

**HB2283**

**HD2**

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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
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TO THE  
SENATE COMMITTEE  
ON  
JUDICIARY AND GOVERNMENT OPERATIONS

March 24, 2010

9:30 a.m.

HB 2283, HD2

RELATING TO PUBLIC PROCUREMENT.

Chair Taniguchi, Vice-Chair Takamine, and committee members, thank you for the opportunity to testify on HB 2283, HD2. 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 the 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:

~~[F]§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)