



EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

March 2, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Ms. President and Members of the Senate:

For your information and consideration, I am transmitting two (2) copies of the Department of Budget and Finance, Report to the Legislature, on Act 272, SLH 2007, Relating to State Funds. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at [www.hawaii.gov/budget/LegReports](http://www.hawaii.gov/budget/LegReports).

Sincerely,

/s/

LINDA LINGLE

Enclosure



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March 2, 2009

The Honorable Calvin K. Y. Say, Speaker  
and Members of the House of Representatives  
Twenty-Fifth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear Mr. Speaker and Members of the House of Representatives:

For your information and consideration, I am transmitting two (2) copies of the Department of Budget and Finance, Report to the Legislature, on Act 272, SLH 2007, Relating to State Funds. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at [www.hawaii.gov/budget/LegReports](http://www.hawaii.gov/budget/LegReports).

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Department of Budget and Finance  
Report to the Legislature  
Act 272, SLH 2007, Relating to State Funds

I. Introduction

Act 272, SLH 2007, which became law (Section 36-2.5, HRS, Full Disclosure of Entities Receiving State Awards) without Governor Lingle's signature, required the Department of Budget and Finance to establish a searchable website that the public could access detailed information regarding State grants, contracts, and other awards to profit and nonprofit entities including after January 1, 2010 any subcontractors or subgrantees. \$250,000 was appropriated for the purpose of the Act.

II. Issues and Concerns

Although the intent of the Act was in keeping with this Administration's overall theme of transparency and accountability about how government operates and how public funds are spent, the Act poses a number of concerns:

- Current State business processes for good and services procurement, purchase of service procurement, grants-in-aid funding, loan programs **do not** capture, or **even require** disclosure of, all of the information required to be reported under Act 272, especially with regard to information on subcontractors, subgrantees and parent entities. Major modifications to the procurement process, grants-in-aid funding process and various loan programs will be necessary to require **up front disclosure** of subaward recipients and parent entities as well as the primary location of performance of work in initial bids and proposal responses, grant applications and loan applications.

[NOTE: Up front disclosure is necessary because, it would greatly facilitate capturing this type of information (everything would be provided in the responding bid, etc.) and preclude any legal issues regarding post contracting disclosures and confidentiality. However, it should be noted that up front disclosure could adversely affect the bidding climate by requiring disclosure of previously closely held, proprietary business information.]

- Act 272 terms and references, especially regarding the definition of "state awards," are **not clearly defined** and **may not be consistent** with current State accounting, budgeting or procurement usage. The terms, "grants," "loans," "contracts" and "purchase orders" appear to follow current State usage, but the

terms, "subgrants," "awards," "cooperative agreements," "other forms of financial assistance," "subcontracts," "task orders" and "delivery orders" appear to need further clarification and/or definition. And there is no definition for a "parent entity."

[NOTE: For example, clear definitions are required for "subgrants" and "subcontracts" to determine what type of business relationships need to be disclosed. Does accounting, legal, computer support or public relations services qualify as "subcontracts" or "subgrants," or would it be considered general goods and services for the contractor or grantee? Would payments to individual health care provider payments under the Med/QUEST program need to be reported separately? Another example is the term "other forms of financial assistance." Are reduced and/or preferential fees/rates, such as subsidized water rates and low cost leases, "other forms of financial assistance" that require disclosure. Further, it is unclear if the website is required to provide information on tax credits and/or deductions because the last clause of subsection (c) of the new codified section (on page 5, lines 5-9) makes reference to tax-related state awards.]

- Act 272 appears to assume that the initial amount of a state award in terms of the successful bid is the same as actual expenditure. In some cases, such as the purchase of a truck, this is true but in many instances there are differences. Is the website required to track and disclose both initial award and actual expenditure? And conversely, many price list purchases from a particular vendor fall well below the \$25,000 single transaction threshold, however, when aggregated statewide over a year these purchases amount to significant sums of money. Is the website required to track, aggregate and disclose such purchases (if not, vendors involved with these types of transactions may not show up at all)?

Further, although grants may be appropriated, the funds may not be released. Is the website supposed to disclose and track all grant appropriations or only those for which funds are released.

[NOTE: This should not be an issue with other expenditures such as contracts because it is assumed that disclosure and tracking will only commence upon a contract award or a purchase order placement.]

