

JAN 25 2006

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to amend the Hawaii
2 public procurement code, as follows:

3 (1) Agencies which are exempt from chapter 103D should be
4 required to have (not merely "encouraged to adopt" as
5 under current law), and submit, written procurement
6 policies, and procedures to the state procurement
7 office, which does not presently have knowledge of the
8 procurement practices of exempt agencies;

9 (2) Any exempt purchases should be documented for later
10 audit. There is a general lack of documentation of
11 exempt purchases, beyond minutes of board meetings and
12 the like;

13 (3) Future bills that would exempt agencies from the
14 procurement code should be required to include a
15 legislative finding that that the exemption is
16 necessary and in the public interest, including the
17 reasons therefor, and not for the administrative



1 expediency of the agency. This amendment would ensure
2 that agencies comply with chapter 103D, Hawaii Revised
3 Statutes, which legitimizes government procurement by
4 providing a definitive process that is open and
5 transparent; and

6 (4) Duplicative training on procurement is common and
7 should be eliminated. The state procurement office
8 and the various departments such as the department of
9 human resources development, department of labor and
10 industrial relations, and the department of budget and
11 finance all conduct training sessions for employees
12 which causes unnecessary budgetary expense. The
13 primary responsibility for training should be vested
14 with the state procurement office, subject to
15 supplemental agency training as appropriate that
16 require more specialized knowledge if the additional
17 training does not add to the budget costs.

18 SECTION 2. Section 103D-102, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§103D-102 Application of this chapter[-]; exemptions;**
21 **necessity of exemptions.** (a) This chapter shall apply to all
22 procurement contracts made by governmental bodies whether the

1 consideration for the contract is cash, revenues, realizations,
2 receipts, or earnings, any of which the State receives or is
3 owed; in-kind benefits; or forbearance; provided that nothing in
4 this chapter or rules adopted hereunder shall prevent any
5 governmental body from complying with the terms and conditions
6 of any other grant, gift, bequest, or cooperative agreement.

7 (b) Notwithstanding subsection (a), this chapter shall not
8 apply to contracts by governmental bodies:

9 (1) Solicited or entered into before July 1, 1994, unless
10 the parties agree to its application to a contract
11 solicited or entered into prior to July 1, 1994;

12 (2) To disburse funds, irrespective of their source:

13 (A) For grants or subsidies as those terms are
14 defined in section 42F-101, made by the State in
15 accordance with standards provided by law as
16 required by article VII, section 4, of the State
17 Constitution; or by the counties pursuant to
18 their respective charters or ordinances;

19 (B) To make payments to or on behalf of public
20 officers and employees for salaries, fringe
21 benefits, professional fees, or reimbursements;



- 1 (C) To satisfy obligations that the State is required
- 2 to pay by law, including paying fees, permanent
- 3 settlements, subsidies, or other claims, making
- 4 refunds, and returning funds held by the State as
- 5 trustee, custodian, or bailee;
- 6 (D) For entitlement programs, including public
- 7 assistance, unemployment, and workers'
- 8 compensation programs, established by state or
- 9 federal law;
- 10 (E) For dues and fees of organizations of which the
- 11 State or its officers and employees are members,
- 12 including the National Association of Governors,
- 13 the National Association of State and County
- 14 Governments, and the Multi-State Tax Commission;
- 15 (F) For deposit, investment, or safekeeping,
- 16 including expenses related to their deposit,
- 17 investment, or safekeeping;
- 18 (G) To governmental bodies of the State;
- 19 (H) As loans, under loan programs administered by a
- 20 governmental body; and
- 21 (I) For contracts awarded in accordance with
- 22 chapter 103F.

