A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

PART I.

SECTION 1. The legislature finds that the comptroller should be an ex-officio nonvoting member of the state procurement policy board in order to ensure the board's independence.

The purpose of this part is to make the comptroller an ex-officio nonvoting member of the procurement policy board.

SECTION 2. Section 103D-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The state procurement policy board shall consist of seven members. Notwithstanding the limitations of section 78-4, the members of the board shall include:

(1) The comptroller as an ex-officio nonvoting member;

(2) A county employee with significant high-level procurement experience as an ex-officio nonvoting member; and
(3) Five persons who shall not otherwise be full-time employees of the State or any county; provided that at least one member shall be a certified professional in the field of procurement, at least one member shall have significant high-level, federal procurement experience, and at least two members shall have significant experience in the field of health and human services.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the state procurement policy board. The initial and subsequent members of the state procurement policy board, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the state procurement policy board members shall be subject to the requirements of section 26-34. No member of the state procurement policy board shall act concurrently as a chief procurement officer. The
members of the state procurement policy board shall devote such
time to their duties as may be necessary for the proper
discharge thereof."

PART II.

SECTION 3. The legislature finds that the State
procurement policy office, in order to fully discharge its
responsibilities, must take further steps to ensure compliance
with chapter 103D, Hawaii Revised Statutes, by the executive
agencies.

The purpose of this part is to require the State
procurement policy board to conduct compliance audits.

SECTION 4. Section 103D-202, Hawaii Revised Statutes, is
amended to read as follows:

"§103D-202 Authority and duties of the state procurement
policy board. (a) Except as otherwise provided in this
chapter, the state procurement policy board shall have the
authority and responsibility to adopt rules, consistent with
this chapter, governing the procurement, management, control,
and disposal of any and all goods, services, and construction.
All rules shall be adopted in accordance with chapter 91;
provided that the state procurement policy board shall have the
power to issue interim rules by procurement directives, which
shall be exempt from the public notice, public hearing, and
gubernatorial approval requirements of chapter 91. The interim
rules shall be effective for not more than eighteen months.

(b) The state procurement policy board shall consider and
decide matters of policy within the scope of this chapter
including those referred to it by a chief procurement officer.

(c) The state procurement policy board shall [have the
power to] audit and monitor the implementation of its rules and
the requirements of this chapter; but shall not exercise
authority over the award or administration of any particular
contract, or over any dispute, claim, or litigation pertaining
thereto.

The state procurement policy board shall annually audit a
minimum of two executive departments, divisions, or agencies,
to ensure compliance with this chapter, as follows:

(1) Based upon a pattern of noncompliance; or

(2) Based upon circumstances of a particular procurement
   that may indicate an intention to circumvent this
   chapter;

provided that there shall be follow-up audits of a department,
division, or agency that has been previously audited under
paragraph (1) or (2).
In addition, the state procurement policy board shall select any department, division, or agency for compliance audits, to be randomly selected or as otherwise authorized by law.

The state procurement office shall report the results of all compliance audits to the legislature no later than twenty days before the convening of each regular session."

PART III.

SECTION 5. The Hawaii public procurement code was originally enacted by Act 8, Special Session Laws of Hawaii 1993, codified as chapter 103D, Hawaii Revised Statutes. Since 1993, only one audit of the State's procurement practices has been performed. That audit, Auditor's Report No. 95-8, was performed in 1995 and states in pertinent part in the summary:

"We found that the administration has been slow in implementing the procurement code and has not taken the necessary steps to ensure effective implementation. The late start of the Procurement Policy Office without appropriate staff has limited the ability of the policy board to carry out its responsibilities. Furthermore, the late appointment of the interim administrator of the Procurement Office delayed development of an on-going
training program, procurement manual, and a periodic review of the procurement process. Because rules were issued late and insufficient attention was paid to interpreting the law and communicating the rules clearly, we found a number of instances of noncompliance and confusion about the law and rules.

The new procurement organization structure is ineffective with conflicting and unclear roles and responsibilities. The division of responsibility and authority between the administrator and the policy office is not clear in law or practice. Both have a responsibility to audit procurement practices. In addition, we found that the administrator has conflicting roles as the chief procurement officer (CPO) for the Executive Branch and as the individual responsible for reviewing procurement practices of all governmental agencies.

The legislature finds that a new audit is timely and necessary, given that thirteen years have elapsed since the 1993 audit and the recent problems in state procurement practices brought to light during the interim hearings by the senate committee on tourism and government operations. One of the
concerns is the apparent noncompliance with procurement laws in the award of contracts, which is a critical element of public procurement.

The purpose of this part is to require the auditor to conduct a compliance, performance, and management audit of executive agency compliance with chapter 103D, Hawaii Revised Statutes, and the administrative rules adopted thereto.

SECTION 6. The auditor shall conduct a compliance, performance, and management audit of chapter 103D, Hawaii Revised Statutes, and the administrative rules adopted pursuant to chapter 103D. The audit shall be limited to the state procurement office and the purchasing agencies, as defined in section 103D-104, Hawaii Revised Statutes, of the State, not including the legislature, judicial branch, office of Hawaiian affairs, and the several counties.

The purpose of the audit, among other relevant issues as determined by the auditor, shall be to determine compliance with chapter 103D, Hawaii Revised Statutes, including but not limited to:

(1) Compliance with requirements that contracts be awarded to the highest ranking bidder;
(2) The use of an evaluation committee by a procurement purchasing agency to score proposals based on evaluation criteria;

(3) Whether awards are based solely on qualifications, and not on other considerations such as personal judgments and biased preferences when selecting another bidder with a lower score;

(4) The proper documentation of each step of the procurement process by a purchasing agency and its chief procurement officer, including but not limited to decisions and justifications to select a bidder and to award a contract;

(5) Whether adequate procurement practices training is made available to and regularly attended by appropriate procurement officials of state agencies; and

(6) The proper use of an alternative procurement method.

SECTION 7. The auditor may contract with a private entity for purposes of conducting the audit and studies required under this part.

SECTION 8. The auditor shall make an interim report of the findings and recommendations to the legislature no later than
twenty days prior to the convening of the regular session of 2009, and a final report on findings and recommendations, including proposals for statutory amendments, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

PART IV.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on January 1, 2009; provided that part III of this Act shall take effect upon the approval of this Act.
Report Title:
Procurement Code; Random Audits; Auditor Review; Appropriation

Description:
Helps ensure compliance with procurement code by requiring the state procurement office to perform annual random audits of government purchasing agencies and audits of agencies selected based on a pattern of agency noncompliance. Requires auditor to audit state procurement office and purchasing agencies of the executive branch and report to legislature. Makes Comptroller and county employee member of the state procurement policy board ex-officio nonvoting members. Eff. 1/1/09. (CD1)