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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 July 2015, the  
2 auditor released report no. 15-09: "Procurement Examination of  
3 the Department of Health: Lack of Procurement Controls Exposes  
4 Health Department to Waste and Abuse," conducted pursuant to  
5 section 23-4, Hawaii Revised Statutes, which requires the  
6 auditor to conduct postaudits of the transactions, accounts,  
7 programs, and performance of all departments, offices, and  
8 agencies of the State and its political subdivisions.

9           The legislature further finds that the auditor's report  
10 highlighted an example of a contract award that was renegotiated  
11 at a price that was three hundred forty-five per cent higher  
12 than the original bid amount. The same contract was then  
13 amended three times, which resulted in a final contract amount  
14 that was six hundred eleven per cent higher than the original  
15 bid, as well as a reduction in the scope of work provided and a  
16 one-year extension of the performance deadline.

17           The legislature additionally finds that a reform of  
18 procurement law is necessary in light of the auditor's report.



1           The purpose of this Act is to protect the public's interest  
2 in the procurement process by:

3           (1) Establishing a fair and reasonable pricing policy for  
4           every contract action;

5           (2) Clarifying that contractors are required to submit  
6           cost or pricing data and a certification of the  
7           accuracy of the data for certain change orders and  
8           contact modifications, even if the original contract  
9           award did not require cost and pricing data; and

10          (3) Clarifying that the state procurement administrator  
11          has the authority to perform periodic compliance  
12          reviews of the procurement practices and procedures of  
13          all governmental bodies, in collaboration with the  
14          state procurement board.

15          SECTION 2. Section 103D-205, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17          "(a) For their respective jurisdictions and unless  
18 otherwise specifically provided in this chapter, each chief  
19 procurement officer shall serve as the central procurement  
20 officer for the officer's respective jurisdiction and:



- 1 (1) Procure or supervise the procurement of all goods,  
2 services, and construction;
- 3 (2) Exercise general supervision and control over all  
4 inventories of goods;
- 5 (3) Sell, trade, or otherwise dispose of surplus goods;
- 6 (4) Establish and maintain programs for the inspection,  
7 testing, and acceptance of goods, services, and  
8 construction;
- 9 (5) Coordinate with the administrator regarding  
10 procurement policies, opportunities for statewide  
11 innovation implementation, and concerns; [~~and~~]
- 12 (6) Report procurement contract data pursuant to  
13 requirements established by the administrator, in the  
14 form and manner prescribed by the state procurement  
15 office [-]; and
- 16 (7) Assist and cooperate with the administrator regarding  
17 any compliance review by the administrator pursuant to  
18 section 103D-206."

19 SECTION 3. Section 103D-206, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§103D-206 Additional duties of the administrator of the  
2 procurement office. In addition to the duties referred to in  
3 section 103D-205, the administrator shall:

4           (1) Perform periodic review of the procurement practices  
5           and procedures of all governmental bodies[+], in  
6           collaboration with the state procurement policy board,  
7           for compliance with the procurement code;

8           (2) Assist, advise, and guide governmental bodies in  
9           matters relating to procurement;

10          (3) Determine corrective actions; provided that if a  
11          procurement officer under the jurisdiction of the  
12          administrator of the state procurement office or a  
13          chief procurement officer of any of the other state  
14          entities under section 103D-203, fails to comply with  
15          any determination rendered by the administrator within  
16          thirty days from the date of the issuance of the  
17          determination, or longer if permitted by the  
18          administrator upon request by the procurement officer  
19          or a chief procurement officer, the procurement  
20          officer or chief procurement officer shall be subject



1 to an administrative fine under section 103D-106, for  
2 every day of noncompliance;

3 (4) Develop and administer a statewide procurement  
4 orientation and training program;

5 (5) Develop, distribute, and maintain a procurement manual  
6 for all state procurement officials; and

7 (6) Develop, distribute, and maintain a procurement guide  
8 for vendors wishing to do business with the State and  
9 its counties."

