

JAN 22 2010

S.B. NO. 2457

A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

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

1 SECTION 1. The Kaho'olawe island reserve consists of the
2 island of Kaho'olawe and the waters surrounding the island which
3 extend two nautical miles seaward from the island's coastline.
4 The forty-five-square-mile island and ninety square miles of
5 waters are managed and controlled by the Kaho'olawe island
6 reserve commission, which is responsible for environmental
7 protection and conservation, revegetation, habitat restoration,
8 the preservation of archaeological and historical resources, and
9 the promotion of traditional and cultural practices.

10 These responsibilities are carried out in a remote,
11 hazardous, and challenging environment, as the reserve has been
12 used for military training and bombing exercises for five
13 decades. Despite a ten-year cleanup of unexploded ordnance,
14 dangers persist throughout the Kaho'olawe island reserve,
15 necessitating the round-the-clock presence of personnel to
16 protect public health and safety.



1 Personnel and cargo are typically transported between Maui
2 and Kaho'olawe by boat; helicopter transportation is used only
3 sparingly due to its cost. Both methods of transportation
4 involve several variables, including the weather, mechanical
5 functions, and personnel availability. Additionally, both
6 methods of transportation have size and weight limitations for
7 their cargo.

8 Due to these factors and other similar restrictions faced
9 by the Kaho'olawe island reserve commission in advancing its
10 mission, including inherent planning, logistical, and timeliness
11 challenges, strict adherence to procurement requirements are
12 frequently not practicable or advantageous to the State.

13 The purpose of this Act is to provide an exemption from the
14 Hawai'i public procurement code for goods and services acquired
15 for use in and construction acquired for the Kaho'olawe island
16 reserve.

17 SECTION 2. Section 103D-102, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) Notwithstanding subsection (a), this chapter shall
20 not apply to contracts by governmental bodies:



- 1 (1) Solicited or entered into before July 1, 1994, unless
2 the parties agree to its application to a contract
3 solicited or entered into prior to July 1, 1994;
- 4 (2) To disburse funds, irrespective of their source:
- 5 (A) For grants or subsidies as those terms are
6 defined in section 42F-101, made by the State in
7 accordance with standards provided by law as
8 required by article VII, section 4, of the State
9 Constitution; or by the counties pursuant to
10 their respective charters or ordinances;
- 11 (B) To make payments to or on behalf of public
12 officers and employees for salaries, fringe
13 benefits, professional fees, or reimbursements;
- 14 (C) To satisfy obligations that the State is required
15 to pay by law, including paying fees, permanent
16 settlements, subsidies, or other claims, making
17 refunds, and returning funds held by the State as
18 trustee, custodian, or bailee;
- 19 (D) For entitlement programs, including public
20 assistance, unemployment, and workers'
21 compensation programs, established by state or
22 federal law;



- 1 (E) For dues and fees of organizations of which the
- 2 State or its officers and employees are members,
- 3 including the National Association of Governors,
- 4 the National Association of State and County
- 5 Governments, and the Multi-State Tax Commission;
- 6 (F) For deposit, investment, or safekeeping,
- 7 including expenses related to their deposit,
- 8 investment, or safekeeping;
- 9 (G) To governmental bodies of the State;
- 10 (H) As loans, under loan programs administered by a
- 11 governmental body; and
- 12 (I) For contracts awarded in accordance with chapter
- 13 103F;
- 14 (3) To procure goods, services, or construction from a
- 15 governmental body other than the University of Hawaii
- 16 bookstores, from the federal government, or from
- 17 another state or its political subdivision;
- 18 (4) To procure the following goods or services which are
- 19 available from multiple sources but for which
- 20 procurement by competitive means is either not
- 21 practicable or not advantageous to the State:



- 1 (A) Services of expert witnesses for potential and
2 actual litigation of legal matters involving the
3 State, its agencies, and its officers and
4 employees, including administrative
5 quasi-judicial proceedings;
- 6 (B) Works of art for museum or public display;
- 7 (C) Research and reference materials including books,
8 maps, periodicals, and pamphlets, which are
9 published in print, video, audio, magnetic, or
10 electronic form;
- 11 (D) Meats and foodstuffs for the Kalaupapa
12 settlement;
- 13 (E) Opponents for athletic contests;
- 14 (F) Utility services whose rates or prices are fixed
15 by regulatory processes or agencies;
- 16 (G) Performances, including entertainment, speeches,
17 and cultural and artistic presentations;
- 18 (H) Goods and services for commercial resale by the
19 State;
- 20 (I) Services of printers, rating agencies, support
21 facilities, fiscal and paying agents, and



1 registrars for the issuance and sale of the
2 State's or counties' bonds;

3 (J) Services of attorneys employed or retained to
4 advise, represent, or provide any other legal
5 service to the State or any of its agencies, on
6 matters arising under laws of another state or
7 foreign country, or in an action brought in
8 another state, federal, or foreign jurisdiction,
9 when substantially all legal services are
10 expected to be performed outside this State;

11 (K) Financing agreements under chapter 37D; [and]

12 (L) Goods and services procured for use in and
13 construction procured for the Kaho'olawe island
14 reserve by the Kaho'olawe island reserve
15 commission; and

16 [~~L~~] (M) Any other goods or services which the policy
17 board determines by rules or the chief
18 procurement officer determines in writing is
19 available from multiple sources but for which
20 procurement by competitive means is either not
21 practicable or not advantageous to the State;



- 1 (5) Which are specific procurements expressly exempt from
2 any or all of the requirements of this chapter by:
- 3 (A) References in state or federal law to provisions
4 of this chapter or a section of this chapter, or
5 references to a particular requirement of this
6 chapter; and
- 7 (B) Trade agreements, including the Uruguay Round
8 General Agreement on Tariffs and Trade (GATT)
9 which require certain non-construction and non-
10 software development procurements by the
11 comptroller to be conducted in accordance with
12 its terms; and
- 13 (6) With a bidder or offeror who is a United States
14 General Services Administration-approved sole source
15 vendor, who shall be exempt from complying with
16 section 103D-302, 103D-303, or 103D-304, as
17 applicable, in any procurement funded by state and
18 federal matching funds, if the bidder or offeror was
19 responsible for obtaining and was the recipient of the
20 federal funds."

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval;
 2 provided that the amendments made to section 103D-102, Hawaii
 3 Revised Statutes, by section 2 of this Act shall not be repealed
 4 when section 103D-102, Hawaii Revised Statutes, is reenacted on
 5 July 1, 2012, pursuant to Act 175, Session Laws of Hawaii 2009.
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INTRODUCED BY:

Jm

F. Kalani English

Bruce K. Koh

Carol Fukumaga

[Signature]

Randy H. Lee

[Signature]

Will Eno

[Signature]

[Signature]

Erzanne Chun Oakland



Report Title:

Procurement Code; Exemption; Kaho'olawe Island Reserve Commission

Description:

Exempts from the procurement code contracts for goods, services, or construction procured by the Kaho'olawe island reserve commission for use in the Kaho'olawe island reserve.

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