

**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
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EDWIN H. SNIFFEN

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 28, 2020  
11:05 A.M.  
State Capitol, Room 211

**S.B. 2842, S.D. 1**  
**RELATING TO EMERGENCY PROCUREMENT**

Senate Committee on Ways and Means

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The Department of Transportation (DOT) **supports** the proposed revisions to Hawaii Revised Statutes (HRS) § 103D-102(b)(4) to add and include construction and 103D-307 which revises Emergency Procurements to add equipment failures, repairs to public property to protect against further loss of, or damage to public property, to prevent or minimize serious disruption in continued functioning of government services. To replace the chief procurement officer approval with an accounting report to the legislature detailing the emergency, the response, and money spent in making the procurement, within sixty days of the event in which the procurement was made.

The DOT has conducted nineteen (19) emergency procurements in the last two years<sup>1</sup>. The total cost at \$7,296,545. The DOT assesses whether the procurement is an emergency by threat to life, public health, welfare, or safety, as provided for in the current statute. The proposed language aligns with and expands the current statute to add situations of an unusual or compelling urgency such that without the continued functioning of government service, there would be a threat to life, public health, welfare, or safety. The following are impacts to the DOT from the current process: a recent bridge culvert required immediate repairs of an emergency nature, when we conducted our competitive due diligence in selecting a contractor, the contractor did not think we would be timely with payment (based on prior experience waiting for payment) and ended up refusing to do the work. Instead of providing continued service to all, we placed signage reducing the load rating. This limited the vehicle load weight allowed.

The proposed revision would allow greater flexibility and efficiency by key subject matter experts, having intimate knowledge of the respective situation, to directly address the need, determine and perform appropriate action, and close out financial obligations as timely as possible to restore the given situation and operation back to a point that no longer creates an adverse environment.

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<sup>1</sup> Exclusive of emergency procurements as authorized by Emergency Proclamation.

The expansion of defined categories enables the DOT to promptly and appropriately respond to and rectify a wider range of emergency events, so to minimize further risks, liabilities, and costs to operations and the public. The revision of the accounting report requirement to the legislature within sixty days of the event in which the procurement was made will help to address and support timely payments to responding partners (namely contractors and vendors) for their collaborative efforts by replacing the approvals required in the current process which impact delays. The timely payments will also help to support the availability and willingness of the contractor and vendor community to assist and respond on future events. The revised statute will continue to ensure appropriate levels of accountability with an enhanced level of trust in the decision efforts of the subject matter experts that are front and center to the situation and appropriately qualified to assess the respective event.

Of the nineteen (19) emergency procurements, the chief procurement officer (CPO) approved thirteen (13) and disapproved six (6). While the contractor is paid for the work performed both with CPO approval as well as CPO disapproval, the time it takes between the submission of the Emergency approval request to decision by the CPO may take a month or longer, causing contractor payment delays. As an alternative, an accounting of the emergency procurement money spent to be reported to the legislature serves as a check on the decision-making of the head of the purchasing agency.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE  
GOVERNOR



CURT T. OTAGURO  
COMPTROLLER  
  
AUDREY HIDANO  
DEPUTY COMPTROLLER

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

**WRITTEN TESTIMONY**  
**OF**  
**CURT T. OTAGURO, COMPTROLLER**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**  
**TO THE SENATE COMMITTEE ON**  
**WAYS AND MEANS**

**FRIDAY, FEBRUARY 28, 2020, 11:05 A.M.**  
**CONFERENCE ROOM 211, STATE CAPITOL**

**S.B. 2842, SD1**

**RELATING TO EMERGENCY PROCUREMENT**

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee, thank you for the opportunity to submit testimony on S.B. 2842, SD1. The Department of Accounting and General Services (DAGS) **supports** S.B. 2842, SD1. This bill will enable departments to respond to emergencies in a more timely basis.

Thank you for the opportunity to submit testimony on this matter.

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR

BONNIE KAHAKUI  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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**TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE  
ON  
WAYS AND MEANS**  
Friday, February 28, 2020, 11:05 a.m.

