

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
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Date: 04/03/2023
Time: 02:30 PM
Location: 308 VIA VIDEOCONFERENCE
Committee: House Finance

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB 1518, SD2, HD2 RELATING TO THE DEPARTMENT OF EDUCATION.

Purpose of Bill: Provides procurement exemptions for the department of education for certain goods, services, and construction. Requires the department of education to transition to the electronic procurement system maintained by the state procurement office no later than 6/30/2025. Effective 6/30/3000. Sunsets 6/30/2025. (HD2)

Department's Position:

The Hawaii State Department of Education (Department) supports SB 1518, SD 2, HD 2.

As the educational landscape continues to evolve, the Department must ensure teachers and students have access to the appropriate instructional tools and resources necessary to provide our students with the education they need to succeed in the current and future workforce, whether they pursue college (including technical education), military service, and/or employment after high school.

By raising the procurement thresholds, this measure would provide the Department with the flexibility to procure educational materials most beneficial to students, educators, and schools in a more timely and less cumbersome manner. This will allow the Department to focus on innovating and engaging students through the use of technology and preparing students for the workforce by upgrading the equipment used in career and technical education courses to replicate the worksites in industry and meet industry standards.

This bill will further support the Department in dealing with the inflationary pressures that have increased the cost of goods, services and construction.

However, the Department requests the language in the HD 1 version of this bill be re-inserted into this measure. The Department has a dedicated procurement branch in both the Office of Fiscal Services for goods and services and the Office of Facilities and Operations for construction along with procurement protocols and systems at our complex area and school levels. The Department is committed to transitioning to an electronic procurement system but requests the additional year provided for in the HD 1 version to allow more time for that transition.

Thank you for the opportunity to provide testimony on this measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

HOUSE COMMITTEE
ON
FINANCE

April 3, 2023, 2:30 P.M.

SENATE BILL 1518, SD2, HD2
RELATING TO THE DEPARTMENT OF EDUCATION

Chair Yamashita, Vice Chair Kitagawa, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1518, SD2, HD2. The State Procurement Office (SPO) appreciates the amendments made by the previous committee to SECTIONS 2, 3, and 4 of the current bill, and still strongly opposes the additional language in Section 2, page 2, lines 17 to 21 continued to page 3, lines 1 to 10, Section 3; page 3, lines 14 to 21 continued to page 4, lines 1 to 7; as well as Section 4, page 8, lines 4 to 12, and provides the following comments and recommendations:

Comments: The SPO testifies that education goods, services, and construction small purchases procurements for the Department of Education (DOE) should be competitively procured pursuant to Hawaii Revised Statutes (HRS) chapter 103D, the Hawaii Public Procurement Code (Code), and should not be exempt from the requirement to conduct such procurement through an electronic procurement system (eProcurement); regardless of a county's estimated population.

The requirement for goods, services, and construction small purchases procurements to be conducted through an eProcurement system was first enacted by Act 283, Sessions of Laws (SLH) 2006 to increase the qualifying small purchase amount from \$25,000 to \$50,000 **to reduce procurement delays and expedite the procurement process** that is in accordance with the rules issued by the Procurement Policy Board (PPB). As a result, the PPB issued Hawaii Administrative Rule (HAR) §3-122-78, ***Electronic procurement***, effective July 1, 2007, requiring small purchase procurements of \$25,000 to less than \$50,000 to be made through an eProcurement system and **shall include at a minimum, the functionality of notifying registered vendors of the procurement opportunity and electronic receipt of the offer.**

During SLH 2009, the Senate Committee on Judiciary and Government Operations found that the Code needed to be updated in anticipation of the State receiving federal economic stimulus grants that would be applied in large part to procurements and determined the State needed to move expediently. Therefore, Act 175, SLH 2009 was enacted to increase the small purchases limit from \$50,000 to \$100,000 for goods and services and to \$250,000 for construction contracts, also **requiring small purchase procurements of \$25,000 to less than \$100,000 to be made through an eProcurement system.**

