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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEES
ON
WATER AND LAND
AND
LABOR & GOVERNMENT OPERATIONS
MARCH 19, 2024, 9:00 AM

SENATE BILL 2202, SD2
RELATING TO SMALL PURCHASES

Chair Ichiyama, Chair Matayoshi, Vice Chair Poepoe, Vice Chair Garrett, and members of the committees, thank you for the opportunity to submit testimony on Senate Bill 2202, SD2. The State Procurement Office (SPO) opposes this bill in its entirety. We offer the following comments and recommendation.

Comment:

Section 2, page 3, lines 8 to 9:

(c) [~~Procurements~~] Except as provided in subsection (d), procurement of ~~(\$25,000)~~ \$50,000 to less than \$250,000 shall be made in accordance with small purchase procedures; provided that [~~such~~] small purchase procurements through an electronic system shall be required.

Increasing the small purchase threshold to \$50,000 for electronic procurement would result in less transparency, reduced competition which may lead to increased costs, procurement irregularities, and higher risk of 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.

All jurisdictions should be taking advantage of technological advances and not resort to labor intensive, manual processes. Resorting to manual processes is contrary to enhancing operating efficiencies. Procurement automation is one way to supplement processes in the wake of labor shortages. Also, by using an electronic system, accurate procurement data

should be immediately available to the jurisdiction, negating the need for agencies to compile and provide procurement data.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, and to prevent favoritism, collusion, or fraud in awarding of contracts. Additionally, obtaining quotes without an electronic procurement (eProcurement) system may lead to the agency only going to the same vendors repeatedly, which would be in violation of HRS 103D-101(a)(6)(A) Encourage economic competition by:

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

Between January 2020 and December 2023, there are 9,260 awards for less than \$50,000 posted on the Hawaii Awards & Notices Data System (HANDS) with a total approximate value of \$145 million. If the bill passes, approximately 2,315 awards per year, valued at approximately \$36 million annually, would lack transparency and would fail to give vendors equal opportunity to compete for government contracts.

Calendar Year	Number of Transactions Less than \$50K	Total Amount
2020	2,176	\$33,350,953.69
2021	2,284	\$34,013,129.78
2022	2,447	\$39,701,045.34
2023	2,353	\$38,672,279.53
Total	9,260	\$145,737,408.34

Calendar Year	Number of Transactions \$25K to less than \$50K	Total Amount
2020	519	\$19,745,404.15
2021	544	\$20,889,861.01
2022	648	\$25,271,510.61
2023	634	\$24,651,174.02
Total	2,345	\$90,557,949.79

Note: These figures represent only account for 13 of 23 jurisdictions.

Of the 2,315 annual solicitations, approximately 586 per year are between \$25,000 to less than \$50,000 with a total value of \$22,639,487. This represents the average number of solicitations that will only require three quotes if the bill passes and would lack transparency and assurances to the vendor for an open and fair competition.

Recommendation: The SPO recommends that HRS 103D-305 is left unamended.

However, if the Legislature intends to raise the threshold, the SPO recommends the following changes to **§103D-305 Small purchases; prohibition against parceling**:

(a) Procurements of less than ~~\$100,000~~ **\$125,000** for goods or services, or ~~\$250,000~~ **\$275,000** for construction shall be made in accordance with procedures set forth in rules adopted by the policy board that are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.

(c) [~~Procurements~~] Except as provided in subsection (d), procurement of ~~(\$25,000)~~ \$50,000 to less than ~~\$250,000~~ **\$275,000** shall be made in accordance with small purchase procedures; provided that [~~such~~] small purchase procurements through an electronic system shall be required.

Comment: Section 2, page 3, lines 12 to 17:

(d) In an affected area of federally declared disaster, procurement of \$75,000 to less than \$250,000 shall be made in accordance with small purchase procedures; provided that small purchase procurements through an electronic system shall be required; provided further that procurements pursuant to this subsection shall be reported to the state procurement office.

The governor has the authority to waive the procurement code, in its entirety or parts in a declared emergency and must submit a request to the president to declare a federal disaster.

Recommendation: The SPO recommends that HRS 103D-305 is left unamended.

However, if the Legislature intends to raise the threshold, the SPO recommends the following changes to the language in **Section 2, page 3, lines 12 to 17**:

(d) In an affected area of federally declared disaster, procurement of \$75,000 to less than \$250,000 shall be made in accordance with small purchase procedures; provided that small purchase procurements through an electronic system shall be required; provided further that procurements pursuant to this subsection shall be reported to the state procurement office.

The SPO also recommends that the bill should address how long this provision will be in effect after the federal disaster is declared, or state that the provision align with the dates of the governor's emergency proclamation.

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