

STAND. COM. REP. NO. 1611

Honolulu, Hawaii

April 9, 2009

RE: S.B. No. 21
S.D. 1
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 21,
S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO GOVERNMENT,"

begs leave to report as follows:

The purpose of this bill is to allow the State to expedite the use of federal American Recovery and Reinvestment Act of 2009 (ARRA) funds, by providing temporary exemptions from procurement and rulemaking statutes, and establishing an expedited procurement procedure for the expenditure of these funds which, among other things:

- (1) Applies to government procurements of goods, services, construction, and health and human services using ARRA funds, and replaces procurement procedures under Chapter 103D, 103F, and specified sections of Chapter 103, Hawaii Revised Statutes (HRS);
- (2) Consists of two separate procedures, one applicable to procurements of goods, services, or health and human services of less than \$150,000 and construction of less than \$250,000, and another applicable to procurements exceeding those amounts;
- (3) For all procurements under this bill, requires the head of the purchasing agency to establish committees to

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review all offeror submissions, and award contracts based on the information provided by the committee;

- (4) Establishes a procedure to protest the award of a contract for health and human services, and another to protest awards of other types of contracts; and
- (5) Makes the remedies of debarment and suspension under section 103D-702, HRS, applicable to offerors and others who commit fraud or misrepresentation in the procurement, or abuse the expenditure of public moneys.

This bill also allows agencies to issue interim rules exempt from Chapter 91, HRS, to implement programs, services, or benefits authorized or funded by ARRA, and increases the Temporary Assistance for Needy Families Program (TANF) funds expenditure ceiling to allow the Department of Human Services (DHS) to use ARRA funds.

The State Administration, Department of Accounting and General Services, Department of Taxation, Department of Human Resources Development, Department of the Attorney General, Department of Labor and Industrial Relations, Department of Transportation, DHS, and Subcontractors Association of Hawaii supported this bill. The Autism Society of Hawaii and a concerned individual opposed this bill. The State Procurement Office, Department of Health, Hawaii Council of Mayors, Hawaii Government Employees Association, Hawaii Disability Rights Center, AARP Hawaii, and Goodwill Industries of Hawaii, Inc., commented.

Your Committee has amended this bill by:

- (1) Making the expedited procurement procedures for ARRA-funded procurements permissive rather than mandatory;
- (2) Specifying that small procurements of less than \$150,000 for goods and services, and \$250,000 for construction, are to be made through an electronic procurement system;
- (3) Instead of requiring offeror tax clearances to be obtained prior to final payment under the contract, requiring offerors to comply with the general excise tax, unemployment, workers' compensation, temporary disability insurance, and Prepaid Health Care Act laws, and demonstrate compliance by registering on the Hawaii



Compliance Express, the State's one stop clearance website;

- (4) Requiring posting of information about awards on the procuring agency's website;
- (5) Removing the exemption from section 103-55, HRS, which requires compliance with all applicable labor laws, and that wages, hours, and working conditions of contracted employees be not less than those of comparable public employees;
- (6) Specifying that the expenditure ceiling increase for TANF funds is \$15,000,000, and appropriating \$5,000,000 of those federal funds to the Child Development Fund for fiscal year 2008-2009;
- (7) Establishing a Legislative Federal Economic Stimulus Program Oversight Commission to oversee the distribution of any federal economic stimulus program funds and ensure the efficiency, integrity, and fairness of the distribution;
- (8) Changing the effective date to June 29, 2009; and
- (9) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee remains concerned that the bill's "expedited" procurement may not meet the accountability and oversight requirements of ARRA. In particular, White House guidelines specify the need for full competition. Memorandum M-09-10, dated February 18, 2009, issued by the Director of the Office of Management and Budget, Executive Office of the President states:

*"Although the law calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a federal contract on a non-competitive basis. **Agencies are expected to follow the same laws, principles, procedures, and practices in awarding non-competitive contracts with Recovery Act funds as they do with other funds. Competition is the cornerstone of our acquisition system. The benefits of competition are well established. Competition saves money for the taxpayer, improves contractor performance, curbs fraud,***

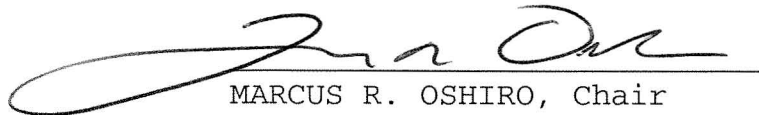


and promotes accountability for results. Agencies should review their internal procurement review practices to ensure they promote competition to the maximum extent practicable. For instance, agencies might lower the dollar thresholds at which higher level review is required when a noncompetitive acquisition strategy is contemplated.

To the maximum extent practicable, contracts using Recovery Act funds shall be awarded as fixed-price contracts (See FAR Subpart 16.2) using competitive procedures. These procedures include those identified under FAR Subparts 6.1, 6.2, and 16.505(b)(1) and Subsections 8.405-1 and 8.405-2. Existing fixed-price contracts that were competitively awarded may be used to obligate funds expeditiously. (Emphasis added)

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 21, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 21, S.D. 1, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



