

PROCUREMENT POLICY BOARD
1151 Punchbowl Street, Conference Room 410
Honolulu, Hawaii 96813

Regular Meeting
December 18, 2008
1:00 pm

AGENDA

- I. Call to Order.
- II. Approval of Minutes – Meeting of September 18, 2008.
- III. HAR Chapter 3-120 Exhibit A – Procurements Exempt from HRS Chapter 103D.
 - 1) Reconsideration of Exhibit A Exemption Nos. 5, 7 and 9 as requested by the Board; and
 - 2) Request to amend Exhibit A Exemption No. 1 as requested by the University of Hawaii.
- IV. Small Business Utilization Council's Memo to the Procurement Policy Board regarding Justification for Recommended Set-Asides and Subcontracting dated October 8, 2008.
- V. Request by Member Russ Saito:
 - 1) Discussion of IDIQ contract solicitations;
 - 2) Discussion of cooperative purchasing agreements; and
 - 3) Discussion of IDIQ multiple award verses Qualified Vendor list solicitations.
- VI. H.C.R. 358, H.D. 1/2008 Task Force (Task Force)
 - 1) Task Force letter dated September 30, 2008 to Department of Commerce and Consumer Affairs (DCCA); and
 - 2) DCCA's reply dated October 8, 2008 to the Task Force.
- VII. Executive Session to consult with the Board's attorney on issues pertaining to the Board's powers, duties and liabilities.
- VIII. Announcements.
- IX. Adjournment.

Agenda may be viewed at www.spo.hawaii.gov/procurement-policy-board-minutes-of-meeting. Individuals may present testimony on matters on the Procurement Policy Board's agenda when the agenda item is being discussed by the Board. Individuals intending to testify should contact the State Procurement Office at (808) 587-4700 at least 48 hours before the scheduled meeting. Written testimonies will be accepted through e-mail at procurement.policy.board@hawaii.gov or faxed to (808) 587-4703 until 1:00 pm, December 16, 2008. Testimonies received after the December 16, 2008 deadline will be forwarded to the board after the December 18, 2008 meeting. Individuals submitting written testimony at the meeting and would like the written testimony distributed to the board at this meeting, are requested to provide 12 copies.

Individuals requiring special assistance or services may call (808) 587-4700 by 1:00 p.m., December 15, 2008 to discuss accommodation arrangements.

AGENDA

ITEM II

PROCUREMENT POLICY BOARD MEETING

September 18, 2008

1:00 pm

Conference Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Members Present

Pamela Torres, Chair
Darryl Bardusch, Vice-Chair
Russ Saito, Secretary
Leslie Chinen, member
Keith Matsumoto, member

Others

Aaron Fujioka, State Procurement Office
Ruth Yamaguchi, State Procurement Office
Justin Fo, State Procurement Office
Colin Tanaka, State Procurement Office
Pat Ohara, Office of the Attorney General
Kevin Vegas, Grainger
Kim Langley, Office of Senator Donna Mercado Kim

Agenda Item I - Call to Order

Chair Pamela Torres called the meeting to order at 1:02 p.m.

Agenda Item II - Minutes

Mr. Darryl Bardusch made a motion, seconded by Mr. Keith Matsumoto, to approve the minutes of the August 21, 2008 meeting. The motion was unanimously carried.

Agenda Item III

Chair Torres inquired whether any of the members would like any changes to the time or length of the board meetings because there have been times in the past when meetings have been lengthy and concerns have been raised.

After a brief discussion the board decided to informally end the meetings at 4:00 pm. The Chair would poll the members when it gets close to 4:00 pm to obtain consensus from the board as to whether to continue the meeting or to defer to the next meeting.

Agenda Item IV

Mr. Matsumoto said he was satisfied with the summary provided by the SPO because it verified that there is a process in place to handle procurement exemptions and he believes it is working properly.

Mr. Matsumoto made a motion, seconded by Mr. Bardusch to accept the summary provided by the SPO and close this issue. The motion was unanimously carried.

Agenda Item V

Mr. Aaron Fujioka stated that the minutes summarizing the board's decisions denying the petitions are available on the SPO website.

Ms. Pat Ohara gave background information to the board regarding this issue and mentioned there are 3 lawsuits filed by Akaku against the State that are still pending.

Mr. Matsumoto made a motion, seconded by Mr. Bardusch to have the Deputy Attorney General draft a letter for the Chair's signature in response to the HCR 358 Task Force request, stating that there are no written decisions because hearings on the lawsuits, which covered the same issues as those raised in the petitions, had begun and opposing counsel verbally agreed that the lawsuits would supersede the petitions. The motion was unanimously carried.

Agenda Item VI

Mr. Fujioka stated that the next board meeting is tentatively scheduled for Thursday, October 16, 2008 at 1:00 pm.

Mr. Saito stated that the nomination committee on appointments of new PPB members is still waiting for the Senate President's nominee to the committee.

Agenda Item VII

Mr. Leslie Chinen made a motion, seconded by Mr. Bardusch, to adjourn the meeting. The motion was unanimously carried. The meeting was adjourned at 1:33 p.m.

Respectfully submitted,

10/2/08
Date

Russ K. Saito
RUSS K. SAITO, Secretary
Procurement Policy Board

Attachment: September 18, 2008 Agenda

PROCUREMENT POLICY BOARD

1151 Punchbowl Street
Conference Room 410
Honolulu, Hawaii 96813

Regular Meeting
September 18, 2008
1:00 pm

AGENDA

- I. Call to Order.
- II. Approval of Minutes – Meeting of August 21, 2008.
- III. Chair Torres' Request to address the board's monthly meetings and length of the meetings.
- IV. Request by Member Keith Matsumoto for a summary of non-exhibit A exemptions of the DBEDT's attached agencies: HSDC, HTDC, HTIC and NELHA.
- V. Request from H.C.R. 358, H.D. 1 (2008) Task Force by letter dated September 3, 2008.
- VI. Announcements.
- VII. Adjournment.

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AGENDA

ITEM III

1)

----- Forwarded by Aaron S Fujioka/dags on 10/14/2008 08:56 AM -----

Ruth E Yamaguchi/dags

10/13/2008 05:57 PM



To Dawn E Matsumura/LtGov/StateHiUS@StateHiUS, Eileen Harada/DBEDT@DBEDT, Kay M Okimoto/DCCA@DCCA, tmoriyasu@dod.hawaii.gov, James Pao/DHHL/StateHiUS@StateHiUS, Glen WY Chock/DCCA@DCCA, Patti K Kodama/DCCA@DCCA, Laureen K Wong/DCCA@DCCA, Marc S Yamamoto/PSD/StateHiUS@StateHiUS, Barbara E Arashiro/DHS/StateHiUS@hcdch, Lynn S Naito/DBF/StateHiUS@StateHiUS, Wanda N Kimura/DBF/StateHiUS@StateHiUS, David T Moore/AG/StateHiUS@StateHiUS, Kerry K Yoneshige/dags@dags, jon@librarieshawaii.org, May Y Price/PSD/StateHiUS@StateHiUS, edk@imail.librarieshawaii.org, Audrey HP Uto/dags@dags, Francis Keeno/ADMIN/HIDOT@HIDOT, Lisa Dau/ADMIN/HIDOT@HIDOT, Cindy L Yee/LtGov/StateHiUS@StateHiUS, Susy Kawamoto/DHS@STATEHIUS, Patrick S Fukuki/DLIR/StateHiUS@StateHiUS, Gerilyn W Sakai/DLIR/StateHiUS@StateHiUS, Shelli Oye/ADMIN/HIDOT@HIDOT, Cynthia Afuso/ADMIN/HIDOT@HIDOT, Lloyd Unebasami/HTA/DBEDT@DBEDT, Mary Ann K Teshima/DHRD/StateHiUS@StateHiUS, Juliet Kazanjian/DLNR/StateHiUS@StateHiUS, Suzanne M Efhani/TAX/StateHiUS@StateHiUS, Luna V. Santos/DOH@DOHEXCH, Benton Ho/ADMIN/HIDOT@HIDOT, Rick T Sogawa/DHS/StateHiUS@StateHiUS, Rachel Zane/Gov/StateHiUS@StateHiUS, Keith L Aragaki/DOA/StateHiUS@StateHiUS, emuraoka@kauaigov.com, ErnieK@OHA.org, jonathan.h.wong@courts.state.hi.us, adele@capitol.hawaii.gov, cwong@co.honolulu.hi.us, pnakamura@kauaigov.com, cshimabukuro@hawaiidws.org, cremigio@kauaiwater.org, ken.bissen@co.mauhi.hi.us, nitta@capitol.hawaii.gov, auditors@auditor.state.hi.us, ethics@hawaiiethics.org, complaints@ombudsman.hawaii.gov, mhiu@honolulu.gov,



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cc Aaron S Fujioka/dags@dags, Justin JL Fo/dags@dags

Subject Fw: Request from Procurement Policy Board

Executive Departments and CPO Jurisdictions -

Please review the attached memo from the SPO Administrator.
Specifically, the Procurement Policy Board (PPB) is reviewing Exhibit A, HAR Chapter 3-120 (see last two pages of attached HAR 3-120), Items # 5, 7 and 9, and your comments are welcome, or your attendance at the next scheduled PPB meeting, to provide feedback to the PPB members.