**SB2842, SD1  
RELATING TO EMERGENCY PROCUREMENT**

Chair Dela Cruz, Vice-Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on SB2842, SD1. The State Procurement Office (SPO) offers a recommendation, comments and concerns:

- A. **Recommendation. CPO Exemption Statute Verbiage Change is Incomplete.** This bill proposes to amend Section 103D-102(4) to include exemptions for construction in addition to goods and services. However, the amendment does not activate the allowance for exemption as it is incomplete. For completeness, the Bill must also include the word 'construction' in paragraph (L) of 103D-102(4). Our previous testimony asks that both areas in this section be updated.

This will enable the CPO to approve exemptions with oversight that will avert the risk that any of 40+ individual department and attached agency heads will exempt construction as an emergency when it is not, avoiding costly court cases.

**RECOMMENDATION: AMEND Section 1, page 5, Line 2-7 as follows:**

“(L) 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; and...”

- B. **Comments and Concerns.** This bill proposes to amend Section 103D-307 on emergency procurement. The SPO provides the following comments and concerns to Section 2 of the bill:

### **1.0 Heads of Departments have the ability to manage their emergencies immediately.**

The State Procurement Office emergency procurement procedure allows the requester to submit their package before or after the emergency (Refer to SPO Form 0002, Attachment 1). This allows Heads of Departments to take immediate action and process the paperwork later.

In an emergency procurement, the quantity or service to be purchased should only be what is necessary to meet the circumstance.<sup>1</sup> That is, the expectation is to conduct swift immediate action to negate any safety and life risks. It is a temporary measure that would require a full competitive procurement to deal with any longer-term needs, such as a design-bid-build construction requirement.

### **2.0 SPO Policy & Procedure for Approval of Emergency Procurements.**

The SPO policy and procedure approves emergency procurement based on the following:

1. Is it an emergency based on the definition in Statute and Rules?
2. How long was the department aware of the problem before acting on it? Often-times, this is where we do the most disapprovals as departments tell us they knew about the repair need and did nothing about it. This does not fall into the definition of an emergency procurement.
3. What is the work that is being requested? If it is an immediate work completed to manage the emergency, that is acceptable. If the request is for years' long worth of design and construction, that is not acceptable, as it is a circumvention of the procurement code to exempt construction when that is not allowable.
4. Requests can be approved, disapproved or processed for no action. They are published on our Hawaii Awards Notices Database System (HANDS) for transparency.

### **3.0 Limitations on the emergency exception.**

In *Raynor v. Commissioners for Town of Louisburg*, 220 N.C. 348, 17 S.E.2d 495 (1941), the court held that the circumstances under which the Town of Louisburg purchased new diesel engines for its power plant did not constitute an “emergency” within the meaning of the exception to the bidding statutes. The town argued that the aging engines in its power plant needed replacement and failure of the engines would pose a threat to public health and safety. In disagreeing with the town’s assertion that these circumstances constituted an emergency, the court held that the emergency must be present, immediate, and existing, and cannot be a situation that is merely anticipated to arise in the future. The court noted that bids for the engines could have been advertised for just one week with replacement ensuing soon after. This means that if competitive bidding requirements can be followed without causing harm to public health and safety (or if that harm can be temporarily mitigated), the emergency exception cannot be used.<sup>2</sup>

In *Sloan v. Department of Transp.*, 666 S.E.2d 236, 379 S.C. 160 (Aug 25, 2008), DOT procured construction involved the widening of the road from two lanes to five lanes. Contractor consistently got behind on the project. DOT granted contractor time extensions, but ultimately terminated the contract for convenience. DOT chose a convenience termination, rather than for cause, to avoid having the contractor's bonding company taking over the project. Had the bonding company taken over, it would have been responsible for bringing in another contractor to complete the project for the originally contracted price. DOT estimated this process would have taken the bonding company six months. DOT estimated it would have taken four months if DOT had itself performed a competitive bidding process for a replacement contractor. So, approximately two weeks after the DOT terminated the contractor, one of the existing subcontractors began finishing the prime contractor's work under an emergency contract with DOT.

