
A BILL FOR AN ACT

RELATING TO EMERGENCY PROCUREMENT.

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

1 SECTION 1. Section 103D-102, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

5 (1) Solicited or entered into before July 1, 1994, unless
6 the parties agree to its application to a contract
7 solicited or entered into prior to July 1, 1994;

8 (2) To disburse funds, irrespective of their source:

9 (A) For grants as defined in section 42F-101, made by
10 the State in accordance with standards provided
11 by law as required by article VII, section 4, of
12 the state constitution; or by the counties
13 pursuant to their respective charters or
14 ordinances;

15 (B) To make payments to or on behalf of public
16 officers and employees for salaries, fringe
17 benefits, professional fees, or reimbursements;



- 1 (C) To satisfy obligations that the State is required
- 2 to pay by law, including paying fees, permanent
- 3 settlements, subsidies, or other claims, making
- 4 refunds, and returning funds held by the State as
- 5 trustee, custodian, or bailee;
- 6 (D) For entitlement programs, including public
- 7 assistance, unemployment, and workers'
- 8 compensation programs, established by state or
- 9 federal law;
- 10 (E) For dues and fees of organizations of which the
- 11 State or its officers and employees are members,
- 12 including the National Association of Governors,
- 13 the National Association of State and County
- 14 Governments, and the Multi-State Tax Commission;
- 15 (F) For deposit, investment, or safekeeping,
- 16 including expenses related to their deposit,
- 17 investment, or safekeeping;
- 18 (G) To governmental bodies of the State;
- 19 (H) As loans, under loan programs administered by a
- 20 governmental body; and



1 (I) For contracts awarded in accordance with chapter
2 103F;

3 (3) To procure goods, services, or construction from a
4 governmental body other than the University of Hawaii
5 bookstores, from the federal government, or from
6 another state or its political subdivision;

7 (4) To procure the following goods [~~or~~], services, or
8 construction, which are available from multiple
9 sources but for which procurement by competitive means
10 is either not practicable or not advantageous to the
11 State:

12 (A) Services of expert witnesses for potential and
13 actual litigation of legal matters involving the
14 State, its agencies, and its officers and
15 employees, including administrative quasi-
16 judicial proceedings;

17 (B) Works of art for museum or public display;

18 (C) Research and reference materials including books,
19 maps, periodicals, and pamphlets, which are
20 published in print, video, audio, magnetic, or
21 electronic form;



- 1 (D) Meats and foodstuffs for the Kalaupapa
- 2 settlement;
- 3 (E) Opponents for athletic contests;
- 4 (F) Utility services whose rates or prices are fixed
- 5 by regulatory processes or agencies;
- 6 (G) Performances, including entertainment, speeches,
- 7 and cultural and artistic presentations;
- 8 (H) Goods and services for commercial resale by the
- 9 State;
- 10 (I) Services of printers, rating agencies, support
- 11 facilities, fiscal and paying agents, and
- 12 registrars for the issuance and sale of the
- 13 State's or counties' bonds;
- 14 (J) Services of attorneys employed or retained to
- 15 advise, represent, or provide any other legal
- 16 service to the State or any of its agencies, on
- 17 matters arising under laws of another state or
- 18 foreign country, or in an action brought in
- 19 another state, federal, or foreign jurisdiction,
- 20 when substantially all legal services are
- 21 expected to be performed outside this State;



- 1 (K) Financing agreements under chapter 37D; and
- 2 (L) Any other goods [~~or~~], services, or construction
- 3 which the policy board determines by rules or the
- 4 chief procurement officer determines in writing
- 5 is available from multiple sources but for which
- 6 procurement by competitive means is either not
- 7 practicable or not advantageous to the State; and
- 8 (5) Which are specific procurements expressly exempt from
- 9 any or all of the requirements of this chapter by:
 - 10 (A) References in state or federal law to provisions
 - 11 of this chapter or a section of this chapter, or
 - 12 references to a particular requirement of this
 - 13 chapter; and
 - 14 (B) Trade agreements, including the Uruguay Round
 - 15 General Agreement on Tariffs and Trade (GATT)
 - 16 which require certain non-construction and non-
 - 17 software development procurements by the
 - 18 comptroller to be conducted in accordance with
 - 19 its terms."

20 SECTION 2. Section 103D-307, Hawaii Revised Statutes, is
21 amended to read as follows:

1 " [f]§103D-307 [f] **Emergency procurements.** (a) The head of
2 a purchasing agency may obtain a good, service, or construction
3 essential to meet an emergency by means other than specified in
4 this chapter when the following conditions exist:

5 (1) A situation of an unusual or compelling urgency
6 creates a threat to life, public health, welfare, or
7 safety by reason of major natural disaster, epidemic,
8 riot, fire, or similar event and to a lesser extent,
9 by reason of equipment failure, repair to public
10 property to protect against further loss of, or damage
11 to, public property, or to prevent or minimize serious
12 disruption in the continued functioning of government
13 services, or such other reason as may be determined by
14 the head of that purchasing agency;

15 (2) The emergency condition generates an immediate and
16 serious need for goods, services, or construction that
17 cannot be met through normal procurement methods and
18 the government would be seriously injured if the
19 purchasing agency is not permitted to employ the means
20 it proposes to use to obtain the goods, services, or
21 construction; and



1 (3) Without the needed good, service, or construction, the
2 continued functioning of government, the preservation
3 or protection of irreplaceable property, or the health
4 and safety of any person will be seriously threatened.

5 (b) The emergency procurement shall be made with such
6 competition as is practicable under the circumstances [~~and,~~
7 ~~where practicable, approval from the chief procurement officer~~
8 ~~shall be obtained prior to the procurement~~]. A written
9 determination of the basis for the emergency and for the
10 selection of the particular contractor shall be included in the
11 contract file.

12 (c) The head of the purchasing agency who makes an
13 emergency procurement:

14 (1) In response to a serious threat to life;

15 (2) To ensure public access when it is significantly
16 impeded by an unexpected major natural disaster,
17 epidemic, riot, or fire; or

18 (3) To minimize a serious disruption to the continued
19 functioning of government services,

20 shall account for details of the emergency, the response and
21 money spent in making the procurement, and report on that



1 accounting to the legislature within sixty days of the event for
2 which the procurement was made."

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

5 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Emergency Procurement; Reporting Within Sixty Days of Procurement

Description:

Revises emergency procurement laws to add equipment failures, repairs to public property to protect against further loss of, or damage to, public property, to prevent or minimize serious disruption in continued functioning of government services. Replaces approval by chief procurement officer with an accounting report to the Legislature within 60 days after the procurement is made. Effective 7/1/2050. (SD2)

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