If you have any questions or concerns on this matter, please call me.

Ruth Yamaguchi
State Procurement Office
Ph 808 586-0554

----- Forwarded by Ruth E Yamaguchi/dags on 10/13/2008 05:48 PM -----

**Procurement Policy
Board/dags**
Sent by: Aaron S
Fujioka/dags

10/13/2008 04:56 PM

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Schindler/HSPLS/StateHiUS@StateHiUS, Lawrence M
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Ohara/AG/StateHiUS@StateHiUS, Cindy S
Inouye/DHRD/StateHiUS@StateHiUS, Keith L
Aragaki/DOA/StateHiUS@StateHiUS, Ruth E
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Oho/dags@dags

Subject Request from Procurement Policy Board

To Chief Procurement Officers and Executive Department Heads:

Please review the memo below. The Procurement Policy Board's meeting agenda when finalized, will be forwarded, thank you.

Aaron Fujioka
State Procurement Office
587-4700



Memo re 3-120 Exemption nos 5 7 and 9 (10-13-08).pdf



HAR Chapter 3-120.pdf Summary - Procurements Exempt from HRS 103D.pdf



LINDA LINGLE
GOVERNOR



AARON S. FUJIOKA
ADMINISTRATOR

PROCUREMENT POLICY BOARD
DARRYL W. BARDUSCH
LESLIE S. CHINEN
DARYLE ANN HO
KEITH T. MATSUMOTO
RUSS K. SAITO
PAMELA A. TORRES

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
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SPO 09-063

October 13, 2008

TO: Executive Department Heads
Chief Procurement Officers

FROM:

Aaron S. Fujioka

A handwritten signature in black ink, appearing to read "Aaron S. Fujioka", written over the printed name.

SUBJECT: HAR Chapter 3-120

The Procurement Policy Board (PPB) adopted the attached HAR Chapter 3-120 which includes Exhibit A-Procurements Exempt from HRS Chapter 103D. The PPB would like to further review Exhibit A Exemption Nos. 5, 7 and 9 at the November 20, 2008 meeting for the purpose of reconsidering these three exemptions. Your agency/jurisdiction may have previously submitted written comments on these exemptions requesting the continuation. A copy of the summary provided to the PPB with the State Procurement Office's recommendation is attached.

If you previously submitted comments in support of any of these three exemptions, the PPB is requesting your attendance and feedback at this meeting to more fully understand the necessity of continuing the exemption(s). If you are unable to attend, a representative would be appreciated. For those agencies/jurisdictions who have not submitted comments either for continuing or deleting these three exemptions, your attendance is welcome.

Your staff may call Justin Fo at 586-0577 if they have any questions, or you may call me at 587-4700.

Attachments (2)

"EXHIBIT A"

HAR Chapter 3-120
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS
07/17/08

The following list of exemptions, pursuant to HAR §3-120-4, has been determined to be exempt from HRS Chapter 103D by the procurement policy board:

<u>Exemption Number</u>	<u>Exemption</u>
1.	Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases;
2.	Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
3.	Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter;
4.	Services of legal counsel, guardian ad litem, psychiatrists, psychologists, receivers and masters when required by court order;
5.	Fresh meats and produce;
6.	Insurance to include insurance broker services;
7.	Animals and plants;
8.	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
9.	Food and fodder for animals;

Exemption
Number

Exemption

10. Facility costs for conferences, meetings, and training sessions;
11. Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
12. Arbitrator and mediator services;
13. Interpreter services;
14. Procurement of repair services when dismantling is required to assess the extent of repairs;
15. Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses;
16. Radio and television airtime when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc);
17. Subscription costs and registration or workshop fees for conferences or training; and
18. Court reporter services.

SUMMARY
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS
HAR §3-120-4

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
1	Research, reference, and "educational materials" including books, maps, periodicals, and pamphlets, which are published "or available" in print, video, audio, magnetic, or electronic form, "including web-based databases".	<p>Requested by the Dept. of Education, Hawaii State Public Libraries Systems, University of Hawaii, and Dept. of Public Safety</p> <p>Flexibility is essential to facilitate innovativeness or matching of teaching material to the environment and people involved; to get the latest books and related materials to the public in the best possible manner. Publishing companies as an industry norm do not sell to jobbers for resale.</p> <p>A similar exemption in HRS §103D-102(b) (4)(C) lacks sufficient coverage; this HAR exemption is more inclusive (added "educational materials" and "web-based databases").</p>	<p>This exemption is supported by law, and provides clarity with the added language.</p> <p>Recommend the continuation of this exemption.</p>	<p>AG – supports SPO recommendation.</p> <p>B&F, EUTF – supports SPO recommendation. Educational materials must be obtained on an ongoing basis for the education of its board members and staff.</p> <p>C&C of Honolulu –retain the exemption. Materials are selected based on specific information necessary for the agency to accomplish their mission.</p> <p>DCCA – supports SPO recommendation. The DCCA depends on the most current, thorough, and most accurate resources and reference materials. Procuring those resources through competitive means would be impractical and seriously curtail the DCCA's efforts and abilities to protect the public.</p> <p>DOE–supports SPO recommendation. Schools need to select and obtain educational materials that best fit within their established curriculum and programs. Obtaining educational materials through competitive means may result in materials not best suited for educators and students.</p> <p>DOH, HHSC – supports SPO recommendation.</p> <p>DLNR – retain the exemption. The Commission on Water Resource Management must have the highest quality of water resource materials, research, educational materials, and database standards to provide the best available information to the public and to make informed critical decisions. It is vital the Commission retains the option of choosing the materials that best fit its needs, regardless of vendor.</p> <p>DOT – supports SPO recommendation. This exemption is necessary for the purchase of various trade publications, and training and testing materials for the various functions within the department.</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
2	Services of printers, rating agencies, support “facility providers”, fiscal and paying agents, and registrars for the issuance and sale of the State’s or counties’ bonds.	<p>Requested by the Dept. of Budget and Finance.</p> <p>The nature of the types of procurements and time constraints involved, prevent agencies from using the competitive process. When the approval to issue a bond is received, the services of agents, rating agencies, printers, etc. need to be expedited to get the bond out on the market.</p> <p>A similar exemption in HRS §103D-102(b)(4)(I), refers to “support facilities”. The definition of a “support facility” is an irrevocable letter of credit, surety bond or agreement issued by one or more support facility providers. The definition of “support facility provider” is a bank, trust company, banking association, etc. The exemption in HAR has the correct language.</p>	<p>This exemption is supported by law, and provides clarity with the added language.</p> <p>Recommend the continuation of this exemption.</p>	
3	Services of lecturers, speakers, trainers, <u>facilitators</u> and script writers; <u>when the individual possess specialized training methods, techniques or expertise in the subject matter.</u>	<p>Requested by the University of Hawaii, Dept of Human Services, and Dept of Human Resources and Development.</p> <p>Competition is not feasible due to the numerous unique methods of training, speaking, and writing styles of individuals and the skills and intangibles of individuals that cannot be quantified.</p> <p>The amended wording is necessary because some types of training services are competitive. As an example, the State Procurement Office competitively solicits computer training services.</p>	<p>Recommend the continuation of this exemption, with the added language to restrict training services that are competitive.</p>	<p>AG – supports SPO recommendation.</p> <p>C&C of Honolulu, Purchasing – retain the exemption. The selection of vendors is based not only on their qualifications but also their effectiveness to the intended audience.</p> <p>C&C of Honolulu, Human Resources – supports continuation of the exemption. The quality of training services cannot be competitively measured and procured. Boring lecturers, speakers, and trainers who do not engage the attendees ultimately waste their time as well as taxpayers dollars.</p> <p>DOD –supports SPO recommendation. The DOD has various unique training situations that make it essential to have this exemption.</p> <p>DOH, HHSC – supports SPO recommendation.</p> <p>G. Riki Hokama – retain the exemption without the amendment. The proposed amended language requires a subjective determination as to whether an individual possesses specialized training methods, thus creating the opportunity for conflict.</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
				<p>DHRD – supports SPO recommendation but with alternate wording. Competition for these services are not feasible due to the numerous unique methods of training, speaking, and writing styles of individuals and the skills of individuals that cannot be quantified. However, while some services such as computer training services can be competitively procured, the proposed wording will be problematic. Therefore the following is recommended as an alternative: “Services of lecturers, speakers, trainers, and script writers; <u>except for technical training for hard skills, such as computer-related training services.</u>”</p> <p>DHS – opposes any elimination of the exemption. Although the textual content can be identical, the training method and style of the trainer is always unique. The skills, styles, and motivational qualities of a trainer ultimately determine the success of the training and are not easily quantifiable. In many instances, the training material used by a trainer is copyrighted.</p> <p>DLNR – supports SPO recommendation. The Commission on Resource Management has specialized needs that sometimes can only be met by a single individual. It is essential for the Commission to have the ability to select lecturers, speakers, trainers, and scriptwriters who have the required knowledge and expertise. The Division of Aquatic Resources recommends including the term “facilitators” with the exemption.</p> <p>PSD – supports SPO recommendation but recommends the following amendment- “<u>when the individuals possess specialized training methods and expertise in the subject matter, that although are not a sole . . .</u>”</p> <p>DOT – supports SPO recommendation. The selection of speakers, trainers, and lecturers is based on the subject matter and experience of the speaker.</p>
4	Services of legal counsel, guardian ad litem, psychiatrists,	Requested by the Judiciary and Dept. of Commerce and Consumer Affairs (DCCA). The DCCA requested the addition of receivers	Recommend the continuation of this exemption	G. Riki Hokama – supports the exemption but takes no position on the amendment

