

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
SEPTEMBER 30, 2003

The teleconference meeting was held on Wednesday, September 30, 2003, at the Structural Pest Control Board, 1418 Howe Avenue, Suite 18, Angela D. Newman Conference Room, Sacramento, California, commencing at 10:07 AM with the following members constituting a quorum:

Michael Roth, President
Jean Melton, Vice President
Bill Morris
Mustapha Sesay
Gregory Traum
Ken Trongo

Board member Karl Thurmond was not present

Board staff present:

Kelli Okuma, Registrar
Susan Saylor, Assistant Registrar
Barbara Howe, Licensing
Dennis Patzer, Enforcement
Karen Sanders, Administration

Departmental staff present:

Donald Chang, Legal Counsel
Kurt Heppler, Legal Counsel

Mr. Roth explained the purpose of today's teleconference meeting: to consider whether to take action on the Research Advisory Panel's (RAP) recommendations or to reject the submitted proposals and re-release the Request for Proposal (RFP) in a manner that would provide notice to the greatest number of interested parties. He then turned the meeting over to Don Chang, Legal Counsel.

Mr. Chang stated that at the last Board meeting a question arose concerning the RFP issued by the University of California Forest Products Laboratory (UCFPL) with respect to award of the Structural Pest Control Board's research project funds. As a result, the Board had asked legal counsel to determine whether the RFP was required to comply with contract code provisions applicable to California state agencies. Mr. Chang said he had asked an attorney in his office, Mr. Kurt Heppler, to research that issue. He then requested Mr. Heppler to present his research, the opinion he had prepared and the basis for his conclusions to the Board.

Mr. Heppler commented that in order to address the issue of notices to the RFP he would first like to explain the traditional state contracting process; that is, in order to procure goods and services there is a statutory scheme whereby a notice is first published in the California State Contracts Register so that everybody who has an interest in supplying the good or service can find out about the need for goods and services. However, contracts with the University of California (UC) are exempt from such statutory requirement and there was no applicable standard for UC to advertise an RFP. He stated that although there were certain elements of notice that had been published for the RFP in question, such as internet notices and list server notices, because there was no standard to compare with, he had been unable to determine if those notices had been sufficient or not. But of more interest, he felt, was the fact that there were substantial inconsistencies within the contract itself when it was compared to the statutes in the Business and Professions Code which govern the actions of the Board. For instance, the contract states either UCFPL will make the decision to award the contract, or the RAP will do it, or there would be some discussion among the two, which section 8674 of the Business and Professions Code states is the Board's responsibility. Therefore, he felt there was an inherent uncertainty or conflict with the RFP release, the statutes that govern the application, and the operation and administration of the Board. He therefore concluded that, considering the inconsistencies in the RFP, perhaps with the Board's discretion it would be better to revise the RFP in a manner consistent with the applicable statutes and regulations, and then release it to interested parties in a manner prescribed by the Board. With that he concluded his presentation and welcomed any questions or comments.

Mr. Roth asked for comments from members of the Board regarding the advise of legal counsel.

Mr. Traum commented it was his understanding it would be the Board's preference on how to have media notify applicants. He wondered if that was part of the recommendation.

Mr. Roth replied he believed it was something the Board could do if they wanted to and they could have as much or as little involvement as they wished.

Mr. Heppler commented the initial contract with the UCFPL merely said to issue the RFP. That was the extent of its direction. Therefore, if the Board chose to re-bid, perhaps the Board could more clearly specify how the RFP should be released.

Mr. Morris asked if it would be prudent to come to a conclusion now to either reject or accept the RAP's recommendations.

Mr. Roth felt the Board members should probably stick to the issue of whether or not the RFP had been properly noticed.

Mr. Chang responded he felt Mr. Morris' suggestion to accept or reject was a good way to proceed because the Board members first had to decide what to do with the presented recommendations.

Mr. Roth asked: if the proposals as recommended were accepted, would Board members then be effectively rejecting legal counsel's recommendations?

Mr. Chang responded there were some serious legal reservations expressed by legal counsel regarding the RFP.

Mr. Roth asked what would happen if the Board accepted the grant proposal today.

Mr. Chang stated the issue of whether or not the RFP was proper should first be discussed; if found to not be proper, then the issue to accept the recommended grant proposals based upon that improper RFP and its consequences should be discussed.

Mr. Roth asked for public comments.

Vernard Lewis, UC Berkeley, stated he understood the seriousness of the meeting today and that it looked to him as if the issue revolved around the nature of the contract, which he knew nothing about as a submitter of a proposal. He expressed his wish that the science and importance of the proposals would be kept independent of the contract as he felt this research was important to the people of California. He felt the issues of the contract, since they involved a lot of legal problems, could be delayed to a future meeting or agenda. He commented it took him a month of working every day many hours to prepare his proposal, he was not involved in the contract and felt it had been adequately publicized as it was on the Internet and had been given to the International Research Group (IRG), etc.

