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STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
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Date: 03/16/2023

Time: 02:00 PM

Location: 309 VIA VIDEOCONFERENCE

Committee: House Education

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB 1518, SD2 RELATING TO THE DEPARTMENT OF EDUCATION.

Purpose of Bill: Provides procurement exemptions for the Department of Education for certain goods, services, and construction. Sunsets 6/30/2026. Effective 7/1/2050. (SD2)

Department's Position:

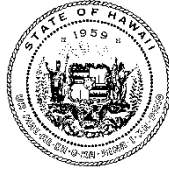
The Hawaii State Department of Education (Department) supports SB 1518, SD 2.

The Department appreciates the amendment to subsection (b)(4) of 103D-102, Hawaii Revised Statutes, to expand the definition of educational materials which are no longer limited to simply textbooks. As the educational landscape continues to evolve, the Department must ensure teachers and students have access to the appropriate instructional tools and resources necessary to provide our students with the education they need to succeed in the current and future workforce, whether they pursue college (including technical education), military service, and/or employment after high school.

This bill would provide the Department with the flexibility to procure educational materials most beneficial to students, educators, and schools in a more timely and less cumbersome manner. This will allow the Department to focus on innovating and engaging students through the use of technology and preparing students for the workforce by upgrading the equipment used in career and technical education courses to replicate the worksites in industry and meet industry standards.

This bill will further support the Department in dealing with the inflationary pressures that have increased the cost of goods, services and construction.

Thank you for the opportunity to provide testimony in support of this measure.



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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

HOUSE COMMITTEE
ON
EDUCATION
March 16, 2023, 2:00 P.M.

SENATE BILL 1518, SD2
RELATING TO DEPARTMENT OF EDUCATION

Chair Woodson, Vice Chair Marten, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1518, SD2. The State Procurement Office (SPO) strongly opposes the additional language in Section 2, page 2, lines 12 to 21; page 3, lines 1 to 2, Section 3; page 3, lines 6 to 17; as well as Section 4, page 7, lines 14 to 19, and provides the following comments and recommendations:

Comments: The SPO testifies that education goods, services, and construction small purchases procurements for the Department of Education (DOE) should be competitively procured pursuant to HRS chapter 103D, the Hawaii Public Procurement Code (Code), and should not be exempt from the requirement to conduct such procurement through an electronic procurement system (eProcurement).

If the DOE has specific goods or services that procurement by competitive means is not practicable or not advantageous to the State, then statutes and rules already exist that allow for exemptions for goods and services (except construction) via HRS §103D-102 and HAR §3-120-5, in a process that is open and transparent, without giving the DOE a blanket exemption.

Additionally, pursuant to HRS §103D-102(b)(4)(C), "Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form" are already exempt from the Code to allow the DOE, the Hawaii State Public Libraries Systems, the University of Hawaii, and the Department of Public Safety to obtain the latest books and related materials to the public in the best possible manner. In 2008, the Procurement Policy Board (PPB) added this exemption to Exhibit A, HAR Chapter 3-120, titled "Procurements Exempt from Chapter 103D, HRS," specifically to allow schools and departments **to select and obtain education materials that best fit within their established curriculums and programs.**

Regarding DOE’s exemption for “other goods related to any education, training, or expertise required for participating in educational programs,” HAR §3-120-4(b)(3) already provides a “trainer” exemption that applies when the trainer has specialized training methods techniques or expertise in the subject matter and **teaches, educates, or instructs only**.

The Code is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government. The statutes and rules should apply uniformly for government entities and should not carve out a special process for the DOE. Procurement of education goods, services, and construction procurements should be treated no different than other procurements.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, **to prevent favoritism, collusion, or fraud** in awarding of contracts. To legislate that any one entity should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law’s application.

The SPO feels very strongly that the Code should be applied equally and uniformly throughout departments and jurisdictions. Exempting the DOE may lead to schools only going to the same vendors repeatedly, which would be in violation of HRS 103D-101(a)(6)(A). The Code encourages economic competition by:

“(A) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment.”

As of March 14, 2023, DOE awarded a total of 57 goods and services awards, between \$5,000 and less than \$100,000, posted on the Hawaii Awards & Notices Data System (HANDS); a total value \$1,666,505.71. If the bill passes, an average of 8 awards per year, valued at an average of \$354,765.42 each year, would lack transparency and fail to give vendors equal opportunity to compete for government contracts.

Calendar Year	Number of Transactions between \$5,000 - \$100,000	Total Amount
2020	14	\$480,195.91
2021	13	\$225,402.91
2022	24	\$943,441.89
2023	6	\$17,465.00
Total	57	\$1,419,061.68

*NOTE: These are only the awards posted on HANDS, which represents a small fraction of the procurement conducted. The DOE has their own eProcurement system, which may include other awards postings. For CY2023, only one solicitation awarded \$17,465.00, the other five awarded \$0.00.

As of March 14, 2023, DOE awarded approximately 253 construction awards, between \$15,000 and less than \$250,000, posted on the Hawaii Awards & Notices Data System (HANDS); a total value of \$21,516,656.91; an average of \$85,000. If the bill passes, an average of 63

construction awards per year, would lack transparency and fail to give vendors equal opportunity to compete for government contracts.

Calendar Year	Number of Construction Transactions between \$15,000 - \$250,000	Total Amount
2020	55	\$4,317,701.18
2021	68	\$4,577,266.71
2022	101	\$9,541,777.89
2023	29	\$3,079,911.13
Total	253	\$21,516,656.91

It is SPO's understanding that the DOE conducts procurements on two eProcurement systems: the Executive Branch's HlePRO for Competitive Sealed Bids (IFBs) and Competitive Sealed Proposals (RFPs) and the DOE's HePS for construction, which may add to confusion for vendors on where to find and/or submit their offers.

