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COMMENTS
OF
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TO THE
SENATE COMMITTEE
ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

March 3, 2011

2:45 PM

SB 1332, SD 1

RELATING TO THE UNIVERSITY OF HAWAII.

Chair Espero, Vice-Chair Kidani and committee members, thank you for the opportunity to comment on SB 1332, SD 1. The State Procurement Office (SPO) opposes the amendment to extend the exemption granted to the University of Hawaii (UH) from certain provisions of HRS chapter 103D, the Hawaii Public Procurement Code (Code).

UH should not be seeking preferential treatment, as they are a state public university, funded by taxpayer dollars, the same as the Judiciary, DOE, executive agencies, counties, etc., who are all subject to the requirement of the Code. Our public university should be an example of fostering equality, fairness, transparency and openness in government contracting and the procurement process. Passage of this bill provides special treatment for the UH, instead of the university being a leader in championing a level playing field for all.

In 2010, the National Association of State Procurement Officials (NASPO), a non-profit association established in 1947 dedicated to strengthening the procurement community through education, research, and communication wrote a white paper in response to a study conducted by the American Association of State Colleges and Universities (AASCU) and the National Association of Educational Procurement (NAEP). Essentially the Universities and colleges wanted greater autonomy from state statutes and policies governing procurement, and to operate with independence from the state central purchasing office.

NASPO agreed with several recommendations for change by the AASU and NAEP, but did not agree that public colleges and universities be exempt from state procurement laws. *"Exempting public colleges and universities from state procurement law is completely inconsistent with sound public policy and sound business practices."*
<http://www.naspo.org/higherEdProcure.cfm>

SB 1332, SD 1
Senate Committee on Public Safety,
Government Operations and Military Affairs
March 3, 2011
2:45 PM
Page 2

Public procurement's primary objective is to give everyone equal opportunity to compete for government contracts; to prevent favoritism, collusion or fraud in awarding of contracts. The true nature of competition gives government agencies the benefits of knowing that the acquiring of goods and services were conducted in a fair and objective manner. Meeting this objective requires a single set of statutes and rules that define and mandate the use of selection processes that are competitive, efficient, fair, transparent, open and impartial.

Statutory exemptions for specific agencies are contrary to the Hawaii Public Procurement Code, section 103D-102, HRS, on the applicability of the chapter that states in part ". . . shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, . . ." 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.

The SPO opposes 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 process 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. To the extent agencies may need specific purchases to be exempted from Code requirements, the Code provides an exemption process on a case by case basis as opposed to a total blanket statutory exemption.

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. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic and confusing to vendors, contractors and service providers that must comply with a variety of different processes and standards. 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. To legislate that any one entity should be exempt from compliance with the procurement code conveys a sense of disproportionate equality in the law's application.

If the Legislature intends to exempt specific programs or funds from the Code, the exemption should include assurances that the agency's exempt process includes fair and open competition, disclosure, transparency, due process for aggrieved parties, a defined selection and awards process, and the various elements contained in the Code to ensure public confidence that the exempt procurement process is as fair as the Code.

We request that this bill be held. Thank you.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Public Safety, Government Operations, and Military Affairs
March 3, 2011 at 2:45 p.m.

by
Howard Todo
Vice President for Budget & Finance/CFO, University of Hawai'i

SB 1332 SD1 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Espero, Vice Chair Kidani and Members of the Committee:

The University of Hawai'i supports SB 1332 SD 1 which would extend the repeal date of Act 82, Session Laws of Hawai'i 2010, from July 1, 2012 to July 1, 2015.

Act 82 provided the University with an exemption, with certain exceptions, from the requirements of the Hawai'i Public Procurement Code (Chapter 103D, HRS), effective July 1, 2010. The intent of this legislation was to afford the University with flexibility to pilot revisions to its procurement procedures to accelerate the acquisition of goods, services, and construction while still obtaining best value and maintaining transparency and fairness in the procurement process.

The President of the University appointed a Task Group consisting of members from other governmental agencies and representatives from the construction and engineering industry to assist the University in developing construction procurement procedures. The Board of Regents approved initial revisions to the University's procurement procedures at its meeting of June 28, 2010, for implementation effective July 1, 2010. The Board subsequently approved the Task Group recommended revisions to these procedures in the area of qualification-based construction procurement at its meeting of September 16, 2010. The University then conducted numerous workshops with the majority of construction related organizations statewide. About 250 contractors attended these workshops and 232 contractors have submitted or are in the process of submitting their statement of qualifications. UH has begun the procurement of construction services for several major projects, such as the Hawaiian Language Building at UH Hilo, and the IT Building at UH Mānoa using these new procedures.

While Act 82 afforded the University a very limited two-year period in which to pilot its revisions to its procurement procedures, SB 1332 SD1 would expand this period to a total of five years. Because new construction projects normally take between 2 to 3 years to complete, this expanded window of time would provide the University with a

more reasonable period to refine further its procurement procedures and to conduct a more comprehensive evaluation and assess the effectiveness of this interim procurement process.

In regard to the annual reports to be submitted under this proposed bill in Section 1, the University suggests the following language be used to specify the scope of these reports to read as follows:

SECTION 4.(a)(4) "A description and status of construction projects in excess of \$5,000,000 procured during the period of time that the University of Hawaii is exempt from chapter 103D, Hawaii Revised Statutes, with certain exceptions, pursuant to this Act;"

SECTION 4.(b)(1)(A) "A list of all construction contracts in excess of \$5,000,000 entered into by the University of Hawaii that are exempt from chapter 103D, Hawaii Revised Statutes, with certain exceptions, pursuant to this Act;"

SECTION 4.(b)(2) "Any formal complaints the University of Hawaii has received from subcontractors in regard to or as a result of section 304A-2690, Hawaii Revised Statutes."

With these amendments, the University strongly supports SB 1332 SD1. Thank you for this opportunity to provide testimony.