A BILL FOR AN ACT

RELATING TO EMERGENCY PROCUREMENT.

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

SECTION 1. 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 as 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;

(4) To procure the following goods [or services, or construction] 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 2. Section 103D-307, Hawaii Revised Statutes, is amended to read as follows:
"[§103D-307] Emergency procurements. (a) The head of a purchasing agency may obtain a good, service, or construction essential to meet an emergency by means other than specified in this chapter when the following conditions exist:

(1) A situation of an unusual or compelling urgency creates a threat to life, public health, welfare, or safety by reason of major natural disaster, epidemic, riot, fire, or similar events and to a lesser extent, by reason of equipment failures, repairs to public property to protect against further loss of, or damage to, public property, or to prevent or minimize serious disruption in continued functioning of government services, or such other reason as may be determined by the head of that purchasing agency;

(2) The emergency condition generates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods and the government would be seriously injured if the purchasing agency is not permitted to employ the means it proposes to use to obtain the goods, services, or construction; and
(3) Without the needed good, service, or construction, the continued functioning of government, the preservation or protection of irreplaceable property, or the health and safety of any person will be seriously threatened.

(b) The emergency procurement shall be made with such competition as is practicable under the circumstances [and, where practicable, approval from the chief procurement officer shall be obtained prior to the procurement]. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(c) The head of the purchasing agency that makes an emergency procurement in the response to a serious threat to life, or significant impact to ensure public access caused by any unexpected major natural disaster, epidemic, riot, fire, or minimize serious disruption in continued functioning of government services, shall account for details of the emergency, the response and money spent in making the procurement, and report on that accounting to the legislature within sixty days of the event in which the procurement was made."
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.
Report Title:
Emergency Procurement; Reporting Within Sixty Days of Procurement

Description:
Revises Emergency Procurement laws to add equipment failures, repairs to public property to protect against further loss of, or damage to public property, to prevent or minimize serious disruption in continued functioning of government services. Replaces approval by chief procurement officer with an accounting report to the legislature within sixty days after the procurement is made. (SD1)

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