In 2012, the Senate Committee on Ways and Means (WAM) found that certain sections of Act 175, SLH 2009 needed to be made permanent to allow more expeditious execution of procurements, particularly procurements funded in part by federal stimulus funding. The Senate WAM Committee also found that **an electronic procurement system is the fairest, most efficient, time saving method of procuring small purchases that ensures the greatest amount of competition** by electronically notifying all prospective bidders in an open and transparent environment, and that electronic procurement should apply to a wider range of procurements. Accordingly, Act 173, SLH 2012 was **enacted to make the purchase of goods, services, and construction more efficient for state agencies** by increasing the limits of procurements qualifying for certain small purchases procedures to \$100,000 for goods and services and \$250,000 for construction to be made through an eProcurement system and provided that procurements for construction greater than \$50,000 shall be secured by a payment bond, in addition to the performance bond that is already required by Act 175, SLH 2009. If this bill passes, it will be in direct contradiction with the findings of the 2009 Senate Committee on Ways and Means and prior Committees.

In this year's SLH 2023, the Senate Committee on Education asked the SPO how many solicitation were conducted in the Executive Branch's eProcurement system, HlePRO, for Calendar Year (CY) 2022 that received only one response. Upon SPO's review, there were a total of 671 solicitations that received only one response, of which 507 were RFQs.

Breakdown by Method of Procurement (1 response)	No. of Solicitations
Small Purchases (RFQ)	507
Competitive Sealed Bidding (IFB)	120
Competitive Sealed Proposals (RFP)	35
Competitive Purchase of Services (103F-RFP HHS)	9

In the event, no responsive, responsible quotes, or reasonable prices are received through an eProcurement system, then HAR §3-122-78(d) already exists that allows the head of the purchasing agency or designee to determine that it is neither practicable, nor advantageous to the State to issue a new solicitation and to consider whether the specifications can be revised, time constraints, and competition in the marketplace. In the event of this determination, an alternative procurement method may be selected, to include, but not limited to direction negotiations.

On March 23, 2023, the House Committee on Labor & Government Operations raised concerns that schools in rural county areas would have difficulty acquiring the needed goods, services, and construction materials fast enough asking if there was a way to speed up the process, while still maintaining transparency. For the Executive Branch, anything that is \$15,000 to less than

\$100,000 for goods and services and \$15,000 to less than \$250,000 for construction is procured for on our eProcurement system, HlePRO; and the Code does not specify a specific timeline to procure Small Purchase (RFQs) so how long a notice is posted depends on the urgency of the goods, services, and construction needed.

Furthermore, if the DOE has specific goods or services that procurement by competitive means is not practicable or not advantageous to the State, then statutes and rules already exist that allow for exemptions for goods and services (except construction) via HRS §103D-102 and HAR §3-120-5, in a process that is open and transparent, without giving the DOE a blanket exemption.

Additionally, pursuant to HRS §103D-102(b)(4)(C), “Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form” are already exempt from the Code to allow the DOE, the Hawaii State Public Libraries Systems, the University of Hawaii, and the Department of Public Safety to obtain the latest books and related materials to the public in the best possible manner. In 2008, the Procurement Policy Board (PPB) added this exemption to Exhibit A, HAR Chapter 3-120, titled “Procurements Exempt from Chapter 103D, HRS,” specifically to allow schools and departments **to select and obtain education materials that best fit within their established curriculums and programs.**

Regarding DOE’s exemption for “other goods related to any education, training, or expertise required for participating in educational programs,” HAR §3-120-4(b)(3) already provides a “trainer” exemption that applies when the trainer has specialized training methods techniques or expertise in the subject matter and **teaches, educates, or instructs only.**

The Code is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government. The statutes and rules should apply uniformly for government entities and should not carve out a special process for the DOE. Procurement of education goods, services, and construction procurements should be treated no different than other procurements.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, **to prevent favoritism, collusion, or fraud** in awarding of contracts. To legislate that any one entity should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law’s application.

The SPO feels very strongly that the Code should be applied equally and uniformly throughout departments and jurisdictions. Exempting the DOE may lead to schools only going to the same vendors repeatedly, which would be in violation of HRS 103D-101(a)(6)(A). The Code encourages economic competition by:

“(A) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment.”

