
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

PART I

1
2 SECTION 1. The legislature finds that in this period of
3 high economic turmoil, procedural changes are necessary to
4 enable the State to achieve a quick recovery and to provide
5 effective economic stimulation. The legislature further finds
6 that Hawaii's public procurement process is inefficient and
7 antiquated. Procedures require protracted periods of time
8 between each procurement step. Currently, the awarding of a
9 contract is subject to prolonged review, thereby preventing
10 government projects from proceeding in a timely manner.

11 Senate Concurrent Resolution No. 132, S.D. 1, Regular
12 Session of 2009, established a task force to determine the
13 economic contributions of the construction industry in Hawaii.
14 As directed in the concurrent resolution, the task force has
15 developed a series of proposals for state actions to preserve
16 and create new jobs in the local construction industry. The
17 intent of this Act is to implement one of the task force's
18 proposals.



1 Accordingly, the purpose of this Act is to amend
2 chapter 103D, Hawaii Revised Statutes, to require certain state
3 and county agencies to award public contracts on bid proposals
4 within thirty days of the bid opening date. In doing so,
5 however, it is also the purpose of this Act to strike a balance
6 between expedited procedures and necessary accountability and
7 transparency.

8 SECTION 2. Section 103D-102, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§103D-102 Application of this chapter.** (a) This chapter
11 shall apply to all procurement contracts made by governmental
12 bodies whether the consideration for the contract is cash,
13 revenues, realizations, receipts, or earnings, any of which the
14 State receives or is owed; in-kind benefits; or forbearance;
15 provided that nothing in this chapter or rules adopted hereunder
16 shall prevent any governmental body from complying with the
17 terms and conditions of any other grant, gift, bequest, or
18 cooperative agreement.

19 (b) Notwithstanding subsection (a), this chapter shall not
20 apply to contracts by governmental bodies:



- 1 (1) Solicited or entered into before July 1, 1994, unless
- 2 the parties agree to its application to a contract
- 3 solicited or entered into prior to July 1, 1994;
- 4 (2) To disburse funds, irrespective of their source:
- 5 (A) For grants or subsidies as those terms are
- 6 defined in section 42F-101, made by the State in
- 7 accordance with standards provided by law as
- 8 required by article VII, section 4, of the State
- 9 Constitution; or by the counties pursuant to
- 10 their respective charters or ordinances;
- 11 (B) To make payments to or on behalf of public
- 12 officers and employees for salaries, fringe
- 13 benefits, professional fees, or reimbursements;
- 14 (C) To satisfy obligations that the State is required
- 15 to pay by law, including paying fees, permanent
- 16 settlements, subsidies, or other claims, making
- 17 refunds, and returning funds held by the State as
- 18 trustee, custodian, or bailee;
- 19 (D) For entitlement programs, including public
- 20 assistance, unemployment, and workers'
- 21 compensation programs, established by state or
- 22 federal law;



- 1 (E) For dues and fees of organizations of which the
- 2 State or its officers and employees are members,
- 3 including the National Association of Governors,
- 4 the National Association of State and County
- 5 Governments, and the Multi-State Tax Commission;
- 6 (F) For deposit, investment, or safekeeping,
- 7 including expenses related to their deposit,
- 8 investment, or safekeeping;
- 9 (G) To governmental bodies of the State;
- 10 (H) As loans, under loan programs administered by a
- 11 governmental body; and
- 12 (I) For contracts awarded in accordance with chapter
- 13 103F;
- 14 (3) To procure goods, services, or construction from a
- 15 governmental body other than the University of Hawaii
- 16 bookstores, from the federal government, or from
- 17 another state or its political subdivision;
- 18 (4) To procure the following goods or services [~~which~~
- 19 that are available from multiple sources but for which
- 20 procurement by competitive means is either not
- 21 practicable or not advantageous to the State:



- 1 (A) Services of expert witnesses for potential and
2 actual litigation of legal matters involving the
3 State, its agencies, and its officers and
4 employees, including administrative quasi-
5 judicial proceedings;
- 6 (B) Works of art for museum or public display;
- 7 (C) Research and reference materials including books,
8 maps, periodicals, and pamphlets, which are
9 published in print, video, audio, magnetic, or
10 electronic form;
- 11 (D) Meats and foodstuffs for the Kalaupapa
12 settlement;
- 13 (E) Opponents for athletic contests;
- 14 (F) Utility services whose rates or prices are fixed
15 by regulatory processes or agencies;
- 16 (G) Performances, including entertainment, speeches,
17 and cultural and artistic presentations;
- 18 (H) Goods and services for commercial resale by the
19 State;
- 20 (I) Services of printers, rating agencies, support
21 facilities, fiscal and paying agents, and



