

HB2676

HD1

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
DARYLE ANN HO
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
<http://hawaii.gov/spo>

TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENT OPERATIONS

March 24, 2010

9:30 AM

HB 2676, HD1

RELATING TO THE KAHO'OLAWA ISLAND RESERVE COMMISSION.

Chair Taniguchi, Vice Chair Takamine, and committee members, thank you for the opportunity to testify on HB 2676, HD1.

The State Procurement Office (SPO) does not support the language to exempt the Kaho'olawe Island Reserve Commission (KIRC) from HRS chapter 103D, the Hawaii Public Procurement Code (Code) for certain commodities.

In the past years, the KIRC received several procurement exemptions from the SPO for the acquisition of food and fuel due to a lack of offerors meeting KIRC's specific needs. The Code already provides flexibility to address KIRC's situation. Specific purchases may be exempted when it is not advantageous or not practicable. Although there is currently a lack of competition, the situation in the future may change making competition feasible and open to all. A statutory blanket exemption from procurement would not be reviewed to determine the appropriateness of that exemption, which over a period of time may change. The current practice requires KIRC and SPO to document the reason justifying the exemption and is available for public scrutiny. For your information the SPO currently posted agency requests for exemption on the SPO website at <http://hawaii.gov/spo2/source/>, under *CPO Approval*, click on *CPO exemption from Chapter 103D* and scroll to find the applicable agency request.

HB 2676, HD1
Senate Committee on Judiciary
and Government Operations
March 24, 2010
9:30 AM
Page 2 of 2

The SPO is against statutorily 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. The competitive procurement processes of the Code are to insure that all potential providers are afforded the opportunity to compete for the required services.

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. It was the legislature's intent for the Code to be a single source of public procurement policy. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules.

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.

Thank you.

LINDA LINGLE
GOVERNOR OF HAWAII



KŪKULU KE EA A KANALO A

KAHO‘OLAWE ISLAND RESERVE COMMISSION

811 Kolu Street, Suite 201, Wailuku, HI 96793
Telephone (808) 243-5020 Fax (808) 243-5885
Website: <http://kahoolawe.hawaii.gov>

Testimony of
MICHAEL K. NAHO‘OPTI
Executive Director

Before the Senate Committee on
JUDICIARY AND GOVERNMENT OPERATIONS

Wednesday, March 24, 2010
9:30 AM
State Capitol, Conference Room 016

In consideration of
HOUSE BILL 2676, HOUSE DRAFT 1
RELATING TO THE KAHO‘OLAWE ISLAND RESERVE COMMISSION

House Bill 2676, House Draft 1 would exempt the Kaho‘olawe Island Reserve Commission (KIRC) from state procurement requirements for the purchase of food and fuel products needed to carry out KIRC’s statutory responsibilities. KIRC supports this measure, as strict compliance with procurement requirements are often not practicable or advantageous to the state for the purchase of vital goods and services needed on Kaho‘olawe, due to inherent challenges in planning, logistics and timeliness. KIRC also requests that the bill take effect on July 1, 2010.

Relating to food and fuel products specifically, KIRC has consistently received approval for procurement exemptions or alternatives over the past several years, demonstrating that a statutory exemption for these items is justified.

KIRC’s projected Fiscal Year 2010 expenditure for food products is \$65,000. KIRC presently has an exemption from the State Procurement Office (SPO) for the purchase of food products that will expire at the end of the fiscal year. This exemption, however, does not include fresh meats or produce – pursuant to Act 175, Session Laws of Hawaii 2009, the Chief Procurement Officer cannot approve exemptions for fresh meats and produce. Therefore, a statutory change would be the only means to exempt all KIRC food purchases from procurement requirements.

Food vendor prices change weekly, if not more frequently, and KIRC’s food orders change weekly, in terms of products and quantities ordered as well as delivery logistics – all of which make the regular procurement process for KIRC’s needs a “square peg in a round hole.” In fact, KIRC was encouraged by a trainer at SPO to request for an exemption, recognizing that the current process is not “advantageous or practicable” – the SPO criteria for exemptions.

COMMISSION MEMBERS

NOA EMMETT ALULI, M.D.
Chairperson
CRAIG NEFF
Vice-Chair
MILTON M. ARAKAWA, A.J.C.P.
COLETTE Y. MACHADO
LAURA H. THIELEN
AMBER NĀMAKA WHITEHEAD

Michael K. Nāho‘opti
Executive Director

Chapter 103D, HRS, currently provides an exemption for “meats and foodstuffs for the Kalaupapa settlement” [reference §103D-102(b)(4)(D)]. Access to Kaho`olawe is more challenging than access to Kalaupapa in that Kaho`olawe can only be accessed by boat or helicopter, where Kalaupapa can also be accessed by airplane and by land (foot trail).

A statutory procurement exemption for food products would allow KIRC to work with local vendors to take advantage of price specials, bulk sales, new items and product freshness. Counterintuitively, it would allow greater competition, enhanced quality, better pricing and improved service.

KIRC’s Fiscal Year 2010 budget for on-island fuel is \$85,500. Only one vendor can currently meet KIRC’s specifications for fuel delivery and staging so that KIRC can transport diesel and gasoline to Kaho`olawe. KIRC presently has approval from SPO to purchase from this vendor, off the State Price List, and a statutory exemption would allow KIRC to continue to work with this and any other vendor who may be able to meet KIRC’s unique delivery needs.

KIRC purchases diesel and gasoline in 55-gallon drums, delivered to its Kihei boathouse, strapped on pallets for transport by boat to Kaho`olawe. The drums must be delivered because a Commercial Driver’s License (CDL) is required to transport more than 100 gallons, and CDL requirements do not fall within any of KIRC’s position descriptions; it is logistically impractical to transport one drum at a time when KIRC’s vessel typically transports six. Additionally, local fire safety restrictions do not allow KIRC to store drums at its boathouse, so drums must be ordered for delivery on the day they are to be transported to Kaho`olawe. KIRC’s transportation of fuel to Kaho`olawe depends largely on the weather and ocean conditions, so cannot be predicted or scheduled far in advance. Presently, only one vendor is able to meet these specifications.

On Kaho`olawe, electricity is provided by a 125KW diesel generator that operates around-the-clock. Disruption in KIRC’s fuel supply would jeopardize the health and safety of KIRC personnel and volunteers and threaten KIRC’s on-island assets.

With a statutory procurement exemption for fuel, KIRC could work with any vendor who could meet its specifications. While only one vendor is known today, other vendors may be able to meet KIRC’s specifications in the future and should have the opportunity to compete for the provision of these goods and services.

KIRC’s only permanent source of funding is the Kaho`olawe Rehabilitation Trust Fund; it is in KIRC’s best interest to make the Trust Fund last as long as possible. The two exemptions provided by House Bill 2676, House Draft 1 would allow KIRC to find the best pricing to prolong the life of the Trust Fund.

KIRC thanks the Chair for scheduling this matter for hearing and appreciates the Committee’s consideration.