In justifying the emergency, DOT cited significant delays, enormous inconvenience to the public, public safety and convenience. DOT explained that a large number of residences and commercial businesses continued to be adversely impacted by the construction, that traffic control devices were in place throughout the majority of the

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<sup>1</sup> NASPO Emergency Procurements Best Practices, 2020

<sup>2</sup> University of North Carolina School of Government, “Coates' Canons Blog: Emergency Procurement – When is an emergency really an emergency?” Norma Houston, Jun 2011.

project and at many high volume intersections, that these conditions created an ongoing safety concern and also cause significant inconvenience for residences and business owners, and that procurement of a replacement contract through the standard bidding procedures would cause an unacceptable delay and increase frustration among the already frustrated public that live and conduct business in the area. DOT explained that the emergency conditions were just the safety of the individuals getting in and out of their driveways; the businesses; the entrance and exits for the business; and just a general traveling through that work zone was a hazard.” DOT conceded there is “always a hazard in a work zone, from beginning to end.”

#### ANALYSIS:

The Court looked at Procurement Code's statute and regulations as persuasive authority. Court also relied on dictionary definitions.

"An emergency is, by its very nature, a sudden, unexpected onset of a serious condition. See The American Heritage Dictionary 448 (2nd College ed.1982) (emergency defined as “[a]n unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action”); Black's Law Dictionary 361 (6th ed.1991) (defining emergency as “[a] sudden unexpected happening; an unforeseen occurrence or condition; ... a sudden or unexpected occasion for action”)."

The Court observed:

- "safety concerns did not appear unexpectedly in September 2004 thereby suddenly creating a public safety risk"
- "any urgency felt by the DOT was, in large part, due to the delays on the project and the resultant frustration by the affected community"
- "These factual circumstances, however, do not constitute an emergency under section 57-5-1620, as that plain and ordinary term was likely intended by the Legislature."
- "Given the history of the contract with Eagle, the termination of the contract cannot reasonably be viewed as a sudden, unexpected occurrence."

#### 4.0 Alternative relief for requesters in emergencies, specifically regarding repairs and maintenance.

4.1 **Indefinite Delivery Indefinite Quantity (IDIQ) contracts** – Heads of Departments may consider putting in place indefinite quantity contracts for a period of time through a formal competition in anticipation of certain emergency situations, with the understanding that the user agencies will purchase from the contract only if an emergency need exists. Most states and counties use pre-qualified contract lists for emergency repairs. The SPO has spent the last five years advising departments such as DOT, DLNR and HI-EMA to create these types of contracts. If a department creates their repair and maintenance IDIQs to cover the general repairs and maintenance as well as emergency on-call, this allows for the majority of needs to be handled expeditiously. It also substantiates the fact that if an emergency repair happens that is outside of the scope of the embedded contract, it is more likely to present as a real emergency versus general repairs and maintenance.

4.2 **Sole Source Options.** HARS 3-122-81(c) allows a sole source procurement for 'compatibility to existing equipment or for a public utility repair or construction that can only be provided by the utility company. In addition, the Procurement Policy Board maintains a list of procurements approved for sole source that may be procured without obtaining approval. Here are some of those listed that pertain to this subject:

- (3) Annual license renewal and maintenance for computer software. Criteria: When the license renewal and maintenance can be obtained from only a single source, normally the developer of the software.
- (4) Procurement of computer software conversions, modifications, and maintenance for existing programs from the manufacturer of the software. Criteria: When the conversion, modification, or maintenance can only be obtained from the manufacturer of the software.

(6) Repair and maintenance services and supplies from the original equipment manufacturer or its designated representative; when the manufacturer or its designated representative is required to provide the services and supplies to retain the manufacturer's warranty or guarantee. Criteria: When the services or supplies can only be obtained from the manufacturer or its designated representative to retain the manufacturer's warranty or guarantee.

(7) Procurement of equipment upgrades from the original manufacturer to existing equipment and information technology hardware, when the upgrades can only be obtained from the manufacturer. Criteria: When the upgrades are available only from the manufacturer.

