



STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
WAYS AND MEANS

April 4, 2024; 10:15 a.m.

HOUSE BILL 2496, HD1, SD1
RELATING TO PROCUREMENT

Chair Dela Cruz, Vice Chair Moriwaki, and members of the committee, thank you for the opportunity to submit testimony on House Bill 2496, HD1, SD1. The State Procurement Office (SPO) provides comments to this bill, which proposes to create an alternative procurement method when it is neither practicable nor advantageous to utilize any of the other methods provided in the Procurement Code, Chapter 103D, Hawaii Revised Statutes (HRS).

Recommendation: The SPO recommends the following **changes** to the bill:

1. **DELETE the language about Alternative Procurements in Section 1, page 1, lines 4-17, through page 2, lines 1-2, in its entirety.**
2. **DELETE the language about Alternative Procurements in Section 3, page 7, line 10, in its entirety.**

Section 2 addresses the needs in a situation when it is not practicable or not advantageous to utilize one of the methods of source selection when procuring goods, services, or construction.

Comments/Justification: Creating a new method as described for “alternative procurements” is confusing as to how this alternative procurement method will be made a part of federal statute or federal regulation, or what other steps are needed to ensure that the State’s interests are protected. It is unclear how this method would be conducted in a fair and impartial manner.

Additionally, Hawaii Administrative Rules (HAR) Chapter 3-122 already allows for an alternative procurement method in different situations. Pursuant to HAR 3-122-1, “Alternative procurement

method" means a procurement method used due to a waiver from the competitive sealed bids or proposals process when one or no responsive, responsible offer is received.

- HAR 3-122-35 Waiver to Competitive Sealed Bids
- HAR 3-122-59 Waiver to Competitive Sealed Proposal

HB 2496, HD1, SD1, which adds "construction" to HRS 103D-102 (b)(4) and 103D-102 (b)(4)(L), will provide the flexibility that the departments need for construction projects.

Thank you.



TESTIMONY BY:
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April 4, 2024
10:15 a.m.
State Capitol, Room 211

H.B. 2496, H.D. 1, S.D. 1
RELATING TO PROCUREMENT

House Committee on Ways and Means

The Department of Transportation (DOT) provides **comments** to this measure and proposes recommendations.

Hawaii Revised Statutes (HRS) 103D-102(b)(4)(L) provides for an exemption to the procurement laws when it is not practicable or not advantageous to utilize existing methods of procurement for goods and services.

There may be situations when it is not practicable or advantageous to competitively procure construction. The recommendation is to amend the exemption statute to allow the Chief Procurement Officer authority to exempt construction procurement when it is not practicable or advantageous to competitively procure. Therefore, the DOT recommends the following amendments:

- **AMEND section §103D-102 Application of this chapter.**

Amend HRS §103D-102(b)(4) "To procure the following goods [ø], services, or construction which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State."

Exemptions from HRS Chapter 103D should not be limited to goods and services. Section (4) should mirror section (3), where the chapter does not apply to procurement of goods, services, or *construction* from a governmental body other than the University of Hawaii bookstores, from federal government, or from another state or its political subdivision.

- **AMEND section §103D-102 Application of this chapter.**

Amend HRS §103D-102(b)(4)(L) to "Any other goods, [ø] services, or construction which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State;"

Thank you for the opportunity to provide testimony.