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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE  
ON  
LABOR & GOVERNMENT OPERATIONS  
February 6, 2024, 9:15 A.M.

HOUSE BILL 2496  
RELATING TO PROCUREMENT

Chair Matayoshi, Vice Chair Garrett, and members of the committee, thank you for the opportunity to submit testimony on House Bill 2496. The State Procurement Office (SPO) opposes this bill which proposes to create an alternative procurement method when it is not practicable or not advantageous to utilize any of the methods provided in the Procurement Code, Chapter 103D, HRS.

The proposed language in Section 1, page 1, lines 4 to 18, is ambiguous about 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 as well as the procedures are standard, consistent and conducted in a fair and impartial manner.

Additionally, Hawaii Administrative, Rules Chapter 3-122 allow for **alternative procurement** methods in different situations, as outlined below, and would cause confusion if another "alternative procurement" was introduced.

- HAR 3-122-3 Contract Extensions
- HAR 3-122-35 Waiver to Competitive Sealed Bids
- HAR 3-122-59 Waiver to Competitive Sealed Proposals
- HAR 3-122-66 Waiver for Requirement for Procurement of Professional Services
- HAR 3-122-78 Electronic Procurement for Small Purchases

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

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

Hawaii Revised Statutes (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 advantageous to competitively procure for a construction project. The statute can be amended to allow the Chief Procurement Officer the ability to exempt construction procurement when it is not practicable or advantageous to competitively procure.

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

**1. 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.

**2. 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;”

Both of the recommended changes would address construction projects that may have federal statutes, federal regulations, be federal special experimental or demonstration projects, and with federal approval of the alternative process to be used.

Thank you.