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED
	<p>[and] psychologists, receivers and masters when required by court order[, or by the Rules of Court in the case of interpreters, in criminal and civil proceedings].</p>	<p>and masters when appointed by the court. Receivers and masters generally are required to conduct reviews, operate businesses, etc. and report directly to the court. The DCCA also recommended the deletion of “interpreters” since they are already covered by exemption item no. 13.</p> <p>The computation rates for these services are fixed by law, judicial rule, or operational policy, which render the requirement for price comparisons moot. The circumstances regarding such proceedings also make it impracticable and unreasonable to comply with HRS chapter 103D.</p>	<p>with the proposed amendments.</p>	<p>7/17/08 PPB Meeting</p>
5	<p>Fresh meats and produce.</p>	<p>Requested by the Dept. of Education and University of Hawaii.</p> <p>The highly perishable nature of fresh meat and produce, and unstable and frequent fluctuations in their pricing necessitate this exemption. The volatile nature of the industry, unexpected requirements, and frequent fluctuations in pricing for fresh meats and produce is not practicable or not advantageous to compete these requirements.</p> <p>The school food service programs often times must determine what to purchase or select menus based on what’s available, the quality, unexpected requirements and best pricing at the markets or food distributors. To require firm pricing for fresh meats and produce for any extended period presents an unfair situation for the agencies and vendors.</p>	<p>Recommend the continuation of this exemption.</p>	<p>DOA – recommends retaining the exemption to support local ranchers and farmers, provides quality fresh meats and produce for school culinary programs and encourages purchasing of Hawaii fresh commodities for commercial use.</p> <p>C&C of Honolulu –retain exemption. Items are perishable. Not feasible to store in large quantities. Timely delivery and availability is critical.</p> <p>DOE–supports SPO recommendation. Due to unstable and frequent fluctuation in price, vendors of fresh meat and produce are unwilling to hold firm prices for the length of time required to procure these items competitively. Unexpected requirements also make it impractical to procure these items through competitive means.</p> <p>DOH, HHSC – supports SPO recommendation.</p> <p>Hawaii Beef Producers – supports the exemption. The exemption supports local ranchers and farmers, provides quality meats and produce for the schools and food service systems. It encourages ranchers and farmers to continue to produce local products.</p> <p>Hawaii Cattle Producers Cooperative Assoc. – strongly supports retaining the exemption. The association</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
				<p>represents 46 ranchers statewide. The exemption supports these ranchers who provide meat to the DOE, culinary schools and state institutions. The exemption needs to be retained to allow the industry to achieve its full potential and goal in being a major meat provider for the state's economy.</p> <p>Maui Cattle Company – retain the exemption. The exemption supports local ranchers and producers. It is important that our state institutions support our local agricultural industry as it allows Hawaii to continue to provide some of its essential food supply.</p> <p>Kukaiau Ranch, LLC – retain the exemption. The exemption supports local ranchers and farmers, it provides quality meats and produce for our school systems and state run food service programs. We need to market our products where possible and be self sustainable and need your assistance by supporting this exemption.</p> <p>Hawaii Farm Bureau Federation – supports continuing the exemption. The organization represents farmers and ranchers across the state and believes the agriculture is the cornerstone to Hawaii's sustainability and is a critical part of self sufficiency. Providing locally grown fruits, vegetables and meats to students fosters a strong local agricultural industry. The existing exemption is critical to supporting local ranchers and farmers.</p>
6	Insurance to include insurance broker services.	<p>Originally requested by DAGS Risk Management.</p> <p>Low price alone cannot be used for the selection of an insurance provider and many preferred providers or insurance companies will not respond to competitive solicitations.</p> <p>Because the SPO and DAGS awarded an RFP for insurance broker services that was determined to be successful, the SPO recommended the deletion of insurance broker services.</p>	<p>The SPO initially recommended amending the exemption with the deletion of insurance broker services.</p> <p>However given new information, the SPO recommends</p>	<p>B&F, EUTF – The placement of insurance, is best done by the broker through standard industry practice.</p> <p>C&C of Honolulu, Budget and Fiscal Services- opposed to any changes. It is impractical to separate the services from the product; especially since broker services are paid by the insurance company in the form of commissions. Each agency has their own unique insurance and broker services requirements and need the flexibility to employ a competitive structure best suited to their requirements.</p> <p>C&C of Honolulu, Risk Management – opposed to any</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
			retaining this exemption without amendments.	<p>change. Provided a copy of a lawsuit filed against the State that supports not making any changes to this exemption.</p> <p>Hawaii County - retain the exemption without the amendment. Brokers compete against each other as they all have access to different carriers. The elimination of broker services from the exemption will create the need for an RFP for each type of policy; an unwieldy proposition that will only add unnecessary time and effort to the process. The current process has worked well for the County of Hawaii.</p> <p>DOH, HHSC – retain the exemption as previously written without the amendment.</p> <p>UH – retain the exemption without any amendment. The exemption as presently written provides flexibility to meet the needs of the UH, other agencies and their clients in a timely manner.</p>
7	Animals and plants.	<p>Requested by the City & County of Honolulu and University of Hawaii.</p> <p>Competition is not feasible due to the unique nature, quality, visual appearance, or health of one animal or plant from another. As an example, specifications and pricing cannot determine the selection of all animals and plants. Many times, as in the case of zoo animals or rare plants, the availability may be in short supply or with short notice.</p> <p>The SPO recommended amending the exemption to read “Rare or exotic animals and plants, and animals and plants for research purposes” because it was felt that unless the animals and plants are rare or exotic such as zoo animals or needed for research purposes, most other animals and plants may be subject to competition.</p>	<p>The SPO initially recommended amending the exemption to restrict the exemption to only certain animals and plants.</p> <p>However given new information, the SPO recommends retaining this exemption without amendments.</p> <p>When animals or plants can be procured through a competitive process, solicitations may</p>	<p>C&C of Honolulu – retain exemption but without amendments. These items require careful screening to prevent the spread of disease to other animals and plants. There is also an issue of compatibility with other animals that vary with each individual animal.</p> <p>County of Hawaii – retain the exemption but without amendments. Who is to determine what animal or plant species are rare or exotic? Not all zoo animals are considered rare and exotic. There is no consistent formula to weight the value of animals or plants that vary in color, markings, size, vigor or age. While live stock may be purchased based on weight and age, the zoo may also need to purchase live stock for the petting zoo. In this case, color, markings, size, pedigree for breeding, and temperament are factors that need to be considered. As with animals, the agency also provided detailed justification for not exempting only rare or exotic plants. Short supply and short notice also affect animals and plants that are rare and exotic or required for research purposes.</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
			be issued on a case by case basis. An example is live stock not for zoo purposes.	
8	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.	The exemption is essential for commodities available on short notice or subject to quick sale or acquisition, therefore making the competitive process not feasible.	Recommend the continuation of this exemption.	
9	Food and fodder for animals.	<p>Requested by the City & County of Honolulu, the University of Hawaii, and Department of Agriculture.</p> <p>The initial language of this exemption was limited to "Food and fodder for animals in a zoo", and subsequently amended to "Food and fodder for animals" to be more generic.</p> <p>As per the C&C of due to the perishable nature of the foods, quality, availability and specialized types of foods that zoo animals require, it is not feasible to bid their food.</p> <p>The UH maintains various types of laboratory and farm animals that require a wide variety of special food that have a limited shelf, and ordered in small quantities. Changes in the feed are also necessary for testing and research purposes.</p> <p>The DOA Animal Quarantine Station must have foods that are accepted by the numerous animals that are quarantined for up to four months. Digestibility by the animals is something that cannot be determined ahead of time or without actual feeding trials.</p> <p>The SPO recommended deleting the exemption</p>	<p>The SPO initially recommended deleting the exemption.</p> <p>However given new information, the SPO recommends the continuation of this exemption.</p>	<p>DOA – Reiterated their justification for the exemption.</p> <p>C&C of Honolulu – It is not feasible to order large quantities due to the perishable nature of some foods and the changing dietary needs of animals. It is necessary to protect the well being of animals.</p> <p>County of Hawaii- retain the exemption. Quality in manufacturing and ingredients are critical to the health and welfare of animals. An example is the many recent recalls of dog and cat foods. All animal feeds are not created equally. If this exemption is deleted and animal food and fodder must be purchased competitively, the health and well being of valuable zoo animals will be at risk. At a minimum, amend the language back to "Food and fodder for animals in a zoo."</p> <p>UH – retain the exemption. The UH reiterated their original justification for the exemption and provided additional information in support of the exemption.</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
		because it was felt that food and fodder was competitive; purchasing agencies could seek a CPO exemption if warranted on a case-by-case basis.		
10	Facility costs for conferences, meetings, and training sessions.	Agencies have specific requirements such as large meeting and break out rooms for their conferences or meetings. The desired types of facilities and hotels frequently are not available on the required dates for the conferences and meetings, necessitating agencies to negotiate dates, times and costs with any available or potential location.	Recommend the continuation of this exemption.	<p>AG – supports SPO recommendation.</p> <p>B&F, EUTF – supports SPO recommendation. It would not be practical or feasible for the EUTF to use a competitive process to obtain these facilities.</p> <p>C&C of Honolulu –retain the exemption. The location of the facility is important to achieve maximum attendance.</p> <p>DOD – supports SPO recommendation. DOD’s international involvement requires certain security measures to be met which make it difficult to select low bidders.</p> <p>DOH, HHSC – supports SPO recommendation.</p> <p>G. Riki Hokama – retain the exemption. It can be difficult to find acceptable facilities that are available on the dates needed and fit the conference’s specifications. The Council must negotiate dates, times, and costs with any available or potential location.</p> <p>DLNR – retain the exemption. The Division of Aquatic Resources has encountered problems paying for break-out rooms in the past; recommend to add “including break-out rooms”.</p> <p>DOT – supports SPO recommendation. Needed for securing conference rooms for various DOT conferences.</p>
11	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, <u>or</u> professional	<p>Requested by the City & County of Honolulu, the University of Hawaii, and various other State departments.</p> <p>It is not feasible to competitively solicit certain types of advertisements when agencies are required to address or reach a specific audience through a limited source of specialized publications.</p>	Recommend the continuation of this exemption, with the typo clarification.	<p>AG – supports SPO recommendation.</p> <p>G. Riki Hokama – supports SPO recommendation. It is not feasible to competitively solicit certain types of advertisements when agencies are required to address or reach a specific audience through a limited source of specialized publications.</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
	publications.			
12	[Professional consultant services as required under Chapter 658, HRS] <u>Arbitrator and mediator services.</u>	<p>Requested by the Dept. of Agriculture, Dept. of Land and Natural Resources, Dept of Labor and Industrial Relations, and various other State departments.</p> <p>Arbitrators or mediators are periodically required to settle controversies between agencies and the public. HRS Chapter 658 (Arbitration and Awards) provides for a neutral third party to settle differences between parties. Selection of a neutral third party arbitrator or mediator makes the competitive procurement process impractical.</p> <p>HRS Chapter 658 was repealed and replaced with HRS Chapter 658A (Uniform Arbitration Act) which is basically the same. Rather than changing the reference from Chapter 658 to Chapter 658A, the SPO recommends the exemption be amended to simply refer to arbitrator and mediator services.</p>	Recommend the continuation of the exemption with the proposed amendment.	AG – supports SPO recommendation.
13	Interpreter services.	<p>Requested by the University of Hawaii and Dept. of Human Services.</p> <p>When purchasing sign language and oral interpreter services, the UH must abide by the Hawaii State Coordinating Council of Deafness Administrative Rules, Chapter 11-218, which requires the UH to hire a hearing impaired person's preferred interpreter when possible or use the interpreter determined by the Hawaii Services on Deafness- the only interpreter referral agency in the State.</p> <p>The Dept. of Human Services requires this exemption for hiring a vision impaired, hearing impaired, or non-English speaking person's preferred interpreter.</p>	Recommend the continuation of this exemption.	<p>AG – supports SPO recommendation.</p> <p>DOH, HHSC – supports SPO recommendation. Services are needed for the health care industry and reiterates the justification provided by the Dept. of Human Services.</p>
14	Procurement of	Requested by the City & County of Honolulu,	Recommend the	C&C of Honolulu –retain the exemption. Without