Bill Gillespie, Government Watcher, stated he did not feel the core of the issue had been reached, which was the potential for conflict of interest. He felt there were questions the Board should address in the best interests of the public and the industry. He felt the RFP was slanted toward the Board and the Board membership. He felt the Board members were apparently unaware of Branch 2 and the relative numbers of licensees who hold a Branch 2. He stated if the Board wished to serve the industry they should assure that the RFP include pests and other items, not just Branch 3 items, as Branch 3 constituted the primary Board membership. He felt the Board members, particularly the public members, were placed on the Board to look into things such as conflicts of interest and he didn't feel that was being done. He also felt the Board and perhaps the Fair Political Practices Commission should look into who had been given awards in the past to see if it was the same people or the same organizations. He questioned the committee membership, wondering if there were any people on the committee who held a special relationship with Dr. Lewis, business, personal or otherwise. He then questioned if there were any committee members who had undergone a conflict of interest investigation.

Mr. Chang reminded Bill Gillespie that the issue was, based upon the advice of counsel who had pointed out some defects with the RFP, whether the Board should proceed or not.

Bill Gillespie commented that the only comments he had related to conflicts of interest and if this was not the proper forum for that, he felt the Board should address that at another time.

Mr. Chang restated that for this meeting the issue was the RFP and if the advice of legal counsel should be considered when the Board made its decision.

Harvey Logan, Pest Control Operators of California, stated his concerns over the length of time the process would take because Forest Products Laboratory was no longer in existence, a new contract would have to be drawn, and it sounded as though legal counsel was suggesting the contract itself be changed rather substantially. He commented that money had been accumulating for seven years now and felt the people of California and the industry were interested in seeing something done. He recommended the Board adopt legal counsel's recommendations in a future contract, but consider the proposals and award them today.

Mr. Roth said he believed the Board should follow the recommendation of legal counsel, as there were risks involved with a flawed contract that weighed heavier than the benefits of proceeding, and it would be a mistake to not listen to legal counsel, which he felt had the interest of the public and the agency at heart. He then commented there was at least one other study he would like to see funded in the future, pesticide use in an urban environment, as he felt it was an extremely important issue to the general public.

Mr. Trongo commented it was his understanding at the last Board meeting that there was a concern the RFP had not been properly noticed, with no question of the contract and whether or not it was acceptable. He said Mr. Heppler had stated there was no standard necessary or required for notification. So, if the contract was not consistent, change it, but the Board should proceed on today's question of whether or not the RFP had been properly noticed.

Mr. Chang responded that Mr. Trongo was correct in that the initial concern raised by the Board had been whether or not UC Forest Products Lab had properly noticed the matter and that matter had been reviewed. However, in performing his due diligence, Mr. Heppler had discovered some other significant flaws with respect to the RFP itself. For the most part, the RFP indicated the contract would be basically awarded and governed by UC Forest Products Lab, clearly inconsistent with the law. Therefore the question had now become: Does the Board wish to issue an RFP that does not properly identify the Board to be the controlling party? Because once the RFP is issued in that sort of manner it becomes binding upon all parties.

Mr. Sesay asked Mr. Chang if he foresaw a problem in the future if the Board went with the proposal.

Mr. Chang stated there was a clear potential for problems in the event of a dispute between what the Board might wish to do with the contract and what UC might wish to do with it. In effect, the Board would legally lose control over this project because the RFP specifies that Forest Products Lab or its successor, UC, maintain control over the project as opposed to the Board maintaining control over the project.

Mr. Morris felt that with the major inconsistencies now facing the Board, it was not prudent to accept the RFP and stated that the amount of time since an RFP had been issued warranted awarding the matter high priority.

Mr. Trongo asked Mr. Chang if the Board could accept the spirit of the contract and then alter it.

Mr. Chang replied no because it was too significant of a flaw. The RFP misidentified the contracting party, a fundamental principle of the contract. He proposed that if the Board decided not to go forward with the RFP because of the defects, staff could contact UC Berkeley as the successor to Forest Products Lab to determine their abilities and if they could perform the responsibilities of the contract as the Board had intended and directed UC Forest Products Lab to perform. If staff was satisfied with the ability of UC Berkeley to perform the contract as successor, the Board would amend the contract to include UC Berkeley and then immediately release a new RFP. The entire process would only incur about a 4-5 month delay between the time of switching over to UC Berkeley and the release of the new RFP and under this scenario the process would be properly completed.

Mr. Trongo moved and Mr. Sesay seconded to reject all the proposals currently submitted based upon the defects with the RFP and direct staff to contact UC Berkeley to explore its ability to perform in the role of the UC Forest Products Lab. If UC is found able, staff will amend the contract to allow UC Berkeley to be the administrator of the Board's contract and immediately release a new RFP.

Passed unanimously.

Ms. Okuma commented the matter would be placed on the agenda for the Board meeting being held October 17, 2003 and in the next two-week period staff would gather the information necessary for the Board to consider at that meeting.

Mr. Roth thanked everyone for participating and adjourned the meeting at 10:40 AM.



MICHAEL ROTH, President



KELLI OKUMA, Registrar

10-17-03
DATE