
A BILL FOR AN ACT

RELATING TO CONSTRUCTION CONTRACTS.

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

- 1 SECTION 1. Section 103-53, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:
- 3 "(e) This section shall not apply to:
- 4 (1) Any procurement of less than \$25,000 or that is
5 considered a small purchase under section 103D-305 and
6 any state or county department contract of less than
7 \$25,000;
- 8 (2) Emergency purchases for the procurement of goods [~~7~~] or
9 services [~~7~~, ~~or~~, ~~construction~~] under section 103D-307 or
10 an emergency or disaster under chapter 127A;
- 11 (3) Grants disbursed by a state agency pursuant to chapter
12 42F or in accordance with standards provided by law as
13 required by article VII, section 4, of the state
14 constitution, or made by the counties pursuant to
15 their respective charters or ordinances;
- 16 (4) Contracts or agreements between government agencies;
- 17 (5) Contracts or agreements to disburse funds:



- 1 (A) To make payments to or on behalf of public
- 2 officials, officers, and employees for salaries,
- 3 fringe benefits, professional fees, and
- 4 reimbursements;
- 5 (B) To satisfy obligations required to be paid by
- 6 law, including fees, judgments, settlements, and
- 7 other payments for resolving claims;
- 8 (C) To make refunds or return funds held by the State
- 9 or county as trustee, custodian, or bailee;
- 10 (D) For entitlement programs, including public
- 11 assistance, unemployment, and workers'
- 12 compensation programs, established by state or
- 13 federal law;
- 14 (E) For deposit, investment, or safekeeping,
- 15 including sums to pay expenses related to their
- 16 deposit investment, or safekeeping;
- 17 (F) For loans under government-administered loan
- 18 programs; or
- 19 (G) To make periodic, recurring payments for utility
- 20 services;



1 (6) Rent for the use or occupation of the premises and
2 facilities at Aloha Stadium, the convention center, or
3 any other state or county large spectator events
4 facility; and

5 (7) Contracts or agreements of the Hawaii health systems
6 corporation and its regional system boards."

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

9 "(b) Notwithstanding subsection (a), this chapter shall
10 not apply to contracts by governmental bodies:

11 (1) Solicited or entered into before July 1, 1994, unless
12 the parties agree to its application to a contract
13 solicited or entered into prior to July 1, 1994;

14 (2) To disburse funds, irrespective of their source:

15 (A) For grants as defined in section 42F-101, made by
16 the State in accordance with standards provided
17 by law as required by article VII, section 4, of
18 the state constitution; or by the counties
19 pursuant to their respective charters or
20 ordinances;



- 1 (B) To make payments to or on behalf of public
- 2 officers and employees for salaries, fringe
- 3 benefits, professional fees, or reimbursements;
- 4 (C) To satisfy obligations that the State is required
- 5 to pay by law, including paying fees, permanent
- 6 settlements, subsidies, or other claims, making
- 7 refunds, and returning funds held by the State as
- 8 trustee, custodian, or bailee;
- 9 (D) For entitlement programs, including public
- 10 assistance, unemployment, and workers'
- 11 compensation programs, established by state or
- 12 federal law;
- 13 (E) For dues and fees of organizations of which the
- 14 State or its officers and employees are members,
- 15 including the National Association of Governors,
- 16 the National Association of State and County
- 17 Governments, and the Multi-State Tax Commission;
- 18 (F) For deposit, investment, or safekeeping,
- 19 including expenses related to their deposit,
- 20 investment, or safekeeping;
- 21 (G) To governmental bodies of the State;



- 1 (H) As loans, under loan programs administered by a
2 governmental body; and
- 3 (I) For contracts awarded in accordance with chapter
4 103F;
- 5 (3) To procure goods [7] or services [~~or construction~~]
6 from a governmental body other than the University of
7 Hawaii bookstores, from the federal government, or
8 from another state or its political subdivision;
- 9 (4) To procure the following goods or services [~~which~~]
10 that are available from multiple sources but for which
11 procurement by competitive means is either not
12 practicable or not advantageous to the State:
- 13 (A) Services of expert witnesses for potential and
14 actual litigation of legal matters involving the
15 State, its agencies, and its officers and
16 employees, including administrative quasi-
17 judicial proceedings;
- 18 (B) Works of art for museum or public display;
- 19 (C) Research and reference materials including books,
20 maps, periodicals, and pamphlets, which are