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
	repair services when dismantling is required to assess the extent of repairs.	<p>Dept. of Transportation, Dept. of Public Safety, and various other State departments.</p> <p>Competitive procurement of repair services is impractical when the item is required to be disassembled to determine the extent of the work required. An example is the repair of vehicles where the problem or extent of the repairs is not known until the vehicle has been disassembled. It is not practical or reasonable to require agencies to ask repair shops to disassemble and reassemble vehicles to obtain repair pricing.</p>	continuation of this exemption.	<p>dismantling, it would be impossible to determine the scope of some repairs. Once dismantled, it may not be practical to utilize the services of another vendor.</p> <p>DOH, HHSC – supports SPO recommendation.</p> <p>DOT – supports SPO recommendation. This exemption is used quite frequently for the dismantling and repair of the department's heavy and specialized equipment.</p>
15	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses.	<p>Requested by Dept. of Human Services.</p> <p>Pursuant to HRS Section 346-15, the Department of Human Services may pay for the burial costs of deceased medical or financial assistance recipients or unclaimed corpses to any licensed provider of mortuary and crematory services, with a maximum limit of \$400. The law further specifies that when the decedent is survived by relatives, the relatives shall also be permitted to make their own arrangements for the burial or cremation of their deceased relative.</p>	Recommend the continuation of this exemption.	<p>C&C of Honolulu –retain the exemption. HRS Section 841-19 requires indigent persons to be decently buried or cremated. The timely disposition of a body is critical to the operation of the medical examiner or corner and to provide a dignified and decent disposition.</p> <p>DOH, HHSC – support SPO recommendation.</p> <p>DHS – supports SPO recommendation. The burial costs of deceased medical or financial assistance recipients or unclaimed corpses to any licensed provider of mortuary and crematory services is limited to a maximum \$400. Given that the average cost for mortuary services is over \$3500 and cemetery services are over \$1000, it is improbable that many mortuaries will be willing to compete for these services.</p>
16	Radio and television airtime when selection of station is [to be made] by [current] <u>the targeted</u> audience [demographics] <u>(i.e. ethnic or age group, gender, etc.)</u> .	<p>Requested by the Dept. of Transportation, Dept. of Health, and City & County of Honolulu.</p> <p>Factors such as type, size of listening audience, or programming time to reach a targeted audience may make competitive procurement impractical.</p> <p>The meaning of audience demographics is not clear; the SPO proposes the amendment to provide examples of a targeted audience (i.e. ethnic or age group, gender, etc.).</p>	Recommend the continuation of the exemption with the proposed amendment.	<p>UH – supports SPO recommendation.</p> <p>Recommends amending the exemption to read: Radio and television airtime <u>and advertising space in print and other media</u> when selection [of station] is [to be made] by [current] <u>the targeted</u> audience [demographics] <u>(i.e. ethnic or age group, gender, etc.)</u>.</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
17	<u>Subscription costs and registration or workshop fees for conferences or training.</u>	Particular subscriptions, conferences or training workshops are very limited, specialized, and selection is generally determined by the agency's work requirements. For that reason, it is not practical to competitively procure these expenditures.	Recommend the approval of this exemption.	<p>AG – supports SPO recommendation.</p> <p>B&F, EUTF – supports SPO recommendation. It would not be practical or feasible to ask national organizations to bid on their subscriptions or workshop offerings.</p> <p>DOD – supports SPO recommendation. The costs for these items does not lend to competitive bidding.</p> <p>HHSC – supports SPO recommendation to approve and include this exemption.</p> <p>G. Riki Hokama – supports SPO recommendation. The selection of educational and professional subscriptions, workshops, and conferences is appropriately made on the basis of an agency's work requirements.</p>
18	<u>Court reporter services.</u>	<p>Requested by the Attorney General's Office, Dept. of Budget and Finance, and the Public Utilities Commission.</p> <p>HRS Section 606.13.6 prohibits the contracting for private court reporter services unless for a particular case or reporting incident. Court reporters violating this section shall be subject to discipline, censure, suspension or revocation of their license.</p> <p>In any litigation, flexibility is needed to meet the court reporting needs of each particular case. When court reporting services are identified for a 'particular case or reporting incident', unknown factors such as how long each deposition will take, location, number of parties involved make it not practicable to define the requirements. The unpredictability of litigation that requires the services of a court reporter may initiate as a small purchase, but escalate to amounts of \$50,000 or more.</p> <p>Court reporters provide a unique service. The quality of individual services, as well as the</p>	Recommend the approval of this exemption.	<p>AG – supports SPO recommendation when the services are for a particular case or reporting incident.</p> <p>B&F, EUTF – supports SPO recommendation. This is a specialized service with fairly standardized fees and limited availability.</p> <p>G. Riki Hokama – supports SPO recommendation. In legal and other time-sensitive matters, flexibility is needed to meet the court reporting needs of each particular situation.</p>

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED 7/17/08 PPB Meeting
		various types of services, varies from reporter to reporter, and from firm to firm. HRS 606-13.6 prohibits entering into contracts if there is no specific case or 'reporting incident', therefore an establish list of court reporter services is not allowable. When a 'particular case or reporting incident' comes up it is impracticable to competitive solicit for services due to lack of time to meet the immediate needs of the agency.		

UNIVERSITY OF HAWAII

Waikiki Aquarium

State of Hawaii
State Procurement Office
Procurement Policy Board
P.O. Box 119
Honolulu, HI 96810-0119

October 30, 2008

RE: Exemptions for HAR Chapter 3-120-4 No. 7 and No. 9

This letter is in testimony to secure Exemption No. 7 (Animals and Plants) and Exemption No. 9 (Food and Fodder for Animals) from Exhibit A, Hawaii Administrative Rules, Chapter 3-120. The Waikiki Aquarium, University of Hawaii, requests the continuation of these exemptions.

Regarding Exemption No. 7 (Animals and Plants), in the Aquarium's operations, due to limited availability of rare or exotic species including those requiring permit to acquire, competition for purchasing is unfeasible. Also, in public aquariums, specialty animals are essential to fully execute the exhibit's theme or message. Often times, animal purchases are made without inspection, and require a dependable vendor to ensure delivery of high quality animals of the correct species in good health.

