CHAPTER 25

PROCUREMENT REFORM

"How sound are the state's buying practices?"

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Legislators gathered in early September of 1993, determined to reform the state procurement code. Everyone, it seemed, wanted to junk the current law: bureaucrats complained that it made their jobs unnecessarily difficult; Governor Waihee called it "complex beyond workability"; and outside experts labeled it a "disaster." Immediate action was obviously so imperative and imminent one tended to forget that the law in question had been around since 1909. So why the sudden outbreak of reform fever?

Background. State government spends over $800 million each year just on supplies, printing, advertising, and consultants. That's a lot of money, and yet as of mid-1993 Hawai'i was the *only* state that didn't have centralized purchasing.

Consequently and incredibly, no one could keep track of how money was being spent. A 1993 state auditor's report pointed this out and went on to call Hawai'i's procurement law "old, fragmented and vague . . . inefficient and costly . . . out of date, incomplete."

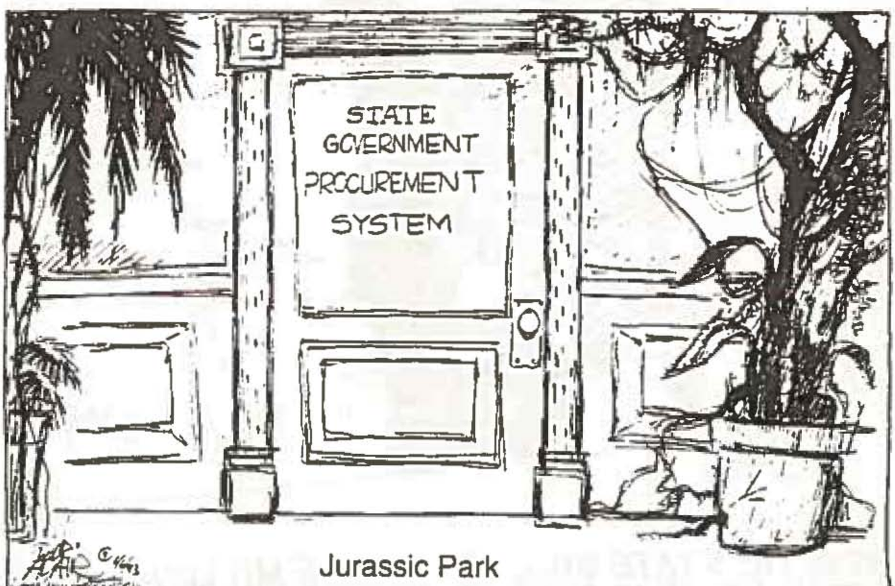
Serious abuses. It's not just that the law was flawed—there had been allegations of serious abuse of it as well. By the late 1980s, contracts were being routinely awarded to politically connected people who did not have to compete. Often these and other contracts were later amended upward, again without public scrutiny. Even when bidding was required, well-positioned vendors had been permitted to write the specifications before bidding, thus abling them to favor themselves over their competitors. In fiscal year 1990/91, one division alone—"Airports" in the State Department of Transportation—issued more than half its contracts without competitive bidding. These non-bid contracts represented well over $40 million of taxpayer money.

Ian Lind, then with *Hawaii Monitor*, reported an uncanny correlation between contributions made, and non-bid contracts received. Public cynicism was growing, but procurement reform seemed a distant possibility, at best.

All of this greatly troubled the state's Director of Purchasing and Supply Division, Earl Dedell. Now retired, Dedell likes to stress that no law is people proof: "Our procurement law has never been a disaster. If everyone did what the law calls for, there wouldn't be a problem. The problem is with people, not with the law." Nevertheless, Dedell urged in the late 1980s that the law be studied, hoping this would lead to meaningful reform of the entire "system." He formed a study group of high-level bureaucrats who worked closely with a mainland consulting firm, Lallatin and Associates. To no one's surprise, they found that there had been minimal competition in the awarding of work during the late 1980s. Lallatin's 1990 report recommended major changes and this led some observers to believe that reform would be forthcoming.

