

---

---

# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. The legislature finds that the system of  
2           awarding of contracts for public construction under chapter 103,  
3           Hawaii Revised Statutes, and for public procurement under  
4           chapter 103D, Hawaii Revised Statutes, needs to be improved by  
5           requiring a thorough examination of every prospective  
6           contractor's record of compliance with the state labor laws.  
7           The legislature is concerned that contractors who have a history  
8           of violating state labor laws may gain an unfair advantage over  
9           other contractors who comply with state labor laws in the bid  
10          process.

11          The purpose of this Act is to enact the responsible  
12          construction contractor law.

13          SECTION 2. The Hawaii Revised Statutes is amended by  
14          adding a new chapter to be appropriately designated and to read  
15          as follows:

16



1 "CHAPTER

2 RESPONSIBLE CONSTRUCTION CONTRACTOR LAW

3 § -1 **Applicability.** (a) This chapter shall apply to  
4 public works contracts under chapter 103 and to procurements for  
5 construction under chapter 103D, if the general contract amount  
6 is \$100,000 or more and to any subcontract of \$25,000 or more in  
7 connection with any general contract.

8 (b) This chapter shall not apply to employees covered by a  
9 collective bargaining agreement under chapter 89 if the  
10 applicability of this chapter is expressly waived in the  
11 collective bargaining agreement in clear and unambiguous terms.

12 § -2 **Definitions.** As used in this chapter, the terms  
13 "contract" and "contractor," shall have the same meaning as in  
14 section 103D-104, as those terms apply to construction. The  
15 term "construction" shall have the same meaning as in section  
16 103D-104.

17 § -3 **Prerequisites for award of contract.** (a) A  
18 contractor who submits a bid for a contract for construction  
19 shall show proof under subsection (c) to the comptroller or  
20 county counterpart for contracts under chapter 103 or to the  
21 procurement officer for contracts under chapter 103D, as a  
22 prerequisite to being awarded a construction contract; provided



1 that this subsection shall be deemed to be a provision of any  
2 contract between the contractor and subcontractor.

3 (b) A subcontractor who subcontracts with a contractor  
4 under subsection (a), for a subcontract for construction shall  
5 show proof under subsection (c) to the comptroller or county  
6 counterpart for contracts under chapter 103 or to the  
7 procurement officer for contracts under chapter 103D, as a  
8 prerequisite to being awarded a subcontract; provided that the  
9 contractor shall be primarily responsible for presentation of  
10 the show of proof under this subsection; and provided further  
11 that this subsection shall be incorporated by reference in any  
12 contract between the contractor and subcontractor.

13 (c) A contractor or subcontractor, as applicable, shall  
14 comply with the following prerequisites:

15 (1) Maintain and participate in a bona fide apprenticeship  
16 program under chapter 372, with regards to each trade  
17 or occupation fitting for apprenticeship that:

18 (A) Is involved in the particular construction  
19 project;

20 (B) Is approved by the department of labor and  
21 industrial relations; and



- 1 (C) Abides by journeyman ratio for each trade as  
2 required for the performance of the contract.
- 3 (2) Comply with the requirements under section 104-2 with  
4 regard to prevailing wages;
- 5 (3) Furnish, at the expense of the contractor or  
6 subcontractor, as applicable, insurance for  
7 hospitalization, medical, and prescription drug  
8 benefits for all individuals employed on the project;
- 9 (4) Maintain during the period of the contract or  
10 subcontract, as applicable, workers' compensation  
11 insurance under chapter 386 for all individuals  
12 employed on the project;
- 13 (5) Commit to hiring Hawaii residents to comprise not less  
14 than eighty per cent of the workforce on the project;  
15 provided that this paragraph shall not apply to  
16 shortage category trades as determined by the  
17 department of labor and industrial relations; and  
18 provided further that those firms that satisfy this  
19 paragraph shall be entitled to an adjustment in the  
20 bid amount by subtracting thereto five per cent;
- 21 (6) Provide its employees with a fair and neutral process  
22 for resolving work-related issues; provided that the



1 process chosen shall not include requirements that  
2 force an employee to waive any remedies or rights  
3 currently afforded by statute; and

4 (7) Be appropriately licensed.

5 § -4 **Compliance duration; compliance officer.** Each  
6 contractor and subcontractor shall certify, for the duration of  
7 the contract of construction, compliance with section -3,  
8 under oath, by an officer of the contractor and subcontractor,  
9 to the comptroller, or county counterpart, or procurement  
10 officer, as applicable, on a monthly basis.

11 § -5 **Failure to comply; sanctions.** A contractor or  
12 subcontractor under this chapter who fails to comply with  
13 section -C, shall be subject to any of the following  
14 sanctions:

- 15 (1) Temporary suspension of work on the project until  
16 there is compliance;
- 17 (2) Withholding of payment on the contract or subcontract,  
18 as applicable, until there is compliance;
- 19 (3) Permanent disqualification from any further work on  
20 the project;



1 (4) Recovery by the State or county, as applicable, of any  
2 moneys expended on the contract or subcontract, as  
3 applicable; and

4 (5) Proceedings for debarment or suspension under section  
5 103D-702."

6 SECTION 3. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, contracts entered into  
8 and proceedings that were begun, before its effective date.

9 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Procurement; Responsible Construction Contractor Law

**Description:**

Enacts the responsible construction contractor law for government procurements of construction projects. (HB1280 HD1)

