

SB2291

SD1 Late

LATE

LINDA LINGLE
GOVERNOR



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WRITTEN COMMENTS
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
JUDICARY AND GOVERNMENT OPERATIONS

February 23, 2010

10:00 AM

SB 2291, SD 1

RELATING TO ECONOMIC DEVELOPMENT.

Chair Taniguchi, Vice-Chair Takamine, and committee members, thank you for the opportunity to comment on SB 2291, SD 1.

As procurement professionals, preferences in the procurement processes are viewed as increased cost to the state. Whether it is the award of the contract to the vendor with a preference or the procurement resources expended in applying, analyzing and reviewing, preferences increases the cost of the contract. However, the State Procurement Office (SPO) understands the purpose of the preference and supports the concept and intent of the preference. The following comments are provided for your consideration.

SECTION 3 and 4, page 3, lines, 1, 17, 19, 20 and 22, page 4, line 4, for purposes of clarity and not to be confused with the other preferences, the term "high technology" be added to the amended term "Hawaii business". Definitions are applicable to the entire PART X, Chapter 103D on Preferences. The definition "Hawaii business" as amended, would also be applicable to other preferences, and in particular may be confusing to the Hawaii product preference. The attachment is provided detailing the clarifying changes.

SECTION 5, page 4, for the purposes of reporting to the legislature, the SPO recommends the Department of Business, Economic Development and Tourism (DBEDT) submits the report since DBEDT has the knowledge and resources to effectively evaluate and recommend improvements to this preference. The DBEDT currently provides an annual report on the small business set-aside program (HRS Chapter 103D-906), and has provided guidance to the Procurement Policy Board in adopting small business set-aside for identified targeted industry sectors below, and by definition are within the definition for "High Technology".

- Custom Computer Programming/Software Development
- Alternative/ Renewal Energy

The proposed amendment to PART III is not necessary, and recommend be deleted. Depending on the type of goods or services, WSCA solicitations allow contract manufacturers to name authorized resellers as part of the contractor's proposal. Contract provisions allow manufacturers to identify and designate authorized resellers as part of the master agreement and participating addendum. Currently the SPO permits resellers to participate as part of any multi-state contracting agreement provided the reseller has been authorized and designated by the contractor. It would be inappropriate to require a contractor to accept a reseller for which no agreement has been negotiated between the reseller and contractor.

The SPO has not changed its practices in administering these WSCA contracts; the terms and conditions of the master agreement between the lead state and each awarded contractor is the principal guiding factor when executing the participating addendum (agreement). This is a contractual issue, and should not be addressed as a statutory amendment. PART III of SB 2291, SD1 will likely jeopardize any existing or future WSCA cooperative purchasing agreements if a contractor is forced to accept a local reseller. All purchasing jurisdictions benefiting from the WSCA volume pricing will no longer have those savings and will also need to utilize resources to procure their needs accordingly. We suggest agencies be allowed to continue having choice, either to utilize the WSCA contracts or to procurement their needs pursuant to HRS chapter 103D.

Thank you.

ATTACHMENT

ATTACHMENT

"Hawaii ~~[software development]~~ high technology business" means ~~[any]~~

- (1) Any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State and that proposes to obtain eighty per cent of the labor ~~[for software development]~~ from persons domiciled in Hawaii~~[-]~~; or

SECTION 4. Section 103D-1006, Hawaii Revised Statutes, is amended to read as follows:

"§103D-1006 ~~[Software development businesses-]~~ High technology goods or services. (a) In any expenditure of public funds for ~~[software development,]~~ high technology goods or services that may be provided by a Hawaii business, the use of Hawaii ~~[software development]~~ high technology businesses shall be preferred. Where a package bid or response to a request for proposal for high technology goods or services contains both Hawaii and non-Hawaii ~~[software development]~~ high technology businesses, then for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii ~~[software development]~~ high technology business shall be increased by a preference percentage ~~[pursuant to rules adopted by the policy board.]~~ of five per cent.

(b) Intellectual property specifically developed and designed by any Hawaii high technology business that is purchased by the State may require...."

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GOVERNOR



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WRITTEN COMMENTS
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
JUDICIARY AND GOVERNMENTAL OPERATIONS
ON
February 9, 2010
S.B. 2291, S.D. 1

RELATING TO ECONOMIC DEVELOPMENT

Chair Taniguchi and members of the Committee, thank you for the opportunity to comment on S.B. 2291, S.D. 1.

The Department of Accounting and General Services (DAGS) has concerns about this bill.

Relative to Section 4, Chapter 103D-1006 (b) DAGS advises that although enterprise wide license agreements are beneficial, requiring Hawaii State businesses to provide unlimited licenses for property they help design and develop may be disadvantageous to the businesses and drive the cost of the development so high that the Hawaii business cannot be competitive, even with a preference.

Relative to Part III, Section 6, allowing resellers to participate in multi-state contracting agreements would be beneficial and is currently allowed, based on reseller agreements between the vendors and their resellers. Similar to construction projects, the

State executes contracts with the general contractor, and not with the subcontractors.

Mandating that resellers be allowed to resell a vendor's product would take away the vendor's discretion and ability to negotiate mutually beneficial reseller agreements.

DAGS defers any amendments to make this part compliant with the procurement code to the State Procurement Office. The multi-state contracting agreements do not need to be limited to WSCA. If resellers could, in compliance with the code, and by agreement with the vendors, participate in a variety of multi-state pricing agreements, Hawaii could benefit from the hard work, research and negotiation other states have done. Inclusion of Federal programs, in compliance with the code, may also be beneficial.

Thank you for the opportunity to comment on this matter.