- Act 272 places the reporting burden and workload on award recipients and subrecipients as it makes provision in subsection (d) of the new codified section (on page 5, lines 16-18) for a reporting system under which the entity issuing a subgrant or subcontract is responsible for fulfilling the subaward reporting requirement.

However, for web security and data accountability reasons, departments/agencies need to be responsible for this function. [Providing input access to thousands of contactors, vendors and grantees appears to be invitation to a security disaster and there is no assurance that they will voluntarily comply in a timely and correct manner.] Therefore, the **real and continuing** burden will fall on the departments and agencies that must input and maintain the various databases for the website. Recipient burden will more than likely **be minimal** and only involve providing the information required for disclosure via the initial bid response. The workloads of the respective departments and agencies will depend on the volume of state awards that they are responsible for (i.e., departments such as the Departments of Health and Human Services that have a lot of contracts, etc., will likely have heavy maintenance workloads).

Some county departments and agencies that administer grants and other programs which are funded by the State will have maintenance workloads. Will these county agencies comply without compensation for their efforts?

- Act 272 requires use of the North American Industry Classification System (NAICS) but the State Procurement Office (SPO) currently uses the procurement standard National Institute of Government Purchasing (NIGP) coding system. The value of transitioning to NAICS is problematic because it is used by business and government to classify and measure economic activity in Canada, Mexico and the United States. The NAICS numbering system is a six-digit code. The first five digits are generally (although not always strictly) the same in all three countries. The last digit designates national industries. The first two digits designate the largest business sector, the third digit designates the subsector, the fourth digit designates the industry group, and the fifth digit designates particular industries.

### III. Current Status

Because of the many issues, questions and concerns which have been identified (Attachment) that will require legislative clarification/direction, full scale implementation of the Act 272 website was determined to be inappropriate. In addition, the State's current fiscal condition does not provide funds to fund the developmental aspects of the Act.

In light of these considerations, a scaled back, phased implementation is being reviewed.

This Department is working with the Department of Accounting and General Services relative to the feasibility of modifying the State Procurement Office's current procurement database(s) which already provides information on awards made by the various procurement methods such as Invitation for Bids, Request for Proposal, Professional Services and Small Purchases, to meet as many of the search and downloading requirements specified in Act 272. This will serve two purposes: it will improve/enhance web access to currently available information; and it will serve as a prototype website to help flesh out technical issues and problems that may crop up in full scale implementation.

We are identifying the composition of a working committee (or committees) that should be established to thoroughly research and develop recommended implementation strategies and statutory amendments for the following:

- *Subcontractor, subgrantor and parent entity disclosure requirements.* This will involve getting feedback from contractors/bidders/proposal responders as to: (i) the impact that subcontractor and parent entity disclosure would have on bid/proposal responses and prices (especially in situations of limited number of bidders for goods and services) given that such disclosure would require making public closely held or proprietary business practices and/or relationships; and (ii) developing a clear and concise definition of the terms "subcontractor," "subgrantee" and "parent entity" for disclosure purposes.
- *Other definitions and review of State business processes to determine compliance with disclosure requirements.* This will involve: (i) developing clear and concise definitions for other terms and references in Act 272 that conform to current State accounting, budgeting or procurement usage to recommend to the Legislature; (ii) reviewing State business processes to determine if the various process capture the required information based on the recommended definitions; and (iii) developing appropriate modifications to State business processes to capture and input the required information based on the recommended definitions.
- *Determining whether to display initial amount of award, actual expenditures or a combination.* This will involve: (i) making an assessment of what would be a meaningful and appropriate disclosure given the legislative intent behind Act 272; and (ii) developing a process/system for capturing the required information as may be necessary.

- *Estimating the compliance workload on departments and agencies.* As any initial modifications to the SPO website are being developed and implemented, a concerted effort will be made to estimate/quantify the compliance workload of the lead and assisting departments as well as the line operating departments and agencies.

#### IV. Summary

DB&F appreciated the intent of Act 272. However, as we have provided to you in this report, we believe there are major issues that need to be addressed to ensure a cost-effective, workable disclosure website and process. We look forward to working with the Legislature in addressing and correcting the implementation and operational issues which have been identified.