1 registrars for the issuance and sale of the
2 State's or counties' bonds;

3 (J) Services of attorneys employed or retained to
4 advise, represent, or provide any other legal
5 service to the State or any of its agencies, on
6 matters arising under laws of another state or
7 foreign country, or in an action brought in
8 another state, federal, or foreign jurisdiction,
9 when substantially all legal services are
10 expected to be performed outside this State;

11 (K) Financing agreements under chapter 37D; and

12 (L) Any other goods or services which the policy
13 board determines by rules or the chief
14 procurement officer determines in writing is
15 available from multiple sources but for which
16 procurement by competitive means is either not
17 practicable or not advantageous to the State;

18 (5) [~~which~~] That are specific procurements expressly
19 exempt from any or all of the requirements of this
20 chapter by:

21 (A) References in state or federal law to provisions
22 of this chapter or a section of this chapter, or



1 references to a particular requirement of this
2 chapter; and

3 (B) Trade agreements, including the Uruguay Round
4 General Agreement on Tariffs and Trade (GATT)
5 [~~which~~] that require certain non-construction and
6 non-software development procurements by the
7 comptroller to be conducted in accordance with
8 its terms; and

9 (6) With a bidder or offeror who is a United States
10 General Services Administration-approved sole source
11 vendor, who shall be exempt from complying with
12 section 103D-302, 103D-303, or 103D-304, as
13 applicable, in any procurement funded by state and
14 federal matching funds, if the bidder or offeror was
15 responsible for obtaining and was the recipient of the
16 federal funds.

17 (c) Notwithstanding subsection (a), this chapter shall not
18 apply to contracts made by any regional system board of the
19 Hawaii health systems corporation.

20 (d) Governmental bodies making procurements which are
21 exempt from this chapter are nevertheless encouraged to adopt
22 and use provisions of this chapter and its implementing rules as



1 appropriate; provided that the use of one or more provisions
2 shall not constitute a waiver of the exemption conferred and
3 subject the procurement or the governmental body to any other
4 provision of this chapter.

5 (e) Notwithstanding any other statute or administrative
6 rule relating to procurement, contracts for projects of the
7 state departments of Hawaiian home lands and transportation,
8 county boards of water supply, and county departments of
9 housing, planning and permitting, and transportation shall be
10 awarded within thirty days of the bid opening date; provided
11 that:

12 (1) The limitation shall not apply if the lowest
13 responsible bid exceeds available funding;

14 (2) An extension, not exceeding business days, shall
15 be permitted if the extension will provide the
16 opportunity for further negotiations with the lowest
17 responsible bidder relating to considerations that
18 could result in benefits to the public; and

19 (3) Contracts for design professional services furnished
20 by licensees under chapter 464 shall be awarded within
21 forty-five days of the bid opening date."

PART II

1 SECTION 3. Chapter 103D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§103D- Gifts to the State not procurement contract.**

5 For purposes of this chapter, a gift to the State shall not be
6 deemed or to constitute a procurement contract and shall not
7 require a procurement contract in order to be accepted by the
8 State as a gift.

9 For purposes of this section, "gift" refers to donations of
10 material, labor, equipment, or other appropriate objects of
11 donation."

12 **PART III**

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2050;
16 provided that this Act shall be repealed on July 1, 2012; and
17 provided further that, on July 1, 2012, section 103D-102, Hawaii
18 Revised Statutes, shall be reenacted in the form in which it
19 read prior to the effective date of Act 175, Session Laws of
20 Hawaii 2009.

21



Report Title:

Construction Task Force; Procurement; Thirty Days

Description:

Requires contracts awarded to projects of the departments of Hawaiian home lands and transportation; county boards of water supply; and county departments of housing, planning and permitting, and transportation to be awarded within 30 days of the bid opening date, subject to sufficient available funding and possible further negotiations to benefit the public.

Requires contracts by these agencies for design professional services to be awarded within 45 days of the bid opening date. Specifies that gifts made to the State shall not constitute or require a procurement contract. Sunsets on July 1, 2012. Effective July 1, 2050. (SD2)

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