- 1 published in print, video, audio, magnetic, or
2 electronic form;
- 3 (D) Meats and foodstuffs for the Kalaupapa
4 settlement;
- 5 (E) Opponents for athletic contests;
- 6 (F) Utility services whose rates or prices are fixed
7 by regulatory processes or agencies;
- 8 (G) Performances, including entertainment, speeches,
9 and cultural and artistic presentations;
- 10 (H) Goods and services for commercial resale by the
11 State;
- 12 (I) Services of printers, rating agencies, support
13 facilities, fiscal and paying agents, and
14 registrars for the issuance and sale of the
15 State's or counties' bonds;
- 16 (J) Services of attorneys employed or retained to
17 advise, represent, or provide any other legal
18 service to the State or any of its agencies, on
19 matters arising under laws of another state or
20 foreign country, or in an action brought in
21 another state, federal, or foreign jurisdiction,



1 when substantially all legal services are
2 expected to be performed outside this State;
3 (K) Financing agreements under chapter 37D; and
4 (L) Any other goods or services which the policy
5 board determines by rules or the chief
6 procurement officer determines in writing is
7 available from multiple sources but for which
8 procurement by competitive means is either not
9 practicable or not advantageous to the State;

10 [and]

11 (5) Which are specific procurements expressly exempt from
12 any or all of the requirements of this chapter by:

13 (A) References in state or federal law to provisions
14 of this chapter or a section of this chapter, or
15 references to a particular requirement of this
16 chapter; and

17 (B) Trade agreements, including the Uruguay Round
18 General Agreement on Tariffs and Trade (GATT)
19 which require certain non-construction and non-
20 software development procurements by the



1 comptroller to be conducted in accordance with
2 its terms[-]; and
3 (6) To procure construction; provided that, with the
4 exception of construction procured pursuant to
5 paragraph (3), all other procurement contracts for
6 construction shall comply with the federal statutory
7 procurement requirements set forth under title 42
8 United States Code section 6962, as amended, and the
9 federal administrative procurement requirements set
10 forth under title 48 Code of Federal Regulations parts
11 1 to 9999, as amended; provided further that the
12 procurement officer shall comply with the rules of the
13 federal agency that is the closest counterpart to the
14 agency of the procurement officer, and if there is
15 none, then to the rules of the General Services
16 Administration under parts 500-599."

17 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is
18 amended by deleting the definition of "design-build".

19 ~~["Design build" means a project delivery method in which~~
20 ~~the procurement officer enters into a single contract for design~~
21 ~~and construction."]~~



1 SECTION 4. Section 103D-302, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) An invitation for bids shall be issued, and shall
4 include a purchase description and all contractual terms and
5 conditions applicable to the procurement. [~~If the invitation
6 for bids is for construction, it shall specify that all bids
7 include the name of each person or firm to be engaged by the
8 bidder as a joint contractor or subcontractor in the performance
9 of the contract and the nature and scope of the work to be
10 performed by each. Construction bids that do not comply with
11 this requirement may be accepted if acceptance is in the best
12 interest of the State and the value of the work to be performed
13 by the joint contractor or subcontractor is equal to or less
14 than one per cent of the total bid amount.]"~~

15 SECTION 5. Section 103D-303, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§103D-303 Competitive sealed proposals.** (a) Competitive
18 sealed proposals may be used to procure goods, services, or
19 construction that are either not practicable or not advantageous
20 to the State to procure by competitive sealed bidding.



1 (b) Proposals shall be solicited through a request for
2 proposals.

3 (c) Notice of the request for proposals shall be given in
4 the same manner as provided in section 103D-302(c).

5 (d) Proposals shall be opened so as to avoid disclosure of
6 contents to competing offerors during the process of evaluation.
7 A register of proposals shall be prepared and shall be open for
8 public inspection after contract award.

9 (e) The request for proposals shall state the relative
10 importance of price and other evaluation factors.

11 (f) Discussions may be conducted with responsible offerors
12 who submit proposals determined to be reasonably likely to be
13 selected for a contract award for the purpose of clarification
14 to assure full understanding of, and responsiveness to, the
15 solicitation requirements. Offerors shall be accorded fair and
16 equal treatment with respect to any opportunity for discussion
17 and revision of proposals, and revisions may be permitted after
18 submissions and prior to award for the purpose of obtaining best
19 and final offers. In conducting discussions, there shall be no
20 disclosure of any information derived from proposals submitted
21 by competing offerors.