Regarding Exemption No. 9 (Food and Fodder for Animals), the Waikiki Aquarium cares for a variety of animals that require specialized diets to meet nutritional needs. Diet items are sometimes difficult to obtain due to availability, need to be ordered frequently in small quantities to maintain freshness, and need to be of high quality to maintain proper animal health. It is completely impractical to adopt procurement procedures to obtain such foods – the delay involved and quality control issue would seriously jeopardize the health of our animals.

The Waikiki Aquarium is also home to two adult male Hawaiian monk seals (*Monachus schauinslandi*), the official state mammal of Hawaii and one of the most critically endangered marine mammals in the world. Proper husbandry and care of marine mammals is specialized and regulated. According to the Animal Welfare Act and Animal Welfare Regulations (APHIS, USDA) Section 3.105 Feeding: "The food for marine mammals must be wholesome, palatable, and free from contamination and must be sufficient quantity and nutritive value to maintain marine mammals in a state of good health." This type of diet must be high quality and fresh, and can only be reliably purchased from a known, trusted vendor with a high quality product. Also, in animal health emergencies, diet items may need to be expedited to ensure proper care or treatment. In such circumstances, the delays involved in the competition procurement process will endanger animal health.

I respectfully request the retention of exemptions No. 7 and No. 9 for the Waikiki Aquarium, under the University of Hawaii.

Sincerely,



Leah Kissel
Marine Mammal Specialist
Waikiki Aquarium



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

NOV 5 2008

Procurement Policy Board
State of Hawaii – State Procurement Office
P.O. Box 119
Honolulu, HI 96810-0119

To Whom It May Concern:

This letter is in reference to Exemptions for HAR Chapter 3-120-4 No. 9 – Food and Fodder for Animals requested by the City & County of Honolulu, the University of Hawaii, and the Department of Agriculture. I am specifically writing in reference to the exemption as it relates to the Waikiki Aquarium, University of Hawaii.

The Waikiki Aquarium maintains endangered Hawaiian monk seals (*Monachus schauinslandi*) in permanent captivity and conducts permitted research on them at the Waikiki Aquarium. This critically endangered species is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA), and the Endangered Species Act of 1973 (ESA). As such, the Waikiki Aquarium holds an MMPA/ESA scientific research and enhancement permit in order to legally care for and study these animals. One of the requirements of the MMPA/ESA permit issued to the Waikiki Aquarium is that the Hawaiian monk seals must be maintained under the U.S. Department of Agriculture, Animal and Plant Health Inspection Service guidelines, and in compliance with the regulations and provisions of the Animal Welfare Act. The Animal Welfare Act regulations require that food for marine mammals is wholesome, palatable, free from contamination, and must be of sufficient nutritive value to maintain marine mammals in a state of good health. This necessitates the Waikiki Aquarium to have choice of quality and vendor for their purchases in order to ensure the Hawaiian monk seals are fed a high quality diet.

This exemption would also allow for emergency purchases and special order food items as needed. The Waikiki Aquarium has assisted the National Marine Fisheries Service in emergency response activities for Hawaiian monk seals in the Main Hawaiian Islands, and this exemption would allow them to continue to do so and thus help in efforts to save this critically endangered species.

Due to the perishable nature of the food fed to monk seals, quality, availability and specialized types of foods that these animals require, it is not feasible to bid their food. It is not feasible to order large quantities due to the perishable nature of the food. This exemption is necessary to protect the well being of these animals.



Quality in manufacturing and ingredients are critical to the health and welfare of animals. An example is the many recent recalls of dog and cat foods. All animal feeds are not created equally. If this exemption is deleted and animal food and fodder must be purchased competitively, the health and well being of valuable zoo and aquarium animals, including Hawaiian monk seals, will be at risk.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Sloan", with a long horizontal flourish extending to the right.

Amy Sloan
Biologist, Office of Protected Resources
National Marine Fisheries Service

Procurement Exemption for Laboratory Animal Service
Submitted by Sylvia Kondo, DVM
Director, UH Laboratory Animal Service (LAS)
November 10, 2008

This is a justification to retain the following procurement exemptions from Exhibit A, Hawaii Administrative Rules, Chapter 3-120: Exemption No. 7 Animals and Plants, and Exemption No. 9 Food and Fodder for Animals. Requiring Laboratory Animal Service (LAS) to purchase from the lowest bidder will open up too many variables for the UH's animal biomedical research program, with potential adverse consequences to the program. Requiring LAS to establish a contract for these goods and services is not flexible enough to meet the needs of animal biomedical research program operated by LAS.

The UH provides the infrastructure to support \$25.3-million dollars (FY08) in grants and contracts involving vertebrate animals, in addition to numerous non-funded activities using vertebrate animals. If LAS is required to estimate our purchasing needs in advance in order to establish a contract, it would lead to unnecessary waste. That is, we would have to overestimate our usage in order to prevent shortages. This would create higher expenses to the investigators who are charged back for animal care. This would have an adverse impact on their budgets to do research on vertebrate animals. Contract modifications to accommodate new or expanded research would hamper the flexibility in starting projects in a timely manner. That is, requiring contracts would hinder our ability to quickly react to changing situations and correct issues that arise, thus compromising research. These reasons are elaborated below.

Exemption No. 9 Food and Fodder for Animals

LAS purchases feed and bedding in direct support of federally funded biomedical activities, and we do not have the luxury of planning these expenses on a long term basis. Numbers and types of animals used, research grants and proposals, and the UH Institutional Animal Care and Use (IACUC) and other agency approval processes to use animals varies from month to month. It is typical for the number of commonly housed animals at LAS to vary between 5-10% from month to month, which is equivalent to a variance of approximately 100-200 animal cages. We do not have a means to bulk store these items, and there is a federal requirement that pelleted feed must be used within six months of the milling date. Our current practice is to evaluate our procurement needs and place orders for feed and bedding on a monthly basis.

Once researchers receive the green light to start their projects, they expect to be able to start their work shortly after receiving these approvals. Delays of any sort, including difficulty in procuring food and fodder for their animals can have a negative impact upon their ability to use their grant funds in

Justification for Procurement Exemption
November 10, 2008

the time allotted. In addition to this, once research has begun, it is not always possible to predict an exact endpoint for the project.

It is also very common for a project to be approved for a species not commonly housed at our facility, and feed must be ordered for this species for the duration of the project. To await contract modifications to accommodate food and fodder needs for new species would cause an undue delay to the researchers.

We have also found from experience that locking ourselves into procurement from a single vendor for these items puts us at a disadvantage and poses risks to the valuable biomedical research that is conducted at UH. Good service and communication are vital for acquiring these goods, and if these are lacking, we end up paying more in the long run for having to air ship in these items, at twice the cost of the item, if orders are not handled properly by the vendor. That is if orders are not shipped in a timely manner, wrong items shipped, are damaged, or of poor quality, we end up having to pay the extra cost of air shipping in these goods and waste valuable time to replace them. We have no other local source for these specialty items used by the laboratory animal industry, and we cannot substitute with off the shelf items. We must keep the care of our animals consistent and of the highest quality to avoid introducing unknown variables into the research. Therefore, we are at the mercy of our vendors. It is vital to our program and to the research at UH, that we have the flexibility to obtain these goods from alternate vendors as the needs arise. We must also assure the Federal agencies that the food we feed is wholesome and palatable, and are regularly inspected on behalf of the federal agencies to ensure that we are complying with these standards for care. Therefore, a reliable vendor who can consistently provide us with quality products in a timely manner is critical to our program.

Exemption No. 7 Animals and Plants

For the same reasons described for the previous exemption, LAS cannot predict the number or type of animals required by the research conducted at our facilities. LAS procures animals in direct support of research, and adding a limitation to the type and quantities that can be ordered because of contract requirements would cripple the research.

There are several hundred strains of commonly used laboratory animals, and not all vendors carry every strain. It would be unrealistic to establish contracts for every conceivable strain that may be used by researchers. In addition to this, even if multiple vendors carry a common strain of animal, these can vary from vendor to vendor, and therefore cannot be used interchangeably. Research animal strains are chosen carefully by the researcher for a specific

Justification for Procurement Exemption
November 10, 2008

project, and something as small as a vendor change could invalidate years of research and destroy the entire project.

We understand that procurement policies are in place to ensure that University funds are used appropriately and that exception to these policies are not taken lightly. LAS has operated for approximately 45 years providing standardized care and oversight of animals used for research and training. Based on our experience, eliminating purchasing exemptions 7 and 9 would severely impact the quality of research conducted at UH as well as our ability to provide support.

We respectfully request that you allow LAS to retain the procurement exemptions for purchasing food, fodder, and animals for the department.

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

November 10, 2008

Procurement Policy Board
State Procurement Office
Honolulu, HI 96810

Subject: Testimony to Procurement Exemption No. 9, Chapter 3-120, HAR

The Hawaii Department of Agriculture strongly requests that the 103D exemption number 9 "Food and Fodder for Animals" be retained for dog and cat foods. The Department will be adversely affected by the elimination of this provision in its operation of the Animal Quarantine Station.

