



**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I**  
**STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 586-0554  
email: [state\\_procurement\\_office@hawaii.gov](mailto:state_procurement_office@hawaii.gov)  
<http://spo.hawaii.gov>

TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS

February 13, 2024; 4:00 p.m.

SENATE BILL 3185  
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 3185. The State Procurement Office (SPO) opposes this bill which proposes to create an alternative procurement method when it is not practicable or not advantageous to utilize any of the methods provided in the Procurement Code, Chapter 103D, HRS.

The proposed language in Section 1, page 1, lines 4 to 18, is ambiguous 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 as well as ensuring the procedures are standard, consistent, and conducted in a fair and impartial manner.

Additionally, Hawaii Administrative Rules Chapter 3-122 allows for an alternative procurement method in different situations, as listed below, and would cause confusion if another "alternative procurement" was introduced.

Pursuant to 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

There are currently six methods of procurement for the purchase of goods, services, and construction in compliance of Chapter 103D:

103D-302 Competitive Sealed Bids	103D-305 Small Purchase
103D-303 Competitive Sealed Proposals	103D-306 Sole Source
103D-304 Professional Services	103D-307 Emergency Procurements

Hawaii Revised Statutes (HRS) 103D-102(b)(4)(L) provides for situations when it is not practicable or not advantageous to utilize one of the six methods of procurement. However, this statute only applies to goods and services.

There may be situations when it is not practicable or advantageous to competitively procure for a construction project. The statute could be amended to allow the Chief Procurement Officer the ability to exempt construction procurement when it is not practicable or advantageous to competitively procure.

In order to achieve this flexibility, SPO recommends either of the following **statute changes**:

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

Amend HRS §103D-102(b)(4) “To procure the following goods ~~or~~ 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.

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

Amend HRS §103D-102(b)(4)(L) to “Any other goods, ~~or~~ 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;”

Both of the recommended changes would address construction projects that may have federal statutes, federal regulations, be federal special experimental or demonstration projects, and with federal approval of the alternative process to be used.

Thank you.



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII**  
**DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 13, 2024  
4:00 p.m.  
State Capitol, Room 225

**S.B. 3185**  
**RELATING TO PROCUREMENT**

Senate Committee on Government Operations

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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 [or], 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.**

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Further, there may be unique, complex, or schedule-critical projects where flexibility is needed in evaluating proposals and in contract negotiations. One example is the Construction Manager General Contractor (CM/GC) process of project delivery. The CM/GC project delivery consists of two phases, a design phase and a construction phase.

CM/GC project delivery process would allow the DOT to engage a construction manager during the design process to provide input on constructability. The Construction Manager (CM) is generally selected based on qualifications. During the design phase, the CM provides input regarding scheduling, pricing, phasing, and other input that may end in the design of a more constructible project. At an average of 60% to 90% design completion, the DOT and the CM negotiate a guaranteed maximum price for the construction of the project based on the defined scope and schedule. If this price is acceptable to both the DOT and the CM, a construction contract is executed, and the CM becomes the General Contractor (GC). However, Hawaii Revised Statutes § 103D-405 does not allow for the paid CM that works with the designer to bid or receive a contract if they developed the solicitation package. Therefore, the DOT proposes the following amendment:

- **AMEND section §103D-405 Maximum practicable competition.**

Amend HRS §103D-405 (d) "Outside contractors may be utilized to prepare specifications and work statements in the development of a solicitation. Contractors paid for those services shall be precluded from bidding on or receiving a contract when they participated in [any way in] the development of the solicitation package or any resulting contract[-] unless the Chief procurement officer determines in writing that it is in the best interest of the State and authorizes a waiver."

Thank you for the opportunity to provide testimony.