

JAN 22 2008

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The Hawaii public procurement code was
2 originally enacted by Act 8, Special Session Laws of Hawaii
3 1993, codified as chapter 103D, Hawaii Revised Statutes. Since
4 1993, only one audit has been performed on the State's
5 procurement practices. That audit in 1995, Auditor's Report
6 No. 95-8, states in pertinent part in the summary:

7 We found that the administration has been slow in
8 implementing the procurement code and has not taken the
9 necessary steps to ensure effective implementation. The
10 late start of the Procurement Policy Office without
11 appropriate staff has limited the ability of the policy
12 board to carry out its responsibilities. Furthermore, the
13 late appointment of the interim administrator of the
14 Procurement Office delayed development of an on-going
15 training program, procurement manual, and a periodic review
16 of the procurement process. Because rules were issued late
17 and insufficient attention was paid to interpreting the law



1 and communicating the rules clearly, we found a number of
2 instances of noncompliance and confusion about the law and
3 rules. . . .

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

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



1 The purpose of this Act is to require the auditor to
2 conduct a compliance, performance, and management audit of
3 compliance with chapter 103D, Hawaii Revised Statutes, and the
4 administrative rules adopted thereto.

5 SECTION 2. The auditor shall conduct a compliance,
6 performance, and management audit of chapter 103D, Hawaii
7 Revised Statutes, and the administrative rules adopted pursuant
8 to chapter 103D. The audit shall be limited to the state
9 procurement office and the purchasing agencies, as defined in
10 section 103D-104, Hawaii Revised Statutes, of the State, not
11 including the legislature, judicial branch, office of Hawaiian
12 affairs, and the several counties.

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

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



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

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

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

14 (6) The proper usage of an alternative procurement method.

15 SECTION 3. The auditor may contract with a private entity
16 for purposes of conducting the audit and studies as may be
17 required under this Act.

18 SECTION 4. The auditor shall make an interim report of
19 findings and recommendations to the legislature no later than
20 twenty days prior to the convening of the regular session of
21 2009, and a final report on findings and recommendations,
22 including proposals for statutory amendments, to the legislature



1 no later than twenty days prior to the convening of the regular
2 session of 2010.

3 SECTION 5. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2008-2009 for
6 the auditor to contract for an audit pursuant to section 3 of
7 this Act.

8 The sum appropriated shall be expended by the office of the
9 auditor for the purposes of this Act.

10 SECTION 6. This Act shall take effect upon its approval;
11 provided that section 5 shall take effect on July 1, 2008.

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Report Title:

Procurement Code; Auditor Review; Appropriation

Description:

Requires the auditor to review and make recommendations concerning the effectiveness of implementation and compliance by state departments and agencies with the Hawaii public procurement code. Appropriates funds for the audit.