The Department manages and operates the Animal Quarantine Station and Airport Animal Quarantine Holding Facility that inspects, processes and quarantines dogs and cats transiting through and entering Hawaii. I have attached a letter dated December 11, 2006 from Dr. James Foppoli, Administrator, Division of Animal Industry to Mr. Aaron Fujioka, Administrator, State Procurement Office and copies of prior testimonies submitted to the Procurement Policy Board requesting continuance of the exemption for food and fodder for animals. The concerns with the elimination of this exemption from a technical perspective and the Division's past experience with feeding different foods is covered in Dr. Foppoli's letter. For example, labeled analyses for different dog and cat foods do not quantify certain factors such as palatability and other qualities that may not be measured or specified in a procurement solicitation. In addition, feeding trials are not required to evaluate all pet foods and label analyses may not accurately reflect a diet's performance when fed.

The Animal Quarantine Station feeds several types of dog and cat foods. In addition to maintenance diets for each species, the Station also feeds several specialty diets designed to assist and treat common conditions in kenneled animals such as gastrointestinal disease, inappetance and weight loss. In addition, there are additional specialty foods that the Station does not currently use but may be needed in the future. Optimum pet care dictates that different foods be utilized for different animals and conditions.

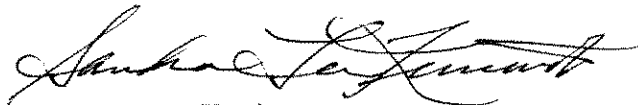
Flexibility afforded under the exemption for dog and cat food allows the Station to rapidly procure different diets to optimize animal care by addressing existing or emergent animal health situations in the population.

In response to comments from Procurement Policy Board members at the May 15, 2008 meeting, the Department requested a determination from the State Procurement Office (SPO) on whether Restricted Specification Requests for various dog and cat food products is feasible. The SPO has

Memo to Procurement Policy Board
November 10, 2008
Page 2

since concluded that restrictive specifications are not possible with pet foods. Furthermore, requesting exemption on a case by case basis from the Chief Procurement Officer is cumbersome and may not be a viable alternative. Therefore, the Department opposes deleting exemption 103D No. 9, Food and Fodder for Animals and strongly recommends that the exemption be retained for the Animal Quarantine Station and Airport Animal Quarantine Holding Facility.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sandra Lee Kunimoto', written in a cursive style.

Sandra Lee Kunimoto
Chairperson, Board of Agriculture

Attachment

c: Animal Industry Div.
Keith Aragaki, ASO

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

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May 30, 2008

Procurement Policy Board
State Procurement Office
Honolulu, HI 96810

Subject: Testimony in Support of Retaining Procurement Exemption No. 9, Chapter 3-120, HAR

The Hawaii Department of Agriculture strongly recommends that the exemption from 103D exemption number 9 "Food and Fodder for Animals" be retained for dog and cat foods

In response to comments from Procurement Policy Board members at the meeting on May 15, 2008, the Department has requested a determination from the State Procurement Office on whether Restricted Specification Requests for various dog and cat food products is feasible. However, the Department opposes deleting exemption 103D No. 9, Food and Fodder for Animals as it has not been determined that restrictive specifications are a viable alternative.

The Animal Quarantine Station (Station) feeds several types of dog and cat foods. In addition to maintenance diets for each species, the Station also feeds several specialty diets designed to assist and treat common conditions in kenneled animals such as gastrointestinal disease, inappetance and weight loss. In addition, there are additional specialty foods that the Station does not currently use but may be needed in the future. Optimum pet care dictates that different foods may be utilized for different animals and conditions.

Flexibility afforded under the exemption for dog and cat food allows the Station to rapidly procure different diets to address existing or emergent animal health situations in the population.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Lee Kunimoto", written over a horizontal line.

Sandra Lee Kunimoto
Chairperson, Board of Agriculture

Attachments

c: Animal Industry
Elaine Abe, ASO

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

May 12, 2008

Procurement Policy Board
State Procurement Office
Honolulu, HI 96810

Subject: Testimony to Procurement Exemption No. 9, Chapter 3-120, HAR

The Hawaii Department of Agriculture requests that the 103D exemption number 9 "Food and Fodder for Animals" be retained for dog and cat foods. It is likely the Department will be the primary agency affected by this provision and its elimination will have adverse effects on the Animal Quarantine Station.

The Department manages and operates the Animal Quarantine Station and Airport Animal Quarantine Holding Facility that inspects, processes and quarantines dogs and cats transiting through and entering Hawaii. I have attached a letter dated December 11, 2006 from Dr. James Foppoli, Administrator, Division of Animal Industry to Mr. Aaron Fujioka, Administrator, State Procurement Office. Dr. Foppoli's letter contains the concerns with the elimination of this exemption from a technical perspective. In addition, the Division's past experience with feeding different foods is explained. As detailed in his letter, labeled analyses for different dog and cat foods does not quantify certain factors such as palatability and other qualities that may not be measured or specified in a procurement solicitation. For example, because feeding trials are not required to evaluate all pet foods, label analyses may not accurately reflect a diet's performance when fed.

Therefore, flexibility afforded under the exemption for dog and cat food optimizes animal care while minimizing animal health issues and pet owner complaints. Furthermore, requesting exemption on a case by case basis from the Chief Procurement Officer is cumbersome and may not be timely in certain circumstances.

It is strongly recommended that the exemption from 103D regarding the procurement of foods for dogs and cats at the Animal Quarantine Station and Airport Animal Quarantine Holding Facility be retained.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Lee Kunimoto", is written over a horizontal line.

Sandra Lee Kunimoto
Chairperson, Board of Agriculture

Attachment

c: Animal Industry
Elaine Abe, ASO



State of Hawaii
DEPARTMENT OF AGRICULTURE
Animal Industry Division
99-941 Halawa Valley Street
Aiea, HI 96701-5602
Phone (808) 483-7151 Fax (808) 483-7100

December 11, 2006

TO: Aaron S. Fujioka, Administrator
State Procurement Office

SUBJECT: Exemption for Dog and Cat Foods

We request that the 103D exemption be retained and not eliminated for dog and cat foods.

Although the labeled analyses for different dog and cat foods may appear identical, there are other factors and product qualities that cannot be quantified by label analysis or objectively specified in a procurement solicitation. Therein lies some of the problems created by removing all food and fodder from exemption.

The Association of American Feed Control officials (AAFCO) develops recommended standards for the nutrient content of dog and cat foods. Manufacturers can show their food meets AAFCO standards for nutritional adequacy by calculations or by feeding trials (Bren, 2001). However, previous studies have demonstrated that AAFCO approved feeding trials are valid to assess pet food quality whereas chemical analysis or calculated values may not be (Huber et al., 1991). In other words, guaranteed labeled chemical analysis is not as meaningful as results of feeding tests.

One of the major qualities of a dog or cat food product is palatability. It is common for different foods to have identical or relatively similar labels yet have vastly different qualities of acceptance by animals. Conversely, a food may be highly palatable but be undesirable due to its ingredients although the nutritional analyses are similar. Nonetheless, palatability cannot be, and is not, quantified on pet food labels. In a quarantine situation where animals may be confined for up to four months, adding an unpalatable diet as an additional stressor is undesirable and will have adverse effects.

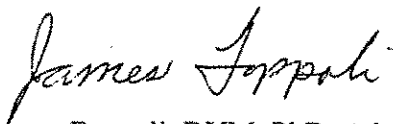
Digestibility is another quality that is not easily determined without actual feeding trials. Depending on the biological availability of the ingredients, the digestibility of products can vary (Earl et al., 1998). For example, cooked carbohydrates (starches) are generally more easily digested than uncooked starch (ISU, AnS320). The bioavailability of other nutrients such as protein is similarly affected by the source. Due to this, less digestible nutrients may pass through the digestive tract without being absorbed and consequently larger volumes of food are required. This in turn creates larger volumes of animal waste to clean and increases potential for gastrointestinal upset. Pet food industry labeling standards do not adequately address digestibility and bioavailability (Michel, 2001).

Food additives such as dyes, colorants and preservative may affect the solid waste produced by an animal. Since the Animal Quarantine Station dog kennel floors are constructed of concrete, certain foods fed in the past have caused staining of the floor that was not easily removed. Those dog foods are no longer used for that reason. This aspect is also difficult to specify and confirm without actually feeding the product.

In addition, the Station has the need to purchase specific specialized veterinary diets to meet the health or medical issues of dogs and cats at the Station. These issues include cardiac, metabolic, gastrointestinal and others. Highly digestible and high caloric foods are two examples used to treat animals with intestinal disease and weight loss respectively. Although the program can require the owner to provide the food, experience has shown that many pet owners do not and the program needs the capability to purchase and provide these and other specialized diets within 24 hours or less.

It is recommended that the selection of foods for the dogs and cats at the Animal Quarantine Station remain flexible by keeping the exemption from 103D to minimize animal health and operational problems and minimize pet owner complaints.

Please contact Dr. Isaac Maeda, Animal Quarantine Branch Manager, at (808) 483-7144 with any questions.



James Foppoli, DVM, PhD, Administrator
Division of Animal Industry

c: Elaine Abe, ASO
Dr. Isaac Maeda, AQB ✓

References

Bren, L., (2001). FDA, Center for Veterinary Medicine, Pet food: the Lowdown on labels, May-June 2001.