As of March 14, 2023, DOE awarded a total of 57 goods and services awards, between \$5,000 and less than \$100,000, posted on the Hawaii Awards & Notices Data System (HANDS); a total value \$1,666,505.71. If the bill passes, an average of 8 awards per year, valued at an average of \$354,765.42 each year, or \$44,345,67 per award would lack transparency and fail to give vendors equal opportunity to compete for government contracts.

Calendar Year	Number of Transactions between \$5,000 - \$100,000	Total Amount
2020	14	\$480,195.91
2021	13	\$225,402.91
2022	24	\$943,441.89
2023	6	\$17,465.00
Total	57	\$1,666,505.71

*NOTE: These are only the awards posted on HANDS, which represents a small fraction of the procurement conducted. The DOE has their own eProcurement system, which may include other awards postings

As of March 14, 2023, DOE awarded approximately 253 **construction** awards, between \$15,000 and less than \$250,000, posted on the Hawaii Awards & Notices Data System (HANDS); a total value of \$21,516,656.91; an average of \$85,000 per award. If the bill passes, an average of 63 construction awards per year, would lack transparency and fail to give vendors equal opportunity to compete for government contracts.

Calendar Year	Number of Construction Transactions between \$15,000 - \$250,000	Total Amount
2020	55	\$4,317,701.18
2021	68	\$4,577,266.71
2022	101	\$9,541,777.89
2023	29	\$3,079,911.13
Total	253	\$21,516,656.91

It is SPO's understanding that the DOE conducts procurements on two eProcurement systems: the Executive Branch's HlePRO for Competitive Sealed Bids (IFBs) and Competitive Sealed Proposals (RFPs), and the DOE's HePS for construction Small Purchases (RFQs), which may add to confusion for vendors on where to find and/or submit their offers.

For calendar year 2022, there were approximately 1,346 Small Purchases (RFQs) solicitations conducted or released on the Executive Branch's Hawaii Electronic Procurement System (HlePRO) none by the DOE. While the DOE has 1,015 Active Users on HlePRO, there are only 10 DOE Buyers and only one of them is delegated to utilize the Small Purchases method of procurement. The remaining users utilize HlePRO to access Hawaii Compliance Express (HCE) to only verify compliance.

It is more transparent to conduct small purchases procurements electronically as it prevents **fraud and collusion, as well as parceling**, which is the artificial division of purchase of same,

like, or related items of goods, services, or construction into several small purchases or smaller quantities, in order evade the statutory competitive requirements, which is a procurement violation.

DOE's manually processing of small purchase procurement is less efficient and possibly lead to higher costs. It relies heavily on paperwork or phone calls, email, and faxes to vendors, and relying on time-consuming, tedious, and repetitive tasks, in this electronic age, takes them away from their main focus of education. Furthermore, an exemption from electronic procurement for small purchases does not absolve the DOE from adhering to the remaining portions of the procurement code, which schools may mistakenly believe they are waived (i.e., award posting, verifying compliance, performance bonds, etc.).

Additionally, on March 31, 2023, Governor Green signed seven "Good Government" bills into law and stated, "The people of Hawaii **deserve a transparent and accountable government**...it is a **critical part of effective government** that delivers for our people." If this bill passes, DOE will receive a blanket exemption and will be given carte blanche to waive accountability and transparency, which will be in direct contradiction with Governor Green's goals for a transparent and accountable government. In this electronic age, the DOE should be utilizing an eProcurement system rather than regressing to a manual process.

Utilizing an eProcurement system is also much more efficient, in which processes are optimized and productivity increases. When solicitations are released in the Executive Branch's Hawaii Electronic Procurement System (HlePRO), all vendors with the applicable Commodity Codes are automatically notified by email. Buyers no longer need to call or email vendors independently to get quotes, all vendors are given the same specifications and information, the risk of human error is minimized, all communications (i.e., questions and answer as well as quotes) are kept securely in the system, and the progress of each solicitation is tracked. Additionally, eProcurement systems provide more security by improving the security and confidentiality of communications.

