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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. A well-trained, construction-trades work force  
2 is critical to state and county public works projects. The  
3 safe, efficient, and economical construction of public works  
4 will be threatened if there is a lack of well-trained  
5 construction workers. By providing for the use of apprentices  
6 on public works projects, state and county government can create  
7 opportunities, in partnership with private industries, for  
8 training that will help ensure a well-trained work force for  
9 future public works construction.

10           The purpose of this Act is to require all offerors and  
11 subcontractors for construction contracts subject to chapter  
12 103D, Hawaii Revised Statutes, to maintain or participate in a  
13 bona fide, state-approved apprenticeship program at the time of  
14 general bidding.

15           SECTION 2. Section 103D-310, Hawaii Revised Statutes, is  
16 amended to read as follows:



1           "§103D-310   Responsibility of offerors.   (a)   Unless the  
2 policy board, by rules, specifies otherwise, before submitting  
3 an offer, a prospective offeror, not less than ten calendar days  
4 prior to the day designated for opening offers, shall give  
5 written notice of the intention to submit an offer to the  
6 procurement officer responsible for that particular procurement.

7           (b)   Whether or not an intention to bid is required, the  
8 procurement officer shall determine whether the prospective  
9 offeror has the financial ability, resources, skills,  
10 capability, and business integrity necessary to perform the  
11 work.   For this purpose, the procurement officer, in the  
12 procurement officer's discretion, may require any prospective  
13 offeror to submit answers, under oath, to questions contained in  
14 a standard form of questionnaire to be prepared by the policy  
15 board.   Whenever it appears from answers to the questionnaire or  
16 otherwise, that the prospective offeror is not fully qualified  
17 and able to perform the intended work, a written determination  
18 of nonresponsibility of an offeror shall be made by the head of  
19 the purchasing agency, in accordance with rules adopted by the  
20 policy board.   The unreasonable failure of an offeror to  
21 promptly supply information in connection with an inquiry with  
22 respect to responsibility may be grounds for a determination of



1 nonresponsibility with respect to [~~such~~] the offeror. The  
2 decision of the head of the purchasing agency shall be final  
3 unless the offeror applies for administrative review pursuant to  
4 section 103D-709.

5 (c) At the time of general bidding, all offerors for  
6 construction contracts with a total estimated contract value of  
7 \$100,000 or more, and all tiers of construction subcontractors,  
8 shall maintain or participate in a bona fide, state-approved  
9 apprenticeship program, pursuant to chapter 372, for  
10 apprenticeable trades, and abide by the applicable apprentice-  
11 to-journey worker ratio, which shall be specified in the  
12 standards for apprenticeship agreement, pursuant to  
13 section 372-3.

14 In determining whether or not there exists maintenance or  
15 participation in a bona fide apprenticeship program, the  
16 procurement officer shall consider the following:

17 (1) The contractor or subcontractor's length of previous  
18 participation in the apprenticeship program shall have  
19 been for a period of not less than six months; and

20 (2) The creditable number of apprentices enrolled in and  
21 the annual number of graduates of the apprenticeship  
22 program.



1        (d) At the time of general bidding, contractors and all  
2 known subcontractors shall furnish written proof of their  
3 maintenance or participation in a bona fide, state-approved  
4 apprenticeship program, and certify in writing on a monthly  
5 basis, their maintenance and participation in the apprenticeship  
6 program for the entire duration of their work on the project.  
7 Construction subcontractors not included in the general bid  
8 shall furnish the appropriate documentation before commencing  
9 work. The requirements in this subsection shall be incorporated  
10 into each contract and subcontract.

11        (e) No work shall be awarded to any construction  
12 subcontractor who does not comply with the requirements of this  
13 section. Any contractor who fails to comply with subsection (d)  
14 subsequent to commencing work shall be subject to one or more of  
15 the following sanctions:

- 16        (1) Cessation of work on the project;  
17        (2) Withholding of payment due under the applicable  
18        contract;  
19        (3) Permanent removal from further work on the project;  
20        (4) Liquidated damages to the contracting agency; or  
21        (5) Suspension from further offerings or awards under  
22        sections 103D-302 and 103D-303.



1       ~~[(e)]~~ (f) All offerors, upon award of contract, shall  
2 comply with all laws governing entities doing business in the  
3 ~~[State,]~~ state, including chapters 237, 383, 386, 392, and 393.  
4 Offerors shall produce documents to the procuring officer to  
5 demonstrate compliance with this subsection. Any offeror  
6 ~~[making]~~ who makes a false affirmation or certification under  
7 this subsection shall be suspended from further offerings or  
8 awards pursuant to section 103D-702. Any contractor who fails  
9 to comply with the requirements of subsection (d) shall be  
10 subject to one or more of the sanctions in subsection (e). The  
11 procuring officer shall verify compliance with this subsection  
12 for all contracts awarded pursuant to sections 103D-302, 103D-  
13 303, 103D-304, and 103D-306; provided that the attorney general  
14 may waive the requirements of this subsection for contracts for  
15 legal services if the attorney general certifies in writing that  
16 comparable legal services are not available in this ~~[State-]~~  
17 state.

18       ~~[(d)]~~ (g) Information furnished by an offeror pursuant to  
19 this section shall not be disclosed to any person except to law  
20 enforcement agencies as provided by chapter 92F."



1 SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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



**Report Title:**

Apprenticeship; Procurement; Construction Contracts

**Description:**

Requires all offerors and subcontractors for construction contracts subject to the state public procurement code, to maintain or participate in a bona fide, state-approved apprenticeship program at the time of general bidding for a period of not less than 6 months. (HB1289 HD1)