**4.3 Exempt Options.** Per HARS 3-120-4(b), the Procurement Policy Board also maintains a list of goods and services that have determined to be exempt, and therefore, a competitive procurement is not required. Here are some of those listed that pertain to this subject:

(2) Services of Printers; and

(12) Procurement of repair services when dismantling is required to assess the extent of repairs.

It should be noted that current procurement statute does not allow for construction exemption of any kind. A recommendation would be to allow the Chief Procurement Officer the ability to exempt construction procurement when it is not practicable or advantageous to competitively procure. An example of this is when you already have a construction contractor working on an area and an additional need is found that was not originally in scope. If the supplemental work, is not material to the overall value of the construction project (30% or less), it would behoove State to allow incumbent contractor to take on the work, saving both time and money.

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

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

Amend §103D-102(b)(4) to “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 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.

**AND**

**AMEND section:**

**§103D-102 Application of this chapter.**

Amend §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;”

**5.0 Federal and other states’ management of emergency procurements and repairs and maintenance.**

**5.1 Federal Regulations.**

The Federal Acquisition Regulations (FAR) on Emergency Acquisition only allows the following emergencies: FAR Chapter 18.001 Emergency Acquisition may be determined by the HOPA if:

- Supporting a contingency operation
- Defense or recovery from cyber, nuclear, biological, chemical, or radiological attack
- International disaster assistance, or
- Presidential declared disaster

Thus, no day-to-day emergencies are recognized, requiring the Federal Agencies to competitively procure for those, inclusive of any threats to public health and repairs and maintenance.

**5.1.1 2CFR200 Federal Grants regulations** apply to any federal monies received, mandate that procurement is conducted according to the State Procurement Code, and specifically require cost and price analysis. FEMA Declared Emergencies that would include FEMA-reimbursable procurements require states to use their procurement code to include price analysis to discourage price gouging. If HOPAs are managing their own emergency procurements (whether for declared or non-declared emergencies) with no oversight on these matters, there is a high risk that federal monies could be at risk.

## **5.2 Benchmarking Other State Regulations.**

Per NASPO's 2018 Survey Executive Summary and online Survey Report<sup>3</sup>, sixty percent of the jurisdictions responding to the survey indicated that they have adopted the provisions of the Model Code partially, or in its entirety. The Model Code defines emergency procurements as the following:

*"§3-206 Emergency Procurements. Notwithstanding any other provision of this Code, the Chief Procurement Officer, the head of a Purchasing Agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file."*<sup>4</sup>

Please refer to Attachment 2, titled: NASPO Emergency Procurement Best Practices for more detail on how states manage emergency procurements.

## **6.0 Effects of removing the SPO from oversight of emergency procurements and give review responsibility to the Legislature.**

Our benchmarking research on federal and state practices show All government agencies containing procurement oversight over emergency procurements by the Federal Contracting Officer or the State Chief Procurement Office, whichever applies. We were not able to find a single exception to this rule where emergency procurements are handed to Legislature for review.

Recommended best practices, and actual practices conducted across the nation as well as with the Federal Government all require strict oversight on any procurements that require an exception to competition.

"Balancing the flexibility provided by exceptions to full competition with the need for proper administration requires central oversight, including the authority to establish strict conditions for the use of exceptions. That authority and oversight must reside solely with the Chief Procurement Officer. Central decision making by the Chief Procurement Officer means that there is a central repository for the documentation supporting the decision on the exception to competition. This, in turn, offers one place for auditors and others to find data about these types of procurements, including the justification for limiting or eliminating competition."<sup>5</sup>

Transparency. Emergency procurements are posted onto the SPO's Hawaii Award and Notices Database System. Removing the SPO authority of oversight over a specific procurement method, will also remove any transparency and access that the Hawaii community now has.

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<sup>3</sup> NASPO [2018 Survey Executive Summary](#) and [online Survey Report](#)

<sup>4</sup> NASPO Emergency Procurements Best Practices, 2020

<sup>5</sup> NASPO Emergency Procurements Best Practices, 2020



Legality question. Does this transfer of Executive authority to Legislature go beyond the enactment of enabling legislation and infringe upon the authority of the Executive branch to conduct fair and transparent procurements?

