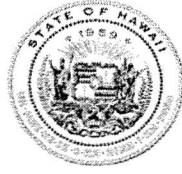


LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
DARYLE ANN HO
GREGORY L. KING
KEITH T. MATSUMOTO
RUSS K. SAITO
PAMELA A. TORRES

AARON S. FUJIOKA
ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEES
ON
HIGHER EDUCATION
AND
ECONOMIC DEVELOPMENT & BUSINESS CONCERNS

January 29, 2008

HB 2431

RELATING TO THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII

Chair Chang, Chair Yamashita and committee members, thank you for the opportunity to testify on H.B. 2431.

The State Procurement Office (SPO) does not support the proposed language to amend section 304A-105, to allow the board of regents to develop procurement practices exempt from chapter 103D, the public procurement code. The designated chief procurement officer, the President of the University of Hawaii, has the autonomy and independence to direct its own procurement program. There is no advantage in independence gained by exempting the UH from the code since the code already provides independence and flexibility in the procurement process.

Statutory exemptions are contrary to the Hawaii Public Procurement Code (Code), section 103D-102, HRS, on the applicability of the chapter that states in part “. . . shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, . . .” Any governmental agency with the authority to expend funds should be in compliance with Chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly to obtain its requirements. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic for the administration and vendors/contractors that must comply with a variety of processes. Agencies agree that fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. SPO believes that for this to be accomplished, we must participate in the process with one set of statutes and rules.

The Code provides consistency in the manner in which purchasing agencies procure goods, services, and construction. Although an exempted agency may develop their own procurement source selection methods, it was the intent and goal of the legislature to have a single source of policy and procedures to ensure consistency and continuity in the application of the procurement process among government agencies throughout the State and counties.

Exempting agencies from the Code will jeopardize uniform and consistent protections against waste, fraud, and abuse the legislature placed in the Code; and will potentially hinder the legislature in promoting and supporting specific segments of the Hawaii economy through preferences allowed by the Code. "Preferences" permit the legislature to promote specific segments of the state's economy and encourage the development of new products and technologies. However, preference programs apply only to agencies subject to the Code, and exempt agencies are not subject to the legislature's designated preferences.

The Code enables the legislature to impose specific requirements to eliminate practices that are detrimental to the public's perception of government procurement. The legislature passed and the governor signed into law, Act 52(2003), amending Section 103D-304 to require that all contract awards to professional service providers be made based upon the merits of the provider, and not upon any other factors; thereby reaffirming the public's understanding that professional service contracts are not awarded to companies based on political affiliation or amount of political contributions.

To provide fairness and consistency, and due process for vendors/contractors, the Code offers a legal and contractual remedy process to resolve protested solicitations and awards, which includes impartial reviews by the Department of Commerce and Consumer Affairs administrative hearings process and the ability to request judicial review. The protest process also protects agencies and taxpayers from onerous and baseless protests, minimizes delays and disruptions in the award of contracts, and supports a prompt resolution.

To insure all vendors/contractors who seek public contracts compete on equal footing they are required to demonstrate compliance with Hawaii laws. The Code requires potential vendors/contractors to comply with Hawaii laws prior to award of a contract, i.e. DOTAX Tax Clearance Certificate including IRS certification, DLIR Certificate of Compliance; DCCA Certificate of Good Standing. Upon completion of goods provided or services performed, and before final payment is made, a vendor/contractor is again required to demonstrate compliance with Hawaii laws, thereby assuring that public funds are paid to compliant vendors/contractors.

The Code contains a provision (§103D-102(b)(4)(L)) that allows a purchasing agency to request an exemption when it has been determined that procurement by competitive means is either not practicable or not advantageous to the State, thereby providing flexibility, but within the requirements of the Code.

Open bidding procedures assure that the State obtains value, and potential vendors/contractors are treated fairly. The SPO believes that it is vital to good government to have a fair and consistent process to award government contracts that hold agencies responsible and accountable for their actions.

The SPO is against exempting specific agencies from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable set of rules and processes for award of contracts.

In conclusion, there is no compelling reason to statutorily exempt agencies from the Code. Thank you.

UNIVERSITY OF HAWAI‘I SYSTEM LEGISLATIVE TESTIMONY



HB 2431 – RELATING TO THE BOARD OF REGENTS OF THE
UNIVERSITY OF HAWAII

Testimony Presented Before the
House Committee on Higher Education
Committee on Economic Development & Business Concerns

January 29, 2008 at 2:40pm

by

Howard Todo
Vice President for Budget & Finance/CFO
University of Hawaii System

Testimony Presented Before the
House Committee on Higher Education
January 29, 2008 at 2:40pm

by
Howard Todo
Vice President for Budget & Finance/CFO, University of Hawai'i

HB 2431 – RELATING TO THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII

Chairs Chang and Yamashita, Vice Chairs Bertram and Wakai, and Members of the Committee:

This Bill restores the University's ability to establish its own procurement policies in support of the widely accepted public policy of greater administrative flexibility for the University. The University was granted this flexibility by the Legislature in 1998 and had used it responsibly and to great benefit until its revocation as of January 1, 2005.