Huber, T.L., Laflamme, D.P., Medleau, L., Comer, K.M. & Rakich, P.M., (1991) CVM, UGA, Comparison for assessing adequacy of dog foods, *JAVMA*, Sept. 15, 199(6):731-4.

Iowa State University, Animal Science Lab; AnS320 presentation, Pet food labels.

Earle, K. E., Kienzle, E., Opitz, B., Smith, P.M. & Maskell, I.E., Fiber affects digestibility of organic matter and energy in pet foods, *Journal of Nutrition*, 128, 12/2798.

Michel, K., (2001). World Small Animal Veterinary Association, WC Vancouver 2001, Pet food labels: What reading a label will and won't tell you about the food.



LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

November 17, 2008

MDB-09-067

Procurement Policy Board
State Procurement Office
Honolulu, HI 96810

Subject: Testimony in Support of Retaining Procurement Exemption No. 5, Chapter 3-120, HAR

The Hawaii Department of Agriculture strongly recommends that the exemption from 103D exemption number 5 "Fresh meats and produce" be retained.

The exemption supports local ranchers and farmers and provides for quality meats and produce to be procured by the Department of Education for school food service programs. These commodities are perishable and when the need is unexpected, it is more practicable to have the exemption to allow purchase in a timely manner.

Culinary schools can use local fresh meats and produce for their training, which encourages future purchasing and promotion of Hawaii fresh commodities for commercial use.

It is important that our state institutions support our local agricultural industry as it contributes to maintaining Hawaii's ability to continue to provide some of its essential food supply.

The flexibility afforded under the exemption supports local ranchers and farmers, provides quality fresh meats and produce for school food service programs and encourages future purchasing and promotion of Hawaii fresh commodities for commercial use.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Lee Kunimoto".

Sandra Lee Kunimoto
Chairperson, Board of Agriculture



2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

November 18, 2008

HEARING BEFORE THE PROCUREMENT POLICY BOARD

TESTIMONY

**RE: Reconsideration of Exhibit Nos. 5, 7 and 9 of HAR Chapter 3-120 Exhibit A
Procurements Exempt from HRS Chapter 103D.**

Members of the Board:

Hawaii Farm Bureau Federation requests clarification of the procurement process relating to agricultural products, namely fresh meats and produce listed as item number 5 in the exemption list of Exhibit A.

Availability of locally grown agricultural products is important to an island State. Everyone has experienced concern as grocery shelves empty during crisis such as strikes and other catastrophic disasters stopping planes and ships from coming to our ports. This supply of locally grown products can only happen due to consistent production which in turn is dependent upon purchase policies by consumers. The State government is a significant consumer and can play an important role in setting a policy example of consumer behavior.

To date, HFBF as well as many of our members have favored the exemption from the procurement process due to the higher cost of production of locally grown products. There was a fear that inclusion in the procurement process would not allow entities to buy products that were priced beyond the allowed limits.

Recently, it has come to our attention that the reverse may be true. The agricultural industry may be prevented from utilizing preferential purchase programs within the procurement code due to the exemption. In addition, new programs such as the Farm to School program may not be utilized due to the exemption status.

During these uncertain times, there is much concern about self sufficiency and sustainability. Agriculture as one of the industries that provides our day to day needs ...specifically food must be recognized for its production of this very basic necessity. Clarification of the possible role of the Procurement Code is needed to facilitate in strengthening local agricultural viability.

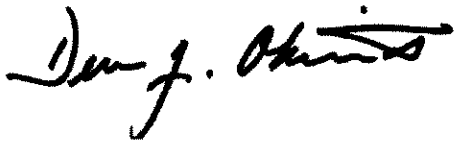
We respectfully request a clarification of the role the current exemption plays in supporting local agricultural production. We strongly believe that this clarification must precede decisions on the status of the exemption for produce and meats.

If our findings about access to preferential purchase programs and their relationship to being within the procurement system with fair compensation is correct, we support fresh produce and meats to be within the procurement code.

However, if no further access to these programs will result, we support the existing exemption to provide the means for payment of the higher prices associated with locally grown produce and meats.

Thank you for this opportunity to provide our opinion on this matter. We hope to reach timely clarification on this matter so the procurement code can play its rightful role as a critical player in enhancing agricultural viability in Hawaii. If there are questions, please contact Alan Takemoto at 848-2074.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dean J. Okimoto", with a stylized flourish at the end.

Dean Okimoto
President
Hawaii Farm Bureau Federation

cc: S.Kunimoto - HDOA

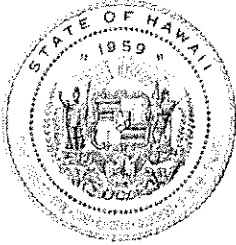
2)

SUMMARY
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS
HAR §3-120-4

No.	EXEMPTION	JUSTIFICATION	SPO RECOMMENDATION	COMMENTS RECEIVED
1	Research, reference, and educational materials including books, maps, periodicals, <u>scholarly journals</u> , and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases.	<p>Requested by the University of Hawaii.</p> <p>Scholarly journals differ from periodicals in that their articles often have an abstract, a descriptive summary of the article's contents, before the main text of the article. The main purpose of a scholarly journal is to report on original research or experimentation in order to make such information available to the rest of the scholarly world.</p> <p>Exempting procurements related to the publication and reprint cost of articles submitted to scholarly journals is necessary because each article is unique and related to a specific subject (i.e., health, meteorology, etc). When an article is submitted for publication in a scholarly journal, the author must sign a copyright release assuring the editors of the journal that the article will not be published elsewhere. The submitted articles are subject to peer review and if accepted, the cost is calculated by the length of the article and the complexity of the illustrations.</p>		

AGENDA

ITEM IV



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

October 8, 2008

To: Procurement Policy Board

Thru: Aaron Fujioka, Administrator
State Procurement Office

9 OCT '08 PM 3:06 SP0

From: Theodore E. Liu, Chair
Small Business Utilization Council

Re: Justification for Recommended Set-Asides and Subcontracting

Pursuant to the Procurement Policy Board's request from the Small Business Utilization Council, I have outlined below specific information that addresses how the Council members arrived at choosing custom computer programming services and alternative/renewable energy industry sectors as targeted areas for set-asides and/or subcontracting.

Custom computer programming is one of a number of industries in the technology sector that has been identified by the state as having significant potential to help diversify the economy and increase the average wage level. As documented in the recent report *Innovation and Technology in Hawaii: An Economic and Workforce Profile*, prepared by the Hawaii Science and Technology Institute, this industry has outperformed both the overall Hawaii and U.S. economies between 2002 and 2007. It has also outperformed growth in the same industry at the national level. Because it primarily produces intellectual property, rather than a physical product, it is able to be relatively cost-competitive with other areas of the nation and in the global market for such services.

Custom computer programming lends itself to preference/set aside programs for two reasons. First, it is well captured within the North American Industrial Classifications System (NAICS) code 541511.¹ This simplifies identification of companies providing such services for procurement purposes. Second, the service is more likely to be a procurement staple of state and local governments than many other emerging technology industries such as research and development and biotech. The attached tables and charts show the size and growth of custom computer programming from 2002 to 2007.

¹ NAICS is a system for organizing firms into industries that share similar production characteristics. It replaces the previous system referred to as the Standard Industrial Classification (SIC) system.

The Clean Energy Initiative, designed to decrease Hawaii's dependence on imported fossil fuel, is a major initiative for the State of Hawaii and U.S. Department of Energy (USDOE). On January 31, 2008, Governor Lingle signed a Memorandum of Understanding (MOU) with the USDOE for the Hawaii-DOE Clean Energy Initiative. The goal is to decrease energy demand and accelerate use of renewable, indigenous energy resources in Hawaii in residential, commercial building, industrial, utility, and transportation end-use sectors, so that renewable energy resources will be sufficient to meet 70% of Hawaii's energy demand by 2030.

The Hawaii-DOE MOU notes that "the islands of Hawaii have abundant natural resources, including wind, sunshine, and geothermal sources for electricity generation, and land for energy crops that can be refined into biofuels to address transportation needs. Economic and culturally sensitive use of natural resources can provide energy supply security and price stability for the people of Hawaii as well as significant environmental benefits and economic growth opportunities. Successfully developing Hawaii's energy economy will make the State a global model for achieving a sustainable, clean, flexible, and economically vibrant energy future." Thus, alternative/renewable energy is seen as a vital ingredient for the security and competitiveness of Hawaii's economy as well as environmentally important.

The Hawaii Science and Technology Institute report has attempted to identify the size and growth of alternative/renewable in Hawaii's economy. As shown in Table 5, the report identified nine industries and government sectors with significant activity in alternative/renewable energy. These industries accounted for nearly 3,600 jobs in 2007, up 50% or almost 1,200 jobs from 2002.

The task of identifying where in the economy the alternate/renewable energy firms are is more challenging than for computer programming above. Alternative/renewable energy does not fall into a unique NAICS code for classification purposes. Many companies participating in this activity are classified by their core specialties such as heating, cooling and electrical work, engineering, etc. A sample of 50 companies known to be energy-related was found by DBEDT to be classified in a wide range of NAICS codes as shown in Table 6. This sample was identified from a list of about 140 alternate/sustainable energy firms and organizations contained in several directories of such entities.

Thank you for your consideration.