The first clue that certain interests would do what they could to prevent procurement reform was not long in coming. The most important recommendation of the Lallatin report—to remove the buying function from each government agency and place it in a centrally controlled and responsible division—was mysteriously changed in the report's final version to allow each agency to continue to be autonomous. No one would explain publicly just how this major reversal of position came to be. Dedell later revealed that the change was made at the insistence of other agency officials.

The second clue was the administration's reaction to the progress of Dedell's study group. When that seven-person body indicated it was close to coming up with specific recommendations for change, the administration quickly added another ten people to the group. The reconstituted group unsurprisingly was unable to come up with any recommendations.



Vetoed bill. A 1992 legislative effort to reform the law produced a bill that passed both the House and the Senate but was vetoed by the governor because of a provision that would have held state employees criminally liable for knowingly violating the law. The governor considered this reason enough to scuttle the entire bill, despite the fact that such a provision is commonly found in other jurisdictions. Evidently, the governor didn't think it fit our unique political culture.

THIS IS THE STATE BILL FOR THE $5 MILLION GEAR... VE ONLY BROKE IT DOWN TO PURCHASE ORDERS OF INDER $ 7,000 FOR...UH, MORE ORDERLY ACCOUNTING."

The state legislative auditor was then directed to retain a qualified consultant to conduct yet another study. The National Association of State Purchasing Officials (NASPO), whose membership includes the nation's leading experts on governmental buying practices, was chosen to do the work. NASPO examined Hawai'i's procurement law and practices and then issued a report that was specific and complete. Boiling their conclusions down to one word (their word), our procurement system was a "disaster."

This and an equally critical report, written by the state legislative auditor and issued a few days before the opening of the 1993 legislative session, again raised hopes for procurement reform.

Another try. The NASPO bill, which was later passed by the State Senate and came to be known as the "Senate bill," called for a central purchasing authority responsible for policymaking and oversight of public contracting. It also provided for a chief purchasing officer with stringent requirements for appropriate professional (as opposed to political) experience. The bill went on to carefully define the accountability, responsibility, and authority of central purchasing but authorized the delegation of power where that made sense. The stated goals of the bill were to (1) serve the best interests of the taxpayers by encouraging competition and focusing on value; (2) provide the entire business community with fair and open access to government business; and, (3) meet the needs of state agencies in securing goods and services in a timely and cost-efficient manner. This Senate bill caused great consternation among many, including the Waihee administration.

A different procurement bill—written by the administration—was intentionally made to look very much like the Model Procurement Code which had been recommended by the state legislative auditor in her 1993 report. But as the experts from NASPO quickly pointed out, what the administration really was offering was the same old wolf in sheep's clothing—the status quo reincarnated. This one came to be called the "House bill."

