

JAN 23 2009

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature find that the system of
2 awarding of contracts for public construction under chapter 103,
3 Hawaii Revised Statutes, and for public procurement purchases
4 under chapter 103D, Hawaii Revised Statutes, needs to be
5 improved by requiring a thorough examination of a 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 "CHAPTER

17 RESPONSIBLE CONSTRUCTION CONTRACTOR LAW



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

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

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

15 **§ -C Prerequisites for award of contract.** (a) A
16 contractor who submits a bid for a contract for construction
17 shall show proof under subsection (c) to the comptroller or
18 county counterpart for contracts under chapter 103 or to the
19 procurement officer for contracts under chapter 103D, as a
20 prerequisite to being awarded a construction contract; provided
21 that this subsection shall be deemed to be a provision of any
22 contract between the contractor and subcontractor.



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

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

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

16 (A) Is involved in the particular construction
17 project;

18 (B) Is approved by the department of labor and
19 industrial relations; and

20 (C) Abides by journeyman ratio for each trade as
21 required for the performance of the contract.



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



1 forcing the employee to waive statutory remedies and
2 rights; and

3 (7) Be appropriately licensed.

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

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

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

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

16 (1) Temporary suspension of work on the project until
17 there is compliance;

18 (2) Withholding of payment on the contract or subcontract,
19 as applicable, until there is compliance;

20 (3) Permanent disqualification from any further work on
21 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, and proceedings that were
8 begun, before its effective date.

9 SECTION 4. In codifying this Act, the revisor shall
10 substitute appropriate section numbers for the letters used in
11 section 2 of this Act.

12 SECTION 5. This Act shall take effect upon its approval.

13

INTRODUCED BY:

[Handwritten signatures]

Robertson
Mike Hubbard
Michelle N. Sidani
Erzanna Chun Abdullah

Report Title:

Procurement; Responsible Construction Contractor Law

Description:

Enacts the responsible construction contractor law for government procurements of construction projects.

