

JAN 21 2022

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that due to the nature of
2 construction, procuring agencies will occasionally discover that
3 they must perform unanticipated or unexpected work that was not
4 in the original scope of work. Under existing procurement laws,
5 this additional work must be separately procured pursuant to the
6 state procurement code in chapter 103D, which often leads to
7 project delays and increased costs for the overall project.

8 Accordingly, the purpose of this Act is to exempt
9 construction projects below the small purchase threshold from
10 competitive procurement when it is not practical nor beneficial
11 to the State.

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

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



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

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

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

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

14 (C) To satisfy obligations that the State is required
15 to pay by law, including paying fees, permanent
16 settlements, subsidies, or other claims, making
17 refunds, and returning funds held by the State as
18 trustee, custodian, or bailee;

19 (D) For entitlement programs, including public
20 assistance, unemployment, and workers'



1 compensation programs, established by state or
2 federal law;

3 (E) For dues and fees of organizations of which the
4 State or its officers and employees are members,
5 including the National Association of Governors,
6 the National Association of State and County
7 Governments, and the Multi-State Tax Commission;

8 (F) For deposit, investment, or safekeeping,
9 including expenses related to their deposit,
10 investment, or safekeeping;

11 (G) To governmental bodies of the State;

12 (H) As loans, under loan programs administered by a
13 governmental body; and

14 (I) For contracts awarded in accordance with chapter
15 103F;

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

20 (4) To procure the following goods or services which are
21 available from multiple sources but for which



1 procurement by competitive means is either not
2 practicable or not advantageous to the State:

3 (A) Services of expert witnesses for potential and
4 actual litigation of legal matters involving the
5 State, its agencies, and its officers and
6 employees, including administrative quasi-
7 judicial proceedings;

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

9 (C) Research and reference materials including books,
10 maps, periodicals, and pamphlets, which are
11 published in print, video, audio, magnetic, or
12 electronic form;

13 (D) Meats and foodstuffs for the Kalaupapa
14 settlement;

15 (E) Opponents for athletic contests;

16 (F) Utility services whose rates or prices are fixed
17 by regulatory processes or agencies;

18 (G) Performances, including entertainment, speeches,
19 and cultural and artistic presentations;

20 (H) Goods and services for commercial resale by the
21 State;



1 (I) Services of printers, rating agencies, support
2 facilities, fiscal and paying agents, and
3 registrars for the issuance and sale of the
4 State's or counties' bonds;

5 (J) Services of attorneys employed or retained to
6 advise, represent, or provide any other legal
7 service to the State or any of its agencies, on
8 matters arising under laws of another state or
9 foreign country, or in an action brought in
10 another state, federal, or foreign jurisdiction,
11 when substantially all legal services are
12 expected to be performed outside this State;

13 (K) Financing agreements under chapter 37D; ~~[and]~~

14 (L) Any other goods or services which the policy
15 board determines by rules or the chief
16 procurement officer determines in writing is
17 available from multiple sources but for which
18 procurement by competitive means is either not
19 practicable or not advantageous to the State; and

20 (M) Any other construction projects pursuant to the
21 small purchase threshold under section 103D-305,



1 that the policy board determines by rules, or the
2 chief procurement officer determines in writing,
3 is available from multiple sources but for which
4 procurement by competitive means is either not
5 practicable or not advantageous to the State; and

6 (5) Which are specific procurements expressly exempt from
7 any or all of the requirements of this chapter by:

8 (A) References in state or federal law to provisions
9 of this chapter or a section of this chapter, or
10 references to a particular requirement of this
11 chapter; and

12 (B) Trade agreements, including the Uruguay Round
13 General Agreement on Tariffs and Trade (GATT)
14 which require certain non-construction and non-
15 software development procurements by the
16 comptroller to be conducted in accordance with
17 its terms."

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



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

2

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "J. M. ...", is written over a horizontal line.



S.B. NO. 2386

Report Title:

Procurement; Small Purchase Construction Project; Exemption

Description:

Exempts certain small purchase construction projects from the procurement code.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

