

JAN 23 2009

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1 SECTION 1. Like all other public airports throughout the
2 United States, security at Hawaii's public airports has changed
3 dramatically since the tragic events of September 11, 2001.
4 Following these events, the federal government formed the
5 Transportation Security Administration (TSA) which now conducts
6 various oversight as to security matters and screenings at all
7 public airports, including airports in Hawaii. TSA and other
8 federal agencies monitor the security programs at Hawaii's
9 airports and at times each year issue various changes, including
10 new security requirements, to improve these programs. Hawaii's
11 department of transportation (DOT) is then required to adhere to
12 these changes and ensure that its public and private security
13 forces follow these directives.

14 Much of Hawaii's security program, and the directives from
15 TSA and other federal agencies, are often deemed confidential
16 for security reasons. Thus, the disclosure of details of the
17 program and federal directives to the general public and, in



1 turn, possible terrorist organizations, is oftentimes
2 prohibited.

3 Given these circumstances, it is problematic to require DOT
4 to follow the pre-September 11, 2001, practice of publicly
5 bidding and awarding its security contracts at Hawaii's airports
6 as DOT is prohibited from disclosing numerous federal
7 requirements to companies bidding on the contract. Thus, a
8 winning bidder will not be fully informed as to the federal
9 requirements and any costs associated with these requirements
10 until after the bidder has submitted its lowest-dollar amount
11 bid to provide security services. This can pose a problem as
12 costs associated with the federal requirements may cause a
13 winning bidder's bid to be unfeasible and may result in the
14 winning bidder to operate at a financial loss. While this is an
15 unfair situation for the bidder, it also raises a security
16 concern. A winning bidder may not be able to fulfill all the
17 requirements and levels of service required to secure Hawaii's
18 airports due to the financial loss. This would put the security
19 of Hawaii's airports and safety of the general public in
20 jeopardy.

21 Allowing DOT to negotiate security-concession contracts for
22 its airports, just as various other concession contracts are



1 negotiated at Hawaii's airports, would eliminate this problem.
2 DOT would be able to select a preferred provider and negotiate
3 the final costs and terms of the contract after full disclosure
4 of all confidential matters has been made. This process would
5 also serve to ensure that the security provider has the
6 financial capability to meet the requirements of the contract
7 and provide the necessary level of security services for
8 Hawaii's airports.

9 The purpose of this Act is to allow DOT to award its
10 security contracts by negotiations rather than by a bidding
11 process given the sensitive and confidential nature of such
12 contracts and related matters.

13 SECTION 2. Section 102-2, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) The bidding requirements of subsection (a) shall not
16 apply to concessions or space on public property set aside for
17 the following purposes:

18 (1) For operation of ground transportation services and
19 parking lot operations at airports, except for motor
20 vehicle rental operations under chapter 437D;

21 (2) For lei vendors;

22 (3) For airline and aircraft operations;



- 1 (4) For automatic teller machines and vending machines,
2 except vending machines located at public schools
3 operated by blind or visually handicapped persons in
4 accordance with section 302A-412;
- 5 (5) For operation of concessions set aside without any
6 charge;
- 7 (6) For operation of concessions by handicapped or blind
8 persons; except concessions operated in the public
9 schools by blind or visually handicapped persons in
10 accordance with section 302A-412;
- 11 (7) For operation of concessions on permits revocable on
12 notice of thirty days or less; provided that no such
13 permits shall be issued for more than a [~~one year~~]
14 one-year period;
- 15 (8) For operation of concessions or concession spaces for
16 a beach service association dedicated to the
17 preservation of the Hawaii beach boy tradition,
18 incorporated as a nonprofit corporation in accordance
19 with state law, and whose members are appropriately
20 licensed or certified as required by law;

1 (9) For operation of concessions at county zoos,
2 botanic gardens, or other county parks which are
3 environmentally, culturally, historically, or
4 operationally unique and are supported, by nonprofit
5 corporations incorporated in accordance with state law
6 solely for purposes of supporting county aims and
7 goals of the zoo, botanic garden, or other county
8 park, and operating under agreement with the
9 appropriate agency solely for such purposes, aims, and
10 goals;

11 (10) For operation of concessions that furnish goods or
12 services for which there is only one source, as
13 determined by the head of the awarding government
14 agency in writing that shall be included in the
15 contract file;

16 (11) For operation of concession or concession spaces at
17 the convention center under chapter 201B; [and]

18 (12) For any of the operations of the Hawaii health systems
19 corporation and its regional system boards [-]; and

20 (13) For any security concession or security operation at
21 airports."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

4

INTRODUCED BY:

J. Kelvin Eghsh

By Request

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Report Title:

Procurement; Security Contracts; Department of Transportation

Description:

Allows the Department of Transportation to hire and award security contracts by negotiation and not through a bid.