Currently all Chief Procurement Officer (CPO) Jurisdictions are statutorily required to adhere to HRS103D-305 requiring small purchases of \$25,000 to less than \$250,000 to be made on an eProcurement system; the SPO is unaware of any CPO Jurisdiction who is currently exempt from this requirement. While the rules are exactly the same for all CPO Jurisdictions, it is only the mechanism to put out the solicitation that may vary. The Executive Branch departments' CPO (the SPO Administrator) requires that small purchases over \$15,000 be made on an eProcurement system. Allowing the DOE this exemption would also open the door for other agencies and/or CPO Jurisdictions from requesting the similar exemption from the Code, creating discord with the Procurement Code.

Lastly, the DOE will soon be releasing a Job Order Contracting (JOC) contract that should help the DOE in dealing with small purchase construction jobs by allowing the DOE to get numerous, commonly encountered construction projects done quickly and easily through multi-year contracts for a wide variety of renovation, repair, and minor construction projects. The JOC will be competitively procured pursuant to the Code and therefore open and transparent.

The National Association of State Procurement Officials states that "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules

of numerous jurisdictions discourage competition by **raising the costs** to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments.”

As these entities create their own procurement rules, it results in the harm above where businesses are forced to track their various practices. The SPO also comments that obtaining a minimum of three quotes is more labor intensive (i.e., manually posting solicitation notice, sending out emails/letters/phone calls to potential vendors, receiving and keeping track of paper document responses) than using an eProcurement system, which can lead to more efficiencies. SPO understands the DOE’s desire to move forward quickly, however, it will be at the expense of accountability, transparency, and fairness to the vendor community.

Furthermore, the SPO continues to seek alignment with the findings of the Senate Special Committee on State of Hawaii Procurement in striving to **“better serve the public by identifying and maximizing efficiency in the public procurement process through clear, fair, and consistent policies and standards.”** If this bill passes, it will be in direct contradiction with the findings of the Senate Special Committee on State of Hawaii Procurement.

Each year, new procurement laws are applied to state agencies causing state agency contracts to become more complex, while other public bodies, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Recommendations: The SPO recommends removing in its entirety, Section 2, page 2, lines 17 to 21 continued on to page 3, lines 1 to 10 as stated below.

~~“302A Procurement; educational goods and services; small purchases. (a) Notwithstanding section 103D-305(c) or any other law to the contrary, the department may procure goods and services of less than \$100,000 without using an electronic system; provided that the procurement shall be subject to the rules governing procurements of less than \$25,000; provided further that, based on the specifications and with adequate reasonable competition, a procurement of:~~

- ~~(1) At least \$5,000 but less than \$15,000 shall require at least three quotations; and~~
- ~~(2) At least \$15,000 but less than \$100,000 shall require at least three quotations in writing.~~

~~(b) This section shall only apply for the procurement of goods and services in a county with a population of less than five hundred thousand.”~~

The SPO also recommends removing in its entirety, Section 3, page 3, lines 14 to 21 continued on to page 4, lines 1 to 7 as stated below.

~~“302A Procurement; educational construction; small purchases. (a) Notwithstanding section 103D-305(c) or any other law to the contrary, the department may procure construction of less than \$250,000 without using an electronic system; provided that the procurement shall be subject to the rules governing procurements of less than \$25,000; provided further that, based on specifications and with adequate reasonable competition, a procurement of:~~

~~(1) At least \$5,000 but less than \$15,000 shall require at least three quotations; and~~

~~(2) At least \$15,000 but less than \$250,000 shall require at least three quotations in writing.~~

~~(b) This section shall only apply for the procurement of goods and services in a county with a population of less than five hundred thousand.”~~

Lastly, the SPO recommends removing in its entirety, Section 4, page 8, lines 4 to 12 as stated below.

~~“(L) Education materials including textbooks, supplies, implements, tools, machinery, computers, electronic devices, or other goods related to any education, training, or experience required for participation in an educational program; provided that this subparagraph shall apply only for procurements by the department of education in a county with a population of less than five hundred thousand; and”~~

Thank you for the opportunity to provide testimony on this measure.