

OVERVIEW

Review of Privatization Contracts for Certain State and County Agencies

Report No. 02-21, December 2002

Summary

The U.S. General Accounting Office has defined privatization as “any process aimed at shifting functions and responsibilities, in whole or in part, from the government to the private sector.” Since 1998, the Legislature has passed three privatization laws, the most recent being Act 90 in 2001. Among other things, Act 90 specifically allows the State and counties to contract with private entities when it is reasonable to believe that those private entities can provide equivalent or better quality services at lower cost than the government agency. Act 90 went into effect on May 3, 2001 and is scheduled for repeal on June 30, 2007.

Although Act 90 enabled the State and counties to utilize privatization as a management tool, the State is not adequately prepared to utilize this tool. We found that although more than a year has passed since Act 90 went into effect, privatization efforts across the State have been minimal. None of the agencies specifically cited in Senate Concurrent Resolution No. 103, Senate Draft 1, of the 2002 Regular Session have utilized Act 90 to privatize any services. The only agency specifically planning to privatize a service under Act 90 is the Department of Land and Natural Resources’ Division of Boating and Ocean Recreation. Although agencies have entered into contracts with private providers since Act 90 went into effect, the lack of a specific definition of what privatization includes has allowed those agencies that untenable justification to “exempt” themselves from the act’s requirements.

We also found that leadership and guidance needed to ensure consistent implementation of Act 90 are lacking. A framework to direct agency efforts is needed. Such a framework should, at a minimum, include the establishment of a privatization authority to ensure privatization goals are achieved, implementation of a process to identify potential privatization opportunities, and development of privatization guidelines to promote accountability and consistency. In addition, this authority could provide clarification regarding existing privatization provisions relating to employee displacement and the managed competition process.

Finally, we found that other privatization components could enhance the State’s current privatization efforts. These components include identifying and comparing in-house and contractor costs and establishing adequate bid, contract, monitoring, and oversight requirements to provide safeguards and ensure quality services are received.



Recommendations and Response

We recommended that the governor designate an entity to implement Act 90, SLH 2001, and establish and enforce privatization guidelines. We also recommended that the governor ensure the establishment of comprehensive privatization guidelines. Finally, we recommended that the governor and mayors consider evaluating state and county agencies' privatization efforts after agencies have privatized services utilizing the privatization guidelines.

The University of Hawaii found our report to be thorough, objective, and informative. The university also expressed its willingness to support the State in its efforts to implement the recommendations.

The City and County of Honolulu also found our recommendations to be sound. The city and county agreed that an entity or commission should be designated to implement and oversee compliance with Act 90; however, it believes that the counties should not be governed by the State since their operations and budgeting, accounting, and procurement processes vary. The city and county also supports our recommendations to establish privatization guidelines and indicated that it believes that Act 90 is sound legislation and does not require any amendments at this time. The city and county also provided information on its current efforts to establish privatization guidelines.

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