H.B. NO. 3113

A BILL FOR AN ACT

RELATING TO THE PROCUREMENT CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of the civil defense system of Hawaii is to ensure that preparations of this State will be adequate to deal with natural and man-made disasters or emergencies; to make adequate provision against shortages of supplies and commodities; to maintain the strength, resources, and economic life of the community; and to provide for prompt and effective action to further and promote the nation's security and civil defense and to protect the public's health, safety, and welfare. It has been the policy of the State that all civil defense functions of this State be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, with those of other states and localities, and with those of private agencies of every type, to the end that the most effective preparation and use may be made of all personnel, resources, and facilities for dealing with any disaster that may occur.

Since the tragic attacks of September 11, 2001, emergency management agencies at the county, state, and federal level

1 nationwide have been anxiously engaged in preparations to
2 prevent, deter, defeat and respond decisively to potential or
3 actual terrorist attacks against our citizens, whether these
4 attacks occur by land, sea, or air. Part of these preparations
5 includes participation in various federal grant programs
6 designed to get moneys to the states and political subdivisions
7 for the acquisition of equipment, supplies, and training to help
8 states and political subdivisions to be better prepared to
9 prevent and respond to any man-made or natural emergencies based
10 on an all hazards approach.
11 The United States Department of Homeland Security
12 administers grants for the State Homeland Security Program, Law
13 Enforcement Terrorism Protection program, Citizen Corps program,
14 Urban Areas Security Initiative funds, Metropolitan Medical
15 Response System, Buffer Zone Protection, and Transit Security
16 program that fund a wide range of preparedness activities that
17 include planning, organization, equipment purchasing, training,
18 and exercises. Each of these grant programs have unique
19 guidance, limitations, requirements, and procedures that change
20 from year-to-year. Grant guidance, limitations, requirements,
21 and procedures for each grant under the Homeland Security Grant
22 Program are specific as to funding, the uses of grant funding,

1 and the accountability for the use of grant funding. Hawaii and
2 its counties have been awarded multiple grants for the purposes
3 of increasing the State's security measures and its ability to
4 respond to terrorist attacks and catastrophic disasters. State
5 and county agencies have been diligent in complying with all
6 Homeland Security Grant requirements and responsibilities.
7 The Homeland Security Grant Program is a primary funding
8 mechanism to enhance the ability of state and local governments
9 to build and sustain national preparedness capabilities to
10 prepare, prevent, and respond to terrorist attacks and other
11 disasters.
12 In addition to traditional procurement procedures,
13 cooperative purchasing programs have been established in other
14 states and become available to assist county and state agencies
15 in maximizing the use of Homeland Security Grant moneys. The
16 use of cooperative purchasing programs can provide states and
17 local jurisdictions with significant benefits in time saving
18 equipment procurement options with one stop shopping with
19 electronic catalog and ordering capability, brand name
20 selection, National Fire Protection Association and Occupational
21 Safety and Health Administration compliance certificates,
22 product additions after appropriate review and approval,

emergency delivery, surge and contingent coverage, fully competed, and material returns. The use of some of these cooperative procurement purchasing programs allow state and local jurisdictions to utilize Homeland Security Grant funds without absorbing the initial cost of the procurement while waiting for reimbursement from the grant programs. The savings and benefits that can be realized through the use of cooperative purchasing programs allow state and county agencies to further maximize Homeland Security Grant moneys.

Additional states have entered into cooperative purchasing agreements and now administer cooperative purchasing programs to realize the many benefits of using such a procurement option. Until recently, state and county agencies in Hawaii have been enjoying the benefits of a cooperative purchasing program formerly administered by the Defense Logistics Agency and currently administered under the Arkansas procurement code.

The legislature finds that eliminating the opportunity of using another state's cooperative purchasing program because it does not meet the specific requirements of Hawaii's cooperative purchasing laws significantly reduces the options available for the use of Homeland Security Grant funds and jeopardizes the receipt of future grants as well as significantly increases the

possibility that current unspent homeland security grant moneys may lapse. The legislature further finds that in addition to the requirements of the various programs under the Homeland Security Grant Program, state and county agencies have various internal mechanisms to ensure the prudent use of public funds and to ensure that public moneys are properly used for the benefit of the public. The purpose of this bill is to amend the procurement code to allow state and county agencies to participate in cooperative purchasing programs established and administered under the procurement codes of the federal government or other states for the use of federally funded grants under the Homeland Security Grant Program provided the moneys expended through the cooperative purchasing program are one hundred percent federal funds.

SECTION 2. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

(1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;

(2) To disburse funds, irrespective of their source:

(A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;

(B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;

(C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;

(D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;

(E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;

(F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;

(G) To governmental bodies of the State;

(H) As loans, under loan programs administered by a governmental body; and

(I) For contracts awarded in accordance with chapter 103F.

(3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, [~~or~~] from another state or its political subdivision[~~.~~], or from a cooperative purchasing program established and administered under the procurement codes of the federal government or another state, provided that the procurement is for the use of one hundred per cent federally funded grants under the Homeland Security Grant Program;

(4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:

(A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and

employees, including administrative quasi-judicial proceedings;

(B) Works of art for museum or public display;

(C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;

(D) Meats and foodstuffs for the Kalaupapa settlement;

(E) Opponents for athletic contests;

(F) Utility services whose rates or prices are fixed by regulatory processes or agencies;

(G) Performances, including entertainment, speeches, and cultural and artistic presentations;

(H) Goods and services for commercial resale by the State;

(I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;

(J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction,

when substantially all legal services are expected to be performed outside this State;

(K) Financing agreements under chapter 37D; and

(L) Any other goods or services 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; and

(5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:

(A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and

(B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

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2 INTRODUCED BY: Calvin K.Y. Say

3 BY REQUEST

JAN 22 2008

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Report Title:
Procurement; Cooperative Purchasing Programs; Homeland Security Grants

Description:
Expedites the purchase of equipment and services by allowing state and county agencies to participate in government cooperative purchasing programs outside of Hawaii when using federal Homeland Security grants.

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JUSTIFICATION SHEET

DEPARTMENT: Defense

TITLE: A BILL FOR AN ACT RELATING TO THE PROCUREMENT CODE.

PURPOSE: To amend the procurement code to allow state and county agencies to participate in cooperative purchasing programs established and administered under the procurement codes of the federal government or other states for the use of federally funded grants under the Homeland Security Grant Program, provided that the moneys expended through the cooperative purchasing program are one hundred percent federal funds.

MEANS: Amend section 103D-102(b), Hawaii Revised Statutes.

JUSTIFICATION: In addition to traditional procurement procedures, cooperative purchasing programs have been established in other states and become available to assist county and State agencies order, purchase, and spend their allotted share of federal Homeland Security Grant funds. Use of cooperative purchasing programs has provided states and local jurisdictions with significant cost savings benefits in time saving procurement options with one stop shopping through online catalog and ordering capability for needed equipment, products, and materials.

Impact on the public: The timely acquisition of needed equipment especially at the first responder level (fire, police, and emergency medical services), would contribute to improved emergency response capabilities.

Impact on the department and other agencies: The bill would provide state and county government agencies an additional purchasing tool for the purpose of obtaining needed equipment such as radio systems, vehicles, trailers, personal protective gear, command vehicles etc. The savings and benefits that are realized through the use of cooperative purchasing programs allow state and county agencies to further maximize Homeland

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	Security Grant funds before the respective grant performance period ends.
GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	All state and county departments and agencies.
EFFECTIVE DATE:	Upon approval.