

OVERVIEW

Investigation of the Procurement and Expenditure Practices of the Department of Business, Economic Development & Tourism and Selected Attached Agencies

Report No. 09-07, April 2009

Summary

We conducted this investigation in response to Senate Concurrent Resolution No. 212, Senate Draft 2 of the 2008 legislative session, calling for an investigation into the procurement and expenditure practices of the Department of Business, Economic Development & Tourism and the following specific attached agencies: High Technology Development Corporation, High Technology Innovation Corporation, and the Hawai'i Strategic Development Corporation. The investigation examined the procurement and expenditure practices, policies, and transactions of the department and included inquiry, analytical procedures, and inspection of relevant records and documents to assess the department's compliance with state procurement laws and regulations. The investigation covered four fiscal years, beginning July 1, 2004 through June 30, 2008.

Our investigation revealed a culture unconcerned with the directives of the Legislature and unconvinced of the importance of the Hawai'i Public Procurement Code. Department leadership was lacking. The "tone at the top" placed emphasis on expediency of job completion over the accountability necessary in state government. Moreover, there were no assurances that appropriate policies and procedures were in place, which contributed to an environment filled with internal control deficiencies. All of this resulted in transactions that are questionable and errors that are contrary to the Hawai'i Public Procurement Code.

We found that the department made use of appropriation transfer authority to fund projects denied by the Legislature. In FY2007 and FY2008, we noted two contracts in particular that had terms that mirrored bills that died during their respective legislative sessions. The department was able to locate "payroll savings" and redirect money in order to fund these projects. Because these contracts were entered into outside of the normal budgeting process, goals, objectives and measures of effectiveness for the particular projects were not reported to the legislature. Moreover, with no mechanism in place to either determine the impact of or reconcile the changes in funding levels, transparency in government is lost.

We also noted violations of procurement procedures, poor procurement practices, and inadequate training. Failure to comply with the procurement code is a violation of state law and could lead to the termination of awarded contracts and individuals can be held liable for moneys paid in connection with the violation. The department director is responsible for the agency's compliance with the law. But individual public employees are also responsible to act in good faith to ensure the fair and equitable treatment of all who deal with government procurement in



order to foster public confidence in the integrity of the procurement process, and to ensure the appropriate application of purchasing ethics.

Our findings raise questions about the department's awareness of, compliance with, and commitment to the requirements of the Hawai'i Public Procurement Code. Many of the exceptions and procedural errors resulted from a lack of understanding of the procurement laws, rules, and internal policies and procedures. The department's deficiencies in implementing the procurement code and its own procurement policies and procedures are the direct result of its lack of training, poor management oversight, and a weak control climate.

To ensure that the department's funds are well spent, it is critical that the department employ an effective procurement system grounded in the ideas of transparency, accountability, and competition consistent with the Hawai'i Public Procurement Code. This is an imperative, especially in these tough economic times. Without active participation from all stakeholders, well-intended changes will leave no lasting impact.

Recommendations and Response

We recommended that the department work to ensure greater transparency and accountability within its governance structure by developing clearly documented policies and procedures within the procurement process, maintenance of financial records, and in monitoring staff and contractor performance. The department director must set the ethical tone for the department by stressing the importance of training and adherence to rules and regulations to ensure that both staff and management understand that fraud, waste, and abuse will not be tolerated.

The department responded to a draft of the report disagreeing with both our findings. The department noted no findings in the report of non-compliance with the Hawai'i Public Procurement Code, completely missing the point on the numerous errors identified. Further, while the department complied with appropriation transfer requirements, it did so after the Legislature made clear that the specific programs discussed (International Affairs and the Creativity Academies) were not a priority. While the department disagreed with our findings, it accepted the recommendations made and identified both future actions and actions already taken in accordance with those recommendations.

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