

JAN 26 2009

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

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

16 SECTION 2. Section 103D-310, Hawaii Revised Statutes, is
17 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; and
19 (2) The credible number of apprentices enrolled in and the
20 annual number of graduates of the apprenticeship
21 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, including chapters 237, 383, 386, 392, and 393. Offerors
4 shall produce documents to the procuring officer to demonstrate
5 compliance with this subsection. Any offeror ~~[making]~~ who makes
6 a false affirmation or certification under this subsection shall
7 be suspended from further offerings or awards pursuant to
8 section 103D-702. Any contractor who fails to comply with the
9 requirements of subsection (d) shall be subject to one or more
10 of the sanctions in subsection (e). The procuring officer shall
11 verify compliance with this subsection for all contracts awarded
12 pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306;
13 provided that the attorney general may waive the requirements of
14 this subsection for contracts for legal services if the attorney
15 general certifies in writing that comparable legal services are
16 not available in this State.

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

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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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.