1 (g) Award shall be made to the responsible offeror whose
2 proposal is determined in writing to be the most advantageous,
3 taking into consideration price and the evaluation factors set
4 forth in the request for proposals. No other factors or
5 criteria shall be used in the evaluation. The contract file
6 shall contain the basis on which the award is made.

7 (h) In cases of awards made under this section, non-
8 selected offerors may submit a written request for debriefing to
9 the procurement officer within three working days after the
10 posting of the award of the contract. Thereafter, the
11 procurement officer shall provide the non-selected offeror a
12 prompt debriefing. Any protest by the non-selected offeror
13 pursuant to section 103D-701 following debriefing shall be filed
14 in writing with the procurement officer within five working days
15 after the date upon which the debriefing is completed.

16 ~~[(i) In addition to any other provisions of this section,~~
17 ~~construction projects may be solicited through a request for~~
18 ~~proposals to use the design-build method, provided that:~~

19 ~~(1) A request for proposals is issued to prequalify~~
20 ~~offerors to select a short list of no more than three~~
21 ~~responsible offerors, prior to the submittal of~~



1 ~~proposals; provided that the number of offerors to be~~
2 ~~selected for the short list shall be stated in the~~
3 ~~request for proposals and prompt notice is given to~~
4 ~~all offerors as to which offerors have been short-~~
5 ~~listed;~~

6 ~~(2) A conceptual design fee may be paid to non-selected~~
7 ~~offerors that submit a technically responsive~~
8 ~~proposal; provided that the cost of the entire project~~
9 ~~is greater than \$1,000,000; and~~

10 ~~(3) The criteria for pre-qualification of offerors, design~~
11 ~~requirements, development documents, proposal~~
12 ~~evaluation criteria, terms of the payment of a~~
13 ~~conceptual design fee, or any other pertinent~~
14 ~~information shall be stated in the request for~~
15 ~~proposals.] "~~

16 SECTION 6. Section 103D-305, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§103D-305 Small purchases; prohibition against parceling.**

19 (a) Procurements of less than \$100,000 for goods or services [~~7~~
20 ~~or \$250,000 for construction]~~ shall be made in accordance with
21 procedures set forth in rules adopted by the policy board that



1 are designed to ensure administrative simplicity and as much
2 competition as is practicable; provided that multiple
3 expenditures shall not be created at the inception of a
4 transaction or project so as to evade the requirements of this
5 chapter; and provided further that procurement requirements
6 shall not be artificially divided or parceled so as to
7 constitute a small purchase under this section.

8 ~~[(b) Procurements greater than \$50,000 for construction~~
9 ~~under subsection (a) shall require security by performance and~~
10 ~~payment bonds, pursuant to section 103D-324, delivered to the~~
11 ~~procurement officer, that are:~~

12 ~~(1) In a form prescribed by the rules of the policy board;~~
13 ~~(2) Executed by a surety company authorized to do business~~
14 ~~in this State; and~~
15 ~~(3) In an amount equal to one hundred per cent of the~~
16 ~~price specified in the contract,~~
17 ~~or shall otherwise be secured by a performance bond in a manner~~
18 ~~satisfactory to the procurement officer.~~

19 ~~(e)]~~ (b) Procurements of \$25,000 to less than \$250,000
20 shall be made in accordance with small purchase procedures;



1 provided that [~~such~~] the small purchase procurements through an
2 electronic system shall be required."

3 SECTION 7. Section 103D-306, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) A contract may be awarded for goods[~~7~~] or services[~~7~~
6 ~~or construction~~] without competition when the head of a
7 purchasing agency determines in writing that there is only one
8 source for the required good[~~7~~] or service[~~7~~ ~~or construction~~],
9 the determination is reviewed and approved by the chief
10 procurement officer, the written determination is posted in the
11 manner described in rules adopted by the policy board, and no
12 objection is outstanding. The written determination, any
13 objection, and a written summary of the disposition of any
14 objection shall be included in the contract file."