Table 1
Jobs, Growth and Average Earnings for Custom Computer Programming in Hawaii

Custom computer programming services (NAICS 541511)	
Basic Information	
2002 Industry Jobs	1,039
2007 Industry Jobs	1,337
Total Change	298
Total % Change	28.68%
2007 Average Earnings/Worker	\$87,987

Figure 1
Growth in Custom Computer Programming jobs in Hawaii (Regional) and the U.S.

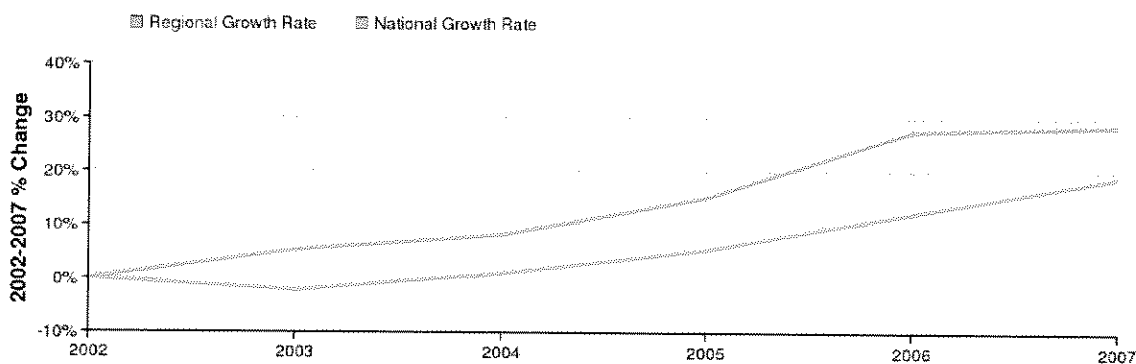


Table 3
Comparison of Jobs, Establishments and Average Earnings, Hawaii and U.S.
2002 - 2007

Description	2002 Jobs	2007 Jobs	Change	% Change	Earnings Per Worker	2007 Establishments
Hawaii (Regional) Total	1,039	1,337	298	29%	\$87,987	284
National Total	501,935	597,284	95,349	19%	\$94,597	77,181

Source: EMSI Covered Employment - Fall 2008 Pre-Release (BETA)

Table 4
Major Occupations in Custom Computer Programming, 2002-2007

SOC Code	Name	2002 Jobs	2007 Jobs	Change	% Change
15-1021	Computer programmers	137	159	22	16%
15-1041	Computer support specialists	57	70	13	23%
15-1051	Computer systems analysts	51	69	18	35%
15-1031	Computer software engineers, applications	50	72	22	44%
15-1099	Computer specialists, all other	45	57	12	27%
11-1021	General and operations managers	43	52	9	21%
41-3099	Sales representatives, services, all other	40	53	13	33%

Source: EMSI Covered Employment - Fall 2008 Pre-Release (BETA)

SOC: Standard Occupational Code

Table 5
Estimates of Industries Providing Significant Alternate/Renewable Energy Services

RENEWABLE ENERGY					
NAICS Code	Description	2002 Jobs	2007 Jobs	Earnings per Worker, Hawaii	2007 Establishments
221111	Hydroelectric power generation	7	18	--	--
221119	Other electric power generation	147	28	--	--
541360	Geophysical surveying and mapping services	33	47	\$56,002	5
541611	Administrative Mgt consulting services	848	1,571	\$49,531	140
541690	Other technical consulting services	433	637	\$35,573	62
541712	Research & dev in Physical, Engrg (not astronomy)	850	1,208	\$84,194	85
611312	Colleges, universities (RCUH)-Energy	6	4	\$62,942	1
611312	Colleges, universities (UH)-Energy	30	35	\$62,942	-
920212	State conservation programs (Natural Resources)	39	39	\$65,510	2
RENEWABLE ENERGY		2,393	3,587	\$58,498	295

LINDA LINGLE
GOVERNOR



PROCUREMENT POLICY BOARD
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LESLIE S. CHINEN
DARYLE ANN HO
KEITH T. MATSUMOTO
RUSS K. SAITO
PAMELA A. TORRES

AARON S. FUJIOKA
ADMINISTRATOR

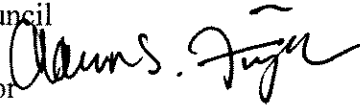
**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

SPO 09-038

August 26, 2008

To: The Honorable Theodore E. Liu, Chair
Small Business Utilization Council

From: Aaron S. Fujioka, Administrator 

Subject: HAR Chapter 3-124, Small Business Preference Rules
Targeted Areas of Sectors for Set-Asides and /or Subcontracting

On August 21, 2008 the Procurement Policy Board (PPB) addressed the recommendation of the Small Business Utilization Council (SBUC) for the above targeted areas of sectors for set-asides and/or subcontracting. On behalf of the PPB, I am requesting the SBUC to clarify and justify the SBUC's recommendation for Customer Computer Programming/Software Development and Alternative/Renewal Energy as targeted areas for set-asides and/or subcontracting.

Should you have any questions, Mr. Russ Saito is available to elaborate on this request.

AGENDA

ITEM V

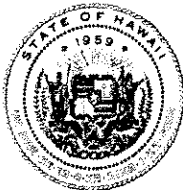
None

AGENDA

ITEM VI

1)

COPY



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

October 8, 2008

8 OCT '08 PM 2:52 SPO-

Mr. Eric Knutzen
County of Kauai
4444 Rice Street, Suite 427
Lihue, Hawai'i 96766

By Mail and Facsimile
(808) 241-6266

Re: HCR 358 Task Force Recommendation

Dear Mr. Knutzen:

I received yesterday the HCR 358 Task Force's letter dated September 30, 2008, which reads as follows:

The HCR 358 Task Force recommends that the cable television division of the DCCA and the State Procurement Office suspend decision making on its current draft rule making for the designation and selection of access organizations until after the HCR 358 Task Force has issued its Final Report to the legislature expected in late December.

I appreciate the work of the Task Force and am hopeful that it will develop reasonable alternatives to chapter 103D, HRS procurement for public access contracts for the Legislature to consider. I also appreciate the sentiment that underlies the request. Nevertheless, the recommendation ignores the factual context in which the referenced rulemaking occurs (and of which, I understand, the Task Force has been fully advised).

First, the rulemaking to which your recommendation refers is purely a Department of Commerce and Consumer Affairs' ("DCCA") function. The State Procurement Office ("SPO") can not suspend DCCA's decision making relating to that rulemaking.

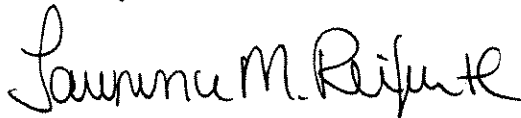
Second, the rulemaking is proceeding, in large part, because Maui Circuit Court Judge Joel August directed that it proceed. The Judge's ruling was made over the DCCA's objection and at the request of Akaku, one of the members of this Task Force.

Mr. Eric Knutzen
October 8, 2008
Page 2

Finally, and as the Task Force knows, DCCA already proposed to suspend the rulemaking process; but we were told that we could not. Specifically, on May 30, 2008, DCCA requested a continuation of the temporary exemption from chapter 103D for the department's existing PEG contracts from the SPO until such time as the HCR 358 Task Force has completed its work. SPO denied that request while it temporarily exempted the contracts through the end of the calendar year in order to allow DCCA to complete the rulemaking process. As a result, suspending decision making on the draft rules as the Task Force recommends would place DCCA in violation of the terms of the SPO extension, at which point we would no longer have even a temporary exemption from chapter 103D. This would put DCCA and our PEG contracts in rather clear violation of the law, and the RFP process would have to re-commence immediately.

While I share the Task Force's thought that it would make more sense of the Task Force's assignment if the rulemaking was deferred to permit the Task Force to first complete its work, SPO has already answered the underlying question for us by denying our request for temporary exemption on that basis. As a result, DCCA can not suspend the rulemaking process.

Sincerely,



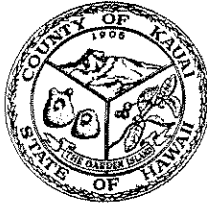
LAWRENCE M. REIRURTH
Director

c: Mr. Clyde Sonobe
Mr. Aaron Fujioka
✓ Ms. Pamela Torres

2)

Bill "Kaipo" Asing
Acting Mayor

Gary Heu
Administrative Assistant



COUNTY OF KAUAI

Wallace Rezentes, Jr.
Director of Finance

Belma Baris
Deputy Director of Finance

September 30, 2008

7 OCT '08 AM 8:22 SPO-

Larry Reifurth
Director
DCCA
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Request from H.C.R. 358 H.D. 1 (2008) Task Force

Dear Sir,

On behalf of the H.C.R. 358 H.D. 1 (2008) Task Force as its chairman, the Task Force recommends that the cable television division of the DCCA and the state procurement office suspend decision making of current draft rule making¹ for the designation and selection of access organizations until after the H.C.R. 358 Task Force has issued its Final Report to the legislature expected in late December.

Please feel free to contact me with any questions you may have at (808) 241-4406 or via email eknutzen@kauai.gov.

Sincerely,

Eric Knutzen
Chairman
H.C.R. 358 H.D. 1 (2008) Task Force

Cc: Aaron Fujioka, Pamela Torres

¹Subchapter 16-131-70