69. Thereafter, on February 5, 1996, the Petitioner made a request for an administrative hearing under HRS § 103D-709 (which became the basis for the present proceedings).

70. By March of 1996 HFSI/Wang Federal had committed additional personnel and resources to RFP No. 1541 project requirements although no actual computer hardware or software had been installed, no training had taken place, and no dollar figure was available on its total expenditures.

III. CONCLUSIONS OF LAW

The Petitioner in this matter has raised a number of allegations concerning violations of the 1993 Hawaii Public Procurement Code (HRS Chapter 103D) and the October 11, 1994 Hawaii Administrative Rules (Interim), Title 3, Subtitle 11, Chapter 122 by the Respondent throughout the entire timeframe relevant to RFP No. 1541. These allegations have been addressed in generally chronologic order and have been evaluated in light of the requirement in HRS § 103D-709(c) that the Petitioner has the burden of proof to establish its allegations by a preponderance of the evidence. They have also been considered in view of the requirement in HRS § 103D-101 that "All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith."

The solicitation by proposal rather than by bid

First, it was alleged that the Respondent failed to make the requisite written determination to proceed by way of proposals rather than bids. The provisions of HRS § 103D-303(a) are applicable in resolving the issue and state, in relevant part, that:

When, under rules adopted pursuant to this chapter, the chief procurement officer, the head of a purchasing agency, or a designee of either officer above the level of procurement officer determines in writing that the use of competitive sealed bidding is either not practicable

or not advantageous, a contract may be entered into by competitive sealed proposals.

Nevertheless, the Respondent did not make any such written determination - either by a separate document or as part of RFP No. 1541 itself. The Respondent's illusory argument that this requirement was implicitly met by the act of issuing a request for proposals rather than a request for bids, or that it was met by potential extraction from the content of the document itself is not convincing. Despite substantial similarities to the July 13, 1992 RFP, the issuance of RFP No. 1541 on November 23, 1994 constituted a new solicitation and the law mandated that its issuance be justified by a prior written determination. Accordingly, the preponderance of the evidence established that the Respondent violated HRS § 103D-303(a).

It is worth noting, however, that this violation had no evident effect on any of the proposers or their proposals, nor did it result in any dissimilar or unfair treatment toward one or more of them. The choice of proceeding by way of proposals rather than by way of bids was a reasonable and appropriate - albeit undocumented - decision. Although technically meritorious, this allegation appears to have been largely an afterthought raised by the Petitioner to supplement other allegations of subsequent wrongdoing by the Respondent.

The inclusion of GIS within the Application Area Requirements

Second, it was alleged that the Respondent included a GIS component which was unnecessary for police and fire operations, and that its inclusion was done in an illicit attempt to use federal drug forfeiture funds to finance it, and/or as a vehicle to include the planning needs of other agencies as a masked evaluation factor. Although the public safety needs of the Respondent could have been met by a much simpler imaging process, the facts supported the legitimate importance of GIS to public safety without establishing any hidden agenda for incorporating the planning needs of other agencies. Furthermore, the evidence did not establish any intended or actual misappropriation of funds, and the relatively minuscule point value assigned to GIS was factually immaterial in calculating the overall scores for each of the proposals. The potential augmentation of the GIS component at some point after implementation of the system (to allow for concurrent use in planning, tax, real property, or other applications) is irrelevant in assessing past compliance with the procurement laws.

The relative importance of evaluation factors in RFP No. 1541

Third, it was alleged that the Respondent failed to reveal the relative importance of the evaluation factors which the RFP Committee used to

score the proposals. The language of HRS §103D-303(e) quite clearly sets out a mandatory requirement that:

The request for proposals shall state the relative importance of price and other evaluation factors.
[Emphasis added]

Also, the language of HAR § 3-122-53(b) states, in relevant part, the applicable requirements for scoring proposals when the option of a numerical evaluation system is used:

Numerical rating systems may be used, but are not required. When used, the evaluation shall be based only on the evaluation factor set out in the request for proposals. The relative priority to be applied to each evaluation factor shall also be set out in the request for proposals.

