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

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

13 (3) To require future bills that would exempt agencies
14 from the procurement code to include a legislative
15 finding that that the exemption is necessary and in
16 the public interest, including the reasons therefor,
17 rather than for the administrative expediency of the



1 agency. This amendment would ensure that agencies
2 comply with chapter 103D, Hawaii Revised Statutes,
3 which legitimizes government procurement by providing
4 a definitive process that is open and transparent; and
5 (4) To eliminate duplicative training on procurement. The
6 state procurement office and the various departments
7 such as the department of human resources development,
8 department of labor and industrial relations, and the
9 department of budget and finance all conduct training
10 sessions for employees which causes unnecessary
11 budgetary expense. The primary responsibility for
12 training should be vested with the state procurement
13 office, subject to supplemental agency training as
14 appropriate that require more specialized knowledge if
15 the additional training does not add to the budget
16 costs.

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

19 **"§103D-102 Application of this chapter[-]; exemptions;**
20 **necessity of exemptions.** (a) This chapter shall apply to all
21 procurement contracts made by governmental bodies whether the
22 consideration for the contract is cash, revenues, realizations,

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

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

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

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

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

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

21 (C) To satisfy obligations that the State is required
22 to pay by law, including paying fees, permanent

- 1 bookstores, from the federal government, or from
- 2 another state or its political subdivision;
- 3 (4) To procure the following goods or services which are
- 4 available from multiple sources but for which
- 5 procurement by competitive means is either not
- 6 practicable or not advantageous to the State:
- 7 (A) Services of expert witnesses for potential and
- 8 actual litigation of legal matters involving the
- 9 State, its agencies, and its officers and
- 10 employees, including administrative
- 11 quasi-judicial proceedings;
- 12 (B) Works of art for museum or public display;
- 13 (C) Research and reference materials including books,
- 14 maps, periodicals, and pamphlets, which are
- 15 published in print, video, audio, magnetic, or
- 16 electronic form;
- 17 (D) Meats and foodstuffs for the Kalaupapa
- 18 settlement;
- 19 (E) Opponents for athletic contests;
- 20 (F) Utility services whose rates or prices are fixed
- 21 by regulatory processes or agencies;

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

1 procurement by competitive means is either not
2 practicable or not advantageous to the State; and

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

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

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

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

1 to any other provision of this chapter[-]; and provided further
2 that all purchases made under this subsection shall be
3 sufficiently documented, including but not limited to board
4 approval, for purposes of subsequent audit.

5 (d) A legislative bill to exempt a governmental body from
6 this chapter shall contain a legislative finding that the
7 exemption is necessary in the public interest and is not for the
8 purpose of the administrative expediency of the agency.

9 (e) A governmental body that is exempt from this chapter
10 shall post exempt contract awards on the state procurement
11 office website for purposes of public disclosure."

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

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

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

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

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

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

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

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

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. Requires exempt agency to post contract awards on state procurement office website. (SD1)

