

JAN 22 2010

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 in this period of
2 high economic turmoil, procedural changes are necessary to
3 enable the State to achieve a quick recovery and to provide
4 effective economic stimulation.

5 The legislature further finds that Hawaii's public
6 procurement process is inefficient and antiquated. Procedures
7 require protracted periods of time between each procurement
8 step. Currently, the awarding of a contract is subject to
9 prolonged review, thereby preventing government projects from
10 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 all state
3 agencies to award public contracts on bid proposals within
4 thirty days of the bid opening date. In doing so, however, it
5 is also the purpose of this Act to strike a balance between
6 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 are
- 19 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~~] that
9 are published in print, video, audio, magnetic,
10 or 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~~] that the
13 policy 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~~] that
21 are exempt from this chapter are nevertheless encouraged to
22 adopt and use provisions of this chapter and its implementing



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

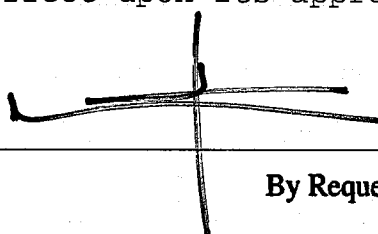
5 (e) Notwithstanding any other statute relating to
6 procurement or Hawaii administrative rule, contracts shall be
7 awarded to projects of the state departments of Hawaiian home
8 lands and transportation, county boards of water supply, and
9 county departments of housing, planning and permitting,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

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

14

INTRODUCED BY: _____

A handwritten signature in black ink, consisting of a vertical line intersected by a horizontal line with a flourish extending to the left.

By Request



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 thirty days of the bid opening date.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