RFP No. 1541, however, listed seven evaluation factors - Application Area Requirements - without attaching any relative importance to them. Quite to the contrary, the explanatory language accompanying this list stated that these factors had not necessarily even been listed in order of importance or weight. This language was used despite the fact that these evaluation factors had been taken directly from the July 13, 1992 RFP and the same numerical rating system used to score that document was initially adopted for use in scoring proposals received in response to RFP No. 1541. Furthermore, when prospective proposers asked about the relative importance of the evaluation factors at the Pre-Proposal Conference they were specifically told that this type of information would not be provided to them.

These violations were notably more significant than the previously discussed violation of HRS § 103D-303(a) because they deprived potential proposers of important information for structuring their proposals and emphasizing evaluation factors with higher weights. The fact that this unlawful conduct may have had an equally adverse impact on all of the proposers can hardly be said to justify its occurrence. Accordingly, the preponderance of the evidence established that the Respondent violated HRS § 103D-303(e) and HAR § 3-122-53(b).

The switch of values for two evaluation factors

Fourth, it was alleged that the Respondent wrongfully altered the numerical values (weights) for Growth Potential and for Cost as two of the seven evaluation factors - Application Area Requirements. In adopting numerical

values from the evaluation methodology which had been used with the July 13, 1992 RFP, the RFP Committee did switch the assigned values for Growth Potential (10 points) with the value for Cost (4 points) after both the Chairperson/Coordinator, Mr. Onishi, and the Recording Secretary, Ms. Novak, knew the cost identified with each of the proposals. This type of modification to the scoring system should have been accomplished before any of the committee members learned of the cost content of any of the proposals, and should have been made known to the proposers as a change to the numerical rating system referred to above. The language of HAR § 3-122-53(g) states that:

Evaluation meetings may be held by an evaluation committee to discuss the request for proposals, the evaluation process, the weighing of evaluation factors, and proposals received, before evaluation [Emphasis added]

It is fundamental to the fairness of the procurement process that changes in the criteria for selection not be made after proposals have been opened and their contents has become known to one or more of the evaluators. HAR § 3-122-53(g) states that an evaluation committee may meet to discuss the evaluation process and the weighing of evaluation factors "before evaluation," and having knowledge of the costs of proposals is sufficient for an evaluation of those costs to have begun. This kind of modification to evaluation methodology (scoring) is another type of conduct that casts suspicion upon the legitimacy of the procurement process. Accordingly, the preponderance of the evidence established that the Respondent violated HAR § 3-122-53(g).

The numerical calculation of objective scores for each proposal

Fifth, it was alleged that the Respondent's use of a numerical system to initially score the proposals may have resulted in unreliable results because of its length and complexity. Although, these calculations were clearly extensive, they reflected a methodology which necessarily involved many components and subcomponents of the seven evaluation factors. The committee members followed the correct formulas and the properly adopted evaluation methodology at this objective stage of scoring the proposals. While early calculations did contain numerous errors, subsequent recalculations resulted in numerically correct scores for the objective portion of the RFP Committee's evaluation of the proposals. The facts simply did not establish that the actual application of the (unrevealed) numerical rating system violated the procurement laws.

The comments on cost negotiation at the system demonstrations

Sixth, it was alleged that the Respondent engaged in improper negotiations when representatives of HFSI/Wang Federal (and Tiburon) made informal unauthorized comments to Mr. Onishi (implying that there was room for adjustment in the cost of their proposals) at the system demonstrations. This conduct did take place and did influence Mr. Onishi in his subsequently assigning subjective weights to the Cost factor of proposals during the subjective scoring process which was later adopted by the RFP Committee.

In examining this situation it is worth considering the applicability of HRS § 103D-303(f) which reads, in relevant part, as follows:

As provided in the request for proposals, and under rules adopted by the policy office, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers[.]

as well as HAR § 3-122-54(d) which reads, in relevant part, as follows:

Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

Although it does not appear from a factual perspective that these inappropriate comments had any material effect on the outcome of the selection process, the Respondent's failure to offer PRC at least the opportunity to provide similar input as the only other priority listed proposer constituted technical violations of HRS § 103D-303(f) and HAR § 3-122-54(d).

