
A BILL FOR AN ACT

RELATING TO PUBLIC PROCUREMENT.

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

1 SECTION 1. The purpose of this Act is to provide temporary
2 exemptions from statutes relating to procurement and rulemaking
3 to allow the State to expedite the implementation or expansion
4 of programs, services, and benefits. It is not the intent of
5 the legislature to provide permanent exemptions to the relevant
6 statutes.

7 SECTION 2. To the extent not covered by any exemptions
8 adopted by the procurement policy board or the respective chief
9 procurement officers, and any law to the contrary
10 notwithstanding, governmental bodies and state agencies
11 contracting for goods, services, construction, or health and
12 human services may do so exempt from chapter 103D and chapter
13 103F, Hawaii Revised Statutes, and sections 103-8.5 and 103-
14 53(a), Hawaii Revised Statutes, and subject to the requirements
15 of section 3.

16 The chief procurement officer of each respective entity
17 shall adopt and implement procedural requirements to carry out
18 the purposes this Act.



1 SECTION 3. (a) Procurements for goods, services,
2 construction, or health and human services, in amounts greater
3 than \$25,000, shall be made through an electronic procurement
4 system to obtain price quotations based on specifications; and
5 registered vendors, contractors, and service providers that
6 supply the goods, services, construction, or health and human
7 services shall be solicited and considered to meet the minimum
8 requirements. For purposes of this Act, "electronic procurement
9 system" means a system that incorporates, at minimum, electronic
10 notification to registered vendors, contractors, and service
11 providers; electronic receipt of responses; and electronic
12 notification of awards.

13 (b) An award shall be made to the lowest responsive and
14 responsible offeror, using a fixed-price contract. For purposes
15 of this Act, "fixed-price contract" means a contract providing
16 for a firm price, or a price that may be adjusted only in
17 accordance with contract clauses providing for revision of the
18 contract price under stated circumstances.

19 (c) Prior to the issuance of the solicitation, the chief
20 procurement officer, or the chief procurement officer's
21 designee, shall determine in writing whether an award to the



1 lowest responsive and responsible offeror is not practicable or
2 not advantageous to the State.

3 (d) When an award to the lowest responsive and responsible
4 offeror is not practicable, an award shall be made to the
5 offeror whose offer provides the best value to the State. For
6 purposes of this Act, "best value" is defined as the most
7 advantageous offer determined by evaluating and comparing all
8 relevant evaluation criteria, in addition to price, so that the
9 offer meeting the overall combination that best serves the State
10 and is rated the highest, shall be selected. The quantitative
11 criteria may include, but shall not be limited to, the total
12 cost of ownership, performance history of the vendor,
13 contractor, and service provider, quality of goods, services,
14 construction, or health and human services, delivery, and
15 proposed technical performance.

16 (e) If only one responsive and responsible offeror submits
17 an acceptable offer, award may be made to the single offeror,
18 provided the chief procurement officer, or the chief procurement
19 officer's designee, determines in writing that the price
20 submitted is fair and reasonable. If no offers are received,
21 direct negotiations may be conducted, provided the chief
22 procurement officer, or the chief procurement officer's



1 designee, determines in writing, the need for the goods,
2 services, construction, or health and human services.

3 (f) The chief procurement officer, or the chief
4 procurement officer's designee, shall designate an evaluation
5 committee consisting of a minimum of three governmental
6 employees with sufficient and relevant qualifications related to
7 the procurement. In designating the members of the evaluation
8 committee, the chief procurement officer or designee shall
9 ensure the impartiality and independence of committee members.

10 The chief procurement officer, or the chief procurement
11 officer's designee, shall award the contract or contracts based
12 upon the information provided by the evaluation committee.
13 Written determination for the selection shall be placed in the
14 procurement file.

15 (g) Construction contracts shall include security for bid,
16 payment, and performance bonds when the estimated contract
17 amount is \$50,000 or more, and conforms to the requirements of
18 sections 103D-323 and 103D-324, Hawaii Revised Statutes.

19 (h) Except for awards of health and human services
20 contracts, a person aggrieved by an award of a contract pursuant
21 to this Act may protest a purchasing agency's failure to follow
22 procedures established by this Act. The protest shall be



1 submitted to the head of the purchasing agency, in writing,
2 within five working days after notice of the award. The head of
3 the purchasing agency, or a designee, may settle and resolve a
4 protest by one or more of the following means:

- 5 (1) Amending or canceling a request for interest;
- 6 (2) Terminating the contract that was awarded;
- 7 (3) Declaring the contract void from the time of its
8 award; or
- 9 (4) Affirming the purchasing agency's contract award
10 decision.

