

OVERVIEW

THE AUDITOR
STATE OF HAWAII

A Review of Hawaii's Procurement Law

Summary

In Act 274, Session Laws of Hawaii 1992, the Legislature requested that the State Auditor conduct a study to provide information and recommendations for the enactment of a comprehensive procurement code for the State of Hawaii. Chapter 103, Hawaii Revised Statutes, on Expenditure of Public Money and Public Contracts, governs the procurement of goods and services for the State. Initially enacted in 1909, the statute has been amended over 200 times but still does not provide the legal foundation of a sound public purchasing program.

The current procurement code is old, fragmented, and vague. It no longer meets the needs of the State in a number of respects. Definitions of common terms used throughout the statute are unclear, source selection is limited to one method, and because the statute is vague and silent on many issues, it is open to interpretation. The statute's lack of clarity has led to inconsistencies in purchasing practices among state agencies. Moreover, there is an absence of statewide rules to regulate and guide purchasing policy. Each department is left to develop its own purchasing guidelines, and vendors must respond to differing requirements from one agency to the next. In effect, enormous expenditures for goods and services are being made with little uniform guidance and regulation.

The current procurement code requires significant revisions. Developing a comprehensive and modern procurement code that can satisfy the State's purchasing requirements will be a long-term process. Our proposals are only the first steps. We believe these proposals create the foundation for the basic changes needed to increase competition and fairness and establish greater uniformity in state purchasing.

Recommendations and Response

We recommend that the State of Hawaii begin the process of revising its procurement code based in part on the framework provided by the American Bar Association's *Model Procurement Code for State and Local Governments*. We believe that Chapter 103 should be amended to include a statement of purpose, language detailing the specific scope of the statute, and clearer definitions of commonly used terms. The statute should also provide for additional source selection methods, authorization for cooperative purchasing agreements, and procedures for vendor protests and vendor debarment or suspension.

We also recommend the establishment of a procurement policy office as the central procurement policy authority for the State. The office would be headed by a director with at least ten years of experience in large-scale procurement of goods and services. With the assistance of a procurement advisory committee, the director would issue statewide rules and regulations consistent with the revised procurement code. The procurement advisory committee would be comprised of a small group of public procurement officials and members from the private sector.

The department did not comment on many of our recommendations for revisions to Chapter 103. It did agree that Chapter 103 should be clarified regarding emergency purchases. It also agreed that considerable savings could be obtained through volume purchasing. The department disagreed, however, with our recommendation for the appointment of a director for a new procurement policy office, suggesting instead that the comptroller should continue to be the State's procurement policy officer. We believe that a high level person with extensive experience in procurement is needed to bring policy direction to state procurement.

The department disagreed with many of our findings, particularly those relating to inconsistencies in practice and the lack of guidance given to departments. The department says adequate guidance is given in budget execution policies, administrative directives, comptroller's circulars, and its accounting manual. We do not believe that these are sufficient to give statewide direction for purchases of goods and services. An improved state law and better rules are needed.

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