## 7.0 Historical Information

**7.1 Executive Branch HOPAs have defaulted on this authority before.** During the period of October 23, 2008 to December 6, 2010, the prior Administrator allowed Executive Departments to conduct emergency procurements without CPO review under the dollar threshold of \$50,000. After two years, the Administrator pulled back this allowance due to rampant abuse.

## 7.2 Metrics

Dept	FY17 Total EP Requests	FY17 Total \$ EP Requests	FY17 Total EP Requests Denied	FY17 Total \$ EP Requests Denied	% of EP Requests that include construction and Design	FY18 Total EP Requests	FY18 Total \$ EP Requests	FY18 Total EP Requests Denied	FY18 Total \$ EP Requests Denied	% of EP Requests that include construction and Design
DAGS	5	\$287,858.00	0	\$0.00	100%	9	\$7,782,918.00	0	\$0.00	100%
AGR	9	\$108,678.00	1	\$8,688.00	77%	1	\$2,025.00	0	\$0.00	100%
DBEDT	2	\$372,863.00	0	\$0.00	0	1	\$19,530.00	0	\$0.00	0%
DHS	2	\$133,680.00	1	\$80,000.00	100%	3	\$137,663.50	1	\$99,013.00	33%
Libraries	0	\$0.00	0	\$0.00	0%	1	\$150,000.00	1	\$150,000.00	100%
DHHL	2	\$11,554.00	1	\$5,500.00	50%	3	\$51,672.00	0	\$0.00	33%
DLNR	6	\$94,289.00	1	\$21,195.00	33%	9	\$223,993.67	1	\$5,945.00	44%
PSD	7	\$115,103.00	2	\$43,569.00	43%	0	\$0.00	0	\$0.00	0%
DOT	13	\$860,815.00	0	\$0.00	69%	10	\$813,155.46	5	\$298,711.88	80%
UH	2	\$55,000	0	\$0.00	100%	5	\$97,183.63	0	\$0.00	60%
<b>TOTAL</b>	<b>48</b>	<b>\$ 2,039,840.00</b>	<b>6</b>	<b>\$ 158,952.00</b>	<b>78%</b>	<b>42</b>	<b>\$9,278,141.26</b>	<b>8</b>	<b>\$ 553,669.88</b>	<b>73%</b>

**7.3 Examples** of requests that have been approved versus those that have been disapproved. For a full list, Attachment 4 shows all emergency procurement requests received by SPO over FY 2018 and FY 2019.

- Approved-EP20-020SO DOTH--On 12/25/19, trees, rocks and mud from the hillside above Pali Highway, Kailua bound, in between the two tunnels, fell onto the roadway. It was discovered that additional large trees and mud/rock sections remained perched about 60-80 feet above the travel lanes of the highway. \$30K
- Approved-EP20-0150 DOTH--On September 26, 2019 at 3:15 am Kauai Police Dispatch called to report an accident on Kaumualii Highway at Hokulei Village Intersection and one of the traffic signal poles was down on the ground. The traffic light was not working. Police were directing traffic. American Electric was called in to do the traffic signal repairs which included removal of the old pole base. Traffic signal required repair as soon as possible for public health and safety. Repair was complete about 10:00 a.m. Police Report: 19-20461. \$6K
- Approved-EP20-006SO DLNR--Response to a wildfire near DOFAW managed public hunting areas that burned approx. 2150 acres. Area of burn was located along HWY 552, which leads into Waimea Canyon State Park, Kokee State Park, and numerous Forest Reserves. Public areas are vital for visitors and residents. Public safety was compromised as the fire burned invasive trees, shrubs and grasses. Rapid control of wildfire was critically important to prevent spread into adjacent towns of Kekaha and Waimea, continued spread within Kekaha Game Management Area and Public Hunting Area Unit I. \$191,690
- Disapproved-EP19-018L DOTH --Large winter swells in Hanalei Bay caused severe shoreline erosion of Kuhio Highway (Route 560), undermining the shoulder and threatening to erode into the travel lane. **\$6.2M**  
This request was disapproved as it was not an interim or temporary fix to address the immediate threat to public health, welfare, or safety. Rather, the scope included engineering design,

construction, and construction engineering. This would result in a multi-year construction project that is essentially exempted from competitive procurement, which is not the intent or premise of emergency procurement.