The addition of a subjective factor to the evaluation methodology

Seventh, it was alleged that the Respondent altered the evaluation methodology in an untimely, unauthorized manner without written notification as a result of the RFP Committee's addition of a 20% personal preference factor

in reaching its "final evaluation". The provisions of HRS 103D-303(g) read as follows:

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. [Emphasis added]

In contrast, the language in RFP No. 1541 stated that proposals would be evaluated "based upon, but not limited to" [Emphasis added] their responsiveness to the seven evaluation factors - General Area Requirements - identified therein. After the RFP Committee completed its objective numerical scoring of the proposals - as well as after its verification of proposals by user reference calls and system demonstrations - the committee members modified the previously adopted evaluation methodology by adding a new factor which was based solely on their personal preferences and was given a weight making up one-fifth of the total score. This introduced a significant "wild card" into the evaluation process. No such evaluation factor was identified in RFP No. 1541 nor was it included in the evaluation methodology adopted by the RFP Committee for scoring purposes. Furthermore, it was adopted without any written modification to either RFP No. 1541 or its evaluation methodology despite its having the effect of reducing the weight of each of the seven evaluation factors - General Area Requirements - by 20%. Accordingly, the preponderance of the evidence established that the Respondent violated HRS § 103D-303(g) as well as (previously cited) HAR § 3-122-53(b).

It is also worth noting that, having made the decision to proceed with this additional subjective factor, the committee members engaged in an unnecessarily complex series of mathematical calculations.² The RFP Committee's subsequent calculations artificially magnified the degree of separation between HFSI/Wang Federal's first place proposal and the other two proposals, and also resulted in reversing the positions of PRC's second place proposal and Tiburon's third place proposal.

² It was also at this stage that Mr. Onishi assigned values to Cost as an evaluation factor in non-compliance with the "8-5-3" scoring that was established for this purpose by the committee members.

The April 26 and May 9, 1995 correspondence from PRC

Eighth, it was alleged that the Respondent failed to treat the PRC correspondence of April 26, 1995 and May 9, 1995 as written protests under HRS § 103D-701(c) and failed to respond to them in an appropriate manner - electing instead to continue the award process under RFP No. 1541 with an already selected finalist. The primary purpose of the two letters written in the Spring of 1995 was to request information on the status of RFP No. 1541 since the conduct of the Respondent had raised suspicions about whether a selection had already been made. The secondary purpose of the letters was to promote the PRC proposal and invite site visits to PRC user locations as well as to invite the solicitation of a best and final offer from PRC. Although there was discretionary room for the Respondent to have considered these letters as protests, it cannot be said that the Respondent's conduct was unreasonable in not doing so. The form and content of these letters is clearly distinguishable from the subsequent PRC protest letter of January 4, 1996 (which did result in an agency level review) and the Respondent's reply to them did not specifically violate the procurement laws.

On the other hand, since the Respondent had in fact made a selection (subject only to confirmation through site visits) to be followed by the award of a negotiated contract, the Respondent's rather vaguely worded replies to these letters were at best disingenuous - and quite possibly counterproductive in terms of achieving the best contract attainable under RFP No. 1541. This type of reply also precluded clarification of conduct and/or correction of alleged wrongdoing by a more formal review at a substantially earlier date.

The post-recommendation/selection site visits

Ninth, it was alleged that the Respondent denied PRC fair and equal treatment because only HFSI/Wang Federal user/client locations were the subject of "site visits" by the RFP Committee, and because this was done after a selection/recommendation had already been made.

It is clear that the schedule of events set out in RFP 1541 specified that site visits were an activity which would take place after the demonstrations, but before the selection of a successful finalist. Although RFP 1541 also contained language that the "Hawaii County Police Department" could alter the schedule of events, it went on to state that such revisions would be in writing (as an official addendum) and would be mailed to all of the proposers. This was never done and, in the absence of any written change to RFP No. 1541 which would have eliminated site visits as part of the preselection evaluative process, the site visits to HFSI/Wang Federal user locations in April and May of

1995 were simply to confirm the performance abilities of an already selected proposer.

Although other language in RFP No. 1541 arguably allowed "HCPD and HCFD" (the police and fire departments) to treat site visits as optional, it still required that when such visits were conducted they had to be made to each of the finalist proposers' (vendors') sites. Furthermore, the decision to limit site visits to only the successful finalist was not made by the RFP Committee, but rather was imposed upon it by the Mayor as the result of budgetary restraints. However reasonable this may have been from a short term financial view, it was inconsistent with the schedule set out in RFP No. 1541 and the evaluation methodology adopted by the Committee. Accordingly, the preponderance of the evidence established that by failing to accord fair and equal treatment to PRC (and Tiburon) in this respect the Respondent the (previously cited) HRS 103D-303(f) and HAR § 3-122-54(d).

