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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

LATE TESTIMONY

TO THE
HOUSE COMMITTEE
ON
FINANCE

February 25, 2010

10:00 a.m.

HB 2283, HD1

RELATING TO PUBLIC PROCUREMENT.

Chair Oshiro, Vice-Chair Lee, and committee members, thank you for the opportunity to testify on HB 2283, HD1. This bill would require State personnel conducting public procurement to do so in an ethical manner, and also proposes that any person, including any actual or prospective bidder, offeror, contractor, or business taking part in public procurement shall act in good faith.

The State Procurement Office (SPO) understands the intent of this bill. This bill is unnecessary as existing ethics provisions are already addressed in HAR §3-131-1.02, Procurement Code of Ethics (attached). Should the committee decide to move this bill, we suggest he attached amendments for consistency and clarity.

Thank you.

Attachment

NOTE: State Procurement Office's suggested language in larger font.

SECTION 1. Section 103D-101, Hawaii Revised Statutes, is amended to read as follows:

[H]§103D-101[H] [Requirement] Requirements of [good faith.] ethical public
procurement. (a) All officers and public employees of the State and each county shall
conduct and participate in public procurement in an ethical manner. In conducting and
participating in public procurement, public employees a government purchaser shall:

- (1) Act as a fiduciary and trustee of public moneys;
- (2) Remain independent from vendors, bidders, prospective bidders, interested parties, and
political figures any person, including any actual or prospective bidder,
offeror, contractor, or business;
- (3) Act only in the public interest;
- (4) Abide by the statutes and administrative rules relating to public procurement;
- (5) Identify and maximize efficiencies in the public procurement process;
- (6) Encourage economic competition by:
 - (A) Dealing with vendors, bidders, figures and other interested parties at arm's length
Ensure all persons are afforded equal opportunity to compete in
a fair and open environment; and
 - (B) Researching innovative goods and services to meet the public's needs;
- (7) Avoid the intent and appearances of impropriety or conflicts of interest of unethical
behavior;

- (8) Avoid social interactions with ~~vendors, bidders, potential bidders~~, any person, including any actual or prospective bidder, offeror, contractor, business or other interested parties during the procurement process;
- (9) Maintain confidentiality in a manner that ensures a fair procurement process; ~~and~~
- (10) Remain impartial in dealings with ~~vendors, bidders, potential bidders~~, any person, including any actual or prospective bidder, offeror, contractor, business and other interested parties; and
- (11) Identify and eliminate any conflicts of interest.
- (b) Any person, including any actual or prospective bidder, offeror, contractor, or business taking part in the conduct of public procurement shall act in good faith to practice purchasing ethics, and when applicable, display business integrity as a responsible offeror of goods and services through the public procurement process, including but not limited to the following:
- (1) ~~Avoiding~~ the intent and appearance of unethical behavior or business practices;
- (2) ~~Refraining from~~ any activity that would create a the appearance of impropriety or conflicts of between personal interest and the interests of the State or counties;
- (3) Identify and eliminate any conflicts of interest; and
- (4) Ensure that all persons are afforded an equal opportunity to compete in a fair and open environment.
- (c) All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith.

§3-131-1.02 Procurement code of ethics. (a)

Public employees shall act in good faith to discharge their duties to ensure the fair and equitable treatment of all persons who deal with government procurement; to foster public confidence in the integrity of the procurement process; and to ensure the appropriate application of purchasing ethics. Any person employed by a governmental body who, when engaging in procurement, shall be bound by this code of ethics, including but not limited to the following:

- (1) Avoid the intent and appearance of unethical behavior or practices;
- (2) Diligently follow the procurement laws, rules, and procedures;
- (3) Refrain from any activity that would create a conflict between personal interests and the interests of the State;
- (4) Identify and eliminate any conflicts of interest;
- (5) Avoid soliciting or accepting money, loans, credits, discounts, favors, or services from present or potential suppliers which may influence or appear to influence purchasing decisions; and
- (6) Ensure that all persons are afforded equal opportunity to compete in a fair and open environment.

(b) Governmental bodies shall conduct procurement in accordance with all applicable statutes and rules, including chapter 84, HRS.

(c) Any person, including any actual or prospective bidder, offeror, contractor, or business shall act in good faith to practice purchasing ethics, and when applicable, display business integrity as a responsible offeror, including but not limited to the following:

- (1) Avoid the intent and appearance of unethical behavior or business practices;
- (2) Refrain from any activity that would create a conflict between personal interests and the interests of the State;
- (3) Identify and eliminate any conflicts of interest; and
- (4) Ensure that all persons are afforded equal opportunity to compete in a fair and open environment. [Eff and comp AUG 24 2009]
(Auth: HRS §103D-202) (Imp: HRS §§103D-101, 103D-106, 103D-310, 84-15, 84-16)

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LATE

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
February 25, 2010
H.B. 2283, H.D. 1

RELATING TO PUBLIC PROCUREMENT

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on
H.B. 2283, H.D. 1.

The Department of Accounting and General Services (DAGS) would like to point out
that this bill is not necessary because its purpose is fulfilled by Hawai'i Administrative Rules
HAR 3-131-1.02 titled "Procurement Code of Ethics".

The State Procurement Office, which is responsible for the administrative rules for
procurement, can provide clarification on this matter.

Thank you for the opportunity to testify on this matter.