For instance, as of February 8, 2023, there were approximately 1,346 Small Purchases (RFQs) solicitations conducted or released on the Executive Branch's Hawaii Electronic Procurement System (HlePRO) for Calendar Year (CY) 2022; none by the DOE. A total of 671 solicitations were conducted on HlePRO for CY2022 507 out of the were small purchases. While the DOE has 1,015 Active Users on HlePRO, there are only 10 DOE Buyers and only one of them is delegated to utilize the Small Purchases method of procurement. The remaining users utilize HlePRO to access Hawaii Compliance Express (HCE) to only verify compliance.

It is more transparent to conduct small purchases procurements electronically as it prevents fraud and collusion, as well as parceling, which is the artificial division of purchase of same, like, or related items of goods, services, or construction into several small purchases or smaller quantities, in order evade the statutory competitive requirements, which is a procurement violation.

DOE's manually processing of small purchase procurement is less efficient and possibly lead to higher costs. It relies heavily on paperwork or phone calls, email, and faxes to vendors, and relying on time-consuming, tedious, and repetitive tasks, in this electronic age, takes them away from their main focus of education. Furthermore, an exemption from electronic procurement for small purchases does not absolve the DOE from adhering to the remaining portions of the procurement code, which schools may mistakenly believe they are waived (i.e. award posting, verifying compliance, performance bonds, etc.). A blanket exemption to the DOE gives them carte blanche to waive accountability and transparency. In this electronic age, the DOE should be utilizing an eProcurement system rather than regressing to a manual process.

Utilizing an eProcurement system is also much more efficient, in which processes are optimized and productivity increases. When solicitations are released in the Executive Branch's Hawaii Electronic Procurement System (HlePRO), all vendors with the applicable Commodity Codes are automatically notified by email. Buyers no longer need to call or email vendors independently to get quotes, all vendors are given the same specifications and information, the risk of human error is minimized, all communications (i.e., questions and answer as well as quotes) are kept securely in the system, and the progress of each solicitation is tracked.

Additionally, eProcurement systems provide more security by improving the security and confidentiality of communications.

Currently all Chief Procurement Officer (CPO) Jurisdictions are statutorily required to adhere to HRS103D-305 requiring small purchases of \$25,000 to less than \$250,000 to be made on an eProcurement system; the SPO is unaware of any CPO Jurisdiction who is currently exempt from this requirement. While the rules are exactly the same for all CPO Jurisdictions, it is only the mechanism to put out the solicitation that may vary. The Executive Branch departments' CPO (the SPO Administrator) requires that small purchases over \$15,000 be made on an eProcurement system. Allowing the DOE this exemption would also open the door for other agencies and/or CPO Jurisdictions from requesting the similar exemption from the Code, creating discord with the Procurement Code.

Lastly, the DOE will soon be releasing a Job Order Contracting (JOC) contract that should help the DOE in dealing with small purchase construction jobs by allowing the DOE to get numerous, commonly encountered construction projects done quickly and easily through multi-year contracts for a wide variety of renovation, repair, and minor construction projects. The JOC will be competitively procured pursuant to the Code and therefore open and transparent.

The National Association of State Procurement Officials states that "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by **raising the costs** to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

As these entities create their own procurement rules, it results in the harm above where businesses are forced to track their various practices. The SPO also comments that obtaining a minimum of three quotes is more labor intensive (i.e., manually posting solicitation notice, sending out emails/letters/phone calls to potential vendors, receiving and keeping track of paper document responses) than using an eProcurement system, which can lead to more efficiencies. SPO understands the DOE's desire to move forward quickly, however, it will be at the expense of accountability, transparency, and fairness to the vendor community.

Furthermore, the SPO continues to seek alignment with the findings of the Senate Special Committee on State of Hawaii Procurement in striving to "better serve the public by identifying and maximizing efficiency in the public procurement process through clear, fair, and consistent policies and standards." If this bill passes, it will be in direct contradiction with the findings of the Senate Special Committee on State of Hawaii Procurement.

Each year, new procurement laws are applied to state agencies causing state agency contracts to become more complex, while other public bodies, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Recommendations: The SPO recommends removing in its entirety, Section 2, page 2, lines 12 to 21 continued on to page 3, lines 1 to 2 as stated below.

~~“302A—Procurement; educational goods and services; small purchases. Not withstanding section 103D-305(c) or any other law to the contrary, the department may procure goods and services of less than \$100,000 without using an electronic system; provided that the procurement shall be subject to the rules governing procurements of less than \$25,000; provided further that, based on the specifications and with adequate reasonable competition, a procurement of:~~

- ~~(1) At least \$5,000 but less than \$15,000 shall require at least three quotations; and~~
- ~~(2) At least \$15,000 but less than \$100,000 shall require at least three quotations in writing.”~~

The SPO also recommends removing in its entirety, Section 3, page 3, lines 6 to 17 as stated below.

~~“302A—Procurement; educational construction; small purchases. Not withstanding section 103D-305(c) or any other law to the contrary, the department may procure construction of less than \$250,000 without using an electronic system; provided that the procurement shall be subject to the rules governing procurements of less than \$25,000; provided further that, based on specifications and with adequate reasonable competition, a procurement of:~~

- ~~(1) At least \$5,000 but less than \$15,000 shall require at least three quotations; and~~
- ~~(2) At least \$15,000 but less than \$250,000 shall require at least three quotations in writing.”~~

Lastly, the SPO recommends removing in its entirety, Section 4, page 7, lines 14 to 19 as stated below.

~~“(L) Education materials including textbooks, supplies, implements, tools, machinery, computers, electronic devices, or other goods related to any education, training, or experience required for participation in an educational program; and”~~

Thank you for the opportunity to provide testimony on this measure.