11 In lieu of paragraphs (1) to (4), a protest may be resolved
12 by mutual agreement; provided that if the protest is not
13 resolved by mutual agreement, the head of the purchasing agency,
14 or a designee, shall issue a decision in writing within ten
15 working days of receipt of the protest. The decision shall
16 state the reasons for the action taken. A copy of the written
17 decision shall be mailed or otherwise furnished to the person
18 who initiated the protest, the person awarded the contract, and
19 to all other offerors not awarded the contract.

20 (i) For awards of health and human services contracts, the
21 decision of the head of the purchasing agency shall be final and
22 conclusive unless a person who is aggrieved by an award of a



1 contract submits a request for reconsideration to the chief
2 procurement officer within five working days of the receipt of
3 the written decision. The request shall contain a specific
4 statement of the factual and legal grounds upon which
5 reconsideration is sought. A request for reconsideration may
6 only be made to correct a purchasing agency's failure to comply
7 with the procedures of this Act and any applicable rules adopted
8 to implement this Act. The chief procurement officer may uphold
9 or overturn the previous decision of the head of the purchasing
10 agency. A decision by the chief procurement officer shall be
11 rendered within ten working days from receipt of the request for
12 reconsideration and shall be deemed final and conclusive.

13 (j) The procedures and remedies provided for in
14 subsections (h) and (i) shall be the exclusive means available
15 to resolve the concerns of persons aggrieved in connection with
16 the award of a contract under this Act. The fact that a protest
17 or a request for reconsideration is filed shall not stay the
18 award of any contract made under this Act, unless so ordered by
19 the chief procurement officer.

20 (k) All offerors, upon award of contract, shall comply
21 with all laws governing entities doing business in the State,
22 including chapters 237, 383, 386, 392, and 393, Hawaii Revised



1 Statutes. To demonstrate compliance, offerors shall be
2 registered on the Hawaii compliance express. The procurement
3 officer shall verify compliance for all contracts awarded. Any
4 offeror making a false affirmation or certification under this
5 subsection shall be suspended from further offerings or awards.

6 (l) Upon award, award information shall be posted on each
7 respective governmental jurisdiction's website, except
8 information determined to be confidential under chapter 92F,
9 Hawaii Revised Statutes.

10 (m) The chief procurement officers may be more restrictive
11 in their jurisdiction procedures, and impose any other
12 requirement, as applicable, to ensure compliance with this Act.

13 (n) Nothing in this Act, any rules adopted thereunder, or
14 any other authority shall be construed to exempt a bidder,
15 offeror, contractor, or provider, as applicable, from any action
16 that would otherwise be a cause for debarment or suspension
17 under section 103D-702, Hawaii Revised Statutes, if the contract
18 or procurement, but for this Act, would be subject to section
19 103-8.5 or 103-53(a), or chapter 103D or 103F, Hawaii Revised
20 Statutes.


21 This subsection shall not be interpreted to absolve any
22 person from applicable criminal penalties.



1 SECTION 4. The state procurement office shall adopt rules
 2 to implement the procurement procedures applicable to this Act.
 3 Any such rules may be issued as interim rules by adoption and
 4 filing with the lieutenant governor and by posting the interim
 5 rules on the lieutenant governor's website. Interim rules
 6 adopted pursuant to this Act shall be exempt from the
 7 requirements of chapter 91, Hawaii Revised Statutes, and shall
 8 take effect upon filing with the lieutenant governor. All
 9 interim rules adopted pursuant to this section shall be
 10 effective only through December 31, 2013, and shall apply only
 11 to procurement procedures begun after the effective date of this
 12 Act and before June 30, 2013. For any new or expanded programs,
 13 services, or benefits that have been implemented under interim
 14 rules to continue in effect beyond December 31, 2013, the
 15 responsible agency shall adopt rules in conformance with all the
 16 requirements of chapter 91, Hawaii Revised Statutes.

17 SECTION 5. This Act shall take effect on July 1, 2010, and
 18 shall be repealed on June 30, 2013.

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INTRODUCED BY:

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Report Title:

Hawaii Public Procurement Code

Description:

Exempts contracts for purchase of goods, services, construction, or health and human services from chapters 103D and 103F, Hawaii Revised Statutes for 36 months.

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

