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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 **PART I**

2 SECTION 1. The Hawaii Revised Statutes is amended by  
3 adding a new chapter to be appropriately designated and to read  
4 as follows:

5 **"CHAPTER**

6 **RESPONSIBLE CONSTRUCTION CONTRACTOR LAW**

7 § **-A Applicability.** (a) This chapter shall apply to  
8 public works contracts under chapter 103 and to procurements for  
9 construction under chapter 103D, if the general contract amount  
10 is \$250,000 or more and to any subcontract of \$50,000 or more in  
11 connection with any general contract.

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

16 § **-B Definitions.** As used in this chapter, the terms  
17 "contract" and "contractor", shall have the same meaning as in

1 section 103D-104, as those terms apply to construction. The  
2 term "construction" shall have the same meaning as in section  
3 103D-104.

4       §    -C   **Prerequisites for award of contract.**   (a)   A  
5 contractor who submits a bid for a contract for construction  
6 shall show proof of compliance with subsection (c) to the  
7 comptroller, county counterpart for contracts under chapter 103,  
8 or to the procurement officer for contracts under chapter 103D,  
9 as applicable, as a prerequisite to being awarded a construction  
10 contract; and provided further that the requirements of this  
11 subsection shall be deemed incorporated by reference in any  
12 contract between the contractor and subcontractor.

13       (b)   A subcontractor who subcontracts with a contractor  
14 under subsection (a), for a subcontract for construction shall  
15 show proof of compliance with subsection (c) to the comptroller  
16 or county counterpart for contracts under chapter 103 or to the  
17 procurement officer for contracts under chapter 103D, as a  
18 prerequisite to being awarded a subcontract; provided that the  
19 contractor shall be primarily responsible for presentation of  
20 the show of proof under this subsection; and provided further  
21 that the requirements of this subsection shall be deemed

1 incorporated by reference in any contract between the contractor  
2 and subcontractor.

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

5 (1) Classify all workers of the contractor and  
6 subcontractor as employees;

7 (2) Comply with all applicable labor laws;

8 (3) Comply with the requirements under section 104-2 with  
9 regard to prevailing wages;

10 (4) Commit to hiring Hawaii residents to compose not less  
11 than eighty per cent of the workforce on the project;

12 provided that the department of labor and industrial  
13 relations shall determine those trades in a shortage

14 category in this State, in which case this paragraph

15 shall not apply to shortage category trades; and

16 provided further that those firms that satisfy this  
17 paragraph shall be entitled to an adjustment in the

18 bid amount by subtracting therefrom per cent;

19 (5) Provide its employees with a fair and neutral process  
20 for resolving work-related issues, that does not force

21 the employee to waive statutory remedies and rights;

22 and

1 (6) Be appropriately licensed.

2 § -D **Compliance duration; compliance officer.** Each  
3 contractor and subcontractor shall:

4 (1) Comply with section -C for the entire duration of  
5 the contract of construction; and

6 (2) Certify compliance with section -C, under oath, by  
7 an officer of the contractor and subcontractor, to the  
8 comptroller, county counterpart, or procurement  
9 officer, as applicable, on a monthly basis.

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

14 (1) Temporary suspension of work on the project until the  
15 contractor or subcontractor complies with  
16 section -C;

17 (2) Withholding of payment on the contract or subcontract,  
18 as applicable, until the contractor or subcontractor  
19 complies with section -C;

20 (3) Permanent disqualification of the contractor or  
21 subcontractor from any further work on 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 of the  
5 contractor or subcontractor under section 103D-702."

6 **PART II**

7 SECTION 2. The purpose of this part is to provide a  
8 preference for offerors on a construction contract under chapter  
9 103D, Hawaii Revised Statutes, if the contractor is a party to a  
10 construction contract that is registered with the department of  
11 labor and industrial relations at the time of the general  
12 bidding.

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

16 **"§103- Public works construction; apprenticeship**  
17 **agreement.** (a) A governmental body, as defined in section  
18 103D-104, that enters into a public contract under this chapter  
19 having of an estimated value of not less than \$250,000, shall  
20 decrease the bid amount of a bidder by five per cent if the  
21 bidder is appropriately licensed and is a party to an  
22 apprenticeship agreement registered with the department of labor

1 and industrial relations and in conformance with chapter 372.  
2 The lowest total bid, taking the preference into consideration,  
3 shall be awarded the contract unless the solicitation provides  
4 for additional award criteria. The contract amount awarded,  
5 however, shall be the amount of the price offered, exclusive of  
6 the preference.

7 (b) For purposes of subsection (a) in determining whether  
8 there is conformance with chapter 372, the procurement officer  
9 shall consider the actual number of apprentices enrolled in and  
10 the annual number of graduates of the apprenticeship program.

11 (c) At the time of submission by a bidder of a competitive  
12 sealed bid under section 103D-302 or by an offeror of a  
13 competitive sealed proposal under section 103D-303, a bidder or  
14 offeror, as applicable, shall furnish written proof of being a  
15 party to a registered apprenticeship agreement and, if awarded  
16 the contract, shall continue to certify monthly in writing that  
17 the bidder is a party to a registered apprenticeship agreement.  
18 This subsection shall be deemed to be incorporated into a public  
19 works contract. A bidder who is awarded a contract shall  
20 subject to the following sanctions if, after commencement of  
21 work, the bidder at any time during the construction is no  
22 longer a party to a registered apprenticeship agreement:

- 1        (1) Temporary or permanent cessation of work on the  
2        project, without recourse to breach of contract claims  
3        by the bidder; provided that the governmental body  
4        shall be entitled to restitution for nonperformance or  
5        liquidated damages, as appropriate; or  
6        (2) Proceedings to debar or suspend under section  
7        103D-702."

8            SECTION 4. In codifying the new sections added by  
9 section 1 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12            SECTION 5. New statutory material is underscored.

13            SECTION 6. This Act shall take effect upon its approval.

**Report Title:**

Apprenticeship; Procurement; Public Works Construction Contracts

**Description:**

Enacts the responsible construction contractor law for government procurements of construction projects. Provides procurement preference to contractors who are party to a registered apprenticeship agreement. (SD2)