As a corollary allegation, the Petitioner asserted that additional negotiations took place between the Respondent and HFSI/Wang Federal representatives during the course of the RFP Committee's site visits to HFSI/Wang Federal user locations, but the facts were insufficient to substantiate this allegation.

The post-recommendation/selection best and final offer

Tenth, it was alleged that the Respondent denied PRC fair and equal treatment by requesting a "best and final offer" only from HFSI/Wang Federal and ignoring the other finalists in this regard. It is important to recognize that although "best and final offers" were not specifically addressed in RFP No. 1541 nor included in the designated schedule of events, they are specifically addressed in HAR § 3-122-55 as follows:

Best and final offers. (a) The procurement officer shall establish a date and time for the priority-listed offerors to submit their best and final offers.

(b) Best and final offers shall be submitted only once; unless,

- (1) The chief procurement officer or the head of a purchasing agency or a designee of either officer above the level of procurement officer determines in writing that it is in the State's best interest to conduct additional discussions or change the State's requirements and require another

submission of best and final offers;
otherwise,

(2) No discussion of or changes in the best and final offers shall be allowed prior to award.

(c) Priority-listed offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(d) After best and final proposals are received, final evaluations will be conducted for an award pursuant to section 3-122-58. [Emphasis added]

The committee members had clearly made a selection by March 2, 1995 when Mr. Onishi requested both: 1) approval of the selection by the Mayor and the Chiefs of the Police and Fire Departments; and 2) a best and final offer from HFSI/Wang Federal. (It should be noted, however that Mr. Onishi's letter to HFSI/Wang Federal was sent out the day before the RFP Committee's selection was approved). The failure of the Respondent to comply with these mandatory requirements and the timing provisions resulted in unequal treatment of PRC (and Tiburon) in this respect and constituted a violation of HAR § 3-122-55 as well as (previously cited) HRS § 103D-303(f) and HAR § 3-122-54(d). Once again, these were not merely technical violations but breached core requirements of the procurement process.

The post-award request for documentation

Eleventh, it was alleged that the Respondent failed to act in accordance with HAR § 3-122-59 by its slow pace and partial compliance with the Petitioner's request for all documentation relating to RFP No. 1541 selection procedures after the contract award had been announced. It appeared, however, that the Petitioner over estimated the number of documents which had been created and retained by either the RFP Committee or its individual members, and under estimated the number of documents which could legitimately be withheld from public inspection. While the Respondent could have been more diligent in complying with this request, the facts were insufficient to conclude that its conduct reached the level of a violation of the procurement laws.

The pseudo defenses asserted by the Respondent

In addition to the factual and legal arguments raised by the Respondent with respect to the above issues, the Respondent asserted that certain conduct engaged in by the Petitioner either constituted defenses which justified its own conduct and/or warranted consideration in determining the

nature of any remedies in this matter.³ The four substantive areas which the Respondent focused on were: 1) the February “blackboard episode” by Mr. Mase which revealed the costs identified with each proposal to PRC; 2) the February “trespass episode” in which Mr. Darsch was discovered within an HFSI/Wang Federal secured area prior to the system demonstrations; 3) the June “fax episodes” in which Mr. Tanner and Mr. Mase, communicated directly with Ms. Perreira rather than Mr. Onishi; and 4) the “inquiry episode” in which Mr. Lui-Kwan and other PRC representatives sought status information from Mr. Iwamoto rather than Mr. Onishi.

Although one or more of these events may have violated some legal or ethical standard beyond the parameters of the procurement code, the facts in this proceeding did not satisfactorily establish them to have been unlawful, and also failed to demonstrate that any of these events had any material impact on either the RFP No. 1541 selection process or its eventual outcome. In addition, it was not shown that even if actionable wrongdoing had been committed by the Petitioner, it would have somehow justified the Respondent’s own unlawful conduct.

IV. DECISION

A careful appraisal of the above findings/conclusions reflects multiple violations of the Hawaii Public Procurement Code by the Respondent from the beginning to the end of the RFP No. 1541 selection process. Although certain allegations raised by the Petitioner were not substantiated, and others constituted primarily technical violations, several major violations demonstrated the Respondent’s lack of compliance with both the spirit and the letter of the procurement laws.

