

JAN 24 2013

A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

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

1 SECTION 1. Chapter 304A, Hawaii Revised Statutes, is
2 amended by adding four new sections to be appropriately
3 designated and to read as follows:

4 "§304A-A Construction projects. In the solicitation for
5 bids for construction projects with a total estimated contract
6 value of \$1,000,000 or higher, the university shall require each
7 bidder to submit a listing of the bidder's subcontractors who
8 are to perform work with a value that exceeds five per cent of
9 the total bid amount submitted by the bidder.

10 §304A-B Pre-bid conference. (a) At least fifteen days
11 prior to submission of bids similar to those described in
12 section 103D-302 for a construction or design-build project with
13 a total estimated contract value of \$500,000 or more, and at
14 least fifteen days prior to submission of proposals similar to
15 those described in section 103D-303 for a construction or
16 design-build project with a total estimated contract value of
17 \$100,000 or more, the university shall hold a pre-bid conference



1 and shall invite all potential interested bidders, offerors,
2 subcontractors, and union representatives to attend.

3 (b) The university shall comply with the rules adopted
4 pursuant to section 103D-303.5, by the procurement policy board
5 established under section 103D-201.

6 §304A-C Right to audit records. (a) The university, at
7 reasonable times and places, may audit the books and records of
8 any person who has submitted cost or pricing data similar to
9 those described in section 103D-312 to the extent that such
10 books and records relate to such cost or pricing data. Any
11 person who receives a contract, change order, or contract
12 modification for which cost or pricing data is required, shall
13 maintain such books and records that relate to such cost or
14 pricing data for three years from the date of final payment
15 under the contract, unless another period is otherwise
16 authorized in writing.

17 (b) The university shall be entitled to audit the books
18 and records of a contractor or any subcontractor under any
19 negotiated contract or subcontract other than a fixed-price
20 contract to the extent that such books and records relate to the
21 performance of such contract or subcontract. The books and
22 records shall be maintained by the contractor for a period of



1 three years from the date of final payment under the prime
2 contract and by the subcontractor for a period of three years
3 from the date of final payment under the subcontract, unless
4 another period is otherwise authorized in writing.

5 §304A-D Preference for small businesses; set-asides; use
6 as subcontractors. The university shall comply with the rules
7 adopted pursuant to section 103D-906, by the procurement policy
8 board established under section 103D-201."

9 SECTION 2. Section 103D-102, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) Notwithstanding subsection (a), this chapter shall
12 not apply to contracts made by:

13 (1) Any regional system board of the Hawaii health systems
14 corporation; [~~or~~]

15 (2) The Kaho'olawe island reserve commission, except as
16 provided by section 6K-4.5[~~+~~]; or

17 (3) Except with respect to sections 103D-110, 103D-304
18 with respect to design professional services furnished
19 by licensees under chapter 464, 103D-324, 103D-707,
20 and 103D-1002, the university or the board of regents
21 of the university."



1 SECTION 3. Section 304A-105, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The board of regents shall develop internal policies
4 and procedures for the procurement of goods, services, and
5 construction, consistent with the goals of public accountability
6 and public procurement practices, which shall be subject to
7 [chapter 103D.] sections 103D-110, 103D-304 with respect to
8 design professional services furnished by licensees under
9 chapter 464, 103D-324, 103D-707, 103D-1002, 304A-A, 304A-B,
10 304A-C, and 304A-D. Except as provided in this subsection,
11 chapter 103D shall not apply to any actions or activities
12 undertaken, conducted, or performed under authority of the board
13 of regents or the university; provided that the board of regents
14 and the university are encouraged to use the provisions of
15 chapter 103D as guidelines; provided further that in using one
16 or more provisions of chapter 103D as guidelines, neither the
17 board of regents nor the university shall be:

18 (1) Deemed to have waived in any way the exemption from
19 the requirements and applicability of chapter 103D
20 granted in this subsection; or



1 (2) Subject to any of the provisions or requirements of
2 chapter 103D other than those provided for in this
3 subsection."