15 SECTION 8. Section 103D-307, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The head of a purchasing agency may obtain a good[~~7~~]
18 or service[~~7~~ ~~or construction~~] essential to meet an emergency by
19 means other than specified in this chapter when the following
20 conditions exist:



- 1 (1) A situation of an unusual or compelling urgency
2 creates a threat to life, public health, welfare, or
3 safety by reason of major natural disaster, epidemic,
4 riot, fire, or such other reason as may be determined
5 by the head of that purchasing agency;
- 6 (2) The emergency condition generates an immediate and
7 serious need for goods [7] or services [~~7-or~~
8 ~~construction~~] that cannot be met through normal
9 procurement methods and the government would be
10 seriously injured if the purchasing agency is not
11 permitted to employ the means it proposes to use to
12 obtain the goods [7] or services [~~7-or-construction~~];
13 and
- 14 (3) Without the needed good [7] or service, [~~or~~
15 ~~construction~~7] the continued functioning of
16 government, the preservation or protection of
17 irreplaceable property, or the health and safety of
18 any person will be seriously threatened."

19 SECTION 9. Section 103D-311, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) The policy board may adopt rules to prequalify
2 prospective suppliers for particular types of goods[~~7~~] and
3 services[~~7, and construction~~] or to limit a solicitation to
4 prequalified vendors to meet statutory or licensing requirements
5 applying to the solicitation or when the time necessary to
6 verify vendor qualifications would jeopardize timely award of
7 contracts."

8 SECTION 10. Section 103D-313, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) Cost-reimbursement and cost-plus-a-percentage-of-cost
11 contracts may be used only when the chief procurement officer
12 determines in writing that such a contract is likely to be less
13 costly than any other type of contract or that it is
14 impracticable to obtain the goods[~~7~~] or services[~~7, or~~
15 ~~construction~~] required except by means of such a contract.
16 Cost-reimbursement and cost-plus-a-percentage-of-cost contracts
17 shall not be used if their use would jeopardize the receipt of
18 federal assistance moneys or reduce the amount of [~~such~~] the
19 assistance under any applicable federal statute or regulation."

20 SECTION 11. Section 103D-324, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Unless the policy board determines otherwise by
2 rules, the following bonds or security shall be delivered to the
3 purchasing agency and shall become binding on the parties upon
4 the execution of the contract if [~~the contract which is awarded~~
5 ~~exceeds \$25,000 and is for construction, or~~] the purchasing
6 agency secures the approval of the chief procurement officer:

7 (1) A performance bond in a form prescribed by the rules
8 of the policy board, executed by a surety company
9 authorized to do business in this State or otherwise
10 secured in a manner satisfactory to the purchasing
11 agency, in an amount equal to one hundred per cent of
12 the price specified in the contract;

13 (2) A payment bond in a form prescribed by the rules of
14 the policy board, executed by a surety company
15 authorized to do business in this State or otherwise
16 secured in a manner satisfactory to the purchasing
17 agency, for the protection of all persons supplying
18 labor and material to the contractor for the
19 performance of the work provided for in the contract.
20 The bond shall be in an amount equal to one hundred
21 per cent of the price specified in the contract; or



1 (3) A performance and payment bond which satisfies all of
2 the requirements of paragraphs (1) and (2)."

3 SECTION 12. Section 103D-802, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§103D-802 Cooperative purchasing authorized.** A public
6 procurement unit may either participate in, sponsor, conduct, or
7 administer a cooperative purchasing agreement for the
8 procurement of goods [7] or services [~~7-or-construction~~] with one
9 or more public procurement units, external procurement units, or
10 nonprofit private procurement units pursuant to rules adopted by
11 the policy board and an agreement entered into between the
12 participants. The cooperative purchasing may include [7] but
13 shall not be limited to [7] joint or multi-party contracts
14 between public procurement units, and state public procurement
15 unit requirements contracts [which] that are made available to
16 local public procurement units. Cooperative purchasing
17 agreements may be exempt from preferences pursuant to part X."

18 SECTION 13. Section 103D-904, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**[+]§103D-904[+]** **Geographic bidding.** The chief
21 procurement officer may utilize geographic bidding in providing



1 goods [7] and services [~~7~~ ~~and construction~~] to best meet the needs
2 of the State."