The legislative intention behind the enactment of HRS Chapter 103D is revealed in its history as follows:

The purpose of this bill is to revise, strengthen, and clarify Hawaii’s laws governing procurement of goods and services and construction of public works.

Specifically, the bill establishes a new comprehensive code that will:

³ The Respondent also raised various procedural arguments such as lack of timeliness of the agency level protest, lack of standing, estoppel/laches, and unclean hands. These were generally addressed, directly or indirectly, during the course of the hearing and determined to be without merit. Further consideration has confirmed that determination.

- (1) Provide for fair and equitable treatment of all persons dealing with the government procurement system;
- (2) Foster broad-based competition among vendors while ensuring accountability, fiscal responsibility, and efficiency in the procurement process; and
- (3) Increase public confidence in the integrity of the system.

Standing Committee Report No. S8-93, 1993 Senate Journal, at 39.

Accordingly, a fair and equitable resolution of this matter would appear to include, as a minimum; 1) immediate cessation of all work currently being performed by HFSI/Wang Federal under the existing RFP No. 1541 contract, 2) pro-rata compensation and profit to HFSI/Wang Federal for work already performed under the contract, 3) reimbursement to PRC Public Sector, Inc., HFSI/Wang Federal, and Tiberon for their costs incurred by good faith participation in the selection process, and 4) reasonable attorney's fees and costs to PRC Public Sector, Inc. as the prevailing party which was, in effect, also acting in the capacity of a private attorney general to enforce the procurement laws.

On the other hand, a comprehensive reading of HRS Chapter 103D does not appear to reveal any authority for the imposition of an order which includes such relief.⁴ The only section of the procurement code which specifically addresses this aspect of the administrative review stage simply states that:

Hearings Officers shall decide whether the determinations of the chief procurement officer or the head of the purchasing agency, or their respective designees were in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation or contract.

HRS § 103D-709(f). The prior statutory sections contained in Part VII (Legal and Contractual Remedies) are directed at the earlier stage of agency review

⁴ The lack of such authority is also of grave concern to this forum which has expended considerable time and resources in an effort to achieve a just resolution of this matter. The absence of authority to impose such a resolution is particularly frustrating at a time of severe budgetary restraints and rapidly escalating caseloads which leaves no room for futile pursuits.

wherein the chief procurement officer or the head of a purchasing agency evaluates protests in an effort to resolve them before (and as a threshold requirement of) administrative hearings. Similarly, the subsequent statutory sections contained in Part VII focus on judicial review and offer no help in fashioning well-tailored relief.

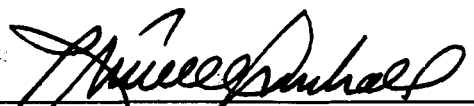
The Hawaii Administrative Rules are also not helpful in providing meaningful administrative remedies. As a starting point, the rules cannot expand whatever authority is contained in the statutes. Furthermore, despite the language of HAR § 3-126-35 which states in its entirety that:

The provisions of this rule [subchapter?] apply where it is determined administratively [by agency review?] or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law[.]

the provisions of HAR § 3-126-38, which address remedies after an award, again focus on the agency review and the actions of "the chief procurement officer or the head of a purchasing agency." In addition, not unlike other poorly articulated substantive sections of the rules, the "remedies" contained in HAR § 3-126-38 heavily favor the governmental entity as a party in this type of proceeding and appear to make this section's only real "remedy" (contract termination) an option of that party. In other words, in this matter the wrongdoer would get to fashion its own order.

Therefore, under even the broadest interpretation of the applicable law, the authority of this forum is limited to a "least undesirable" decision, and orders that pursuant to HRS § 103D-707(1) the Respondent's contract with HFSI/Wang Federal is terminated and HFSI/Wang Federal is awarded compensation from the Respondent for its actual expenses reasonably incurred under that contract as well as a reasonable profit. The alternative of ordering an affirmation of the contract under the circumstances presented in this matter would make a mockery of any enforcement actually incorporated in the procurement code.

DATED: Honolulu, Hawaii, MAY 31 1996



RICHARD A. MARSHALL
Hearings Officer
Department of Commerce
and Consumer Affairs