4 SECTION 4. (a) The board of regents of the University of
5 Hawaii shall submit annual reports to the legislature no later
6 than twenty days prior to the convening of the regular sessions
7 of 2014 and 2015 that shall include:

- 8 (1) A description of the University of Hawaii's internal
9 procurement process;
- 10 (2) A description of the University of Hawaii's internal
11 procedures for handling protests of solicitations or
12 awards of contracts, if different from the procedures
13 described under chapter 103D, Hawaii Revised Statutes;
- 14 (3) A description and summary of any protests or
15 litigation that have arisen during the period of time
16 that the University of Hawaii is exempt from chapter
17 103D, Hawaii Revised Statutes, with certain
18 exceptions, pursuant to this Act;
- 19 (4) A description and status of construction projects in
20 excess of \$1,000,000 procured during the period of
21 time that the University of Hawaii is exempt from



1 chapter 103D, Hawaii Revised Statutes, with certain
2 exceptions, pursuant to this Act; and

3 (5) Any proposed legislation or recommendations to amend
4 chapter 103D, Hawaii Revised Statutes; provided that
5 the board of regents shall consult with the state
6 procurement office on any proposed legislation or
7 statutory amendment recommendations.

8 (b) Each year during which the University of Hawaii is
9 exempt from chapter 103D, Hawaii Revised Statutes, the
10 University of Hawaii shall submit a report to the legislature no
11 later than twenty days prior to the convening of each regular
12 session. The report shall include:

13 (1) Problems the University of Hawaii has identified with
14 procurement provisions under chapter 103D, Hawaii
15 Revised Statutes;

16 (2) Procedures the University of Hawaii has implemented as
17 solutions to address such identified problems;

18 (3) Quantifiable outcomes of procurement procedures the
19 University of Hawaii has implemented while exempt from
20 chapter 103D, Hawaii Revised Statutes; and

21 (4) How procurement procedures implemented by the
22 University of Hawaii have accelerated the acquisition



1 of goods, services, and construction while addressing
2 issues of equity and transparency in public
3 procurement.

4 (c) In its report to the legislature prior to the regular
5 session of 2014, as required under subsection (a), the
6 University of Hawaii shall also provide the legislature with
7 information on:

8 (1) Compliance with section 304A-A, Hawaii Revised
9 Statutes, including:

10 (A) A list of all construction contracts in excess of
11 \$1,000,000 entered into by the University of
12 Hawaii that are exempt from chapter 103D, Hawaii
13 Revised Statutes, with certain exceptions,
14 pursuant to this Act;

15 (B) The amount of each contract; and

16 (C) Specific identification of which contracts either
17 required or did not require the listing of
18 subcontractors pursuant to section 304A-2690,
19 Hawaii Revised Statutes; and

20 (2) Any formal complaints the University of Hawaii has
21 received from subcontractors in regard to or as a
22 result of section 304A-A, Hawaii Revised Statutes.



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

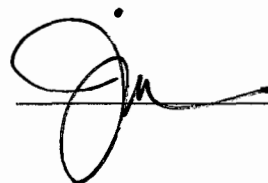
4 SECTION 6. In codifying the new sections added by section
5 1 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect upon approval;
11 provided that on July 1, 2015, this Act shall be repealed and
12 sections 103D-102(c) and 304A-105(b), Hawaii Revised Statutes,
13 shall be reenacted in the form in which they read on the day
14 prior to the effective date of this Act.

15

INTRODUCED BY:



A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the initials 'JW'.



S.B. NO. 1367

Report Title:

University of Hawaii; Procurement; Exemption

Description:

Exempts the University of Hawaii and the board of regents from certain provisions of chapter 103D, HRS. Requires annual reporting to the legislature. Repeals on July 1, 2015.

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