- E. Approved: EP18-014K DAGS-PWD-- Civil Defense sirens-Oahu. \$2.1M
- F. Approved: EP18-015K DAGS-PWD-- Civil Defense sirens-Oahu. \$2.25M
- G. Approved: EP18-016K DAGS-PWD-- Civil Defense sirens-Oahu. \$750K

## **8.0 Hawaii Emergency Management Agency and Grants**

Efforts to support the Hawaii Emergency Management Agency will be in full force and the SPO will remain as a resource to them for such issues as the 2CFR200, Federal Grants guidance for purposes of retaining FEMA reimbursement.

## **9.0 Attachments**

- Attachment 1: SPO-002 Emergency Form

Attachments 2-4 are posted online at [https://spo.hawaii.gov/wp-content/uploads/2020/02/SB2842\\_AGS-SPO\\_Attachments-2-4.pdf](https://spo.hawaii.gov/wp-content/uploads/2020/02/SB2842_AGS-SPO_Attachments-2-4.pdf) :

- Attachment 2: NASPO Emergency Procurements Best Practices, 2020
- Attachment 3: University of North Carolina School of Government, “Coates' Canons Blog: Emergency Procurement – When is an emergency really an emergency?” Norma Houston, Jun 2011.
- Attachment 4: Emergency Procurement Request Log (HANDS) for FY2018/19



## **ATTACHMENT 1**

### **STATE PROCUREMENT OFFICE EMERGENCY PROCUREMENT**

TO: Chief Procurement Officer

FROM:

Name of Requesting Department

*Pursuant to HRS § 103D-307 and HAR chapter 3-122, Subchapter 10, the Department requests approval for the following:*

1. Date or period of Emergency:

2. After-the-Fact: ☐ Yes ☐ No

3. Describe in detail the emergency situation that created a threat to life, public health, welfare or safety.

4. Vendor/Contractor/Service Provider Name:

5. Amount of Request:  
\$

6. Describe in detail the emergency goods, services, or construction and explain why it is necessary.

7. State the reason(s) the vendor/contractor/service provider was selected. Explain what competition, as is practicable, was conducted.

8. Identify the primary responsible staff person(s) conducting and managing this procurement. (Appropriate delegated procurement authority and completion of mandatory training required.)

\*Point of contact (Place asterisk after name of person to contact for additional information.)

<u>Name</u>	<u>Division/Agency</u>	<u>Phone Number</u>	<u>E-mail Address</u>

***All requirements/approvals and internal controls for this expenditure is the responsibility of the department.  
I certify that the information provided is to the best of my knowledge, true and correct.***

\_\_\_\_\_  
Department Head Signature

\_\_\_\_\_  
Date

**For Chief Procurement Officer Use Only**

Chief Procurement Officer (CPO) Comments:

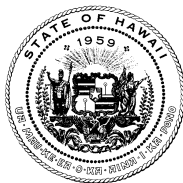
☐ Approved

☐ Disapproved

☐ No Action Required

\_\_\_\_\_  
Chief Procurement Officer Signature

\_\_\_\_\_  
Date



DAVID Y. IGE  
GOVERNOR

STACIE A. ALDRICH  
STATE LIBRARIAN

STATE OF HAWAII  
HAWAII STATE PUBLIC LIBRARY SYSTEM  
OFFICE OF THE STATE LIBRARIAN  
44 MERCHANT STREET  
HONOLULU, HAWAII 96813

**LATE**

**SENATE COMMITTEE ON WAYS AND MEANS**

**Friday, February 28, 2020**

**11:05 am**

**Conference Room 211**

**State Capitol**

**By Stacey A. Aldrich  
State Librarian**

**S.B. 2842, S.D. 1 RELATING TO EMERGENCY PROCUREMENT**

To: Chair Donovan M. Dela Cruz  
Vice Chair Gilbert S.C. Keith-Agaran  
Members of the Senate Committee on Ways and Means

The Hawaii State Public Library System (HSPLS) **supports** S.B. 2842 S.D.1, which proposes to amend provisions relating to emergency procurements to include equipment failures, protect against further loss or damage to public property, and to prevent or minimize serious disruption of government services. The measure replaces chief procurement officer approval with an accounting report by the head of the purchasing agency to the Legislature within an unstated amount of time after the procurement is made.