The first point we would like to make is that providing the University of Hawaii with administrative flexibility has been accepted public policy embraced by all branches of government and the general public.

In 1997, the Governor, Senate President and Speaker of the House created an unprecedented blue ribbon Economic Revitalization Task Force composed of Hawaii's business, community and government leaders. Their objective was to develop recommendations on how to strengthen Hawaii's economy. Recognizing the importance of the University of Hawaii as a major economic engine for the State, one of the clear conclusions of the task force, accepted by all, was that autonomy for the university would materially enhance the university's performance of its constitutional responsibilities and allow it to contribute more meaningfully to the economic revitalization of the State of Hawaii. In 1998 the Legislature passed and the Governor signed Act 115 granting the University of Hawaii greater flexibility in managing its own affairs and, most notably, exempting the University of Hawaii from the State Procurement Code. This flexibility allowed the Board of Regents to adopt University procurement procedures consistent with State procurement law, but not dependent on the State governmental processes, procedures and resources. Taking this flexibility even further, in the 2000 legislative session a constitutional amendment was approved to provide the University of Hawaii with even greater autonomy. This constitutional amendment was overwhelmingly ratified by Hawaii's voters in the 2000 election.

The second point we would like to make is that the University used this flexibility responsibly and effectively.

As required by Act 115, the University developed and implemented its own internal procedures and policies for procurement. The University used its flexibility to create the most advanced and open electronic public sector procurement system in the State of Hawaii. An electronic sourcing system called "SuperQuote" was established at no cost to the University, through which requests for quotation are solicited online. By making use of the Internet, quotes are received faster, the process is more open, competition is increased resulting in lower prices, and there is automatically an audit trail. The University also implemented the first purchasing card (PCard) program in the State. Accountability is

maintained through various restrictions on the type and amount of allowable spending. The PCard program reduces time, costs and effort in purchasing, including by enabling purchases over the Internet. Both SuperQuote and the PCard system have direct electronic interfaces to the University's financial management information system. This eliminates duplicate data entry in purchasing, which further reduces administrative costs and decreases a potential source of errors. The University developed comprehensive and thorough written policies and procedures appropriate for these modern practices. The University's Administrative Procedures on Procurement have been available online for many years and can be found at the following website: <http://www.hawaii.edu/apis/apm/a8200.html>. While the current versions of these procedures reflect the 2005 revocation of the University's Act 115 flexibility, the previous procedures that took advantage of the flexibility are also available in the online archives at <http://www.hawaii.edu/svpa/apm/archives/a8200.html>.

Our third point is that the University remains fully committed to openness, appropriate public oversight and accountability.

In improving its internal procurement system, the University of Hawaii fully honored the statutory requirement to comply with the intent of the State procurement code. While dramatically increasing open competition and improving operational efficiency, the University has also embraced applicable federal procurement guidelines in its new processes and systems. The University procedures developed to implement the flexibility granted by Act 115, as described above, were all reviewed, discussed and approved by the Board of Regents at duly noticed open public meetings conducted under the State "Sunshine" laws. In addition to a bevy of internal control processes, the University's procurement practices are independently audited each year to ensure fair and equitable treatment of vendors, to foster effective broad-based competition in order to secure best value in purchases, and to maintain the integrity of the procurement process.

The public interest is best served by restoring the University's flexibility to establish its own procurement policies.

The widely accepted movement to increase University flexibility has been widely supported by the Legislature over the last decade, by the last two Governors, by the business community and by the voting public. One of the most visible outcomes of this movement was the law passed by the 1998 Legislature granting the University an exemption from the state procurement processes. The University's own procurement system and processes streamlined purchasing to reduce administrative costs, increased competition, reduced the costs of goods and services procured, increased openness and auditability, and reduced the costs for vendors to do business with the University. Our faculty and staff used this direct responsibility and accountability to help the University of Hawaii respond to changing conditions, new opportunities and Hawaii's needs in a more timely and effective manner. In addition, the University's flexibility reduced cost to State Government by relieving DAGS and other agencies of any responsibility for University procurement.

This will allow the University to get repairs and renovations done more quickly and reduce costs while maintaining appropriate controls.

We appreciate the Legislature's desire to assist the University in addressing its deferred maintenance needs and the deteriorating condition of its facilities. Restoring the flexibility in

procurement will allow the University to be more efficient and timely in the use of funds provided by the Legislature to deal with the backlog of repairs and renovations needed at all of our ten campuses. It will allow us to get projects started and completed more quickly and reduce costs for the University and its vendors while providing for open competition and auditability.

We ask your support for the passage of this bill, which is important in helping the University of Hawaii have the facilities and processes to compete in the national marketplace of Colleges and Universities and to be the major engine for the economic diversification of Hawaii.

Thank you for this opportunity to testify in support of this measure.