



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

March 14, 2024  
3:00 p.m.  
State Capitol, Room 225

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

House 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.**

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;"

Thank you for the opportunity to provide testimony.



**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  
GOVERNMENT OPERATIONS

March 14, 2024; 3:00 p.m.

HOUSE BILL 2496, HD1  
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Gabbard, and members of the committee thank you for the opportunity to submit testimony on House Bill 2496, HD1. 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).

**Comments:**

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 (listed below) 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

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

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

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 not advantageous to competitively procure for a construction project pursuant to one of the six methods and/or when part or all of the procurement Code require an exemption to utilize a more viable process such as those procured through a Federal special experimental or demonstration project. The steps to ensure a transparent process would be described in the request for exemption, which the Chief Procurement Officer would approve.

**Recommendations:**

To achieve this flexibility, SPO recommends the bill be revised to include the following statute changes:

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

Amend HRS §103D-102(b)(4) by adding construction:

“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) by adding construction: “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;”

With the aforementioned amendments to HRS §103D-102, the SPO further recommends the deletion of additional language in HB 2496, HD1: Section 1, page 1, lines 4 through 17, and page 2, lines 1 through 2; and the deletion of Section 2 in its entirety.

Thank you.