10 SECTION 4. Section 103D-312, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§103D-312 [~~Cost~~] Fair and reasonable pricing policy; cost  
13 or pricing data. (a) A procurement officer shall purchase  
14 goods, services, and construction from responsible sources at  
15 fair and reasonable prices. A procurement officer shall make a  
16 written determination whether a price is fair and reasonable for  
17 each contracting action, including change orders and contract  
18 modifications that adjust prices. In establishing whether a  
19 price is fair and reasonable, the procurement officer shall  
20 obtain:



1        (1) Certified cost or pricing data for every contract to  
2        which subsection (c) applies; and

3        (2) Other data as necessary to perform a cost or price  
4        analysis of the data and determine a fair and  
5        reasonable price, regardless of whether subsection (c)  
6        applies to the contract.

7        (b) The policy board may adopt rules, pursuant to chapter  
8        91, to establish an order of preference in the type of data  
9        required under subsection (a) (2).

10        [~~(a)~~] (c) A contractor, except as provided in subsection  
11        [~~(e)~~], (e), shall submit cost or pricing data and shall certify  
12        that, to the best of the contractor's knowledge and belief, the  
13        cost or pricing data submitted is accurate, complete, and  
14        current as of a mutually determined specified date [~~prior to~~]  
15        before the date of:

16        (1) The pricing of any contract awarded by competitive  
17        sealed proposals or pursuant to the sole source  
18        procurement authority, where the total contract amount  
19        is expected to exceed an amount established by rules  
20        adopted by the policy board; or



1           (2) The pricing of any change order or contract  
 2           modification that is expected to exceed an amount  
 3           established by rules adopted by the policy board. The  
 4           requirement of this paragraph shall apply regardless  
 5           of whether the original contract award did not require  
 6           certified cost and pricing data.

7           ~~[(b)]~~ (d) Any contract, change order, or contract  
 8           modification under which a certificate is required shall contain  
 9           a provision that the price to the State, including profit or  
 10          fee, shall be adjusted to exclude any significant sums by which  
 11          the State finds that the price was increased because the  
 12          contractor furnished cost or pricing data that was inaccurate,  
 13          incomplete, or not current as of the date agreed upon between  
 14          the parties.

15          ~~[(e)]~~ (e) The requirements of this section, except for the  
 16          requirements of paragraph (c) (2), shall not apply to  
 17          ~~[contracts-]~~ original contract awards:

- 18           (1) Where the original contract price is based on adequate
- 19           price competition;
- 20           (2) Where the original contract price is based on
- 21           established catalog prices or market prices;



- 1 (3) Where the original contract prices are set by law or
- 2 rule; or
- 3 (4) Where it is determined in writing in accordance with
- 4 rules adopted by the policy board that the
- 5 requirements of this section may be waived, and the
- 6 reasons for the waiver are stated in writing[-];
- 7 provided that the requirements for price and costing
- 8 data required under subsection (a) (2) shall not be
- 9 waived without the approval of the chief procurement
- 10 officer; provided further that the chief procurement
- 11 officer shall not delegate this authority."

12 SECTION 5. Section 103D-318, Hawaii Revised Statutes, is  
 13 amended to read as follows:

14 "[+]§103D-318[+] **Finality of determinations.** The  
 15 determinations required by sections 103D-302(g), 103D-303(a),  
 16 103D-303(g), 103D-306, 103D-307, 103D-310, [~~103D-312(e)~~] 103D-  
 17 312(e), 103D-313, and 103D-314 shall be final and conclusive  
 18 unless they are clearly erroneous, arbitrary, capricious, or  
 19 contrary to law."





1 SECTION 6. 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 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on February 19,  
7 2022.



**Report Title:**

Procurement; Fair and Reasonable Pricing Policy; Administrator;  
State Procurement Board; Review

**Description:**

Requires all chief procurement officers to assist and cooperate with any compliance review by the state procurement administrator. Clarifies that the administrator has the authority to perform periodic compliance reviews of the procurement practices and procedures of all governmental bodies, in collaboration with the state procurement policy board. Establishes a fair and reasonable pricing policy for all contract actions. Clarifies that contractors are required to submit and certify cost or pricing data for certain change orders and contract modifications, even if the original contract award did not require cost and pricing data. Effective February 19, 2022. (SD1)

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