3 SECTION 14. Section 103D-303.5, Hawaii Revised Statutes,
4 is repealed.

5 [~~"§103D-303.5 Pre-bid conference. (a) At least fifteen~~
6 ~~days prior to submission of bids pursuant to section 103D-302~~
7 ~~for a construction or design-build project with a total~~
8 ~~estimated contract value of \$500,000 or more, and at least~~
9 ~~fifteen days prior to submission of proposals pursuant to~~
10 ~~section 103D-303 for a construction or design-build project with~~
11 ~~a total estimated contract value of \$100,000 or more, the head~~
12 ~~of the purchasing agency shall hold a pre-bid conference and~~
13 ~~shall invite all potential interested bidders, offerors,~~
14 ~~subcontractors, and union representatives to attend.~~

15 ~~(b) The procurement policy board shall adopt rules under~~
16 ~~chapter 91 to effectuate this section."]~~

17 SECTION 15. Section 103D-323, Hawaii Revised Statutes, is
18 repealed.

19 [~~"§103D-323 Bid security. (a) Unless the policy board~~
20 ~~determines otherwise by rules, bid security shall be required~~
21 ~~only for construction contracts to be awarded pursuant to~~



1 ~~sections 103D-302 and 103D-303 and when the price of the~~
2 ~~contract is estimated by the procurement officer to exceed~~
3 ~~\$25,000 or, if the contract is for goods or services, the~~
4 ~~purchasing agency secures the approval of the chief procurement~~
5 ~~officer. Bid security shall be a bond provided by a surety~~
6 ~~company authorized to do business in the State, or the~~
7 ~~equivalent in cash, or otherwise supplied in a form specified in~~
8 ~~rules.~~

9 ~~(b) Bid security shall be in an amount equal to at least~~
10 ~~five per cent of the amount of the bid.~~

11 ~~(c) Unless, pursuant to rules, it is determined that a~~
12 ~~failure to provide bid security is nonsubstantial, all bids~~
13 ~~required to be accompanied by bid security shall be rejected~~
14 ~~when not accompanied by the required bid security.~~

15 ~~(d) After the bids are opened, they shall be irrevocable~~
16 ~~for the period specified in the invitation for bids, except as~~
17 ~~provided in section 103D-302(g). If a bidder is permitted to~~
18 ~~withdraw its bid before award, no action shall be had against~~
19 ~~the bidder or the bid security."]~~

20 SECTION 16. Section 103D-407, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§103D-407—Construction projects, roadway materials;~~
2 ~~recycled glass content requirements. (a) When purchasing~~
3 ~~roadway materials or other high-value, end use applications for~~
4 ~~public projects, state and county agencies may purchase~~
5 ~~materials with minimum recycled-glass content meeting~~
6 ~~specifications adopted by the policy board which, at a minimum,~~
7 ~~shall provide for:~~

8 ~~(1) A minimum recycled-glass content of ten per cent~~
9 ~~crushed aggregate in treated or untreated basecourse~~
10 ~~in paving materials that shall not reduce the quality~~
11 ~~standards for highway and road construction; and~~

12 ~~(2) The use of one hundred per cent aggregate in~~
13 ~~nonstructural capital improvement applications.~~

14 ~~(b) All highway and road construction and improvement~~
15 ~~projects funded by the State or a county or roadways that are to~~
16 ~~be accepted by the State or a county as public roads may use a~~
17 ~~minimum of ten per cent crushed glass aggregate as specified by~~
18 ~~the department of transportation in all basecourse (treated or~~
19 ~~untreated) and subbase when the glass is available to the quarry~~
20 ~~or contractor at a price no greater than that of the equivalent~~
21 ~~aggregate.~~



1 ~~(c) All state and county construction projects calling for~~
2 ~~nonstructural backfill shall utilize one hundred per cent~~
3 ~~crushed glass when available at a cost equal to or lower than~~
4 ~~the equivalent aggregate.~~

5 ~~(d) As used in this section:~~

6 ~~"Basecourse" means the layer or layers of specified~~
7 ~~material or selected material of a designed thickness to support~~
8 ~~a surface course.~~

9 ~~"Environmental management special fund" means the fund~~
10 ~~established by section 342G-63.~~

11 ~~"Nonstructural backfill" means use as fill in areas not~~
12 ~~subject to structural loading, including but not limited to~~
13 ~~utility line bedding, drainage backfill behind retaining walls,~~
14 ~~drainage line backfill in leachfields or french drains, and~~
15 ~~similar uses."]~~

16 SECTION 17. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.

19 SECTION 18. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 19. This Act shall take effect upon its approval.

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INTRODUCED BY:

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H.B. NO. 2544

Report Title:

Procurement Code; Construction; Federal Requirements

Description:

Subjects the procurement of construction contracts to federal procurement laws.

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

