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# 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. The legislature further finds  
5 that Hawaii's public procurement process is inefficient and  
6 antiquated. Procedures require protracted periods of time  
7 between each procurement step. Currently, the awarding of a  
8 contract is subject to prolonged review, thereby preventing  
9 government projects from proceeding in a timely manner.

10           Senate Concurrent Resolution No. 132, S.D. 1, Regular  
11 Session of 2009, established a task force to determine the  
12 economic contributions of the construction industry in Hawaii.  
13 As directed in the concurrent resolution, the task force has  
14 developed a series of proposals for state actions to preserve  
15 and create new jobs in the local construction industry. The  
16 intent of this Act is to implement one of the task force's  
17 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]  
19 that are 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 or administrative  
6 rule relating to procurement, contracts for projects of the  
7 state departments of Hawaiian home lands and transportation,  
8 county boards of water supply, and county departments of  
9 housing, planning and permitting, and transportation shall be  
10 awarded within thirty days of the bid opening date; provided  
11 that:

- 12 (1) The limitation shall not apply if the lowest  
13 responsible bid exceeds available funding;  
14 (2) An extension, not exceeding business days, shall  
15 be permitted if the extension will provide the  
16 opportunity for further negotiations with the lowest  
17 responsible bidder relating to considerations that  
18 could result in benefits to the public; and  
19 (3) Contracts for design professional services furnished  
20 by licensees under chapter 464 shall be awarded within  
21 forty-five days of the bid opening date."





1 SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval;  
4 provided that the amendments made to section 103D-102, Hawaii  
5 Revised Statutes, by this Act shall not be repealed when that  
6 section is reenacted pursuant to section 14(1) of Act 175,  
7 Session Laws of Hawaii 2009.



**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 30 days of the bid opening date, subject to sufficient available funding and possible further negotiations to benefit the public. Requires contracts by these agencies for design professional services to be awarded within 45 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.*