1 (3) To procure goods, services, or construction from a
2 governmental body other than the University of Hawaii
3 bookstores, from the federal government, or from
4 another state or its political subdivision;

5 (4) To procure the following goods or services which are
6 available from multiple sources but for which
7 procurement by competitive means is either not
8 practicable or not advantageous to the State:

9 (A) Services of expert witnesses for potential and
10 actual litigation of legal matters involving the
11 State, its agencies, and its officers and
12 employees, including administrative
13 quasi-judicial proceedings;

14 (B) Works of art for museum or public display;

15 (C) Research and reference materials including books,
16 maps, periodicals, and pamphlets, which are
17 published in print, video, audio, magnetic, or
18 electronic form;

19 (D) Meats and foodstuffs for the Kalaupapa
20 settlement;

21 (E) Opponents for athletic contests;



- 1 (F) Utility services whose rates or prices are fixed
2 by regulatory processes or agencies;
- 3 (G) Performances, including entertainment, speeches,
4 and cultural and artistic presentations;
- 5 (H) Goods and services for commercial resale by the
6 State;
- 7 (I) Services of printers, rating agencies, support
8 facilities, fiscal and paying agents, and
9 registrars for the issuance and sale of the
10 State's or counties' bonds;
- 11 (J) Services of attorneys employed or retained to
12 advise, represent, or provide any other legal
13 service to the State or any of its agencies, on
14 matters arising under laws of another state or
15 foreign country, or in an action brought in
16 another state, federal, or foreign jurisdiction,
17 when substantially all legal services are
18 expected to be performed outside this State;
- 19 (K) Financing agreements under chapter 37D; and
- 20 (L) Any other goods or services which the policy
21 board determines by rules or the chief
22 procurement officer determines in writing is



1 available from multiple sources but for which
2 procurement by competitive means is either not
3 practicable or not advantageous to the State; and

4 (5) Which are specific procurements expressly exempt from
5 any or all of the requirements of this chapter by:

6 (A) References in state or federal law to provisions
7 of this chapter or a section of this chapter, or
8 references to a particular requirement of this
9 chapter; and

10 (B) Trade agreements, including the Uruguay Round
11 General Agreement on Tariffs and Trade (GATT) which require
12 certain non-construction and non-software development
13 procurements by the comptroller to be conducted in accordance
14 with its terms.

15 (c) ~~[Governmental bodies]~~ Each governmental body making
16 procurements which are exempt from this chapter ~~[are~~
17 ~~nevertheless encouraged to adopt and use provisions of this~~
18 ~~chapter and its implementing rules as appropriate,]~~ shall adopt
19 a written procurement procedure that serves the same purpose as
20 this chapter and shall file the procurement procedure with the
21 state procurement office; provided that the use of one or more
22 provisions shall not constitute a waiver of the exemption



1 conferred and subject the procurement or the governmental body
2 to any other provision of this chapter~~[=]~~; and provided further
3 that all purchases made under this subsection shall be
4 sufficiently documented, including but not limited to board
5 approval, for purposes of subsequent audit.

6 (d) A legislative bill to provide an exemption from this
7 chapter to a governmental body shall contain a legislative
8 finding that the exemption is necessary in the public interest
9 and is not for purposes of administrative expediency of the
10 agency."

11 SECTION 3. Section 103D-206, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§103D-206 Additional duties of the administrator of the**
14 **procurement office.** In addition to the duties referred to in
15 section 103D-205, the administrator shall:

- 16 (1) Perform periodic review of the procurement practices
17 of all governmental bodies;
- 18 (2) Assist, advise, and guide governmental bodies in
19 matters relating to procurement;
- 20 (3) Develop and administer a statewide procurement
21 orientation and training program; provided that a
22 governmental body may supplement the orientation and



1 training with more specialized procurement education
 2 geared to the subject matter of particular goods or
 3 services, including specifications of the procurement,
 4 if the supplementation does not entail additional
 5 budgetary costs;

6 (4) Develop, distribute, and maintain a procurement manual
 7 for all state procurement officials; and

8 (5) Develop, distribute, and maintain a procurement guide
 9 for vendors wishing to do business with the State and
 10 its counties."

11 SECTION 4. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

14

INTRODUCED BY: Juanita R. Thompson
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Report Title:

Procurement Code

Description:

Requires exempt agencies to have written procurement policies, procedures, and ethics. Requires exempt agencies to document purchases for audit. Requires a legislative bill exempting an agency to contain legislative findings of necessity. Allows an agency to supplement procurement training if there is no effect on budget.