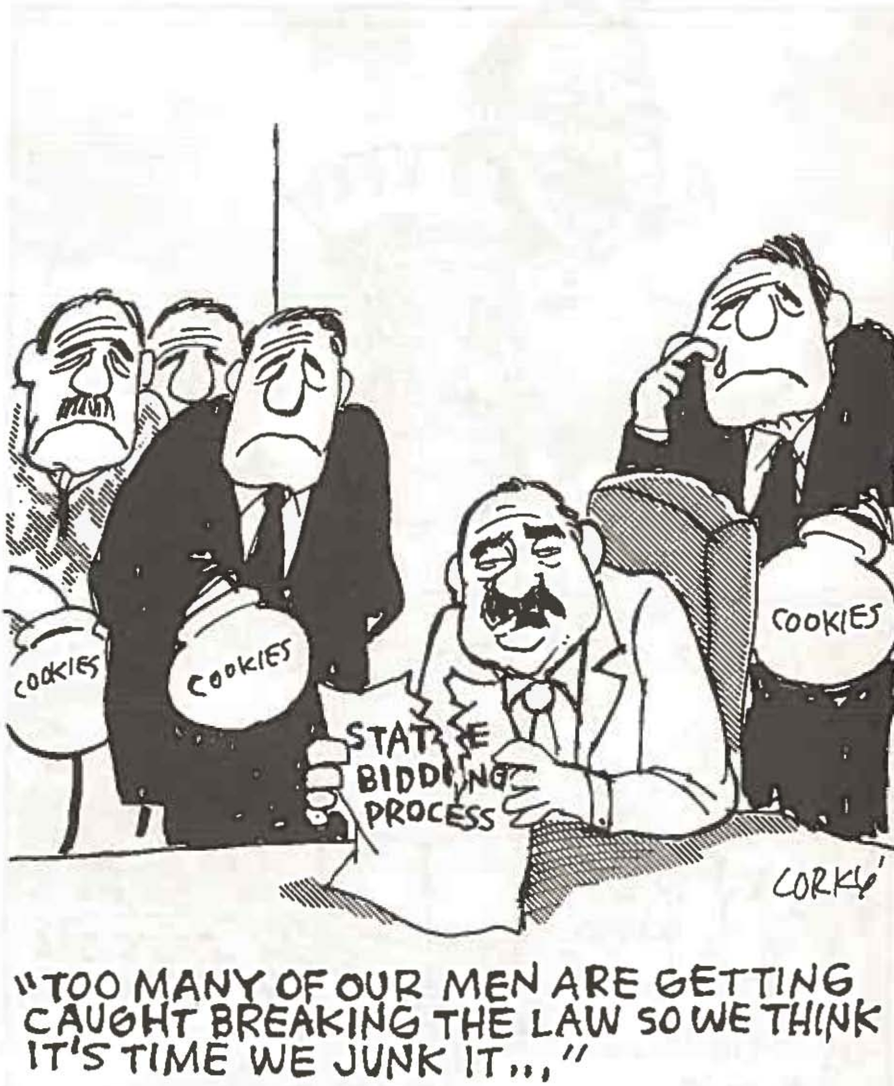
Failed reform, again. The lobbying effort mounted to prevent real reform was awesome. Everyone who benefited from the current disastrous law did everything possible to fight the Senate bill. Their strategy was part Pinocchio, part Keystone Cops—and it worked. Believe it or not, supporters of the administration-backed House bill worked out an oral agreement that was acceptable to supporters of the Senate bill; then, when the compromise bill was put into writing, it mysteriously lacked key provisions that had been agreed upon orally. Outraged supporters of the Senate bill refused to vote for the version that had been handed to them, and there was no time to correct the "error." The ultimate irony is that they then were accused by the administration of having killed procurement reform.

Many observers concluded that this "mix-up" had been carefully planned by forces who wanted to sound like reformers without actually changing anything.

A few months after the session ended, Governor Waihee ordered the legislature into special session and listed procurement reform as a high priority item. Cynics suggested this was "damage control," necessitated by a Senate committee's investigation. More than a few bureaucrats and cronies had just been caught doing things they shouldn't have done, and the governor blamed it all on the procurement system: "And I believe what you'll find in most instances, at worst, are people who short-cut an impossible system in order to do their jobs more effectively." The governor's comments seemed to suggest that all these people had put their hands into the procurement "cookie jar" out of confusion and for the noblest of reasons.

The 1993 special session resulted in what initially appears to be a greatly improved procurement code. That's good news but not reason to forget about the circumstances of its enactment.

Skepticism warranted. We can only wonder why it has taken years of bumbling (or conniving) and a Senate investigation to get a system of procurement that is based on competition, impartiality, professionalism, and openness. And given the events of the past few years, the public is well-advised to be skeptical. Even a well-written procurement code can be abused if powerful people are so inclined.


COOKIES
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"TOO MANY OF OUR MEN ARE GETTING CAUGHT BREAKING THE LAW SO WE THINK IT'S TIME WE JUNK IT..."


SPECIAL INTERESTS
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