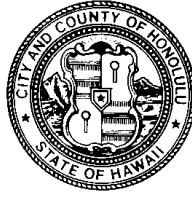
HSPLS provides statewide public library services in 51 buildings, more than half of which are over 50 years old. Due to their age and various types of original construction, we do our best with the help of the Department of Accounting and General Services to maintain and monitor the condition of our equipment and infrastructure. However, not all work can be anticipated and planned. Expanding the types of situations that would qualify for emergency procurements would help to ensure that HSPLS could immediately procure services or construction to mitigate emergency situations.

An illustration of the necessity to expand the scope of what qualifies for an emergency procurement is the recent flooding at the Aina Haina Public Library in 2018. Hiring companies to help with water extraction and debris clean up qualified as emergency procurements. However, our request to remove and replace the water-logged flooring did not qualify as an emergency procurement, even though the

flood waters that ran into the building contained contaminants from Wailupe Stream and Kalanianaʻole Highway and posed a health and safety issue for our staff. Moreover, we had serious concerns that prolonged exposure to a significant amount of water and bacteria would damage many of our books and materials if we could not remove the damaged carpeting. We were fortunate that Governor Ige had made a disaster declaration which allowed us to bypass the regular emergency procurement provisions and move forward to remove the hazardous situation.

Thank you for the opportunity to comment on this measure and your continued support of the Hawaii State Public Library System.

KIRK CALDWELL  
MAYOR



NELSON H. KOYANAGI, JR.  
DIRECTOR

MANUEL T. VALBUENA  
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.  
DIRECTOR OF BUDGET AND FISCAL SERVICES  
CITY AND COUNTY OF HONOLULU  
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
February 28, 2020, 11:05 A.M., Senate Conference Room 211

Position: IN OPPOSITION OF SENATE BILL 2842, SD1, RELATING TO EMERGENCY  
PROCUREMENT

TO: The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Ways and Means

The Department of Budget and Fiscal Services, City and County of Honolulu ("City"),  
**opposes** Senate Bill No. 2842, SD1, Relating to Emergency Procurement.

The current rules and regulations under Hawaii Revised Statutes ("HRS") §103D-307, Emergency Procurements, already accommodates the ability for the head of a purchasing agency to obtain a good, service, or construction to address issues such as "equipment failures, repairs to public property to protect against further loss of or damage to public property, or to prevent or minimize serious disruption in continued functioning of government services". HRS §103D-307(a)(1) provides that a situation of unusual or compelling urgency creates a threat to life, public health, welfare, or safety by reason of major natural disaster, epidemic, riot, fire, or **such other reason as may be determined by the head of that purchasing agency.**

Further, approval from the Chief Procurement Officer ("CPO") for the emergency procurement should remain and continue to be obtained. Pursuant to Hawaii Administrative Rules ("HAR") §3-122-88(b), emergency procurement as defined in HRS §103D-307 may be utilized to purchase only the immediate needs for the emergency and not subsequent non-emergency requirements. Removing CPO approval on emergency procurements may provide the avenue for agencies to claim situations that may not necessarily be an emergency that creates a threat to life, public health, welfare, or safety to be an emergency and be procured as such, thus abusing the authority and purpose of emergency procurements. HAR §3-122-90(a) does allow for approval of emergency procurements to be obtained after-the-fact as soon as practicable thereafter, if time does not permit for approval to be obtained prior to the procurement. This after-the-fact option for emergency procurements is available for agencies to take immediate action on the emergency and process the paperwork for the written determination to request approval from the CPO afterwards. Should the CPO determine that it is not an emergency, then it is a procurement violation.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).